

THE ENVIRONMENTAL IMPACT OF CRUDE OIL THEFT IN NIGERIA: CHALLENGES

E. O. ENAKIRERU & IRENE, AIREN AIGBE (MRS.)

*Delta State Polytechnic, Otefe- Oghara, Delta State –Nigeria & Department of Business Law,
Faculty of Law, University of Benin, Benin State – Nigeria*

ABSTRACT:

The issue of environmental degradation as a result of crude oil theft is fast becoming an intractable problem in Nigeria, the international energy agency reported that Nigeria was losing about \$7 billion annually to oil theft; crude oil theft has led to pipeline damages causing oil firms to cut output and environmental degradation through oil spillage. The Federal Government has enacted plethora of laws and regulations in combating the menace of crude oil theft. This paper criticises the efficacy of the Nigeria laws and regulations, the challenges of crude oil theft, the endemic consequences of oil spillage in the Niger Delta environment, the economic effect of crude oil theft and the lack of sincerity of purposes of the Nigeria government in tackling crude oil theft. This paper recommends appropriate measures such as adequate enforcement of the existing laws and further concludes that crude oil theft is an act of terrorism against the Nigerian economy.

Keywords: *Crude Oil Theft, Environment, Degradation, Oil Spillage, Pollution, Ecosystem and Niger Delta*

INTRODUCTION

The environment is the collection of support systems that make the lives of humans and other species possible. It is the air we breathe, the ground beneath our feet, the water we drink and the energy that heats our homes and powers our society. The environment is not only the tangible elements of earth, air, water and energy, but also the processes can be local or global concern. The challenge in planning for the environment is to anticipate how these processes and interaction are affected by human activity and to act so that their integrity can be preserved under changing conditions.¹

1

The environment is the complex whole of physical, social, cultural, economic and aesthetic factors which affect the individuals, communities and ultimately determine their form, character, relation and survival. Under this paper we will be looking at the environment from the physical perspective. The physical environment has been defined (natural and constructed) to include: land and climate, vegetation, wildlife, the surrounding land uses and the physical character of an area, infrastructure, public services, air, noise and water pollutions.² In simpler terms, the environment consists of the natural habitat of man and all other living organisms, wherein man and all living organisms sustain and fend for themselves in a way that either maintains, improves or depletes the quality of the natural habitat.³

Crude oil means any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil. Illegal oil bunkering is a euphemism for theft of oil which involves direct tapping of oil. This act becomes illegal when it is carried out without requisite statutory licenses or valid documents, or in violation of the Nigerian Maritime Sector. Other terms such as oil theft, pipeline vandalization, fuel scooping and oil terrorism have been employed in describing instances of crude oil theft.⁴

It is true but hard to believe that among the countries that produce crude oil in the World, it is only in Nigeria that citizens steal crude oil. Crude oil theft popularly called oil bunkering has become a tradition in the history of Nigeria's oil and gas play and dates back to the origin of crude production when peasants were using wooden canoes and small containers to scoop crude from leaking pipelines and well-head.⁵ The activity of the theft of crude oil has further cripple the

integrity assessed 07/03/2014

[2http://www.air.com.au/industry/factrefine.html](http://www.air.com.au/industry/factrefine.html) 25/02/2014

3Ibid

4Igbokwe Michael, Being a paper presented at the Annual Conference of the Nigerian Maritime Law Association held in Victoria Island on the 5th and 6th of May, 2004

5Independent newspaper, Wednesday, April 09, 2014

integrity of the Nigeria environment through its direct impact on the ecosystem and its resultant environmental degradation.⁶

But the illegal act took a dramatic twist and degenerated into a full business sponsored by powerful and highly placed cabal supported by foreign firms who facilitate logistics, sales and refining.⁷ However, the nefarious activity no doubt has become an economic sabotage evident in the highest sophistication and connection of thieves who have their own network of pipelines through which crude is siphoned on daily basis into waiting ships.⁸

According to statistics, in 2000 alone, over 200,000 to 300,000 barrels of crude were stolen per day while in 2003 to 2008 apparently ₦14 trillion was lost to crude theft. Also, in 2011, Nigeria recorded a daily crude theft of over 150,000 and 200,000 barrels of crude oil, equivalent of Gabon and Ghana's daily oil production amount to over \$120m is stolen from Nigeria on daily basis.⁹ According to the Managing Director of Pipeline Product Marketing Company (PPMC), Haruna Momoh, Nigeria recently lost N160bn to oil theft pipeline vandals at Arepo, Ogun State, Ijedodo, Ijebu and Epe in Lagos.¹⁰

Sabotage is performed primary through what is known as "bunkering", whereby the saboteur attempts to tap the pipeline. In the process of extraction sometimes the pipeline is damaged or destroyed. Oil extracted in this manner can often be sold.¹¹

6Oil theft: Halting economy, Niger Delta environment by Adeola Yusuf, who return on an- the-spot assessment of the crude oil and bunkering in the Niger Delta reports that the federal government needs more than lips service to tackle the menace, which is now a major source of environmental pollution in the region, besides creating a hole in the national purse.

