

# Policy Dialogue on Transportation and Insurance Policy in Nigeria

## January 31, 2010

### Introduction

There is strong link between transportation and insurance protection and there can hardly be any meaningful development in the transportation sector without security offered by insurance. The **Policy Dialogue on Transportation and Insurance Policy in Nigeria** convened by the Nigerian Institute of Advanced Legal Studies aimed to critically assess the existing framework for delivering transportation related insurances and to develop strategies for effective implementation of such insurances.

The Policy Dialogue held on 31<sup>st</sup> January 2011 at Professor Ayo Ajomo Auditorium at the Nigerian Institute of Advanced Legal Studies.

In attendance were stakeholders and interested persons from a cross section of the society. Notably, there were representatives from: Federal Road Safety Commission; National Insurance Commission; Private Legal Practitioners; and the Academic community.

Perspectives for the Policy Dialogue included:

- Accident Victims and Insurance Policies
- Maritime Insurance Policies and Passenger Safety
- Road Infrastructure and Insurance Liability
- Terrorism, High Risk Destination and Insurance Policies
- The Regulatory Framework of the Federal Road Safety
- Vehicle Road Worthiness and Accident Liability

### OBSERVATIONS

The Dialogue observed as follows:

1. The road system is the most important element in the country's transportation network, carrying about 95 percent of all a nation's goods and passengers
2. Road traffic accidents worldwide account for an annual estimate of about one million or more deaths and between twenty to fifty million non-fatal injuries, with some of the non-fatal injuries leading to permanent disabilities
3. Common problems associated with road systems in Nigeria is that the roads are in disrepair and barely useable, traffic jams and huge delays in the movement of goods are occasioned making owners of the roads and motorists that ply them susceptible to liabilities
4. Other factors contributing to road traffic accidents include poor road infrastructure, speeding, negligence, impairment (for instance due to alcohol consumption), inadvertence, poor traffic management, lack of adherence to traffic rules, mechanical failures due to the carelessness of the vehicle user and more
5. Statistics show that the accident fatality index in Nigeria rose from 157 in 1971 to 302 in 1987

6. Majority of victims of road traffic accidents are between the ages of fifteen and forty. This means that many of the victims are in their prime and productive years
7. Vehicle roadworthiness is a key area where vehicle users can play a vital role in reducing the risks of accidents, and reducing liability arising from accidents
8. The Federal Road Safety Commission (FRSC) was established in 1988 in response to the high road traffic crashes fatality index
9. The regulatory framework of the FRSC is based on the Constitution of the Federal Republic of Nigeria 1999, the FRSC (Establishment) Act, 2007 and other laws, regulations and guidelines
10. Regulating road traffic crashes and creating a safe motoring environment is the mission of the FRSC
11. FRSC's vision is to regulate, enforce and co-ordinate all road traffic and safety management activities through sustained public enlightenment, effective patrol operations, prompt rescue services, improved vehicle administration, robust data management, and promotion of stakeholder cooperation.
12. Insurance is a form of risk management primarily used to hedge against the risk of a contingent, uncertain loss. It is defined as the equitable transfer of the risk of a loss, from one entity to another, in exchange for payment or premium
13. Insurance is a concept that helps protect against damage that one's property may do to others or their properties. It is a pool that absolves such liabilities when they occur
14. Liability insurance is a part of the general insurance system of risk financing to protect the purchaser (the "insured") from the risks of liabilities imposed by lawsuits and similar claims. This insurance is designed to offer specific protection against third party insurance claims
15. Compulsory insurance are classes of insurance made compulsory by law, with the objective of providing protection to third parties and the public
16. The only form of compulsory insurance available in Nigeria is the motor vehicle third-party personal injury insurance under the Motor Vehicle (Third Party Insurance) Act and the Motor Vehicle (Third Party Liability Insurance) (ECOWAS Brown Card Scheme) Act.
17. In other jurisdictions, it takes sometimes two weeks to settle a claim. In Nigeria, it may take two months to respond to notice of loss and up to one or two years to meet the insurance claim
18. Insurance companies limit their liability in different ways through certain measures, policies as well as some statutes. Examples include clauses regarding age limit
19. Owners of infrastructures are primarily liable for the damage the infrastructure may do to others unless the risk is transferred through insurance
20. Roads are mainly owned by government until recently where private sectors now acquire interest in them through public-private partnership (PPP) arrangements
21. The laws seem to exempt government road infrastructure from compulsory risk management through insurance
22. A private investor in a concessioned road project road infrastructure does not enjoy the exemption or immunity enjoyed by the government. For example, the Lekki Toll road project
23. Public management of the budgetary process for road infrastructure projects has been inefficient and contributed to the creation of bureaucratic bottlenecks in access to necessary funds for executing road projects
24. The key instrument for financing reform is the National Roads Funds financed through tollgate collections, traffic fines and other road traffic related taxes

