

SUSTAINABILITY OF LEGISLATIVE INTERVENTION ON CRUDE OIL THEFT ABATEMENT MEASURES IN NIGERIA

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ABSTRACT

Availability, affordability and distribution of energy sources are necessities for sustainable national development. Nigeria is the 13th world's largest producer of crude oil, yet it is unable to attain energy, environmental, social and economic security due to the adverse impact of crude oil theft. Despite the enactment of several laws to combat oil theft in Nigeria such as the Petroleum Production and Distribution (Anti-Sabotage) Act, the Petroleum Act, the Criminal Code Act, the Economic and Financial Crimes Commission (Establishment) Act, the Miscellaneous Offences Act, Oil Pipeline Act, the menace of oil theft and its consequential economic and environmental handicap has not abated. The aim of the study therefore is to establish a synergy between the labyrinth of issues with the legal and institutional efforts geared towards oil theft management in Nigeria. The methodology for this research is doctrinal. The finding of the study is that in spite of the ominous social, economic and environmental implication of oil theft in Nigeria, there is no comprehensive legislation to address the menace. The extant legislations do not define oil theft but tangentially refer to oil bunkering which is only one of the genres of oil theft. The study further found that the impunity with which oil theft and related crimes persist is due to the gaps in the legislations, tax enforcement culture of regulatory agencies, and corruption amongst others. The study contributes that oil theft specific legislations with the establishment of mobile courts in flash points is the impetus required for effective oil theft abatement in Nigeria. The study concludes that diversification of the Nigerian economy from oil based to a non-oil resource based economy will reduce the lure of crude oil theft and improve Nigeria's economic prospects.

1.0 INTRODUCTION

The Federal Government of Nigeria has taken several steps aimed at tackling the menace of crude oil theft. To this end, the Nigerian Government set up the Oil Field Surveillance Limited (OFSL).¹ The purpose of setting up the OFSL is to monitor and report on cases of oil theft in the country. The OFSL staff mainly comprised ex-militants with over 100 people.² The aim was to provide jobs for the Niger Delta youths that were captured under the Federal Government's Amnesty programme during the Yar'adua Administration, particularly those local youths that have surrendered their arms and have been profiled. According to Ben Naanen and Patrick

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¹ Ben Naanen and Patrick Tolani, "Private Gain Public Disaster Social context of illegal oil Bunkering and Artisanal Refining in the Niger Delta," Niger Delta Environment and Relief Foundation (NIDEREF) (Port Harcourt: PANAM NIGERIA, 2014), 79.

² Ibid

Tolani,³ it is also believed that as locals, these ex-militants were familiar with the environment better than engaging people from outside the Niger Delta Region. The OFSL was however disbanded by the Federal Government in September 2012 due to allegations of poor performance levied against the leadership of the OFSL.⁴ Ben Naanen and Patrick Tolani⁵ argued further that before the setting up of the OFSL, the Federal Government had earlier set up a special security committee for the oil producing areas in November 2001, “to address the prevailing situation in the oil producing areas which have, in recent past, witnessed unprecedented vandalism of oil pipelines, disruptions, kidnappings, extortion and a general state of insecurity.” In a report submitted to President Olusegun Obasanjo in February, 2002, the committee observed as follows:

That a major threat to the oil industry... arises from the activities of a ‘cartel or mafia,’ composed of highly placed and powerful individuals within the society who run a network of agents to steal crude oil and finished products from pipelines in the Niger Delta Region⁶

As a result of the activities of these cartel and oil thieves, some multinational oil companies have been forced to shut down their operations in some parts of the Niger Delta region. According to Ben Naanen and Patrick Tolani,⁷ some of these Multinational Oil Companies (MNCs) such as Shell, Agip and ENI have been forced to close down operations in some parts of the Niger Delta Region.

In March 2013 as a result of oil thefts, several oil MNCs were forced to declare *force majeure* on oil shipments; and are yet to fully resume operations. This is inspite of the relative peace pursuant to the cease fire declared by the warring youths in the Niger Delta region as a result of the ongoing dialogue between the Federal Government and the leaders of the region. Nigeria’s crude oil production capacity increased from 800,000 barrels per day to between 2.4 and 2.7 million barrels⁸ per day in 2017.

2.3 CURRENT TRENDS IN OIL THEFT

In a presentation to Nigeria’s House of Representatives Committee on Petroleum (Upstream) in July 2013, the Nigeria National Petroleum Corporation (NNPC) disclosed that between 2010 and 2012, Nigeria lost 11,753,217 million barrels of crude oil to theft and illegal bunkering. A breakdown of this figure shows that the Escravos/Chevron Nigeria-Warri pipeline accounted for a cumulative figure of 6,415,052, while Warri-Kaduna pipeline and SPDC-Warri pipeline accounted for 2,117,538 and 277,512 barrels respectively. The Bonny-Port Harcourt pipeline accounted for 2,943,112 barrels. Delta State had the biggest site for illegal bunkering business.