7 Perception and Reality: Assessing priorities for Sustainable Development in the Niger River Delta

(Moffat and Linden). " n.d"

8Ibid

9File:///C:/Users/Owner/Desktop/Crude%20Oil%20Theft%20cRIME%20Against%20.....4/9/2014.

10Ibid

Sabotage and theft through oil siphoning has become a major issue in the Niger River Delta states as well, contributing to further environmental degradation.¹² Damaged lines may go unnoticed for days, and repair of the damaged pipes takes even longer. Oil siphoning has become a big business, with the stolen oil quickly making its way onto the black market.¹³

While the popularity of selling stolen oil increases, the numbers of deaths are increasing. In late December 2006 more than 200 people were killed in the Lagos region of Nigerian an oil line explosion.¹⁴Nigerian regulations of the oil industry are weak and rarely enforced allowing, in essence, the industry to self-regulate.¹⁵

CRUDE OIL THEFT AND ENVIRONMENTAL ISSUES IN NIGER DELTA

The key environmental issues in the Niger Delta of Nigeria relate to its petroleum industry.

The delta covers 20,000 km² within wetlands of 70,000 km² formed primarily by sediment deposition. Home to 20 million people and 40 different ethnic groups, this flood plain makes up 7.5% of Nigeria's total land mass.¹⁶ It is the largest wetland and maintains the third-largest drainage basin in Africa. The Delta's environment can be broken down into four ecological

11 *Nipa Palm Utilization Project* (<http://www.africanconservation.org/neftemp/nipa.html>) Nigerian Conservation Foundation 1996. Retrieved March 21, 2014.

12 *Oil And Nigeria* (<http://www.nigeria-planet.com/Oil-And-Nigeria2.html>) Nigeria-Planet.com, 2006. Retrieved March 21, 2014.

13 Ibid

14 Ibid

15 Ibid

16 Quoted in Greenpeace Internationals' *Shell shocked*, 11. "n.d".

zones: coastal barrier islands, mangrove swamp forests, freshwater swamps, and low land rainforests.¹⁷

This incredibly well-endowed ecosystem contains one of the highest concentrations of biodiversity on the planet, in addition to supporting abundant flora and fauna, arable terrain that can sustain a wide variety of crop, lumber or agricultural trees, and more species of freshwater fish than any ecosystem in West Africa.¹⁸ The region could experience a loss of 40% of its inhabitable terrain in the next thirty years as a result of extensive dam construction in the region.¹⁹ The carelessness of the oil industry has also precipitated this situation, which can perhaps be best encapsulated by a 1983 report issued by the NNPC, long before popular unrest surfaced.²⁰

We witnessed the slow poisoning of the waters of this country and the destruction of vegetation and agricultural land by oil spills which occur during petroleum operations oil theft, pipeline vandalism and oil bunkering. But since the inception of the oil industry in Nigeria, more than twenty-five years ago. There has been no concerned and effective effort on the part of the

17 Videal, John (2010-05-30). "Nigeria's agony dwarfs the Gulf oil spill. The US and Europe ignore it"

(<http://www.guardian.co.uk/world/2010/may/30/oil-spills-nigeria-niger-delta-shell>). The

Observer. Retrieved 27 March 2014. "Government's national oil spill direction and response agency

(Nosdra) says that between 1976 and 1996 alone, more than 2.4m barrels".

18 "Shell and the N15bn Oil spill Judgment Debt"

(<http://www.independentngonline.com/DailyIndependent> (Lagos). 2010-07-19. Retrieved 27 March

2014.

19 Ibid

20 "Shell could face huge fine for Nigeria spill"

(<http://www.aljazeera.com/news/africa/2012/07/2012717174836875241.html>). *Al Jazeera English*.

July 17, 2012. Retrieved March 26, 2014

government, let alone the oil operators, to control environmental problems associated with the industry.²¹

ENVIRONMENTAL IMPACT OF CRUDE OIL THEFT

Oil spillage has a major impact on the ecosystem into which it is released and may constitute ecocide. Immense tracts of the mangrove forests, which are especially susceptible to oil (mainly because it is stored in the soil and re-released annually during inundations), have been destroyed. An estimated 5 to 10% of Nigerian mangrove ecosystems have been wiped out either by settlement or oil.²²The rainforest which previously occupied some 7,400km² of land has disappeared as well.

