



The role of the judiciary in the eradication of oil pipeline vandalism in Nigeria

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Abstract

Over the years, vandalism has been a major threat to Nigeria's oil production, revenue generation and energy security. It is a fact that Nigeria is an oil-endowed state, and statistics show that about 75% of Nigeria's foreign exchange earnings come from oil. Vandalism of oil pipelines in Nigeria has not only led to environmental degradation, such as fire outbreaks, but it has also had an enormous impact on the economy, resulting to decrease in electricity supply, loss of jobs, scarcity and shortage of petroleum products etc. The resultant effect poses a great danger to humanity and the ecosystem. Pipeline vandalism is a recurring crime in Nigeria, and it is important to understand the judiciary's role in ending this crime. While the government and private oil companies have utilised some structural measures to make the pipelines less exposed, they are still accessible and typically marked by signs that can be easily identified by community members who feel aggrieved by the unfulfilled expectations from the Multi-National Oil Companies (MNOCs). The judiciary plays a vital role in eradicating pipeline vandalism; however, many have lost confidence in the Nigerian Judicial system due to the various technicalities that frustrate litigations in Nigeria. This article shall examine the history of oil pipeline vandalism in Nigeria, the regulatory laws and authorities, the effects of vandalism on the Nigerian economy and the judiciary's role in eradicating oil pipe vandalism.

Keywords: oil pipeline, vandalism, judiciary, government

Introduction

Oil in commercial quantity was first discovered in Oloibiri (now Bayelsa State) in 1956 by Shell D'arcy Exploration Company (now Shell Petroleum Development Company), which ended over 50 years of unsuccessful oil exploration in the country by various international countries. The field started oil production between late 1957 and early 1958, and the first oil production came at 4,928 barrels per day^[1]. The first shipment of Nigerian Crude Oil exports represented an investment of £27 million, which ushered in a new era in the Nigerian oil industry^[2]. To enhance oil production, the federal government had undertaken practical steps to maximise the oil wealth, adopting an open-door economic policy that permitted local and international oil companies equal access to exploration and production rights in the Ijaw area. This laid a strong foundation for the development of petro-business in the country, and maximum profit^[3]. Consequently, indigenous oil companies were registered and obtained licenses for oil drilling from the ministry of petroleum, particularly Henry Stephen Delta Oil, Niger Oil Resources, and the Niger Petroleum Company, which later became significant oil business ventures in the country.

To facilitate the transportation of crude oil across the Niger Delta region to other parts of the country, pipelines were constructed. Over the years, there have been recurrent issues over pipeline vandalism in different parts of the country, especially in the Niger Delta region. The indigenes had high expectations from the MNOCs when oil and natural gas (ONG) were discovered at Oloibiri. They were expecting, among other amenities, regular electricity supply, coastal road networks, an efficient health care delivery system, sustainable community development, gainful employment, etc. They knew that MNOCs usually provided such amenities for their host communities in Europe and expected the same in the Niger Delta. This did not happen,

and they protested, especially in the 1990s, and later went underground to vandalize oil pipelines as a way of expressing their frustration over the long years of neglect and underdevelopment^[4]. Over 800,000 barrels of crude oil per day are lost to pipeline vandalism, oil bunkering, and so on due to the general insecurity around the oil pipelines. Nigeria's oil production, as projected in the 2016 budget, targeted 2.2 million barrels per day, but now the target is 1.4 million barrels per day^[5]. The causes of this offence include but are not limited to poverty and unemployment in the region, misappropriation of crude oil and the emergence of illegal refineries, etc. In the quest for survival and achieving their means of livelihood, people in the region feel that they have no choice but to, on occasions, resort to so-called "violent" means and attack oil and gas installations, allowing them to access crude oil at will, with the basic interest of using the financial proceeds from the misappropriated oil to alleviate poverty^[6]

What is oil pipeline vandalism?

