

## EFFICACY OF THE LEGAL FRAMEWORK ON THE ENVIRONMENTAL IMPACT OF CRUDE OIL THEFT IN NIGERIA \*

### Abstract

*The issue of environmental degradation as a result of crude oil theft is fast becoming an intractable problem in Nigeria. Nigeria is reported to be 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 discusses the efficacy of the Nigeria laws and regulations, the challenges of crude oil theft, the endemic consequences of oil spillage in the Nigeria environment, the economic effect of crude oil theft and the lack of sincerity of purposes of the Nigerian government in tackling crude oil theft. This paper recommends appropriate preventive pragmatic measures and policies that would pave way for absolute strict liability of the enforcement and implementation of existing laws and further concludes that crude oil theft is an act of terrorism against the Nigerian economic.*

**Keywords:** Environment, Oil Theft, Spillage, Degradation, and Enforcement of Laws

### 1. 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.<sup>1</sup>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.<sup>2</sup> 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.<sup>3</sup>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 existing legal framework. Other terms such as oil theft, pipeline vandalizing, fuel scooping and oil terrorism have been employed in describing instances of crude oil theft.<sup>4</sup>Crude oil theft popularly called oil bunkering has become a tradition in the history of Nigeria's oil and gas 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.<sup>5</sup> The activity of the theft of crude oil has further crippled the integrity of the Nigerian environment through its direct impact on the ecosystem and its resultant environmental degradation.<sup>6</sup>This 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.<sup>7</sup> However, the nefarious activity no doubt has become an economic sabotage evident in the

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<sup>1</sup>'Maintaining Environmental Integrity' Ottawa.ca/en/official-pna-0/24-maintainning-environmental-integrity assessed 07/03/2019

<sup>2</sup><http://www.air.com.au/industry/factrefine.html> 25/02/2019

<sup>3</sup>Ibid

<sup>4</sup>I Michael, Being a paper presented at the Annual Conference of the Nigerian Maritime Law Association held in Victoria Island on the 5th and 6<sup>th</sup> of May, 2009

<sup>5</sup>Independent Newspaper, Wednesday, April 09, 2014

<sup>6</sup>Oil 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.

<sup>7</sup>Perception and Reality: Assessing priorities for Sustainable Development in the Niger River Delta (Moffat and Linden). ' n.d'

highest sophistication and connection of thieves who have their own network of pipelines through which crude is siphoned on daily basis into waiting ships.<sup>8</sup> 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 2015, 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.<sup>9</sup> Nigeria recently lost N160bn to oil theft pipeline vandals at Arepo, Ogun State, Ijedodo, Ijegun and Epe in Lagos.<sup>10</sup>

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.<sup>11</sup> Sabotage and theft through oil siphoning has become a major issue in the Nigeria River Delta as well, contributing to further environmental degradation.<sup>12</sup> 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.<sup>13</sup>

## **2. Crude Oil Theft and Environmental Degradation**

The key environmental issues in Nigeria relate to its petroleum industry. The delta covers 20,000 km<sup>2</sup> within wetlands of 70,000 km<sup>2</sup> 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.<sup>14</sup> 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 zones: coastal barrier islands, mangrove swamp forests, freshwater swamps, and low land rainforests.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> 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:<sup>18</sup>

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 government, let alone the oil operators, to control environmental problems associated with the industry.<sup>19</sup>

## **3. Crude Oil Theft and 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 13<sup>th</sup> Nigeria oil and gas

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<sup>8</sup>Ibid

<sup>9</sup>File://C:/Users/Owner/Desktop/Crude%20Oil%20Theft%20cRIME%20Against%20 Access on 4/9/2018.

<sup>10</sup>Ibid, the Managing Director of Pipeline Product Marketing Company (PPMC), Haruna Momoh,

<sup>11</sup>*Nipa Palm Utilization Project* (<http://www.africanconservation.org/neftemp/nipa.html>) Nigerian Conservation Foundation 1996. Retrieved March 21, 2019.

<sup>12</sup>*Oil And Nigeria* (<http://www.nigeria-planet.com/Oil-And-Nigeria2.html>) Nigeria-Planet.com, 2006. Retrieved March 21, 2019.

<sup>13</sup>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. Nigerian regulations of the oil industry are weak and rarely enforced allowing, in essence, the industry to self-regulate.

<sup>14</sup>Quoted in Greenpeace International's *Shell shocked*, 11. 'n.d'.

<sup>15</sup>J Videal, (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-geria-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' Retrieved March 26, 2019

<sup>16</sup>'Shell and the N15bn Oil spill Judgment Debt' (<http://www.independentngonline.com/DailyIndependent> (Lagos). 2010-07-19. Retrieved 27 March 2019.