³ Ibid

⁴ Ibid

⁵ Ibid

⁶ Report of the Special Security Committee, para. 40. Quoted in Human Rights Watch (2003), *The Warri Crisis: fueling violence*, Lagos: Human Rights Watch, vol 15, No. 18 (A), 19.

⁷ Naanen and Tolani, , “ Private Gain,” 79

⁸ “Nigeria’s crude oil production hits 2.7 million Barrels.” Available @ <https://www.nnpcgroup.com/.../Nigeria-Crude-Oil-Production-Hits-27-Million-Barrels-As-...accessed> on 09/02/18

The NNPC also revealed that Nigeria lost, in financial terms, 26 million dollars per day to oil theft, pipeline vandalism and illegal bunkering between January and July 2013, adding that this translated to about 5 billion dollars within the 213 days in question.⁹

The statistics stated above justifies former President Goodluck Jonathan's remarks at the July 2012 Maritime Sector Presidential Retreat in Abuja that:

It is embarrassing that it is only in Nigeria that crude oil is stolen. It is a very bad news and I believe that Nigerians and foreigners who are involved in that act need to throw their heads under the pillow because all over the world, it is only in Nigeria that crude oil is stolen.¹⁰

Oil theft is largely a feature of instability in countries where it happens around the world. In other words, there is a significant correlation between oil theft and state fragility. Countries living with the condition show greater propensity for political and security challenges and where oil theft exacerbates state fragility, as is the case in Nigeria prior to the declaration of amnesty programme in the Niger Delta,¹¹ it funds insurgency, promotes violence induced skills, challenges state powers and authority, breeds intra-group competition and conflicts, and shifts official incentives away from legal and institutional enforcement.

Apart from negligible cases in China, India, Malaysia and other yet-to-be-verified claims of its presence in Angola, South Sudan and Saudi Arabia, the phenomenon of oil theft also exists in pipelines of Ecopetrol and Pertamina in Colombia and South Sumatra in Indonesia at an estimated daily rate of 400 to 1,000 barrels¹². Crude oil is also being currently stolen and sold by militias in Cyrenaica in East Libya. As was the case during Niger Delta militancy, the Libyan militias have since August 2013 forcefully taken control of three major oil export terminals that account for 700,000 barrels of crude oil sales per day. This is no mean challenge to Libyan economy, given that oil accounts for 96 per cent of the country's GDP.

The Libyan oil sector has become a proxy for several conflicts not limited to its Eastern region alone in post-Gadhafi era. All over the country, oil installations have become the convenient targets for open grievances – including those not directly connected to the oil industry – for seeking redress from the government in Tripoli. From the Zawiya oil refinery blockade by war veterans' demanding medicare for injuries suffered during the Libyan rebellion and teachers seeking better remuneration in a national strike, to the incessant Sharara and al-Fil oil fields' blockades by self-acclaimed marginalized local residents seeking jobs and training and to Tuareg protesters demanding identity cards and official recognition of their language in the Southwest, it is obvious that every group has an axe to grind. The Mellitah oil and gas facility blockade by Amazigh militias protesting under-representation in government in Northeast also points to the many drivers of oil economy conflicts in Libya that have become a legion. These challenges have also dimmed the initial optimism about the return of Libya's healthy oil industry and

⁹ Ibid

¹⁰ Ibid

¹¹ NnimmoBassey, , "Transparency and Accountability in Oil and Gas extractive Activities in Nigeria," vol 1 – Oil and Gas, 160

¹² Ibid

deepened its political and economic crisis in post- Gadhafi era.

Besides Libya, Mexico records 10,000 barrels daily theft of condensate from its pipelines, while Iraq also losses about the same quantity of crude oil as Mexico to smuggling from Basra and Kurds territories into Iran and Turkey. Amidst pressing needs for oil money to undertake post-reconstruction and security needs, Iraq's search for solution to oil theft and smuggling, resulted in the 2011 approval for the recruitment of additional 5,000 Oil Police officers to its nearly 30,000strong force. Between 2003 and 2007, it was estimated that Iraq lost about \$6 billion to oil and oil products theft, prompting its Interior Ministry to create Oil Police to handle oil sector security Cross-border stealing and smuggling of oil is major problem for Iraq which has a 3,631-kilometre (2,256-mile) border with Iran, Jordan, Kuwait, Saudi Arabia, Syria and Turkey as well as a narrow sea coast stretch estimated at 58 kilometres (36 miles).¹³ The Iraqi government through its Oil Minister Abdul Karim Luaibi has issued a statement to the effect that it intends to institute a lawsuit against Turkey for collaborating with autonomous Kurdistan region on oil shipments, while warning all other would-be buyers a similar treatment, plus a ban from the Iraqi crude and products trade. Earlier in December 2012, Vitol – the same oil firm named in relation to the shady deals in Nigeria – had tendered apology to the Iraqi government for buying Kurdish oil exported through Turkey without permission from Baghdad. Perhaps, Russia is about the only country with figures that are closer to Nigeria's statistics of crude oil theft globally. It loses an estimated 150,000 barrels of oil per day through its Transneft pipelines in Dagestan.