Oil pipeline vandalism also referred to in Nigeria as oil bunkering, refers to the willful and malicious destruction of oil pipelines for economic and political reasons. It is the illegal or un-authorised act of destroying or puncturing oil pipelines to disrupt supply or to siphon crude oil or its refined products for purposes of appropriating it for personal use or sale on the black market or any other outlet^[7].

Regulations on Oil Pipeline Vandalism in Nigeria

Currently, there is no all-encompassing legislation that deals squarely with oil pipeline vandalism; however, there are two laws that address the acts of tampering and vandalism, and they are;

1. Petroleum Production and Distribution (Anti-Sabotage) Act ^[8]; Section 1 of the Act provides as follows;

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

- a. wilfully does anything with intent to obstruct or prevent the production or distribution of petroleum products in any part 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. 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.” In furtherance of the above, where any person aids, incites, counsels or procures any other person to commit the offence above, he/she shall also be guilty of sabotage ^[9], which is punishable by the death penalty or imprisonment not exceeding 21 years ^[10]

2. The Miscellaneous Offences Act ^[11]; The Act ^[12] provides that 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”.

The above provisions show the legislature's intent to end acts of pipeline vandalism through the death penalty and life imprisonment. The question is whether or not the death penalty and life imprisonment have deterred vandals from committing the offence.

Effects of Oil Pipeline Vandalism on the Nigerian Economy

Nigeria has experienced significant economic loss due to pipeline vandalism. Between 2009 to 2018, it was reported by the Nigeria Extractive Industries Transparency Initiative (NEITI) that Nigeria lost about \$42 billion due to crude oil theft and pipeline vandalism. Statistics reveal that this loss amounts to about 200,000 to 400,000 barrels per day ^[13]. This reflects the adverse effects that vandalism has on the economy. Some of the effects are discussed below;

1. Economic losses from pipeline and plant shutdown;

The Nigerian National Petroleum Company reported that between January to September 2021, Nigeria had lost N898.93 billion from crude oil losses and repairs of vandalized pipelines ^[14]. Also, it was gathered that the oil firm deducted a total of N1.78tn from its remittances to the Federation Account Allocation Committee (FAAC) during the (ten) months. These developments and expenditures are highly counter-productive to the Nigerian economy. Furthermore, the Nigerian National Petroleum Company's September 2021 presentation to FAAC stated that the Energia terminal injection of

crude into the Brass line was suspended from 1 July to 31 July due to pipeline damage. Furthermore, in March 2022, the oil firm told FAAC that it spent N4.19bn in the preceding month on the repairs of pipelines, adding that crude oil valued at N26.99bn was lost in the same month.

- 2. Environmental Pollution;** Oil pipeline vandalism leads to oil spills and environmental pollution. Depending on the magnitude of oil spills due to pipeline vandalism, oil spills may affect the entire ecosystem due to the chemical components and elements of the spilt oil that are toxic to the environment. Oil spills occurring in an aqueous environment (e.g., ocean or seas, or leaks from rigs ending up in water) are rapidly degraded compared to oil spills on land or in the subsurface environment. Oil spilled in an aqueous environment accumulates on top of the water surface and may disperse over large areas in the marine environment due to the various water currents and waves, this generally is dangerous to the life of aquatic habitats ^[15].

Furthermore, oil spills could cause chemical toxicity, which, when absorbed into organs, tissues and cells, can have sub-lethal and lethal toxic effects. In addition to the other adverse effects caused by oil pipeline vandalism, it could cause loss of shelter or habitat through oiling or cleaning operations ^[16].

- 3. Fire outbreak;** Fire outbreak is a prevalent result of oil pipeline vandalism. Statistics show that over 2,500 lives have been lost because of explosions affecting vandalised pipelines in the last 15 years; however, it must be noted that the exact figures for casualties of pipeline fire outbreaks were not determined in all cases as some incidents were seemingly not reported ^[17]. Recently, over 100 people were killed due to an explosion resulting from oil pipeline vandalism in Rivers State.