<sup>17</sup>Ibid

<sup>18</sup>'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, 2019.

<sup>19</sup>Ibid

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.<sup>72</sup> Corruption has bedeviled the nation since independence and 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.<sup>73</sup>

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 due to legal technicalities and procedural flaws. 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 charged to court and are freed by the judiciary.<sup>74</sup> 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 its vision among OPEC countries, crude oil theft should be tackled head-on by increasing public enlightenment on the consequences of the illicit trade.<sup>83</sup> 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.<sup>84</sup>

#### 4. Environmental Impact of Crude Oil Theft and Oil Spillage

The environmental impact of crude oil spillage as a result of oil theft and bunkering on the people of the Niger Delta and the Nigeria state are complex and diverse. Crude oil theft and bunkering is one of the environmental problems facing the Niger Delta area, the impact on the environment will be examined under the following heads.

#### 5. Impact on Aquatic Life

Oil exploration and production has caused a lot of harm to the marine environment as well as aquatic organism.<sup>20</sup> Oil exploration and production has not only destroyed mangrove swamps but other dependent lives. Since mangrove constitute a habitat for many marine lives, the destruction of the mangrove to make way for oil activities meant the destruction of the various living species associated with the swamp. The effect of oil on aquatic mangrove and its community are varies, and complex. Oil on the surface of water may limit oxygen exchange, entangle and kill surface organism and coat the gills of fishes<sup>21</sup>. However, many fish kills are caused not by the direct toxicity of pollution, but by the biodegrading of pollutant which consumers and causes a deficiency of life sustaining oxygen.<sup>22</sup> A Council on environmental quality report states:

In relation to toxicity, a significant positive correlation has been reported between concentration of polycyclic aromatic hydrocarbon, metabolites and mutations in marine organism studies have also shown that certain polycyclic aromatic hydrocarbons induce carcinoma formation in various marine organisms and can be acutely toxic.<sup>23</sup>

Some known effects of oil on marine organism are disruption of physiological or behavioural activities which may reduce much special resistance to infection and interfere with reproductive capabilities. These effects could dislocate

<sup>72</sup>[http://en.wikipedia.org/wiki/environmental\\_issues\\_in\\_Nigeria](http://en.wikipedia.org/wiki/environmental_issues_in_Nigeria) accessed 5/28/2018

<sup>73</sup><http://hdr.undp.org/en/reports/nationalreports/africa/nigeria/name,3368,en.html>. UNDP. 2006. P 76. Retrieved 19 March 2019.

<sup>74</sup>Bronwen Manby: *The price of Oil* (<http://www.ohrw.org/reports/1999/nigeria/>) Human RightsWatch.1999.Retrieved march 9, 2019.

<sup>83</sup>Nwilo, 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](http://www.fig.net/pub/figpub/pub36/chapters/chapter_8.pdf)) International Federation of Surveyors, 2007.Retrieved March 20, 2019.

<sup>84</sup>Ibid

<sup>20</sup>Edu, *'Relation of Petroleum Industry in Nigeria'208*

<sup>21</sup>C.T.I; Odu, *Degradation And Weathering of Crude Oil under Tropical Conditions'* in the Petroleum Industry and the Nigerian Environment, proceedings of international seminar held in Lagos, Nigerian1981, 26

<sup>22</sup>S.E. Manaham, *Environmental chemistry* (5<sup>th</sup>ed.) (1991) 29

<sup>23</sup>The Rio Declaration on Environment and Development, 31 ILM 574 (1992) referred to by AO Ekpu in 'Environmental impact of oil on water: a comparative overview of the law and policy in the united states and Nigeria' (1995) 24 *Denver Journal of International Law And Policy* p 62

the social and economic life of the communities that rely on the contaminated waters for drinking, domestic and fishing purpose. Oil exploitation has depleted biodiversity.<sup>24</sup> Especially at flow stations and terminal extensive deforestation has accentuated the inflow of eroded materials deposited by the major water bodies disturbing aquatic animals in particular.<sup>25</sup> Many swamps, rivers and creeks where fish spawn have been destroyed or polluted as a result of spills.

