

THE UNENDING INCIDENTS OF PIPELINE HACKING AND OIL PILFERAGE IN NIGERIA AND THE LAW

By

Akhabue, D.A. (Esq.)

FACULTY OF LAW AMBROSE ALLI UNIVERSITY, EKPOMA, EDO STATE, NIGERIA.

E-Mail: danielakhabue@gmail.com

ABSTRACT

This paper examines the unending incidents of pipeline hacking, oil pilferage and the law. In Nigeria it is merely saying the obvious that crude oil theft have risen to such a worrisome dimension that something drastic have to be done to curb it. Recent statistics on the phenomenon indicate a staggering lost of revenue to oil thieves who have become a veritable threat to the nation's economy. The Shell Petroleum Development Company (SPDC) recently observed that pipeline vandalism, oil theft and illegal refineries have become detrimental to the nation's economy and environment. The paper also brings to light that the provision for prosecution of offenders under the various laws are confusing and unclear. Death penalty has never deterred people from committing heinous crimes. Apart from the fact that it is not a corrective measure death penalty at a time when there is a global clamour by human rights groups for its abolition, is barbaric. The paper argues in detail that oil theft thrives in the country because government have not been bringing those involve in it to justice. It may be necessary to enact fresh laws, to provide for more stringent penalties such as long prison terms or even life imprisonment but the death penalty should not be considered as option. Vandalism and

stealing of oil is a serious economic crime and it should be treated as such to deter other from it:

INTRODUCTION

Pollution is one of the key issues discussed in most fora on environmental law and environmental protection. In Nigeria, pollution forms a major theme in the discussions of the operations of oil companies in the oil industry, which is the mainstay of the nation's economy.

However, one growing issue which is closely and directly connected with the issue of pollution especially in oil rich communities in Nigeria is the issue of pipeline vandal or sabotage.

Vandalism and sabotage of oil installation may not be entirely new in Nigeria environmental discourse. No doubt, pipeline vandal is an offence in Nigeria. But the victim of any spill resulting from such an offence may go without compensation as the law tries to exclude liability where spillage is the result of the act of third party over whom the operating licence holder has no control. The causes of unending incidents of pipeline hacking and oil pilferage are multidimensional and varied and it is to them we no turn.

- (a) Poverty
- (b) Illiteracy
- (c) Ignorance
- (d) Lack of technological know-how
- (e) Official corruption
- (f) Rescuing education

Crude oil theft have risen to such a worrisome dimension in the country that something drastic have to be done to curb it. Recent statistics on the phenomenon indicate a staggering lost of revenue to oil thieves who have become a veritable threat to the nation's economy¹.

For instance, the Shell Petroleum Development Company (SPDC) recently raised an alert on Nigeria's loss of \$ 6.1bn (~~₦~~965bn) to these nefarious activities annually. The company rightly observed that pipeline vandalism, oil theft and illegal refineries have become detrimental to the nation's economy and environment².

In the same vain, the minister of finance, Ngozi Okonjo-Iweala said that Nigeria loses over 300,000 barrels of crude oil per day which accounts for a drop of \$1bn (~~₦~~160bn) in oil revenue per month. Similarly the Nigerian National Petroleum Corporation (NNPC) revealed that the nation lost about \$1.23bn this year alone³.

Kingsley Kuku the special adviser to the president on Niger Delta has put the environmental losses to illegal oil bunkering in the country at \$1trillion. According to him, by some estimate at the peak of Nigeria losses, Nigeria lost almost 400,000 barrels per day to crude oil theft and pipe line vandalism. It must be understood that what the country is losing is not necessarily what is stolen. Oil theft entails the destruction of pipelines and once detected would mean the closure of the pipelines to effect repairs which cost a lot of money and take a lot of time. This vicious circle of vandalism, detection, repair and back to vandalism is what results into the estimated losses, part of which would be the actual stolen crude. Kingsley Kuku, the special adviser to the president on Niger Delta put the environmental losses to illegal oil bunkering in the country at \$1 trillion⁴.

This ugly development probably prompted senate President David Mark, to recommend death penalty for oil thieves. Mark anchored his suggestion on the premise that oil theft would devastate the economy, if not checked⁵.

It is incontrovertible that oil theft had been increasing and bounds in recent years. It is much worst today than ever and the amount of money lost to the nefarious activities is mind- boggling. It is important therefore that all those draining the Nigeria economy through this unbridled should be severely punished.

Travelling through the Niger Delta region one would find sign posts at strategic locations warning of the dangers of tampering with oil installations, on the National television advertisements and campaigns are placed warning informing people to desist from tampering with oil installations and pipelines.

