

The Problem of Environmental Degradation and Despoliation in the Oil-Producing Areas: A Way Forward

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Rationale and Overview

The Petroleum Act of 1969 vests the entire ownership and control of oil and gas resources in Nigeria in the State. Together with the Petroleum (Drilling and Production) Regulations of 1969, the Act establishes the administrative framework for the petroleum industry in Nigeria. Apart from these, there is a whole gamut of Laws regulating petroleum mining and exploration in Nigeria.

The grant of a Licence, Lease or Permit to survey for and exploit petroleum in the areas that the Licence covers necessarily affects the interests of the oil producing communities who are the holders of surface rights over the areas being explored and exploited by the oil Companies. The issue of quantum of compensation is left to be determined between the holder of these rights and the grantor of the licence. This anomaly has been responsible for the disputes between the oil companies and the affected communities.

But the exploration and mining of petroleum necessarily involves more than a mere infringement of surface rights. It has caused massive environmental degradation that is destroying the very basis of livelihood of whole oil communities.

Compensation procedures require to be fully-developed to give claimants protection and quantifiable standards of redress.

The Federal Environmental Protection Agency Act (FEPA) on oil pollution is not specific, neither is the Decree that established the Oil Commission. The Common Law position on the payment of damages for nuisance in this class of cases is also unhelpful. There ought to be a way forward.

Recommendations/Suggestions

In the developed world, the emphasis is on enforcing local compliance with applicable international treaties on oil and marine pollution. On

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2

November 29, 1969, the International Convention on Civil Liability for Oil Pollution Damage was signed in Brussels, Belgium.

It codifies international rules for the determination of questions of liability and compensation associated with oil pollution. This Treaty is open for accession to all members of the United Nations. As a supplement to this Convention, an International Fund on Compensation for Oil Pollution was established by a Treaty signed on December 18, 1971. Several similar Conventions and Treaties exist which are open to Nigeria to accede to, but, unfortunately, it has not. It needs to.

Second, and more important, it is crucial that there be effective Laws for the enforcement of municipal legislation on oil and marine pollution. We are of the view that there is a gap in the enabling Statute establishing the Commission. There ought to be specific provisions empowering the Commission to monitor and regulate oil Companies' compliance with oil and gas and maritime legislations.

At present, it is the Federal Environmental Protection Agency (FEPA) that enforces or has power to enforce existing legislation. It is our view that the statutory power to enforce ought also to be vested in the Commission.

To be effective, the Commission must have an Inspectorate Division charged with oversight responsibility. Otherwise, its powers will largely be dormant.

If the Commission must begin to address the issue of oil and marine pollution, it is obvious that it will require to have current information about international Conventions and domestic Legislations on the application and enforcement of petroleum activities relating to marine pollution.

The Commission will also require to review its enabling Statute and seek legislative approval for an amendment if its work will be effective.

As Legislative Advocates (i.e. Advisers and Consultants on legislative procedures) in oil and gas and maritime Laws, we would be willing to explore the theme of this brief in further detail with the Commission and look forward to a meeting at your convenience.

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