



TOPE ADEBAYO LP

**ON THE REGULATION  
OF INTEGRATED  
PETROLEUM OPERATIONS:  
TAKEAWAY FROM RECENT  
DEVELOPMENTS**



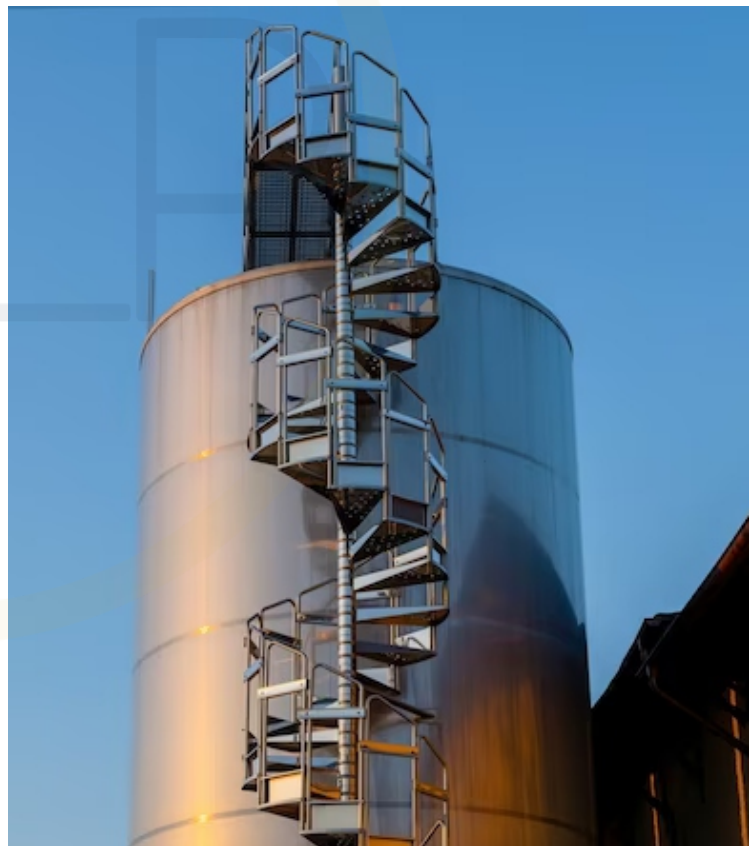
# ON THE REGULATION OF INTEGRATED PETROLEUM OPERATIONS: TAKEAWAY FROM RECENT DEVELOPMENTS

## The Facts

ExxonMobil had applied to the Nigerian Upstream Petroleum Regulatory Commission (“NUPRC” or the “Commission”) for authorisation to treat its operations as an integrated operation. This application was subsequently granted by the Commission.

Upon securing the Commission's authorisation, ExxonMobil applied for and was granted clearance by the Commission to lift 12,600 metric tonnes of Butane at Bonny River Terminal aboard a vessel known as Barumk Gas. After loading operations were concluded, a Certificate of Quantity and Quality (CoQ) was issued by an official of the NUPRC present at the loading site.<sup>1</sup>

According to media publications,<sup>2</sup> the Chief Executive Officer of the Nigerian Midstream and Downstream Petroleum Regulatory Commission (“NMDPRA” or the “Authority”), Farouk Ahmed, had petitioned the Chief of Defence Staff, Lucky Irabor, through a letter dated June 8, 2023,<sup>3</sup> tagging the operations of ExxonMobil at the Bonny River Terminal as an “economic sabotage”, a “theft” and an illegality. The CEO of the NMDPRA had requested the Chief of Defence Staff to “urgently prevent the sailing out of Barumk Gas until investigations into the matter are concluded”. According to the NMDPRA, the butane lifted at the Bonny River Terminal was done without its lawful authorisation.



<sup>1</sup><https://www.nuprc.gov.ng/press-release-8/> (last accessed on 17<sup>th</sup> of June 2023).

<sup>2</sup><https://www.vanguardngr.com/2023/06/nuprc-battles-nmdpra-over-control-of-bonny-river-terminal-2/> (last accessed on 21<sup>st</sup> of June 2023).

<sup>3</sup><https://leadership.ng/nmdpra-seeks-urgent-intervention-against-illegal-lifting-of-petroleum-at-bonny-river/> (last accessed on 1<sup>st</sup> of August 2023).

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### Relevant Provisions of the Petroleum Industry Act (PIA) 2021

#### The NUPRC

According to **section 5 of the Petroleum Industry Act** (“PIA”), the objects and functions of the Commission in Part III of the Act are limited to upstream petroleum operations.

