

**THE LAW OF
OIL POLLUTION
AND
ENVIRONMENTAL
RESTORATION**



A COMPARATIVE REVIEW

Olanrewaju Fagbohun

The Law of Oil Pollution and Environmental Restoration: A Comparative Review

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• Abuja • Lagos • Port Harcourt

Published by

Odade Publishers
Comfort House (3rd Floor)
13, Hughes Avenue
Alagomeji, Yaba
Lagos, Nigeria
Tel: 234-1-774 0976
234-1-898 0905
E-mail: info@odadepublishers.com
Website: www.odadepublishers.com

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First published 2010

ISBN 978 978 906 463 2 (*Hardback*)
ISBN 978 978 906 464 9 (*Paperback*)

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Foreword

It gives me great pleasure to introduce Professor Olanrewaju Fagbohun's work on *"The Law of Oil Pollution and Environmental Restoration: A Comparative Review"*. The focus of the book is oil pollution arising from both onshore and offshore exploration and production installations. It is against this background that the author has critically and exhaustively analyzed the law relating to environmental restoration aftermath of oil pollution. One has only to look at the table of contents to appreciate the wide range of issues and sub-issues to which Professor Fagbohun has given due cognizance.

Oil pollution has unquestionably threatened the extinction of several flora and fauna and their habitats; negatively impacted on the culture and political structure of many indigenous groups; and has been a source of serious health hazard for human beings. While oil continues to play a dominant role in the economy of several societies, the social and environmental cost of oil pollution has been extensive. This book, which would be welcome at any time, thus, comes at a particularly auspicious moment in the continuing global effort to deal with the legacies of past oil pollution and the challenges of future oil pollution.

Given that Nigeria is the focal point of study, the great strength of this work is that it presents a comparative review of oil spill contingency plan in fifteen other jurisdictions. For many of the countries, the

implementation of environmental protection strategies has not been effective, and there are serious concerns that their present framework of environmental protection will not be able to meet the increasing challenges of oil spill and attendant pollution.

In Nigeria, for example, the Niger Delta is in the throes of degradation from oil pollution. Lagos, which is my own immediate constituency, has also had its fair share of oil spill from underground crude oil pipeline criss-crossing its length and breadth, and through its coastline from installations erected in seemingly distant places like Idoho in Cross Rivers State – some 853km distance. Very recently, Lagos State joined the league of oil producing states thereby increasing its share of probable oil spills. Experience has taught us that within the oil industry even with the best of practice and technology, accidents do happen and often times result in pollution, in spite of the fact that our statutes are replete with relevant laws and regulations. From Europe to Asia, North America, South and Central America, Africa and the Middle East, the story is the same in a number of places.

Professor Fagbohun's incisive analysis of the philosophical, legal and institutional frameworks indicate that if indeed, we are to remain true to the course of protecting the environment, then, our approach to restoration of the environment aftermath of oil pollution must reflect and embrace strategies that will enable us give real meaning and force to the right to development in a way that does not compromise developmental and environmental need of present and future generations.

It is very encouraging to find a book devoted to the complex and sensitive issue of oil pollution and environmental restoration and capable of serving as a convenient source to which those desirous of a sure guide to effective strategies for environmental restoration can

turn. I am not surprised at the bold attempt of the author as he has himself achieved distinction in the field of Environmental Law as a Research Professor and Executive Director of the Environmental Law Research Institute. I strongly commend his efforts.

Babatunde Raji Fashola, SAN
Executive Governor of Lagos State
Government House, Alausa – Ikeja
Lagos, Nigeria.

Foreword

It is gratifying to introduce Professor Olanrewaju Fagbohun's book on *"The Law of Oil Pollution and Environmental Restoration: A Comparative Review"*. He has produced a clear and readable account of an extremely sensitive and exacting subject.

The subject is sensitive in the sense that oil plays a central role in the sustenance of the economy of many nations, Nigeria inclusive, while the energy it supplies provides multiple benefits to the human society. On the other hand, it is exacting in that pollution arising from oil production, whether intentional or accidental, large or small, has the potential to cause tremendous and far-reaching damage to almost every form of life with which it comes in contact.