Spills in populated areas often spread out over a wide area, destroying crops and aquacultures through contamination of the groundwater and soils.²³ The consumption of dissolved oxygen by bacteria feeding on the spilled hydrocarbons also contributes to the death of fish. In agricultural communities, often a year's supply of food can be destroyed instantaneously, because of the careless nature of oil operations in the Delta, the environment growing increasingly uninhabitable.²⁴

People in the affected areas complain about health issues including breathing problems and skin lesions; many have lost basic human rights such as health, access to food, clean water, and an ability to work.²⁵

21 Ibid

22Fuggle, R.E: *Africa Environment Outlook Lake Victoria: A Case Study of Complex Interrelationships*, 75-85. United Nations Environment Programme, 2004

23 Media Briefing: Gas flaring in Nigeria (http://web.archive.org/web/20070929163135/pdfs/gas_flaringinnigeria.pdf) Friends of the Earth, 2004.

24Ibid

25Ibid

LOSS OF MANGROVE FORESTS

Vegetation in the Niger River Delta consists of extensive mangrove forests, brackish swamp forests, and rainforests. The large expanses of mangrove forests are exempted to cover approximately 5,000 to 8,580km² of land. Mangroves remain very important to the indigenous people of Nigeria as well as to the various organisms that inhabit these ecosystems.²⁶

Human impact from poor land management upstream coupled with the constant pollution of petroleum has caused five to ten percent of these mangrove forests to disappear. The volatile, quickly penetrating, and viscous properties of petroleum have wiped out large areas of vegetation. When spills occur close to and within the drainage basin, the hydrologic force of both the river and tides force spilled petroleum to move up into areas of vegetation. Mangrove forests are included in a highly complex tropic system.²⁷ If oil directly affects any organism within an ecosystem, it can indirectly affect a host of other organisms. These floral communities rely on nutrient cycling, clean water, sunlight, and proper substrates.²⁸ With ideal conditions they offer habitat structure, and input of energy via photosynthesis to organisms they interact with. The effects of petroleum spills on mangroves are known to acidify the soils, halt cellular respiration, and starve roots of vital oxygen.²⁹

An area of mangroves that has been destroyed by petroleum may be susceptible to other problems. These areas may not be suitable for any native plant growth until bacteria and

²⁶Abestos: health effects (http://www.atsdr.cdc.gov/asbestos/health_effects/.) Agency for Toxic Substance and Disease Registry, 2007. Retrieved March 29, 2014.

²⁷Oil for Nothing: Multinational Corporations, Environmental Destruction, Death and Impunity in the Niger Delta. (<http://www.essentialaction.org/shell/report/>) Essential (Action, 2000. Retrieved March 10, 2014

²⁸Ibid

²⁹Nigeria signs Gas Supply Agreements With Shell, Chevron for Power Stations (<http://www.bloomberg.com/news/2011-05-27/nigeria-signs-gas-supply-agreements-with-shell-chevron-units.html>), Bloomberg, 2011. Retrieved April 27, 2014.

microorganisms can remediate the conditions.³⁰ A particular species of mangrove, *Rhizophoraracemosa* lives higher in the delta system. As the soils supporting *R. racemes* become too toxic, a non-native invasive species of palm, *Nypafruticans*, quickly colonizes the area. This invasive species has a shallower root system that destabilizes the banks along the waterways, further impacting sediment distribution lower in the delta system. *N.fruticans* also impedes navigation and decreases overall biodiversity. In places where *N. fruticans* has invaded communities are investigating how the palm can be used by local people.³¹

The loss of mangrove forests is not only degrading life for plants and animals, but for humans as well. These systems are highly valued by the indigenous people living in the affected areas.³² Mangrove forests have been a major source of wood for local people. ³³They also are important to a variety of species vital to subsistence practices for local indigenous groups, who unfortunately see little to none of the economic benefits of petroleum. Mangroves also provide essential habitat for rare and endangered species like the manatee and pygmy hippopotamus. Poor policy decisions regarding the allocation of petroleum revenue has caused political unrest in Nigeria. This clash among governing bodies, oil corporations and the people of Nigeria has resulted in sabotage to petroleum pipelines, further exacerbating the threat to mangrove forests. The future for mangrove forests and other floral communities is not all negative. Local and outside groups have provided funds and labour to remediate and restore the destroyed mangrove swamps.³⁴ The federal government of Nigeria established the Niger Delta Development Commission (NDDC) in 2000 which aims to suppress the environmental and ecological impacts

30Okereke.J.N, Obiekezie, S. O. and Obasi, K. O.: microvial floral of oil-spill sites in Egbena, Imo State, Nigeria (<http://www.academicjournals.org/AJB/PDF/pdf2007/16Apr/Okereke%20Oct%20al.pdf>)

Academic Journals, 2007.Retrieved March 21, 2014.

