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Explainer: how Nigeria got hit with a $9.6bn judgement debt in London

By Oludara Akanmidu

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Nigeria has received a legal hiding after a UK court awarded a private company a $9.6bn judgment debt against the West African nation. The ruling has generated significant attention in both domestic and international media. This is understandable given that the sum amounts to 20% of the country's foreign reserves. This means it poses a significant threat to its economy.

Oil and gas is the lifeblood of Nigeria's economy. Wikimedia Commons

The big question is: What went wrong? How did Nigeria end up in this costly situation? For the answer, we must look back to January 2010 and a gas supply contract that went horribly wrong.

The background story

On 11 January 2010, Process and Industrial Development (P&ID), a company based in the British Virgin Islands, signed a contract with the Federal Government of Nigeria. This contract is called a gas supply and processing agreement. Nigeria's government agreed that, over a 20-year period, it would supply natural gas (wet gas) to P&ID's production facility.

In return, P&ID would process the wet gas by moving natural gas liquids and return approximately 85% of it to the government in the form of lean gas. This lean gas was to be returned at no cost to the Nigerian government.

Based on this agreement, Nigeria was supposed to arrange for the supply of wet gas to P&ID's gas processing facility which it intended to build in the country's Cross Rivers State. This required the government to construct pipelines and arrange facilities for transporting the wet gas. The government failed to do this for three years.

P&ID viewed this failure as a repudiation of the contract. In simpler terms, this means that the government renounced their obligation under the contract. Consequently, in March 2013, P&ID began an arbitration action against the government before a London tribunal.

Clause 20 of the agreement, which both parties signed, provided that any disputes were to be resolved by arbitration with the seat of arbitration being London, England or any other place agreed by the parties. Nigeria tried to contest this, but its appeal to have the tribunal sit in Nigeria failed.

At the tribunal, P&ID claimed that it had invested $40m in the project even though it had not acquired the land or built any facilities for gas processing. It claimed damages of about $6.6bn the amount of the net income it would have earned over the 20-year period of the agreement.

In response, the government argued that the damages claimed were not a fair and reasonable consequence of the government's breach of the agreement. This is because P&ID never commenced building the gas processing facility. It also argued that P&ID should be awarded only three years' worth of income as by that time, the company should have found some other profitable investment which would reduce its losses from the breach.

Similarly, the government objected to the measure of estimated expenses and income stream which P&ID used to calculate its damages claim.

The tribunal's decision

In July 2015 the tribunal decided that by failing to fulfil its obligations, the government had repudiated the agreement. P&ID was therefore entitled to damages.

In January 2017, the tribunal by a majority of two to one made a final award of $6.597bn together with interest at the rate of 7% starting from 20 March 2013 until payment is made. The 7% interest reflects what P&ID would have paid to borrow the money or earned by investing the money in Nigeria.

Following the tribunal's award of damages, in March 2018, P&ID brought an action before the Queen's Bench Division of the English Commercial Court. It wanted permission to enforce the damages awarded by the tribunal. Despite delays by the Nigerian government, on 16 August 2019, the court made an order enforcing the tribunal's final award which now stands at about $9.6bn.

In making this award, the court noted that the damages awarded were purely compensatory and not intended to punish the Nigerian government. The court also confirmed that there were no public policy grounds on which the award should not be enforced. This decision converts the arbitration award to a legal judgement.

This case perhaps highlights issues with Nigeria's ability to effectively manage its oil and gas resources as well as its facilities. Between January and June 2019 alone, it is reported that Nigeria lost 22-million barrels of crude oil.

These losses have been largely attributed to pipeline vandalism and aged pipelines. The Nigerian National Petroleum Corporation recently spent billions on oil pipelines maintenance. But other problems, such as corruption and fraud in awarding security surveillance contracts for pipelines, persist.

Next steps

The $9.6bn appears to be the largest amount of damages awarded against Nigeria to date. Evidence however suggests this is not the first time that Nigeria has failed to meet its contractual obligations. In 2016 it was reported that investors in Nigeria's power sector threatened to pull out due to the government's failure to meet its contractual obligations.

This case also demonstrates an ongoing issue with the government's attitude to critical infrastructural projects. The Mambilla hydroelectric power project is a case in point. In spite of the huge potential offered by the project, it has been plagued by several controversies ranging from corruption and embezzlement of funds to the "irregular" awarding of contracts, and a general lack of political will.

The Nigerian government is yet to pay the judgement debt. Allegations of domestic and international conspiracy surrounding the agreement continue to abound. For now, the government has said that it intends to appeal the amount awarded.

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