### **6. Impacts on Crops**

Oil communities in Nigeria suffer from the ravages of day to day exploitation of oil<sup>26</sup>. A pamphlet<sup>27</sup> published by the former Bendel State government states that 'As at now the wells flow stations the roads connecting the numerous burrow pits which render the arable land permanently barren now occupy about half of the total arable land available in these areas'. The pamphlet further states<sup>28</sup>: About one quarter of the mid-western region (now Edo and Delta state) has been rendered barren due to spillage and leakage. In addition, the beaches at the mouth of the big rivers have been polluted by oil deposited from nearby offshore platforms. Field and laboratory studies have shown that oil, deposited on leaves of plants penetrates the leaves and reduce transpiration and photosynwork.

The oil by itself contaminating soil need not be toxic to plants. It, however, has its adverse effect on plants indirectly by creating certain conditions which make nutrient for example, nitrogen, essential for plant growth unavailable to plants,<sup>29</sup> furthermore the adverse condition created by oil in the soil make some toxic nutrients more available to plants oil contamination of the soil thus results in the soil becoming unsuitable for crop growth. A report submitted by a River State Chief to the World Conference of Indigenous People on Environment and Development at Rio's Earth Summit in June 1992, states:<sup>30</sup>

Thus apart from air pollution from the oil industry emissions and flares day and night, producing poisonous gases that are silently and other wise endangering the life of plants, game and man himself, we have widespread water pollution and soil/land pollution that respectively result in the death of most aquatic eggs and juvenile stages of life of tin fishes and sensible animals (like-oysters) on the one hand, whilst on the other hand agricultural land contaminated with oil spills become dangerous for farming, even where they continue to produce any significant yields.

The report further states that:

Apart from the basic fact that the contaminated soils are rendered relatively but seriously infertile and polluted, sometimes for at least 30 years, the farmers and fishermen who have been thus dislocated then observe with greater anger the extremely wide gulf between the lifestyle and incomes of oil industry workers and themselves rendered economically impotent by the same oil industry. Confrontations and anger in the soil producing areas occasionally explode into calamities.<sup>31</sup>

Oil contamination of the soil percolates into underground water and contaminates it. Furthermore, open and unlined pits for storing drilling water litter the area of operation of the soil companies and are found in the centre of the

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<sup>24</sup>The word biodiversity (a short form of the expression biological diversity) refers to the number, variety and variability of living organisms, in treaty provisions, biodiversity is defined under article 2 of the convention on biological diversity (CBD) as the variability among living organisms from all source including, inter alia terrestrial, marine and other aquatic ecosystem and ecological complex of which they are part, and 'this includes diversity within species and ecosystem' - KSA Ebuku, ' Biodiversity conversation in Nigeria: an appraisal of the legal regime in relation to the Niger Delta area of the country' in *MPJFIL* vol. 10 Nos. 34 (2006) 44.

<sup>25</sup>Niger Delta Human Development Reports published by the Vanguard Newspaper of Monday, August 14, 2006

<sup>26</sup>The Hazard of Oil Exploration (Bendel State Government, 1981) published by the former Bendel State Government 1987, 4

<sup>27</sup> Ibid

<sup>28</sup>A.M.A. Imevbore, 'The Impact of the Oil Production in the Biota of the Niger Delta in the Petroleum Industry and the Environment of the Niger Delta, Vol. 2 (Lagos; NNPC Publication 1989) 96

<sup>29</sup>H.JR, Dappa-Biriye, R.R Briggs, 'The Endangered Environment of the Niger Delta—Constraints and Strategies' and NGO memorandum of the Rivers state Chief and People of the World Conference of Indigenous People on Environment and Development, Rio de Janiero Appendix 4D

<sup>30</sup>K.B Noble 'A Top A Sea of Oil Nothing But Misery' in the New York Times International September 1993, 4

<sup>31</sup>note 7

village with little or no security. This practice would be legal in most developed countries. A report by Greenpeace international noted that:

While oil companies operation in developed region are usually accompanied by environmental impact assessment social and environmental policies and not to mention a great deal of effort to appease the justified concern of local communities these practice are not exported to lesser developed regions where little or no media attention is paid and where accountability is unheard of.<sup>32</sup>

Poor road construction by the oil companies in their areas of operation has exacerbated the problems of flash flood in the Niger Delta after heavy rain. This is because most roads are constructed without gutters and culverts. Crops and farm have been adversely affected thereby. Extraction of large quantities of Oil Company in Awoye, Ondo State caused saltwater intrusion and the loss of more than twenty hectares of land.<sup>33</sup> The major socio – political issue in the Niger Delta region today is access to land the Niger Delta people complain bitterly about having lost so much land oil operation. Oil facilities and installation have been directly taking land waterways from the people of the region. In Nigeria where most of the rural populace and even the city dwellers lack access to potable water the major source of water for drinking are rivers, streams and ground waters. Villages in the Niger Delta are thus impoverished as a result of depletion of healthy fish and poisoned drinking water.<sup>34</sup>