31Ibid

32Ibid

33Ibid

34*Gas flaring in Nigeria: A human Rights, environmental and economic monstrosity.*

petroleum has had in the region.³⁵ Governmental and non-governmental organizations have also utilized technology to identify the source and movement of petroleum spills.³⁶

DEPLETION OF FISH POPULATIONS

The fishing industry is an essential part of Nigeria's sustainability because it provides much needed protein and nutrients for people, but with the higher demand on fishing, fish populations are declining as they are being depleted faster than they are able to restore their number. Fishing needs to be limited along the Niger River and aquacultures should be created to provide for the growing demand on the fishing industry. Aquaculture allows for fish to be farmed for production and provide more jobs for local people of Nigeria.³⁷

Overfishing is not the only impact on marine communities. Climate change, habitat loss, and pollution are all added pressures to these important ecosystems.³⁸ The banks of the Niger River are desirable and ideal locations for people to settle. The river provides water for drinking, bathing, cleaning and fishing for both the dinner table and trading to make a profit.³⁹ As the people have settled along the shores of the rivers and coasts, marine and terrestrial habitats are

(<http://www.climatelaw.org/cases/country/nigeria/cases/case-documents/nigeria/report/gas.flaring.in.nigeria.html>) Friends of the Earth Nigeria

35Nigerian farmer helps put Shril in the dock (<http://www.rnw.nl/international-justice/article/nigerian-farmer-helps-put-shell-dock>), Radio Netherlands Worldwide, 2011. Retrieved April 7, 2014

36World Wildlife Fund. 2006. Fishing on the Niger River. Retrieved May 10, 2007 from http://www.panda.org/news_facts/multimedia/video/index.cfm?uNewsID=61121. "n,d"

37*Pipeline explosion kills at least 200*

([http://web.archive.org/web/20071227231055/http://www.cnn.com/2006.WORLD/africa/12/26/nigeria. blast/index.html](http://web.archive.org/web/20071227231055/http://www.cnn.com/2006.WORLD/africa/12/26/nigeria blast/index.html)) CNN, 2006. Retrieved March 29, 2014

38Ibid

being lost and ecosystems are being drastically changed.⁴⁰ The shoreline along the Niger River is important in maintaining the temperature of the water because the slightest change in water temperature can be fatal to certain marine species. Trees and shrubs provide shade and habitat for marine species while reducing fluctuation in water temperature.⁴¹

The Niger River is an important ecosystem that needs to be protected, for it is home to 36 families and nearly 250 species of fish of which 20 are endemic, meaning they are found nowhere else on Earth. With the loss of habitat and the climate getting warmer every prevention of temperature increase is necessary to maintain some of the marine environments. Other than restoring habitat, pollution can also be reduced. Problems such as pesticides from agricultural fields could be reduced if a natural pesticide was used or the fields were moved farther away from the local waterways.⁴² Oil pollution can be lowered as well; if spills were reduced then habitat and environmental impacts could be minimized. Oil contamination affects the fish population and affects the farmers that rely on fishing to support their family.⁴³ By enforcing laws and holding oil companies accountable for their actions the risk of contamination can be greatly

39 Rajamani L. the principle of common but differentiated responsibility and the Balance of Commitment under the climate regime, 9 RECIEL 120 (2000); RA and international environmental justice: a North-South Dimension (2004).

40 Ibid

41 Ibid

42 Amaize, Emma. "Nigeria: Pollution in Niger Delta – Oil Firm, Fish Farmers Fight"

(<http://allafrica.com/stories/201008090688.html>). Vanguard. AllAfrica.com retrieved 10 /4/2014

43 Niger Delta Human Development Report"

(<http://hdr.undp.org/en/reports/nationalreports/africa/nigeria/name.3368.en.html>). UNDP. 2006.

Retrieved 19 March 2014

reduced.⁴⁴ By limiting the devastation caused by disturbances to the marine environment such as pollution, overfishing, and habitat loss, the productivity and biodiversity of the marine ecosystems would increase.⁴⁵

BIOLOGICAL REMEDIATION

The use of biological remediation has also been implemented in areas of the delta to detoxify and restore ecosystems damaged by oil spills.⁴⁶ Bioremediation involves biological components in the remediation or cleanup of a specific site. A study conducted in Ogbogu located in one of the largest oil producing regions of Nigeria has utilized two plant species to clean up spills.⁴⁷ The

44Ibid

- 45 Niger Delta Human Development Report”(<http://hdr.undp.org/en/reports/nationalreports/africa/nigeria/name.3368.en.html>).UNDP. 2006.p. 76. Retrieved 19 March 2014.

46

47

first stage of cleanup involves hibiscus cannabinus, a plant species indigenous to West Africa. A cannabinus is an annual herbaceous plant originally used for pulp production. This species has high rates of absorbency and can be laid down on top of the water to absorb oil.⁴⁸ The oil saturated plant material is then removed and sent to a safe location where the hydrocarbons can be broken down and detoxified by micro-organisms. The second stage of bioremediation involves a plant known as Vetiveriazizanioides, a perennial grass species.⁴⁹ Vetiveriazizanioides has a deep fibrous root network that can both tolerate chemicals in the soil and can also detoxify soils through time requiring little maintenance.⁵⁰ The people of Ogbogu hope to use these methods to bioremediation to improve the quality of drinking water, soil conditions, and the health of their surrounding environment.