What is the position of the law as far as Pipeline Vandalism or sabotage is concerned?

Assuming a company, XY oil plc, lays its pipes through community A and youths from the community tamper with the installations, what would be the legal position as regards the effect of the resultant spill on the community which did not authorise the vandal or participate in the sabotage?

Are there laws in Nigeria which specifically outlaw pipeline vandal? What punishment exists, if any for offenders?

How does the issue of jurisdiction of the court affect the prosecution and investigation of offences under the relevant laws?

IS PIPELINE VANDAL AN OFFENCE UNDER NIGERIA LAWS?

S.3 (7) of the *special tribunal (miscellaneous offences) Act 1990*⁶ provides as follows:-

“Any person who willingly 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 obstructs, damages, destroys, or otherwise tampers or interfere 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.

Again section1 (1) of the *petroleum production and Distribution (Anti sabotage) Act 1990*⁷ provides to the effect that any person who;

- a. Wilfully does anything with intent to obstruct or prevent the production or distribution of petroleum products in any parts of Nigeria; or
- b. Wilfully does anything with intent to obstruct or prevent the procurement of petroleum products for distribution in any part of Nigeria; or
- c. XXX.

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.

S1 (2) any person who-

- a. Aids another person; or
- b. Incites, counsels or procures any other person, to do any of the things specified in subsection (1) of this section, shall whether or not

that other person actually does the things in question, be guilty of the offence of sabotage under this Act.

By s 2 of the said Act, the penalty of committing an offence of sabotage shall be a sentence of death or imprisonment for a term not exceeding 21 years.

The ***Criminal Justice (Miscellaneous Provision) Act 1990***⁸ makes the following provisions in S.3 (1)

“Any person who wilfully and unlawfully –

- a. Destroys, damages or remove any oil pipeline or installation connected therewith; or
- b. Otherwise prevents or obstructs the flow of oil along any such pipeline or interferes with any installation connected therewith, shall be guilty of an offence under this Act”.

The penalty under the Act is twice the value of the destroyed pipeline or installation or ₦2000 whichever is higher or imprisonment for 10 years. Where the offence is that under s.3 (6) the penalty is a fine of ₦500. 00 or 3 years imprisonment.

A close look at the statutory provisions reproduced above will leave no one in doubt as to whether pipeline vandal is an offence in Nigeria or not, except that the provisions are not adequate enough to deal with the menace and threat of pipeline vandal.

Furthermore it would appear that the provisions of the special tribunal (miscellaneous offences) Act is wider and more encompassing as it creates absolute offences without regard to the mental state or intent of the offender. Whereas under the petroleum protection and distribution (Anti – sabotage) Act 1990 the intent sufficient to sustain the offences created there under is intent to obstruct or prevent the production or distribution of

petroleum products in any part of Nigeria. It would therefore appear that law does not adequately deal with a situation where the intention of the alleged offender is to make profit for himself without necessarily intending to obstruct production and distribution of petroleum product.

Again the penalties specified under the criminal justice (miscellaneous provisions) Act are quite inadequate. In fact these penalties provided for by this particular enactment are laughably inadequate, they are not stiff enough to deter anybody⁹

LEGAL ISSUES INVOLVED IN SPILLS EMANATING FROM PIPELINE VANDALISM ON INNOCENT THIRD PARTIES.

One very big problem that will continue to be associated with vandal and sabotage of oil installation in Nigeria is the question of the position of the innocent third party whose farmland, fish pond, fishing right on rivers, house and property has been affected as a result of a spill or pollution emanating from an obvious act of sabotage.

This sort of situation may look artificial but it was the real problem that led to the case of ATUBIN v. SHELL B.P.¹⁰ In that case, the plaintiffs claimed the sum of ₦8 million as compensation for damage to their fish ponds, streams, farmlands, and economic trees by the defendant in causing crude oil, gas and chemicals to escape from pipeline under the control of the defendant. The defendant disclaimed liability on the ground that spill was the result of a hole drilled on the pipeline by unknown person and was therefore not due to the negligence or default on the part of the defendant.

Ovie – whisky J. agreed with the defendants and dismissed the claim of the plaintiff on the ground that the plaintiffs had not established negligence on the part of the defendant.

Under the Oil pipeline Act¹¹ S. 11 (5) provides that the holder of an oil pipeline licence shall pay compensation to any person suffering damage as a consequence of any breakage or leakage from the pipeline. However, S.11 (5) (c) makes it clear that the licence holder shall be free from liability on account of the malicious act of third parties or on account of the default of the person claiming compensation.

The provision of S.11 (5) (c) for instance may explain part of the reasons why compensation could not be claimed or pursued on behalf of the person who were victims of the Jesse pipeline fire of 1998, because there was a default on the part of the victims which led to the loss of life and property.