The threat posed by oil theft is so vicious and crippling that in 2013, Nigeria's Minister of Finance and Coordinating Minister for the Economy, Mrs Ngozi Okonjo-Iweala stated in her press briefing at the Spring Meeting of the World Bank and the International Monetary Fund (IMF) in Washington DC, that the country was losing about 300,000 barrels of crude oil, valued at \$1billion (approximately N155billion) every month due to oil theft-related activities. She gave a breakdown of the loss as 150,000 barrels per day due to shut-in from Nembe operations, 65,000 barrels per day to shut-in due to force majeure declared at Qua Iboe Terminal and others in Okono, Brass and Amenam. Okonjo-Iweala stated that the development was bringing down the projected oil production output of 2.528 million barrels per day upon which the 2013 budget was formulated, adding that the Federal Government was drawing down from its Excess Crude Account (ECA) to fund the resulting budget deficit. More frightening figure of associated loss of 400,000 barrels of crude oil per day (far above total crude production of many countries and companies)¹⁴ came in separate interviews in Abuja (Nigeria) and Oslo (Norway) by Okonjo-Iweala and the Former Governor of the Central Bank of Nigeria (CBN), Sanusi Lamido Sanusi, with the latter commenting thus:

The great challenge now is that the fiscal buffers are not as strong as they would be because of the revenue shortfall... if there are any adverse external developments that would feed into this weak revenue profile and put pressure on exchange rates¹⁵.

¹³ Ibid

¹⁴ Ibid

¹⁵ "Govt laments theft of nation's crude oil vows to end menace." https://www.logbaby.com/news/govt-laments-theft-0_13495.html#.WmD_8rynHIU accessed on 18-01-2018

In a bid to curb this disturbing trend, the government of Nigeria had proposed various enactments and policies to curb the menace of crude oil theft in Nigeria. The Federal Government of Nigeria with the support of the legislature, being the arm of the government vested with the power to make laws for the good governance of the State¹⁶, has assisted in putting in place enactments and policies which are aimed at checking the ugly menace of crude oil theft and pipeline vandalism in the oil and gas sector of the Nigerian economy. These measures shall be discussed hereunder.

3.0 OIL THEFT ABATEMENT EFFORTS IN NIGERIA

Crude oil theft has been an intractable crime to combat in Nigeria. This has necessitated the Federal Government to embark on the following intervention to abate the menace:

1. Legislative Intervention
2. Policy Intervention

The focus of this paper is on the Legislative intervention as an abatement measure.

3.1 LEGISLATIVE INTERVENTION IN OIL THEFT ABATEMENT EFFORTS IN NIGERIA

The responsibility to manage oil and gas resources in Nigeria rests squarely on the shoulders of the Federal Government.¹⁷ Aside the enactment of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Federal government has enacted some other legislations for the control and management of the oil and gas sector of the economy. The oil industry in Nigeria has quite a plethora of operational regulations with the following referring to crude oil theft:

1. Petroleum Production and Distribution (Anti-Sabotage) (PPDA) Act;
2. Criminal Justice (Miscellaneous Provisions) Act ;
3. Miscellaneous Offences Act;
4. Petroleum Act;
5. The Criminal Code Act;
6. Economic and Financial Crimes Commission (Establishment Act).

We shall now discuss the relevance of these laws to the abatement efforts of the Federal Government of Nigeria in its quest to abate the menace of crude oil theft.

1. Petroleum Production and Distribution (Anti-Sabotage) (PPDA) Act¹⁸:

The offence of "sabotage" was first defined by the Petroleum Production and Distribution (Anti-Sabotage) Act.¹⁹ Consequently, any person who indulges in any of the following is guilty of the offence of 'sabotage':

- (a) wilfully does anything with intent to obstruct or prevent the production or distribution of petroleum products in any part of Nigeria; or

¹⁶ Section 4, 1999 Constitution of the Federal Republic of Nigeria (as amended)

¹⁷ This is by virtue of s. 44(3), 251(1)(n) and Item 39 of the 2nd Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and s. 1(1) of the Petroleum Act, CAP P10 FN, 2004.