Within the Imo state of Nigeria, a study was conducted in the city of Egbema to determine the micro floral communities present at the site of an oil spill.⁵¹ These micro- organisms have the ability to break down the oil, decreasing the toxic conditions.⁵² This is recognized as another

48 Bond 1 Wayne, Head of Reporting Division National State of Environment Reporting Office, Environment Canada Climate Change.sea.ca/bibliography.htm/accessed 9th March, 2014.

49 Dr. P. C. Nwilo & O. T. Badejo: *impacts of Oil spill along the Nigerian coast* (<http://web.archive.org/web/20080430164524/http://www.aehsmag.com/issues/2001/october/impacts.htm>) the Association for Environmental Health and Sciences, 2001.

54 Baird J (July 26, 2010). "Oil's Shame in Africa". *Newsweek*: 27.

55 Shell International Petroleum Company, *Developments in Nigeria* (London: March 1995)

56 Anderson, I: *Niger River basin: A vision for Sustainable Development* Pp. 1-131 The World Bank, 2005.

50 57Earth summit: www.theguardian.com/environment/2002/sep/04/the_issue_explained. Green politics accessed 10th March 2014.

method of bioremediation and scientists are trying to determine whether the properties these microorganisms possess can be utilized for the cleanup of future spills.⁵³

However bleak this situation may seem for the Niger Delta region there are clearly alternatives that can be implemented to save it from future contamination.⁵⁴ Satellite imagery combined with the use of Geographical Information Systems (GIS) can be put to work to quickly identify and track spilled oil.⁵⁵ To hasten the cleanup of spills, regional cleanup sites along the problem areas could help contain spills more quickly.⁵⁶ To make these tasks feasible more funding must be provided by the stakeholders of the oil industry. Nongovernmental organizations will keep fighting the damaging effects of oil, but will not win the battle alone.

LEGAL MECHANISMS AND STATUTORY REGULATIONS

The effects of pollution arising from oil theft and sabotage are so disastrous to the environment that there have been efforts by the statutes towards prevention and control of same. Some of the statutory laws, which directly and indirectly regulate oil pollution emanating from oil theft and sabotage, are identified in the paper as follows:

1. The constitution of Federal Republic of Nigeria 1999 (as amended)
2. Harmful Waste (Special Criminal Provisions) Act Cap H1, LFN 2004.
3. Oil in Navigable Waters Act, CAP 06, LFN 2004

52 59Our common future, Report of the World Commission on Environment and development (the Brundt land repor 1987) map leaf web.com/feature/2002 Johannesburg-earth-summit-sustainable-development. Assessed 11 March 2014

53 60Report of the world summit on sustainable development
www.unmillenniumproject.org/documents/131302-wssd-reprt.reissuedpdf. Accessed 10/03/2014

54

55

56

4. Oil Terminal Dues Act
5. Petroleum production and distribution (Anti-sabotage) Act CAP P12 LFN 2004
6. Criminal Justice (miscellaneous Provisions) Act, CAP 39, LFN 2004
7. Special Tribunal (miscellaneous Offences) Act CAP 39, LFN 2004
8. Criminal Code Act Cap C. 38, 2004
9. National Oil Spill Detection and Response Agency Act 2005 (NOSDA ACT)

PETROLEUM PRODUCTION AND DISTRIBUTION (ANTI-SABOTAGE)⁵⁷

The Act provides as follows:

Any person who does any of the following things that is to say:

- a. Willfully does anything with intent to obstruct or prevent the production or distribution of petroleum products in any part of Nigeria, or
- b. Willfully does anything with intent to obstruct or prevent the procurement of petroleum product for distribution in any part of Nigeria, or
- c. Shall, if by doing that thing to any significant extent, causes or contributes to any interruption in the production of petroleum products in any part of Nigeria, be guilty of the offence of sabotage under this Act. The Act specifies the penalty for the offence of sabotage and the punishment is death sentence or imprisonment for twenty-one years.⁵⁸

Under the relevant statutory provisions, the enforcement machinery is distinct and the procedures kept quite separate. Another serious problem which would arise in respect of the enforcement of the provisions relating to sabotage and vandalization is the problem associated with the issue of jurisdiction. Under the Act the power to try offenders is given to a military tribunal which may be constituted for any part of Nigeria by the president for trial of persons under the Act

CRIMINAL JUSTICE (MISCELLANEOUS PROVISIONS) ACT,⁶³

The Act provides as follows:

Any person who willfully and unlawfully:

- a. Destroy, damages or removes 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 the Act.