This argument will clearly show or reveal the fallacy in the argument put forward recently in 2003 by Senator Uche Chukwumerije, when he called on the Government to compensate the victims and families of persons who died in the June, 19th 2003 pipeline fire disaster at Onitcha Amiyi – Uha in Abia state which claimed more than 150 lives. S. 11 (5) of the oil pipeline Act clearly covers situation.

This situation is a sorry situation, but it will indeed put more responsibility on people living in oil producing communities to make sure that oil installations in their communities and localities are well protected.

One case which recently brought out the scenarios that may result from such a situation is the recent decision of the court of Appeal in **SHELL PETROLEUM DEVELOPMENT CO. OF NIGERIA LTD. Vs. AMACHREE.**¹² In that case, the plaintiffs/respondents sued the Applicant claiming ₦10 million

as damages for oil spillage from the company's pipeline resulting in immense damage. The plaintiffs alleged negligence on the part of the Defendant. The defendant admitted the occurrence of the spill but attributed the spillage to acts of some third party who maliciously tampered with a 16 inch valve on their delivery line. Police investigation also showed that the spill was caused by the act of third parties. The trial court awarded ₦3.5 million as general damages, but on appeal, the court of appeal set aside the judgement of the lower court on the ground that the defendant could not be held liable for the acts of third parties. PATSACHOLONU JCA (as he then was) stated:-¹³

“In this case, what precautionary measures if any did the Appellant take to ward off intruders and mischievous people who might meddle with the manifold. All parties agreed that the manifold was fenced around. There is evidence that DW3 the retired superintendent of police who investigated the incident when he was still in active service said he found out that the fence made of wire was cut and the steering turned... could the appellant with all due diligence have foreseen that someone would go and cut the wire used in protecting the manifold? There was evidence of a fence and lock, which I might describe as double protection. The nature of the whole scenario singularly envisions a situation where the appellant seemed to have endeavoured to make sure that due to the nature of oil, it was considered necessary to have double protection against intervention by third parties. To my mind, it is obvious that a third party intent on causing

havoc turned on the valve with a devilish view that oil would spill and might consequently cause damage. I will be asking the appellant to play God by requiring it to even foresee the likelihood of a person cutting the wire fence and turning on the valve. To my mind, it is the turning of the valve by an unknown person that caused the oil spillage that caused the damage.

Surprisingly too, none of the statutory provisions limiting liability where there is sabotage was also referred to in the course of the judgement.

Also, the common law under the rule in RYLANDS v. FLETCHER¹⁴ also creates an exception to the applicability of the rule where the escape is due to the unauthorised act of a third party.¹⁵

Section 28 of the National oil spill Detection and Response Agency Act¹⁶ provides to the effect that where a spillage of oil or oily waste has occurred, the spilled oil or oily waste shall be removed or cleaned-up by the owner or operator of the facility from which the oil or oil waste is discharged, using the best practicable technology depending on the sensitivity of the environment. While section 56 of the Act provides to the effect that owners operators of oil and gas terminals that fail to comply with any of the regulations contained under this part shall in addition to the specific obligations required to remedy the breach of any of the regulations including the obligations to carry out necessary clean-up operations and to furnish reports to the Agency, be liable for the payment of an amount of not less than Five Hundred Thousand Naira (N500,000.00) to the Agency for the account of the Government of the Federation for each day the violation continues¹⁷. Nevertheless, it is submitted with due respect that not mindful

of the good intent of the Act, compensation is paid to the Agency for the account of the Government of the Federation and not a third party who suffers or who may have suffer damage to fish pond.

JURISDICTIONAL ISSUES INVOLVED IN PIPELINE VANDAL

As earlier noted, it is an offence to embark on the act of wilfully vandalizing or sabotaging oil installations. But one big problem is the Nigeria legislative approach to law making.

Section 3 (1) of the petroleum production and distribution (anti – sabotage) Act 1990 makes provision for offences constituted under the Act to be tried by a military tribunal. S.4 (1) of the Act purports to give the tribunal exclusive jurisdiction to try the offence of sabotage under the Act. S. 5(1) of the Act provides that the procedure shall be that of the court martial under the Nigerian Army Act.

The criminal justice (miscellaneous Provisions) Act provides in s. 7 (1) as follows:-

“offences under this Act shall be tri-able summarily by the appropriate high court and the provisions of chapter 4 of the criminal procedure Act, of where applicable, of chapter 18 of the criminal procedure code law shall apply accordingly”

Section 7 (2) provides “the prosecution of offences under this Act shall be at the instance of the Attorney General of the Federation.”