“Upstream petroleum operations” is defined in **Section 318 of the PIA** to mean the exploration for, appraisal of, development of and winning or obtaining of petroleum in Nigeria ... and such other activities which by regulation are considered upstream petroleum operations, and related administration and overhead, provided, however, that **where field facilities or fixed or floating platforms or vessels provide for fully integrated upstream and midstream petroleum operations, the Commission may consider the entire operations as upstream petroleum operations** under section 8 (d) of this Act.

Furthermore, **Section 8 of the PIA** makes provision for the commercial regulatory functions of the Commission. According to **section 8(d)**, where in situ facilities or fixed or floating platforms or vessels provide for fully integrated upstream and midstream petroleum operations, the Commission shall consider, and the Commission shall be in charge of such integrated operations

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and petroleum operations may be considered integrated where there is a joint use of utilities used exclusively for the upstream and midstream operations.

Additionally, by virtue of **section 7(ee) of the PIA**, the technical regulatory functions of the Commission include to “issue certificates of quality and quantity to exporters of crude oil, natural gas and petroleum products from integrated operations and crude oil export terminals established prior to the effective date and the Commission shall have the power to monitor and regulate the operations of crude oil export terminals and the responsibility of weights and measures at the crude oil export terminals shall cease to exist from the effective date”.

### The NMDRA

According to **section 30 of the Petroleum Industry Act (“PIA”)**, the objects and functions of the Nigerian Midstream and Downstream Regulatory Authority (“NMDPRA” or the “Authority”) in Part IV of the Act are limited to midstream and downstream petroleum operations.

By virtue of **section 32(b)(iii) of the PIA**, the functions of the Authority shall be to regulate commercial midstream and downstream petroleum operations, including export natural gas operations. Additionally, according to **section 32(ii)**, the function of the Authority shall be to **issue certificates of quality and quantity to exporters of crude oil, LNG and petroleum products**.

### The Controversy and Recent Intervention by the Federal Government

The controversy between the NUPRC, NMDPRA and ExxonMobil appears to be a power tussle between the NUPRC and NMDPRA over what body controls export terminals and issues export permit in the Nigerian Oil and Gas sector.

Sometime within the fourth quarter(Q4) of 2022, the need to streamline the operations of MDAs at crude oil export terminals in Nigeria came up at the Senate. It was resolved that the NUPRC assumes full regulatory oversight of all existing crude oil export terminals. The resolution was subsequently communicated to the former President, Muhammadu Buhari, who after consul

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tation with the Attorney General of the Federation and the Minister of Justice, approved the resolution of the Senate and directed immediate compliance. However, merely a couple of months later, the same issue resurfaces in this controversy involving the NUPRC, NMDPRA, and ExxonMobil.

In a bid to address investors' concerns, President Bola Ahmed Tinubu issued a directive to the Permanent Secretary of the Ministry of Justice dated the 26<sup>th</sup> of June 2023, titled "Delineation of Regulatory Oversight Between Nigeria Upstream Petroleum Regulatory Commission (NUPRC) and Nigeria Midstream and Downstream Petroleum Regulatory Authority (NMDPRA), Pending Clarifications by Way of Amendment to the Petroleum Industry Act 2021".<sup>4</sup> According to the directive, the NUPRC is exclusively responsible for technical and regulatory oversight over all upstream petroleum operations and facilities including integrated upstream and midstream petroleum operations. This encompasses the licensing and monitoring of facilities operationally linked from the extraction phase up to and including crude export terminals as well as the entry gate of the

natural gas processing plant. The NMDPRA on the other hand has exclusive oversight on technical and commercial regulation of petroleum operations and facilities from the exit of the crude export terminals and the entry gate of the natural gas processing plant.

The President directed immediate compliance by the NUPRC and NMDPRA.

### Conclusion

The President's directive, delineating the roles of the NUPRC and NMDPRA at crude oil terminals in Nigeria is yet again a temporary solution to the reoccurring tussle between these regulatory bodies. To fully guarantee certainty and restore investors' confidence, it may be necessary for the Petroleum Industry Act to be promptly amended accordingly. Such Amendment or in the alternative a judicial pronouncement on this matter may be the only way to conclusively lay it to rest.

<sup>4</sup><https://www.thisdaylive.com/index.php/2023/07/06/after-buhari-tinubu-wades-into-nuprc-nmdpra-altercation-over-overlapping-functions> (last accessed on 1<sup>st</sup> of August 2023).



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