5761 CAP P12, LFN 2004

62 Section 1 and 2

By the provisions of the Act offences committed under it are triable summarily by the appropriate High Court and where there is a willful destruction or damage of any pipeline, the punishment attached to offenders under this Act is a fine of two times the value of the oil that might have escaped as a result of the damage or ₦2000 whichever is higher or to imprisonment for ten years,⁶⁴ where the offence is the prevention or obstruction of the flow of oil along any oil pipeline or where there is any interference with any installation connected therewith, the punishment is a fine of ₦500 or imprisonment for three years or both such fine and imprisonment.

SPECIAL TRIBUNAL (MISCELLANEOUS OFFENCES) ACT65

The Act provides as follows:

A person who willfully or maliciously:

- a. Breaks, damage, disconnects or otherwise tampers with any pipe or pipeline for the transportation of crude oil or refined oil or gas; or
- b. Obstruct 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.⁶⁶

The shortcoming under the Special Tribunal (Miscellaneous Offences Act), the power to try offences there under is vested in the tribunal known as “Miscellaneous Offences Tribunal” and the prosecutions can only be initiated before the tribunal by or in the name of the Attorney General of the Federation.⁶⁷

CRIMINAL CODE:68

The Criminal Code contains provisions for the prevention of public health hazards and for environmental protection. Hence this code deals with offences ranging from water fouling, to the use of noxious substances. The Criminal Code section 245 of the Criminal Code, makes fouling of water an offence. It punishes any person who fouls any spring streams, well, tank, reservoir or place, so as to render it less fit for the purpose for which it is ordinarily used such a person is guilty of a misdemeanor and is liable to six months imprisonment. Again any person committing

6464 Section 7

6666 Section 3 and 7

6767Ibid

noxious acts which affects public health may also be punished under section 247 of the criminal code. This provision may be particularly appropriate for the punishment of oil theft and sabotage in Nigeria.⁶⁹

With regards to some of the legislation discussed above the provisions relating to the enforcement organs under the various laws show significant overlap of functions between the different organs set up by the different laws for the same type of offence.⁷¹ For example Special Tribunal (Miscellaneous Offences) Act, Criminal Justice (Miscellaneous provisions) Act and Petroleum Production and Distribution (Anti-sabotage) Act, the punishment prescribed by the three Acts are separate and distinct from each other, it depends on which of the laws the accused is charged. There is therefore no uniformity in terms of punishment in respect of the offence of sabotage or oil theft.

CRUDE OIL THEFT: CHALLENGES.

The quest for wealth has been identified as a major cause of crude oil theft. In Nigeria, where citizen's worship and celebrate money, everybody wants to make it at all cost. Thus, to make it by hook or crook syndrome has become a driving force to Nigerians who indulge in the heinous act of stealing crude. Speaking at the 13th Nigeria oil and gas conference, Managing Director of Exxon Mobil, Mark Ward pointed out that widespread poverty amongst host communities has remained a major factor to the increasing level of crude oil theft because the host communities feel left out.⁷²

Corruption which has been deviled the nation since independence has also contributed immensely to crude oil theft. This is because the lucrative illicit trade has been going on for years under the watchful eyes of past Government administration and nothing was done to put an end to the illegal business. The security agencies that are meant to protect and prevent criminals from carrying out their notorious activity often aid the thieves that fail to compromise with the security agents are arrested but released by their highly placed sponsor without condition.⁷³

6969 Section 245

7171 Section 247 -248

7272http://en.wikipedia.org/wiki/environmental_issues_in_Nigeria accessed 5/28/2014

7373<http://hdr.undp.org/en/reports/nationalreports/africa/nigeria/name.3368.en.html>). UNDP. 2006. P 76.

Furthermore; Nigeria's weak legal framework has also encouraged crude oil theft. This is because the law is so weak that it gives oil thieves leverage and escape route when arrested. For instance, in the history of crude oil theft and subsequent arrested and arraignment in court, no oil thief has been successfully found guilty and sentenced. Instead, the crude oil thieves are arrested and charged to court are freed by the judiciary.⁷⁴

The widespread unemployment in the country has also contributed in no small way to crude oil theft. It is worthy to note that some of the oil thieves are former employees of oil companies that have been laid off for various reasons why others are the unemployed artisans and graduates that could not find job, but only finds a solution by becoming agent and "boy" to the powerful oil thieves.

The effect of incessant crude oil theft in Nigeria has dented the image of the country in the foreign domain. The lucrative illicit trade has further placed the country high among corrupt countries in the World.⁷⁵

It is sad to note that crude oil theft has drastically affected the daily crude production from about 2.7mbpd to 2.4mbpd. For instance, Shell Petroleum Development Company alone is losing about 60,000bpd in the Nembe Creek Trunk line that runs from Nembe in Bayelsa through Niger Delta region to Bonny Island in Rivers State. Not to talk of other E & P companies whose crude stolen cannot be precisely quantified.⁷⁶

Also, crude oil theft has negatively affected Nigeria's internal revenue and foreign reserve, that is, excess crude account (ECA). Recently, the country recorded revenue shortfall due to the constant attack on the 2b pipelines which is regarded as the economic arteries and livewires of

Retrieved 19 March 2014.