- 4. Scarcity and Shortage of petroleum products;** The economy has continued to suffer due to a shortage of crude oil production due to vandalism. The incessant price hike and fuel scarcity have caused untold hardship to Nigerians. Scarcity and shortage of fuel lead to an increase in the transportation cost of goods and, in turn, increases the prices of goods, resulting in inflation.

- 5. Decrease in Electricity supply;** Oil pipeline vandalism results in a shortage of electricity supply. Nigeria's power sector depends mainly on natural gas for electricity generation. An instance of vandalism that reduced electricity supply was vandalism on the Lagos Escravos Pipeline in February 2016, which resulted in a shortage of 3,132 megawatts (MW) of electricity ^[18].

Pipeline Security Solutions

In Nigeria, petroleum and associated products are transported through an extensive pipeline network, from remote to populated areas. The pipelines generally distribute the fuel needed for daily activities across Nigeria; however, these pipelines are poorly secured, thereby making them targets of repetitive attacks by vandals ^[19]. Several

allegations have been made against the ability of security agencies to guard the pipelines.

The federal government has made efforts to improve the security of pipelines, including hiring private security firms and equipping men and officers of the Nigerian Armed forces to protect government facilities; this, however, has not put an end to the high rate of pipeline destruction and other facilities. To this end, there is a need to enact a law that specifically provides for the security of oil pipelines.

To secure pipelines, NNPC Limited is currently using state-of-the-art technology to gather much-needed intelligence to assist security agencies in going after crude oil thieves and pipeline vandals. With oil theft and pipeline vandalism overwhelming Nigeria's oil business, the NNPC Ltd is adopting Saudi Aramco's model of using video surveillance to monitor its pipelines carrying crude oil from wells to flow stations in the Niger Delta ^[20]. The surveillance system is the Central Coordination, Data Integration and Activation Control Room. In real-time, the NNPC can monitor vessels' movement on the coast of Nigeria's territorial waters through the Data Control Centre.

From the facility, officials of the NNPC, working with operatives of the Nigerian Navy, can determine, in real-time, if a vessel is legally carrying out operations within Nigeria's coastal waters. The Data Centre also uses an intelligence system to detect when an incident of crude oil theft has occurred, the location, and the vessels involved. Immediately such an illegal operation has been established, officials of the Centre, through its Incidents Reporting System, will immediately escalate such threat to the security agencies for immediate action.

The Role of the Judiciary in Eradicating Oil Pipeline Vandalism in Nigeria

The Federal High Court is the court with exclusive jurisdiction to hear all matters pertaining to oil and gas ^[21]. Section 6(6) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) ^[22], states that the role of the courts is to preside over and render judgement in cases, to enforce or void statutes and laws when the scope or constitutionality are questioned, and to interpret statutes and laws when disputes arise. The judiciary is to take a proactive approach to ensure that the rights of injured parties are protected. Environmental litigations are based on either nuisance, negligence or the rule in Rylands and Fletcher. The attitude of the Nigerian court concerning legal technicalities, such as the issue of locus standi, jurisdiction, and pre-action notice, frustrates litigations in Nigeria, thereby clogging the wheel of environmental justice and leaving litigants and injured parties with nothing but resorting to self-help.

1. Alternative Dispute Resolution: Litigation as a dispute resolution mechanism entails resolving disputes through a court system. This form of dispute resolution is generally known to be time-wasting due to several adjournments, making cases span for years and expensive. It is the most prevalent means of resolving environmental disputes in Nigeria. The judiciary is encouraged to advise using Alternative Dispute Resolution (ADR) mechanisms between parties, etc.; this is to avoid the technicalities involved in resolving such cases through the traditional court system, such as delays due to several adjournments. The introduction of

amicable means of settlement of disputes could lead to a reduction of the mistrust and the unrest prevalent in the Niger Delta ^[23]. ADR are highly instrumental in the quick resolution of disputes and in reducing the load of court injunctions and orders. In addition to ADR being cost-effective and less time-consuming, the parties involved have more control over the processes and the result.