¹⁸ Cap P.12 Laws of the Federation of Nigeria (LFN), 2004

¹⁹ Ibid

(b) wilfully does anything with intent to obstruct or prevent the procurement of petroleum products for distribution in any part of Nigeria; or
(c) wilfully does anything in respect of any vehicle or any public highway with intent to obstruct or prevent the use of that vehicle or that public highway for the distribution of petroleum products, shall, if by doing that thing he, to any significant extent, causes or contributes to any interruption in the production or distribution of petroleum products in any part of Nigeria, be guilty of the offence of sabotage under this Act.²⁰

Also any person who aids, incites, counsels or procures any other person to do any of these things is equally guilty of sabotage. The Act provides for a penalty of death sentence or imprisonment for a term not exceeding twenty-one years for anyone found guilty of the offence.²¹

The PPDA is relevant to oil theft control because oil theft is an act of sabotage. Oil thieves directly rupture oil pipelines in order to steal crude oil and sell in the market to buyers for local processing (artisanal refining) and other oil dependent activities. Oil theft therefore qualifies as willful act that undermines crude oil production and distribution which are activities punishable by the PPDA.

2. Criminal Justice (Miscellaneous Provisions) Act²²:

The enactment of the PPDA was followed by that of the Criminal Justice (Miscellaneous Provisions) Act of 1975.²³ By virtue of section 3(1) (2) thereof, ‘any person who destroys, damages or removes any oil pipeline or installation connected therewith’; or who “otherwise prevents or obstructs the flow of oil along any such pipeline or interferes with any installation connected therewith” is guilty of an offence. It provides for the penalty of a fine of ₦ 2,000.00 or a term of ten years imprisonment in the first case, or a fine of ₦ 500 or three, years imprisonment in the second.²⁴

The activities mentioned in section 3(1) (2) of the Act are related to oil theft even though oil theft is not specifically mentioned. For successful oil theft operation to occur there must be destruction, damage or rupture to oil pipeline installation. The punishment under the Act is ten years imprisonment.

²⁰ Section 1(1)(a), (b) & (c) of the Petroleum Product and Distribution (Anti-Sabotage) Act CAP P.12 Laws of the Federation of Nigeria, 2004

²¹ Ibid, s. 2

²² CAP C39, Laws of the Federation of Nigeria, 2004.

²³ Ibid.

²⁴ Ibid, 3(1) & (2)

3. Miscellaneous Offences Act²⁵:

The Special Tribunal (Miscellaneous Offences) Act created a range of offences triable by "Miscellaneous Offences Tribunals." Among the list of offences covered by the Act is the offence of 'tampering with oil pipeline.' Section 1(7) provides as follows: Any person who wilfully or maliciously-

- (a) breaks, damages, disconnects or otherwise tampers with any pipe or pipeline for the transportation of crude oil or refined oil or gas; or
- (b) obstructs, damages, destroys, or otherwise tampers or interferes with the free flow of any crude oil or refined petroleum product through any oil pipeline, shall be guilty of an offence and liable on conviction to be sentenced to imprisonment for life.²⁶

This Act reduced the maximum penalty of death under the PPDA to life imprisonment. This Act came into force on the 31st of December, 1983. It was enacted to create a number of miscellaneous offences with stiff penalties and for the trial of such offenders. Section 1 of the Act provides that the Federal High Court shall have power to try persons specified under the Act. The Act does not provide for the option of fine for the offence.

The justification for the application of this Act to oil theft is due to the fact that oil theft activities qualify as acts covered by section 1(7) above. Oil theft is not specifically mentioned in the Act. However, oil theft is an act of willful and malicious damage done to tamper with oil pipelines and interference with the free flow of petroleum products. The Act punishes offenders with life imprisonment.

4. Petroleum Act²⁷:

The Petroleum Act was made to regulate the exploitation of oil from exploration to production. Section 4(1) of the Act provides that a person must obtain license from the Minister to sell, store or distribute any petroleum products in Nigeria. Section 4(6) provides for a penalty upon conviction, of two years in prison or a fine of N2,000 or both as well as the forfeiture of the petroleum products in respect of which the offence was committed. However, section 13(2)(b)(iv) of the Petroleum Act provides for a fine not exceeding N2,000 for any person who explores or prospects for petroleum or acts without the appropriate licence required under any regulations made under the Act. In view of the economic, environmental, social and human rights consequences of illicit oil bunkering, it is submitted that the penalty of N2, 000 or conviction of two years will have no deterrent effect on the offenders.²⁸ Such is inadequate to tackle oil bunkering and pipeline vandalism when compared with the penalty for failure to construct a pipeline in line with the laid down regulation as provided for in section 26 of the Oil & Gas Pipeline Regulations, 1995. It provides for a fine of up to N500, 000:00 or imprisonment for a term of six months or both fine and imprisonment. This lack of adequate sanctions for these illegal activities causes harm to the environment and the people in the region have

²⁵ Cap M17 Laws of the Federation of Nigeria (LFN) 2004

²⁶ Ibid, s. 1(7).