7474Bronwen Manby: *The price of Oil* (<http://www.ohrh.org/reports/1999/nigeria/>) Human Rights Watch.1999.Retrieved march 9, 2014.

7575 Ibid

7676Bogumil Terminski, Oil-induced Displacement and Resettlement: Social problem and Human Rights

Issues, http://www.conflict-recovery.org/bin/Bogumil_Terminski-Oil-Induced_Displacement_and_Resettlement_Social_Problem_and_Right_Issues.pdf."n.d."

the nation's economy.⁷⁷ According to the Minister of petroleum, Allison Madueke, about \$12bn was lost to oil thieves and \$5bn was spent in the last one year on pipeline repairs caused by oil thief adding that such huge amount would have been used to address the issues of infrastructural development challenges affecting the growth of the economy.⁷⁸ Thus, the menace had degenerated into a national crisis that could have adverse effects on effective and full implementation of the budget. According to environmental experts, crude oil theft has caused oil spillage especially the Niger Delta region. Sadly, the spillage is ravaging our environment and has become one of the greatest threats to the country's ecosystem. In the Niger Delta region where crude oil theft is prevalent, oil spillage has reduced the evergreen mangrove forest to mere grasses while fish and other aquatic animals in the water are at the verge of extinction.⁷⁹ According to Shell Petroleum Development Company (SPDC), more than 75% of all oil spill incidents over 70% of oil spilled from SPDC facilities in the Niger Delta between 2006 and 2010 were caused by crude theft and illegal refining which has resulted in consistent pollution of farm lands and rivers. Statistics show that crude oil spills caused by oil thieves in the country is alarming while the impact on the environment is disheartening adding that pollution from oil spill is ravaging the environment.⁸⁰

Crude oil theft leads to declaration of force majeure which prevents the E & P companies from meeting their contractual agreement.⁸¹ For instance, Shell's Nigeria Joint Venture (SPDC JV), declared force majeure on Bonny and Forcados terminals. This is because of the production

7777Ibid

7878 Ibid

7979 Shell and the N15bn Oil spill Judgment

Debt"(<http://www.independentngonline.com/DailyIndependent> (Lagos). 2010-07-19. Retrieved 27 March 2014.

8080Molles Jr, M.C.: *Ecology Concepts and Applications* 3rd Edition,(McGraw-Hill Companies Inc., 2005.) P 93-94.

8181 Ibid

deferment caused by a burning vessel involved in crude oil theft from 28-inch Bomu-Bonny Trunk line. Base on this development, over 150,000 barrels of oil per day were deferred.⁸² Also, Exxon Mobil declared force majeure in the wake of the leakage and fire outbreak at Trans-Niger pipeline which lead to deferment of revenue and other benefits.

Thus, the war against crude oil theft is no longer a war against the poor people of Niger Delta but a war against the “big fishes” and powerful Nigerians with political connections which requires multidimensional approach. However, for Nigeria to actualize its development objectives and achieve its vision 2020, crude oil theft should be tackled head-on by increasing public enlightenment on the consequences of the illicit trade.⁸³

According to the Executive Managing Director, SPDC, Mutiu Sunmonu, Government should seek means of making access to oil pipelines extremely difficult to oil thieves adding that SPDC, has recently resorted to burying its pipelines at 13.5ft into the ground as a means of making it hard for vandals to access.⁸⁴

Persistent crude oil theft, no doubt, is a slap on the Federal Government and the security agencies. The menace is totally unacceptable to Nigerians and it therefore behold on the Government to seriously trace the value chain of the thieves and tackle the nefarious activity that cost Government huge amount of money and environmental pollution. After all, some countries parading themselves as oil producing countries today cannot boast of 80,000bpd while Nigeria is filtering away over 150,000bpd⁸⁵

CONCLUSION

8282 Ibid

8383Nwilo, Peter C., and Olusegun T. Badejo: *impacts and Management of Oil Spill Pollution along the Nigerian Coastal Areas* (http://www.fig.net/pub/figpub/pub36/chapters/chapter_8.pdf) International Federation of Surveyors, 2007. Retrieved March 20, 2014.

8484Ibid

8585 Ibid

Persistent crude oil theft, no doubt, is a slap on the Federal Government and the security agencies. The menace is totally unacceptable to Nigerians and it therefore beholds on the Government to seriously trace the value chain of the thieves and tackle the nefarious activity that costs Government huge amounts of money and environmental pollution. After all, some countries parading themselves as oil producing countries today cannot boast of 80,000bpd while Nigeria is filtering away over 150,000bpd.