### 7. Losses of Mangrove Forests

Vegetation in the numerous rivers of Niger Delta consists of extensive mangrove forests, blackish swamp and rainforests. The large expanses of mangrove forests are expected to cover approximately 5,000 to 8,580km<sup>2</sup> of land. Mangroves remain very important to the indigenous people of Nigeria as well as to the various organisms that inhabit these ecosystems.<sup>35</sup> Human impact from poor land management upstream coupled with the constant pollution of petroleum has caused five to ten per-cent 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.<sup>36</sup> If oil directly affects any organism within an ecosystem, it can indirectly affect a host of other organisms.<sup>37</sup> These floral communities rely on nutrient cycling, clean water, sunlight, and proper substrates.<sup>38</sup> 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.<sup>39</sup> 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.<sup>40</sup> Mangrove forests have been a major source of wood for local people.<sup>41</sup> They 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.

<sup>32</sup>Shell-shocked: The Environmental and Social Costs of Living with Shell in Nigeria, Greenpeace international, July 1994, 9

<sup>33</sup>Niger–Delta Human Development Reports Published by the Vanguard Newspaper of August 14, 2007,4

<sup>34</sup>A report on the Funiwa–5 well blow-outs blamed the resultant oil spills for the death of 180 persons after the spill. The plight of the oil communities in Nigeria is graphically depicted by the remark of an engineer in Texaco Oil, who observed to wit: ‘I have explored for oil in Venezuela, I have never seen oil rich town as completely impoverished as Oloibiri. see JF Fekumo, ‘Civil Liability for Damage caused by Oil Pollution’ in Environment Law in Nigeria (J.A Omotola, ed. 1990) 34 quoted in The Texaco Oil Blow Out Report’ (Rabdahed, 1980)

<sup>35</sup>MK Abestos, *Health Effects* ([http://www.atsdr.cdc.gov/asbestos/health\\_effects](http://www.atsdr.cdc.gov/asbestos/health_effects).)Agency for Toxic Substance and Disease Registry, 2007.Retrieved March 29, 2018.

<sup>36</sup>Oil 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, 2017

<sup>37</sup>African concord December 3, 1990 ‘Oloibiri, used and now abandoned, is a picturesque state of the wreck that awaits the Niger – Delta when its oil dries up. Tell February 18, 2008 (special edition, 48

<sup>38</sup>*Ibid*

<sup>39</sup>*Ibid*, 275

<sup>40</sup>*Ibid*

<sup>41</sup>*Ibid*

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The future for mangrove forests and other floral communities is not all negative. Local and outside groups have provided funds and labor to remediate and restore the destroyed mangrove swamps.<sup>42</sup> The federal government of Nigeria established the Niger Delta Development Commission (NDDC) in 2000 which aims to suppress the environmental and ecological impacts petroleum has had in the region.<sup>43</sup> Governmental and non-governmental organizations have also utilized technology to identify the source and movement of petroleum spills.<sup>44</sup>

### **8. Impacts on Human Health**

The gases emitted during oil production are discharged into air where they become air pollutant. Their toxicity ranges from acute effects due to high concentration in a short time to chronic effects associated with long term exposure due to low concentration.<sup>45</sup> Sulphur dioxide pollution is associated with irritation of the pharynx which may cause coughing. Higher concentration irritates the bronchial and the conjunctivitis.<sup>46</sup> The oxide of nitrogen causes irritation of eyes and throat. In general, inhalation of these air pollutants emanating from the activities and process of the petroleum industry has been the main cause of cancers of the respiratory system, bladder lips, mouth and oesophagus.<sup>47</sup> The Niger Delta human development report states that respiratory disease are the third most serious health problems<sup>48</sup> coming after malaria<sup>49</sup> and diarrhea.<sup>50</sup> The report further states that until very recently respiratory disease was never a serious health problem in the region.<sup>51</sup> The cost incurred in dealing with health problems are very high and beyond hospital bills. Patients and their relatives spend a lot of money on transportation. This is largely because health-care facilities are few and widely dispersed. Travelling to health-care centers in the difficult swampy environment of the core Niger Delta environment area is a tedious and time-consuming undertaking.<sup>52</sup> The high incidence of respiratory disorders, cancer, asthmas and birth deformity in many parts of Nigerian oil producing communities has been attributed to oil pollution.<sup>53</sup>

Gas flaring is the complex and unscientific burning, emitting of excess hydrocarbon gathered in an oil gas production flow station sites to waste the unutilized quantities and separate the resultant unwanted chemicals used in the process of extracting the oil and gas from the natural reservoirs. Nigeria produces more than 400 barrels of oil in response to OPEC requirement and also about 3 billion cubic feet of natural gas and a reserve of 600 trillion standard cubic feet. However, research finding have shown that Nigeria loses enormous revenue and is faced with the threats of environmental pollution pose danger to human health and unquantifiable degradation as gas is flared.<sup>54</sup> In 2018, Nigeria was the sixth-largest gas-flaring country globally, and second in the top ten leading contributors to world gas flaring.