Oil is a very complex mixture made up of hundreds of compounds, mostly hydrocarbons, and is derived from organic rich sedimentary rocks. There are many sources of oil pollution. The pollution arising from onshore and offshore exploration and production installations, which is what Professor Fagbohun has given a focus to, are without doubt significant. When pollution occurs it renders indigenous communities vulnerable and results in serious effects on human health, animal and plant life, and on land which is cherished as food source and for its recreational values. In particular, pollution arising from

offshore installations can threaten the integrity of the coastal shelf, as well as have a negative effect on marine life.

In giving us a detailed history of oil exploration and its impact on the environment, as well as a thorough appraisal of the law relating to oil pollution and environmental restoration, not just in Nigeria, but in sixteen (16) other jurisdictions and under international law, Professor Fagbohun has without doubt performed a great service for which those of us interested in the protection of our environment should all be grateful. His incisive analysis of the interface between restoration and compensation will be helpful to decision makers while his exposition of the challenges facing the judiciary in Nigeria and how those challenges have been tackled in other jurisdictions will be invaluable to the courts.

This book is coming at a crucial time when governments globally are striving to improve their understanding and assessment of impacts, vulnerability and adaptation to climate change, to make informed decisions on practical adaptive actions and mitigation measures and to respond on a sound scientific, technical and socio-economic basis, taking into account current and future climate change and variability.

In the context of climate change, the combustion of fossil fuels has contributed greatly to alteration of levels of atmospheric greenhouse gases (GHGs) such as nitrous oxides, carbon dioxide (CO₂), chlorofluorocarbons (CFCs), methane, carbon monoxide (CO), Sulphur dioxide (SO₂), and ground level ozone. Climate change is largely linked to the emission of these GHGs. The negative effect of climate change includes warming of land surface and the deep ocean, acceleration of the hydrological cycle and

change in global weather patterns. The practical result of these effects include threats to forest and marine coastal ecosystems, possible reductions in crop yields, projected overall temperature increases, severe drought and increased water stress. In Africa alone, it is estimated that yields could decline by as much as 50% by 2020 while water stress could affect some 75-250 million Africans by the same year.

Going by the BP Statistical Review of World Energy 2007, at current production levels, the world's oil reserves will be depleted in 40.5 years. The implication of this is that countries will not suddenly abandon traditional fossil fuels and transit to cleaner and more efficient technologies. Consequently, since fossil fuel will be with us for some time to come, what Professor Fagbohun has done is to signpost a guide for bringing oil exploration and production into harmony with nature through the comprehensive strategy of restoration.

This is a book that is essential for all those in the petroleum industry and their advisors on how they can conduct their operations in combination with satisfying legitimate environmental concerns. It is also a practical guide for regulators on how to develop effective guidelines for oil spill recovery and environmental restoration. For legal practitioners, the courts, other professionals, non-governmental organizations and researchers, it is a reference book which gives an up-to-date position on laws, procedures and developments in the oil industry, nationally and internationally. It is a book that can be written only with a great deal of painstaking research. No one who is in the oil industry or involved in the regulation of the oil industry will be able to do without it.

I congratulate the author on a work that will be in constant use by a large number of stakeholders.

Dr. B. A. Ajakaiye*

Director General/Chief Executive

National Oil Spill Detection and Response Agency

Abuja, Nigeria.

*This foreword was written by the late Dr. B. A. Ajakaiye shortly before he died.

Preface

Much of the world depends on the production or the trade of oil to drive their economy. Indeed, history is replete with examples of nations going to war or willing to go to obtain oil resources or in defence of an oil producing region. This goes to demonstrate the importance of oil resources.

In recent years, heightened concerns about the environmental impacts of fossil fuels (oil and gas, also collectively referred to as hydrocarbons) is such that oil companies are being encouraged to direct their efforts on the development of new and improved technology, while the world is simultaneously moving at a fast pace to research, produce and manufacture a range of economically viable, socially acceptable and environmentally sound energy options. For the time being, and pending when the world is able to source clean and affordable energy, oil and gas will continue to drive global prosperity.

One only needs to look at the statistics – presently, global demand for oil is around 75million barrels per day (mbd), while daily consumption of gas is 220billion cubic feet (bcf). By 2010 global consumption is expected to rise to 90mbd of oil and 280 bcf of gas per day. In terms of reserve, the world's ultimate oil recovery is put at 1,800billion barrels at the most conservative estimate. This is inclusive of past production of around 800 billion

barrels. As a consequence of technological advancement, estimates from the International Energy Agency are more optimistic at around 2,300 billion barrels of oil. What all these point to is that the world will continue to face the challenges of oil production for some time to come.