Oil bunkering is regulated by the provision of various laws, and these laws must be adhered to. The main requirement of most of the provisions is the procurement of license before engaging in oil bunkering activities. This is because ownership of all mineral oil and natural resources in, under or upon any land in Nigeria or its economic zone is vested in the Government. Penalties for non-adherence to these provisions would be the payment of a prescribed sum, sentence to imprisonment (which is inclusive of life imprisonment) and death penalty. Consequently the several legal regimes, laws and regulations have woefully failed to address the issues of oil theft in the oil sector specifically because of the Joint Venture Operation system and the activities of international oil bunkers.

RECOMMENDATIONS

Oil theft and its consequential defaced of the Nigeria environment has place a major challenge on the environmental integrity of the Niger Delta communities and the Nigeria socio-economic and political well-being. In view of the above, this paper recommends as follows:

- 1) Governmental policies should be driven towards mounting mass literacy and educational programmes on poverty eradication as this will help to redirect the Nigerian mentality of get rich quick syndrome and thereby sustaining the nation environment.
- 2) Environmental offences which concern the breach of environmental laws and regulations should be made a strict liability offence.
- 4) Sincerity of purpose in the apprehension and prosecution of oil thieves and pipeline vandals to serve as a deterrent to others. All the hundreds of oil thieves caught so far by the Joint Task Force and the Nigeria Security and Civil Defense Corps (NSCDC) are for mere jamboree.
- 5) Transparency and effectiveness on whatsoever money earmarked for the prevention of theft, to produce visible results, and not just merely releasing funds for politicking.
- 6) That the good way to combat oil theft is to adequately strengthen the military especially the Navy, with the necessary equipment to police our territorial waters. Government should explore the possibility of tracking the oil stolen from Nigeria through fingerprinting to identify its origin. Also, Nigeria's satellite technology should be improved to show all the ships in Nigeria's offshore coastal water.
- 7) Government should review all relevant laws, replacing it with stiffer punishment for oil thieves to serve as a deterrent to those that have the ambition of joining the illegal trade. As a matter of fact, all oil thieves suspects should be prosecuted and convicted by a separate court created for that purpose as a measure to instill fear into the cabal that are reaping from the evil trend.
- 8) Exposing the sponsors of oil thieves along with their international collaborators. Federal Government agencies such as Department of Petroleum Resources (DPR), Petroleum Equalization Fund (PEF) should work out a model to tackle oil thieves that steal crude by forging crude oil and gas export clearance permit to avoid loading more than the quantity purchased. The Pipeline Product Marketing Company Limited, (PPMC) in collaboration with the exploration and production companies (E&P) should device a more practical and scientific approach through electronic pipeline surveillance to track down oil thieves that steal crude by perforating pipelines, fix valves and hoses to the sea through which they siphoned crude into ship.

REFERENCE

- Akin Mabogunje “Land Reform in Nigeria: Progress, Problems and Prospects”. In A Paper Delivered As Chairman, Presidential Technical Committee for Land Reform 2009
- Boudouresque C. F. and Verlaque M.. “Biological Pollution” in V. O. Aigbokhaevbo. “Non-Oil Resources Exploitation in Nigeria: Environmental Malfeasance” International Energy Law Review 8 (2012) 288
- Catherine Schwarz. The Chambers Dictionary (Edinburgh: Chambers Harray Publishers Ltd.1993)31
- E.C.Council regulation 1872/84 in Violet Aigbokhaeubo “Combating Environmental Crimes in Nigeria: A Daunting Uncertainty”.*NIALS Journal of Environmental Vol.1* (2011) 200.
- Exploitation in Nigeria: Environmental Malfeasance” International Energy Law Review 8 (2012) 286.
- Molles Jr, M.C.: *Ecology Concepts and Applications* 3rd Edition, (McGraw-Hill Companies Inc., 2005.) P 93-94.
- Nathaniel I. and Nathaniel A. “The effect of Poverty on Conservation of Biodiversity: The Nigerian Experience” Science in African. September 29. 2012 Cited in V.O. Aigbokhaevbo. “Non-Oil Resources
- National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007
- Rajendra Ramilogan “The Environment and International Law: Rethinking the Traditional Approach” in Vermont Journal of Environmental law 3. No 1(2001-2002)
- The United Nation Conservation To Combat Desertification Defines Desertification As Land Degradation in Arid and Semi-Humid Areas Due to Various Factors Including Climate Variations and Human Activities See Article 1. UNCCD
- United Nation on World Food Day. October 16 2012 Observed That Foundation That Support Food security including Biodiversity Are Undermined in Spite of Global Dependence on Bio Resource Consumption for Their Sustenance. Population Growth and Urbanization Driven Dietary Chances and Lifestyle Adaptation Constitute The Greatest Bio Threat.
- Violet Aigbokhaeubo “Combating Environmental Crimes in Nigeria: A Daunting Uncertainty”.*NIALS Journal of Environmental Vol.1* (2011) 200.