²⁷ Cap P10 LFN 2004

²⁸ Naanen and Tolani, "Private Gain," 85

continued to promote and reinforce a culture of impunity in the Niger Delta.²⁹ Crude oil theft has therefore become a business in the Niger Delta region. There is therefore the need for upward review of the fines provided for the law to serve as deterrent to would be offenders.

The regulations made under the Act provide for application for licence to construct and operate a pipeline. Section 26 of the Regulations provides for the punishment for any person who contravenes the regulation on pipeline construction. Such an offender shall be liable upon conviction to a fine up to N500, 000 or imprisonment for a term of six months or to both fine and imprisonment. It further provides for clear international standards that indicate special materials to be used in the construction of a pipeline and things to guard against in selecting the location of the route to be followed by the pipeline. The implication therefore is that where an operator fails to secure its facility against trespassers, the operator shall at least be partly responsible for any damage done to third parties by, for example, thieves who have malicious intent.³⁰

Besides, there are also international standards that must be met by the operators to avoid sabotage of their oil facilities. The American Petroleum Institute provided that, where there is a high risk of third-party interference, an operator must adopt measures such as; sabotage-resistant pipe specifications; alternative routing away from high risk areas; burial and concrete casements around a pipe; enhanced leak detection systems; and more importantly, enhanced pipeline surveillance capable of detecting any disturbance to the integrity of the pipeline.³¹ The operators are expected to adopt rigorous safety measures to protect themselves and their facilities from the activities of vandals.³² Unfortunately, oil MNCs do not comply with many of these provisions and international best practice thereby contributing to making their facilities susceptible to the sabotage and oil theft witnessed in the Niger Delta region.”³³

The Act and the regulations made thereunder do not specifically refer to the offence of oil theft but oil theft activities are related to the provisions discussed above.

5. The Criminal Code Act³⁴:

The Criminal code makes provisions with respect to the prohibition of pollution. According to Ugbe and Ekpoudu,³⁵ the provisions of the Criminal Code is not primarily targeted at resolving the menace of crude oil theft, rather it has the potential of checking some atrocities that may cause oil pollution and associated consequences. Sections 245 and 247(a) of the Act can be applied to prosecute individuals engaged in oil bunkering/ theft and illegal artisanal refineries on

²⁹ Ibid, 85

³⁰ “Corporate Liability in a New Setting: Shell and the Changing Legal Landscape for the Multinational Oil Industry in the Niger Delta,” Essex Business and Human Rights Project Report, 2013, 16

³¹ API, Standards, Available at <http://www.api.org/publications-standards-and-statistics/annual-standards-plan/standards%20plan%20segments/pipeline>, quoted in Essex Business and Human Rights Project Report, *Ibid*, 12-13

³² Naanen and Tolani, “Private Gain,”85

³³ “Environmental Assessment of Ogoniland”, United Nations Environment Programme (UNEP Report), Kenya, 2011, 100

³⁴ Cap C38 LFN 2004

³⁵ Rose OhiamaUgbe and Anthony Ekpoudu, “ Legal Approach to Cause and Consequences of Oil Spillage in Nigeria,” *The Nigerian Law Journal* 20,1 (2017):155

account of pollution of water or air in Nigeria. Section 245 provides: "Any person who corrupts or fouls the water of any spring, stream, well, tank, reservoir or place, so as to render it less fit for the purpose for which it is ordinarily used, is guilty of a misdemeanor, and is liable to imprisonment for six months". Also section 247(a) provides: "Any person who vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood, or passing along a public way; is guilty of a misdemeanor, and is liable to imprisonment for six months". It has been argued that although the criminal code is not targeted against illegal bunkerers or oil-related crimes, these provisions could creatively be used to deal with illegal oil bunkering.³⁶ The activities of oil criminals often result in pollution of the environment through the spills caused by oil pipeline rupture or damage to enable them steal crude oil. Oil theft is not specifically mentioned also in the Act.

However, the penalty of six months imprisonment or one year is quite insufficient to serve as deterrent to offenders, and may not be commensurate to the damage resulting from these illegal acts. By virtue of section 44 (3) of the 1999 Constitution of the Federal Republic of Nigeria(as amended), the ownership and control of all minerals and mineral oil, in, under and upon any land, and of rivers, streams and watercourses in Nigeria are vested in the federal government.