2. Legal Technicalities; In a bid to handle litigation cases involving pipeline vandalism and environmental pollution, the Judiciary in Nigeria tends to focus on legal technicalities rather than dispensing justice. Justice Niki Tobi JSC (as he then was) notes ^[24] that: "A technicality in a matter could arise if a party is relying on abstract or inordinate legalism to becloud or drown the merits of a case. A technicality arises if a party quickly takes an immediately available opportunity, however infinitesimal it may be, to work against the merits of the opponent's case. In other words, he holds and relies tenaciously unto the rules of the Court with little or no regard for the justice of the matter. As far as he is concerned, the rules must be followed to the last sentences, the last words and the last letters without much ado, and with little or no regard to the injustice that will be caused the opponent".

For a court to assume jurisdiction over a matter, there are some condition precedents which must be satisfied, depending on the case, such conditions include locus standi, pre-action notices, representative action, limitation of action etc. In the case of Mobil Producing (Nigeria) Unlimited V. LASEPA ^[25], the court held the plaintiff failed to fulfil a condition precedent as he did not issue a pre-action notice as provided by the law. Furthermore, in the case of Shell Petroleum Development Company Nig. Ltd V Chief Otoko & Ors ^[26], the appellate court held that the suit filed was not beneficial to all whom the plaintiff was representing and therefore rejected the purported representative action. It is pertinent to note that a plethora of environmental law cases have been thrown away by the court due to the inability of the plaintiff to prove special damage. Where a procedural irregularity can be cured without causing any injustice to the adverse party, an amendment would be readily granted to rectify the anomaly and restore normalcy. The attitude of the judiciary with respect to legal technicalities frustrates oil pipeline vandalism litigations in Nigeria, consequently, this has left litigants and injured parties to resort to self-help. The Courts are enjoined to look away from technicalities and focus on the case's substance.

3. Creation of Special Courts/Tribunals; A Special Court is a court with constrained purview, that manages a specific field of law. The establishment of special courts in the country will aid in easy access to justice. This will fasten environmental litigations since the court's focus is now strictly environmental matters. It will also curb the issues surrounding instituting actions in the wrong court. The proposed environmental court's appeals should be directed to the Court of Appeal to curb unnecessary hierarchy of court leading to delays.

Conclusion/Recommendations

From the above, the acts of oil pipeline vandalism are a major setback on the path to achieving sustainable economic and environmental governance in Nigeria's oil and gas industry, it is fast becoming a recurring offence in Nigeria, especially in the Niger Delta region. Despite the punishment contained in the laws for this grievous offence, it may seem that the acts of pipeline vandalism have defied legal solutions. One of the reasons could be because there are not a lot of reported judgements related to oil pipeline vandalism, and even when the trial courts give judgements, the defendants may want to appeal to appellate courts, which would take years, hence the continuous commission of the offence. The government and the judiciary have to take steps to stop the commission of this crime. Some of the steps which the government could take are;

1. Creation of employment opportunities for the youths in the Niger Delta region
2. Investment in the delivery of qualitative education, training and technology acquisition in institutions of training for the youths of the Niger Delta Region.
3. Support efforts to extend the power grid into rural communities, reducing the dependence on illegally refined products.
4. Where reported cases of vandalism are filed in court, the judiciary should grant such cases accelerated hearings, to aid in speedy expedition of the case, or set up a special tribunal who sit on the matter.
5. Enactment of laws to cater for the security of oil pipelines; An examination of Nigerian legal framework on pipelines laws reveals that they only have provisions that relate to the general management of oil pipelines, no particular law address the problem and solutions to pipeline insecurity in Nigeria.

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