25. Tollgate collections and other forms of road taxation contribute just about one percent of the overall road budget but with reforms in the financial sector, it is now possible to diversify the possible sources of funding for road projects
26. Insurance industry in Nigeria is not properly positioned to render financial assistance because most vehicles on Nigerian roads are inadequately insured or have fake insurance certificates which only pass the various police check points
27. The National Insurance Commission (NAICOM) discharges its statutory responsibility of guiding the insurance industry in particular, and the public generally, towards compliance with the provisions of the insurance laws
28. The NAICOM provides leadership for the Insurance Industry towards researching for and introducing new insurance products especially in relation to emerging risk situation like terrorism, kidnapping and other hostage crimes
29. Under the umbrella of Market Development and Restructuring Initiatives (MDRI), the NAICOM has begun active enforcement of the laws relating to compulsory insurances
30. The NAICOM has initiated and continues to pursue collaboration with relevant state agencies, such as the Nigerian Police and Federal Road Safety Commission
31. The Security and Development Fund may be used to compensate innocent individual third parties permanently disabled or killed by uninsured and unidentified drivers
32. Section 78 of the Insurance Act 2003 provides for Security and Development Fund to be used for the payment of any claim admitted by a registered insurer where such claims remained unpaid
33. Many insurance companies are unable to raise the required minimum capital to implement the provision of Section 78
34. The Motor Accident Insurance Victims Compensation Scheme (MAVICS) provides an alternative to litigation for accident victims
35. Road accident victims must report any hit and run accident or any unidentified vehicle where the insured is in possession of a genuine third party motor insurance in order to receive assistance under MAVICS
36. Strict regulation of marine insurance activities is among the actions which the Federal Government has taken to ensure that maritime transportation is not hindered by fear of risk and that the sector continues to play a key role in the economic development of the country
37. Risk in maritime transportation manifests by way of injuries and fatalities to human beings, environmental pollution, damage or loss of vessel and cargo, and loss of income
38. Maritime transportation plays a significant but little role in passenger movement in Nigeria
39. The 2003 Insurance Act and the Marine Insurance Act do not deal with passenger safety
40. Terrorism knows no boundaries. Every part of the globe is either a high risk destination or is potentially a high risk destination. It is only a matter of degree
41. The best form of insurance against terrorism is to root out the root causes of terrorism. In Resolution 60/288 of 2006, the United Nations General Assembly identifies the "conditions conducive to the spread of terrorism" to include "prolonged unresolved conflicts, dehumanization of victims of terrorism in all its forms and manifestations, lack of rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization and lack of good governance, but emphasizes that "none of these conditions can excuse or justify acts of terrorism."

## RECOMMENDATIONS

1. Annual regulatory inspection for vehicle road worthiness is not enough, user checks and inspections will ensure vehicles continue to be fit to ply the roads between one regulatory inspection and another
2. There is need to entrench an effective system to verify the authenticity of certificates of insurance and certificate of road worthiness before the yearly renewal of motor vehicles. The Federal and State Governments have to work together to achieve this
3. Speed limit should be enforced as done in other countries
4. Due to uncertainty of claim settlement, there is need for extra liability insurance that goes beyond the limits of auto insurance to provide additional layer of security for those who are at risk for injuries caused to others in an accident. A umbrella insurance is an extra liability insurance that you purchase in addition to your regular insurance policies
5. There is a need for deeper understanding of the relationship between transportation and insurance on the one hand, and the legal and institutional challenges we must overcome
6. The actualization of the mission and vision statements of the FRSC would assist in preventing and minimizing road crashes on the nations highways
7. Beyond ensuring compensation against loss of life, injury and damage to third party property, enforcement of compulsory insurance by the NAICOM has potential for deepening insurance premium base for the insurance industry. By extension, this would increase the contribution of the insurance sub-sector to the nation's Gross Domestic Product (GDP) which contribution is currently estimated at less than one percent of the GDP
8. The application of the Act should be extended to third parties' property damage and should not be restricted to death or bodily injury alone
9. Revision of the Motor Vehicle (Third Party Insurance) Act and allied laws to provide for stiffer sanctions for failure to take the compulsory third party insurance
10. Insurance policy which remains the link between the insurance company and the victim of insurance accident should be properly implemented within the spirit of the law
11. Stability of insurance industry is well assured if the Security and Development Fund is well administered as this would absorb shocks which could otherwise destabilize the insurance industry
12. Compulsory liability insurance should expressly provide for rail transport as this means of transportation is fast becoming popular
13. There is need to reconcile Section 50 of the 2003 Insurance Act with Sections 32(1) and 53 of the Marine Insurance Act
14. There should be intensive education of the public on the environmental and socio-economic importance of marine transportation
15. Government should embark on the first phase of serious coastal and inland waterways using decommissioned fishing vessels in order to reduce congestions, accidents and economic loss on roads and to reduce Nigeria's level of carbon dioxide emission
16. Nigerian insurance companies need to be innovative and develop new products that reckon with the challenges posed by global terrorism. Such products should address issues such as disability, repatriation costs, death, etc.
17. The Nigerian Insurance Act should be amended to expand the scope of compulsory insurance to make it mandatory for all employers of labour to provide insurance for all employees (including those on *ad hoc* assignments) in high risk destinations
18. The Nigerian government should enact a law similar to America's Defense Base Act of 1941, pursuant to which insurance coverage is mandatory for workers on overseas military bases

19. With particular reference to the often contentious issue of religion, a few vocal elements have hijacked the religious space, radicalised and deployed it to unleash terror on an innocent majority. It is imperative that the silent majority reclaims this space through constructive and productive engagement with religion
20. No one is immune from terrorism. We must all work towards a terror-free world
21. The regulatory body, the National Insurance Commission (NAICOM), should ensure that the enforcement regime is credible, effective and serves the interests of all stakeholders
22. A new lease of life should be injected into the operations of Nigerian insurance companies, through a credible and effective corporate governance mechanism, in order to inspire confidence in the sector
23. Insurance companies should be adequately guided by the laid down principles protecting the industry in limiting their liability
24. Insurance companies need to brace up to future challenges by building capacity in all areas of insurance