6. Economic and Financial Crimes Commission (Establishment) Act³⁷:

Under the Economic and Financial Crimes (Establishment) Act, oil theft and pipeline vandalism are treated as economic and financial crimes. Naanen and Tolani,³⁸ argue that pipeline vandalization and oil bunkering are economic crimes because they have enormous impact on the Nigerian economy and deprive the state of its resources. Section 40 of the Economic and Financial Crimes Commission (EFCC) Act defines "economic and financial crimes" to mean "the non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc".³⁹

Therefore, under the Economic and Financial Crimes Commission (EFCC) Act, 'illegal oil bunkering' is treated as economic crime and the Commission is thus empowered to investigate and prosecute the perpetrators before courts of competent jurisdiction which is the Federal High Court.

³⁶ Naanen and Patrick, Tolani, "Private Gain," 78

³⁷ Economic and Financial Crimes Commission (Establishment) Act, CAP E1, Laws of the Federation of Nigeria (LFN), 2004

³⁸ Naanen and Tolani, "Private Gain," 78

³⁹ Section 46 of the Economic and Financial Crimes Commission (Establishment) Act, CAP E1, LFN 2004

There is lack of unanimity in the penal sanctions provided in the legislations listed above. It is not the absence of laws that is the problem, but the failure to apply the existing laws through diligent prosecution⁴⁰. There is also the issue of flexibility which the laws provide in the prosecution process as well as the huge disparity in punishment. Whereas punishment under the laws enacted by the military governments could be regarded as draconian by today's human rights standard, the punishment under the other relevant laws are so light they can hardly serve any effective deterrent purpose⁴¹. For instance, while the PPDA Act of 1975, which deals with the distribution of petroleum products, carries the death sentence or a maximum prison term of 21 years, the relevant section of the Petroleum Act which relates to illegal (unlicensed) dealing in petroleum products, provides for a penalty of two years imprisonment or the option of 2,000 naira (12.50dollars) fine⁴². The implication of this kind of legal paradox is that whereas under the PPDA Act, a hapless jobless youth who tampers with petroleum products pipeline to earn a modest amount of cash can be sentenced to death or to a maximum prison term of 21 years, the big bunkerer who carries or procures shiploads of stolen oil but not directly involved in breaking pipeline can be given a pat on the wrist with 2,000 naira fine under the Petroleum Act⁴³.

To enhance the efficiency of these regulations highlighted above, the Federal Government in July, 2013 set up a Legal Task Force (LTF) under the Chairmanship of the Minister for Justice and Attorney-General, Mohammed Bello Adoke. The main task of the LTF is to prosecute cases of oil theft across the country.⁴⁴ The major challenge which confronted the LTF was its wide discretionary powers which included selective implementation of the law and the huge disparity in the prescribed punishment⁴⁵. Furthermore, the Senate of the Federal Republic of Nigeria inaugurated the Senate Committee on the Petroleum Industry Bill. According to Precious Igbonwelundu's report⁴⁶ on the inauguration of the Committee on the Petroleum Industry Bill, Senate President David Mark suggested death penalty for oil thieves and pipeline vandals. But some lawyers like Norrison Quakers believe that capital punishment will not solve the problem and have maintained that such laws were already in existence but underutilized. For them, the existing laws should be enforced. The study agrees with this position. The proposal for the introduction of capital punishment into the legal framework for crude oil theft abatement will not solve the problem.

Furthermore, the Nigerian National Petroleum Corporation (NNPC) has, on various occasions, released statistics showing the havoc the vandals cause, stating that between August and October 2012, the NNPC System 2B pipeline transporting petroleum products recorded 774 break points from Atlas Cove to Ilorin. The report said there were 118 break points to Mosimi; 421 ruptured points from Mosimi to Ibadan; 50 vandalised points from Mosimi to Ore and 122 break points between Ibadan and Ilorin. The effect is that conveying petroleum products across the over 5,000km of vast network of pipelines has become a nightmare. The attendant dangers have not

⁴⁰ Naanen and Tolani, "Private Gain," 75

⁴¹ Ibid

⁴² Ibid

⁴³ Ibid

⁴⁴ "Federal Govt. sets up Legal Task Force on oil theft," *Thisday* 19 July, 2013, 10

⁴⁵ Naanen and Tolani, "Private Gain," 75

⁴⁶ Precious Igbonwelundu, "Should Oil Theft Attract Death Penalty," *The Nation*, April 9, 2013. Available @ <https://thenationonlineng.net/new/law/should-oil-theft-attract-death-penalty/accessed> on 29/9/17

stopped the perpetrators. There have been a series of pipeline explosions that have claimed hundreds of lives and destroyed properties worth millions of naira.