One of such challenges is pollution. The impact of oil pollution include deforestation; ecosystem destruction and loss of pristine habitats; degradation and chemical contamination of land, air and water; long-term harm to flora and fauna (especially migratory birds and marine mammals); acute and chronic health problems for human beings; safety risks for host communities and oil industry workers and immediate to medium-term threat to indigenous communities. Oil pollution not only disrupts the fragile ecosystems of indigenous communities, its negative impacts and the associated human rights abuses also threaten the very survival of these communities. These impacts have often led to civil unrest involving disruption of oil operations, terrorism with oil facilities as the target and kidnap of immigrant workers and senior officials of oil companies.

There are whole variety of modern texts, comprehensive articles and abundantly rich literature that have been devoted to specific topics and aspects of oil pollution. For example, focus have been given to such key issues as civil liability and compensation for damage arising from oil pollution at sea; oil pollution from ships and tankers; liability for oil spillage; damage assessment of natural resources; and marine oil pollution among others. My aim in this book has been to further the understanding of issues relating to oil pollution not just from the general perspective of liability and damage but from the perspective of bringing society into harmony with nature through the comprehensive strategy of restoration.

This is an area that has received little attention, and for the most part has been assumed as fully understood and effectively in use. For this reason, it has only received mention in few pages here and there in works devoted to other subjects I have in the main ventured to suggest that if indeed we seek whole ecosystem improvement, an important first step is to embrace environmental restoration as a strategy. The book has its focus primarily on oil pollution arising from both onshore and offshore installations. These will include wells, flowlines, underwater pipelines, storage facilities gathering lines, separation equipment, auxiliary non-transportation related equipment, drilling or workover equipment, and facilities serving a geographical oil and gas field.

With the object of giving clear guidance to practitioners and researchers I clarified what "restoration" is in contrast with related management practices. I looked at the oil industry and its negative impact on the environment, and examined the existing perspectives on which man has sought to justify the values attributable to protection of the environment. These perspectives are important, not for their particular sources, but, for the fact that several of them exemplify the most widespread, influential and yet seriously flawed approach to environmental protection that is to be found in public and scholarly debate, namely, the essential place of humanity in the attainment of planetary good and the assumption that the moment human victims of oil pollution are satisfied, it would concomitantly yield environmental restoration.

I argued that persuasive as some of these perspectives are, they are fallacious to the extent that they trust man to take charge for reason of his intellectual capacity. Resulting environmental laws invariably reflect this dangerous and arguably incorrect assumption. My

conclusion is that to have in place appropriate and effective checks and balances, strong stakeholder involvement and community participation must, in fact, be inalienable and indispensable components of a sound environmental restoration strategy. Governments must give the practical leverage that will empower these local communities and environmental groups to truly contribute to the decision-making process. The book suggests and reviewed the various strategies that can be used to achieve the above desired goals.

Two other central issues to which considerable attention has been given is the judicial attitude towards restoration aftermath of oil pollution, and the role of international law. In the later discourse, the synergies that can be achieved by linking human rights and environmental protection were examined.

In appreciation of the fact that the oil industry has been regulated in diverse ways in different countries, chapter 9 is a comparative analysis of the state of the law in sixteen other jurisdictions. While the various systems differ in details, their basic policies are similar and demonstrate many common problems. A number of key oil producing countries have either weak environmental laws, weak enforcement of these laws, or no environmental policies at all. Several others do not have a clearly defined or internationally accepted oil spill response plan, while the implementation of response plan by those who have has been a miserable failure. There are a lot to be learnt from the experience of others either in terms of why they have failed or are making progress. The idea of the book is not to draw up oil spill preparedness plan to serve as a model for adoption. Rather, its goal is to sign post those critical elements that should be contained in any such plan to ensure its effectiveness. It also gives a guide on

how to develop effective Guidelines for oil spill recovery clean-up and restoration.