Under the special tribunal (miscellaneous offences) Act the offences created under Act are tri-able by the miscellaneous offences tribunal. S.4 puts a time of investigation at 28 days after the arrest of the accused and the report of the investigation is to be sent to the federal Attorney General not later that 7 days after the conclusion of police investigation. S.6. of the

Act provides that proceedings shall be concluded within 14 days of its first sitting.

All these provisions and enactment tell a lot about our attitude to legislative drafting and law making.

INSTITUTIONAL FRAMEWORK UNDER THE 1999 CONSTITUTION. The Federal High Court has exclusive and original jurisdiction to try civil cases and matters connected with or pertaining to mines and minerals (including oil fields, oil mining, geological surveys and natural gas)¹⁸. The issue of jurisdiction was laid to rest in the case of Shell Petroleum Development Company of Nigeria V. Mulcon¹⁹. Where it was held that the five position is that the state High Court has no jurisdiction to entertain oil related environmental claim. Therefore, parties seeking to enforce civil claims must now approach the Federal High Court in respect of oil related issues²⁰.

What is not so clear from the provisions of the constitution is whether the constitution gives exclusive criminal jurisdiction to the federal High court also in respect of civil matters listed in s. 251 of the constitution.

Again the time limit place on investigations and conclusion of trials may well lead to a shoddy job being done. Even if the prosecution can hold itself bound of such limits, can the law impose a duty on a defence counsel who is bent on doing a thorough job for his client to conclude his case within a particular time frame when there may be expert evidence and witness who may be readily available within the time limited?

All these lapses in the law must be looked at critically, some of these problems have arisen because most of the laws under consideration were originally military draconian Decrees which were copied slavishly into the laws of the federal Republic of Nigeria 1990 without necessary

amendments to bring them in line with the general legal order or framework within the Federal Republic of Nigeria.

CONCLUSION AND RECOMMENDATIONS

No doubt pipeline vandal is an offence in Nigeria. The victim of any spill resulting from such an offence may go without compensation as the law tries to exclude liability where spillage is the result of the act of third party over whom the operating licence holder has no control.

The provision for prosecution of offenders under the various laws are confusing and unclear.

By way of recommendation, it is suggested that:-

- a. Oil license holders must take extra care to protect their pipelines and installations.
- b. Communities where these installations exist must set up monitoring units to see that these installations are not tampered with as any case of sabotage will lead to serious losses without compensation as we saw in the case of ATUBIN v. SHELL BP, and SPDC v. AMECHERE²¹.
- c. The legislative arm of the government must go to work to review the existing laws especially as they relate to jurisdiction investigation and prosecution of offenders under the law.
- d. There is the need to look at the punishment prescribed under the relevant laws so that the laws can be truly deterrent.
- e. However, the recommendation of death penalty for convicted oil thieves by David Mark²² is uncalled for. Death penalty has never deterred people from committing heinous crimes. Apart from the fact that it is not a corrective measure Mark's suggestion is coming at a

time when there is global clamour by human rights groups for its abolition. Many countries have abolished death penalty while others suspended it. Besides this controversial punishment we believe that there are other ways of punishing oil thieves. Government should enforce extant law against the crime. Oil theft thrives in the country because government have not been bringing those involve in it to justice. It may be necessary to enact fresh laws to provide for more stringent penalties such as long prison terms or even life imprisonment but the death penalty should not be considered as option. Vandalism and stealing of oil is a serious economic crime and it should be treated as such to deter other from it. In addition there should be adequate policing of oil pipelines by security agent as a part of measure to rein in this crime. Government should also ensure taking of correct inventory of oil productions and exports. We say this because some of the oil theft in the country might also occur during loading. Lost of oil does not occur through bunkering and pipelines vandalism alone. There might be official corruption along the production and exports chains.

- f. Effort should be intensified by the federal government to ensuring that the European parliament recommendation is strictly adhere to. The European parliament²³ is set to stop the purchase of stolen oil from Nigeria in Europe. Any crude oil meant to be sold in European market is to be accompanied with a certificate of origin. This was one of the landmark decision taken at the meeting of the members of the African, Caribbean, Pacific parliament and their European Union Counterpart (ACP-EU) at the conclusion of their 3-day regional meeting in Abuja. The federal government said²⁴ after the National

Economy Council (NEC) meeting that 400,000 barrels of oil and equivalent of ₦7.3m is lost daily to oil thieves. The bunkering tankers are better equipped than the Nigeria Navy. This is a huge international organised crime. We would have been better off if we have had functional refinery. In the light of the above it is recommended that foreign countries should be barn from buying un-certificated oil.

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