In its quest to address the menace of oil theft, the Federal Government has constituted a taskforce on petroleum monitoring which included men of the Armed Forces, the Police, Nigerian Security and Civil Defence Corps (NSCDC), to guard pipeline areas and arrest illegal bunkers and vandals. But this seemed not to have yielded much fruits as the illegal activities increase daily with the perpetrators becoming hardened.

More also, the security agencies have also been accused of conniving with the vandals to steal oil. Where vandals have been arrested, no one has ever heard of a successful prosecution or conviction of the criminals to serve as deterrent to others. This is despite the fact that the law provides for a maximum of 21 years in prison for anyone convicted of pipeline vandalisation or oil theft. There is also the Petroleum Production and Distribution (PDD) (Anti-Sabotage) Act of 1975. Could it be that these laws are not stringent enough? Will death penalty stem vandalisation of pipelines and oil theft in Nigeria?

In addition to the frowning corruption that has stared into the eyes of the Nigerian economy, many Nigerians at the top echelon of the military, government and private individuals are involved in plundering its common wealth with impunity, bearing in mind that the various laws in the petroleum sub-sector such as: The Petroleum Act 1969; Oil Pipeline Act 1956; Oil & Gas Pipelines Regulations 1995, among others, regrettably, do not provide or carry heavy penal sanctions.

Section 4(1)⁴⁷ provides that a person must obtain licence from the Minister to sell, store or distribute any petroleum product in the country. Then section 4(6) went further to provide a penalty upon conviction, of two years in prison or a fine of ₦2, 000 or both as well as the forfeiture of the petroleum products in respect of which the offence was committed. The same thing applies for section 13(2)(b)(iv) of the Petroleum Act, which provides a fine not exceeding ₦2, 000 for any person who acts without the appropriate licence.

Section 26⁴⁸ provides for the punishment for any person who contravenes the regulation on pipeline building. Such an offender will be liable upon conviction to a fine up to N500, 000 or imprisonment for a term of six months or to both fine and imprisonment.”

Norrison Quakers⁴⁹ opined that the provisions of sections 4, 6 and 13 of the Petroleum Act, 1969, were not strict enough and adequate to tackle oil bunkering and pipeline vandalisation compared to the higher sanction for failure to build a pipeline in line with the laid down regulation as provided for in section 26 of the Oil & Gas Pipeline Regulations.

Lawyers, who spoke on the issue, noted that such vices are the least of Nigeria’s

⁴⁷ Petroleum Act Cap P10, Laws of the Federation of Nigeria, 2004

⁴⁸ Oil & Gas Pipeline Regulations, 1995

⁴⁹ TunjiAriyomo, “Petroleum Industry Bill; Oil Minister’s Powers, UK Laws and deft propaganda,” *Integrity Group Nigeria*, 5. Available @ <http://integritynigeria.org/category/the-essence-of-oil-media-portal/oil-industry-oversight-regulation-and-management/laws-and-regulation/page/5/accessed> on 15/01/2018

challenges. They called on the legislator to rather make corruption a capital offence. They accused the government of insensitivity to the plight of the citizens, which has left vulnerable and unemployed youths with no other option than to fend for themselves.

Although they described pipeline vandalism as a heinous economic crime that deserves stringent sanctions for offenders, the lawyers blamed the government for non-enforcement of existing laws on economic sabotage. Those who spoke on the issue included Senior Advocate of Nigeria (SAN) Norrison Quakers; constitutional lawyer Dr. Fred Agbaje; Lagos based lawyers Dr. Frederick Banjoko, Ebun-OluAdegboruwa and Chairman, Nigerian Bar Association (NBA), Ikorodu Branch, SahidOwosile.⁵⁰

7. The United Nation's Convention Against Transnational Organised Crime (UNCATOC)⁵¹

The role of the international community in the abatement efforts of the Federal Government of Nigeria cannot be over emphasized. The oil stolen in Nigeria definitely gets to the international market where it is sold in hard currency. Nigeria's abatement efforts will not therefore be complete without the contributions from the international community. There is no international treaty by the United Nations Organisation on oil theft. Similarly under the United Nation's Convention Against Transnational Organised Crime (UNCATOC)⁵², oil theft is not captured as a transnational crime. This has posed difficulty in getting international support for abatement measures put in place by the Federal Government of Nigeria. The international community must play an active role in the abatement efforts by Nigeria. It has been suggested by Naanen and Tolani⁵³ that one way of securing international support is for Nigeria to prove that oil theft is a trans-national organized crime (TOC) and concludes that this will be difficult to establish. The study differs in this respect. It is our respected view that it will not be a difficult task for Nigeria to justify the crime of oil theft as a trans-national organized crime (TOC), in order to qualify for international support or collaboration. This is because the menace of oil theft has all the elements that qualify it to be a trans- national organized crime. By virtue of Article 2 of the United Nations Convention Against Transnational Organized Crime (UNCATOC), the term 'serious crime' means 'conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or more serious penalty.' We therefore submit that oil theft being one punishable by life imprisonment in Nigeria, qualifies as a serious crime by virtue of Article 2 of the United Nations Convention Against Transnational Organised Crime. Furthermore, the scope of application of UNCATOC⁵⁴ provides:

This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of:

- (a) The offences established in accordance with articles 5, 6, 8 and 23 of this Convention; and
- (b) Serious crime as defined in article 2 of this Convention;

⁵⁰ Ibid

⁵¹ United Nation's Convention Against Transnational Organised Crime. Available @ https://www.unodc.org/.../organised-crime/UNITED_NATIONS_CONVENTION_AG... accessed on 20/9/2017

⁵² ibid

⁵³ Naanen and Tolani, "Private Gain," 111

⁵⁴ See article 3 of United Nations Convention Against Transnational Organised Crime, 2003. The Convention is also referred to as the Palermo Convention.

where the offence is transnational in nature and involves an organized criminal group.

2. For the purpose of paragraph 1 of this article, an offence is trans-national in nature if:
 - (a) It is committed in more than one State;
 - (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
 - (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
 - (d) It is committed in one State but has substantial effects in another State.

Oil theft qualifies as transnational because by virtue of section 2(c) above because it is committed in Nigeria but involves an organized criminal group that engages in criminal activities in more than one state. It therefore qualifies as a transnational organized crime.

Ben Naanen and Tolani opine further that another option is to launch an international campaign through NGOs and argue that if it could be demonstrated that oil theft affects poor people in Nigeria or that it is a human rights issue, it might be possible to sign on such organizations as Oxfam and Amnesty International, and making it an environmental issue seems to offer a better prospect for an international campaign. They however cautioned that a possible obstacle to an international campaign could be that the international community's high perception of corruption in Nigeria, and the oil industry represents much of that corruption. However, we believe that there is need for the international community to support Nigeria and they have a role to play. According to Sarah Chayes:⁵⁵

No example can as yet be cited of a country that has recovered from the oil curse once it has set in. But, supported by the combined best efforts of the Western private and public sectors, there's no reason why passionate, dynamic Nigeria shouldn't be a first: a turnaround country for a turnaround industry.

Therefore, one of the ways of achieving this is through international collaboration to solve the menace of crude oil theft in Nigeria. According to Nathan Seef⁵⁶, "although the international community has proposed some alternative measure to solving the menace of oil theft, they have remained passive actors." The International community must be active in the war against oil theft. This is in view of the importance of crude oil to national development. International collaboration is a veritable approach to solving the menace of crude oil theft in Nigeria.

Recommendations

1. The legal regime on abatement of crude oil theft has not yielded the desired result due to enforcement challenges. In order to get the desired result of abatement of the menace of crude oil theft or reduce its incidences to the bearest minimum, the Federal Government of Nigeria should address the problems associated with enforcement of the laws which

⁵⁵ Sarah Chayes, "How to reverse Nigeria's oil curse," Carnegie Endowment for International Peace. Available on line @ <http://carnegieendowment.org/2015/06/02/how-to-reverse-nigeria-s-o.....> accessed on 25/9/2017

⁵⁶ Nathan Seef, "Oil theft in Nigeria: Questions moving forward," IAffairs Canada. Accessed on 20/ 6/ 2016 @<http://www.iaffairscanada.com/2015/oil-theft-in-nigeria-questions-m.....>

regulate crude oil theft.

2. The National Assembly should enact an oil theft-specific legislation to combat the menace of oil theft in Nigeria. This proposed legislation would provide for an all-encompassing definition for crude oil theft taking into cognizance its genres and peculiarities. It would also provide for appropriate punishment for the offence and creation of mobile courts in flash points to try offenders.

Conclusion

Nigeria's over dependence on crude oil for its energy needs, accounts for the prevalence of crude oil theft. Sustainability of the abatement measures for crude oil theft will remain a mirage unless the Nigerian economy is diversified to non-oil resources and renewable energy is optimally harnessed to dethrone the fossil hegemony. Sustained pressure on the United Nations to include oil theft as a trans-national crime in the United Nation's Convention Against Transnational Organized Crime and Terrorism Watch List will serve as a boost to Nigeria's domestic abatement effort. This is more so as oil theft constitutes environmental, economic terrorism and oil thieves are operating with increasing impunity and lethality which has cross-border implications.

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