The book should therefore be of interest to researchers, practitioners and professionals who as independent consultants or as employees in the service of government ministries, agencies, private oil companies or international institutions, are being charged with the task of managing issues relating to oil pollution and environmental restoration. Not only will they be able to appreciate the environmental risk involved in oil pollution, they will be in position to assess the level of their preparedness in meeting its challenges and be able to make necessary adjustment to their present regime as necessary. Academics, undergraduate and post-graduate students of environmental law, geography, land use planning, environmental studies and development studies should also find the book useful as a resource for further study.



The public presentation of a book, "The LAW of OIL POLLUTION and ENVIRONMENTAL RESTORATION" (A Comparative Review), took place at the Institute of International Affairs, Victoria Island, Lagos, recently. The author, OLANREWaju FAGBOHUN, is Research Professor of Law with the Nigerian Institute of Advanced Legal Studies and a Director of the Environmental Law Research Institute in Nigeria. He was a co-ordinator Environmental Law & Allied Disciplines of the Centre for Environment and Science Education of the Lagos State University (LASU), and a member of the National Work Group for the Streamlining of Environmental Laws in Nigeria and Development of Environmental Law and Policy Curriculum for Nigerian Universities. Governor EMMANUEL EWETA UDUAGHAN of Delta State co-presented the book with Chief WOLE OLANIPEKUN, SAN, and Governor BABATUNDE RAJI FASHOLA, SAN, of Lagos State, was represented by the Solicitor-General of Lagos State, Hon. LAWAL PEDRO, SAN. Here are some of the personalities at the event.

Photographs by award-winning Director of Photography: SUNMI SMART-COLE



•The Guest Lecturer, Governor Emmanuel Uduaghan of Delta State, delivers his paper



•The author of the book, Professor Olanrewaju Fagbohun and Delta State Governor, Dr. Emmanuel Uduaghan



•The Solicitor-General of Lagos State, Hon. Lawal Pedro, SAN representing Governor Babatunde Fashola, SAN and the presenter of the book, Chief Wole Olanipekun, SAN



•The father of the author, HRM Abayomi Alabi Fagbohun and Olori Moradeke



•Scientific Officer (Co-ordination) The African Union, Dr. Mohammed Kyari and Professor Demola Popoola of Obafemi Awolowo University, Ile Ife



•Professor Enitan Odehinni, former Anambra State Deputy Governor, Chief Stella Odiye and Prince Yemi Adefulu, CEO, Odiade Publishers (who produced the book)



•Mrs. Nike Aboaba, Hon. Justice Yetunde Adesanya of the Lagos State Judiciary and Mrs. Yeside Fagbohun, wife of the author of the book and Chief Executive Officer, Denkon Global Ltd.



•Senior Partner in the Lagos law firm, AELEX, Mr. Soji Awogbade exchanges pleasantries with Governor Uduaghan



•The Director-General, Nigerian Institute of Advanced Legal Studies, Dr. Ephim Azinge and Ikponmwosa Omigie, esq who represented the book reviewer, Professor Yinka Omorogbe



IMAGES



• Hon. Justice Yetunde A. Adesanya of the High Court of Lagos State and Mr. Hassan Jarnakani



• Governor Emmanuel Uduaghan of Delta State and photographer and journalist, Sammi Smart-Cole



• Director-General, Copyright Commission, Mr. Adebambo Adewopo, Mr. Mustapha Motolani of LASU and former Lagos State Commissioner for Education, Professor Kunle Lawal



• Hon. Justice Opeyemi Oke of Lagos State Judiciary and Delta State Commissioner for Culture and Tourism, Hon. Richard Mofe-Damijo (the popular actor and lawyer)



• Governor E. E. Uduaghan with the author, Professor O. Fagbohun, his wife, Yeside, their sons, Abdul-Samad and Umar-Farouq



• Bashorun Adebayo Ajao and Adeleke Agbola, Esq.



• Delta State Commissioner for Environment, Dr. Bibobra Bello Orubebe and Delta State Commissioner for Basic and Secondary Education, Ms. Juliet Agoba



• Delta State Commissioner for Transport, Chief Lawrence Osiegbu and Commissioner for Higher Education, Dr. Hope Eghagha



• Mr. Bayo Quadri-Shitta, Mr. Steve Adesina and Ms. Joyce Akpata



• Governor Uduaghan presents the book