### **9. 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.

- A. The constitution of Federal Republic of Nigeria 1999 (as amended)
- B. Harmful Waste (Special Criminal Provisions) Act Cap H1, LFN 2004.

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<sup>42</sup>Gas flaring in Nigeria: A human Rights, environmental and economic monstrosity. ([http://www.climatelaw.org/cases/country/nigeria/cases/case\\_documents/Nigeria/report/gas.flaring.in.nigeria.html](http://www.climatelaw.org/cases/country/nigeria/cases/case_documents/Nigeria/report/gas.flaring.in.nigeria.html)) Friends of the Earth Nigeria. Retrieved May, 7 2017.

Nigerian farmer helps put Shriil in the dock (<http://www.rnw.nl/international-justice/article/nigerian-farmer-helps-put-shell-dock>), Radio Netherlands Worldwide, 2011. Retrieved April 7, 2017

<sup>44</sup>World 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'](http://www.panda.org/news_facts/multimedia/video/index.cfm?uNewsID=61121.'n,d') Retrieved May, 8 2017

<sup>45</sup>S.O. Olusi, 'Human Health Hazards Associated with Petroleum Related Pollution' In the Petroleum Industry and the Nigerian Environment, proceedings of the international seminar held in Lagos, Nigeria. 1981, 195

<sup>46</sup>*Ibid*

<sup>47</sup> *Ibid*

<sup>48</sup> 12.3 per-cent of thousands

<sup>49</sup> 73 Percent

<sup>50</sup>19.4 Percent

<sup>51</sup>Niger-Delta Human Development Reports Published by the Vanguard Newspaper of Wednesday August 16, 2007, 43

<sup>52</sup>*Ibid*

<sup>53</sup>Nigeria: Oil Producing Community Threatened, Inter Press Service October 6, 1993 Cited by Ekpu A.O. In Environmental Impact of Oil on Waters: A Comparative Overview of the Law and Policy in the United States and Nigeria' *Denver Journal of International Law and Policy*, (1995) 24

<sup>54</sup>Gas flarewikipedia, En. Mrockipediaq.org/wiki/gas flares Retrieved 17 March 2017.

- C. Oil in Navigable Waters Act, CAP 06, LFN 2004
- D. Oil Terminal Dues Act
- E. Petroleum production and distribution (Anti-sabotage) Act CAP P12 LFN 2004
- F. Criminal Justice (miscellaneous Provisions) Act, CAP 39, LFN 2004
- G. Special Tribunal (miscellaneous Offences) Act CAP 39, LFN 2004
- H. Criminal Code.
- I. National Oil Spill Detection and Response Agency Act 2005 (NOSDRA ACT)

#### **10. Petroleum Production and Distribution (Anti-Sabotage)<sup>55</sup>**

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.<sup>56</sup>

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.

#### **11. Criminal Justice (Miscellaneous Provisions) Act,<sup>63</sup>**

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.

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,<sup>64</sup> 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.

#### **12. Special Tribunal (Miscellaneous Offences) Act<sup>65</sup>**

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.<sup>66</sup>

<sup>61</sup>CAP P12, LFN 2004

<sup>62</sup>Sections 1 &2.

<sup>63</sup>CAP 39, LFN 2004

<sup>64</sup>Section 7

<sup>65</sup>Cap. LFN 2004

<sup>66</sup>Section 3 and 7

The shortcoming under the Special Tribunal (Miscellaneous Offences Act), the power to try offences thereunder 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.<sup>67</sup>

### **13. Criminal Code<sup>68</sup>**

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 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.<sup>69</sup>

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.<sup>71</sup> 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.

### **1.14 Conclusion and Recommendations**

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 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 150,000bpd. 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, 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.

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 environmental laws and regulations should be made an absolute liability offence.
3. The National Assemble should come up with laws providing condign punishment for oil thieves and pipeline vandals.
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, there is no statistical data of environmental cases, prosecutions and convicts in Nigeria.
5. 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.
6. 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.

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<sup>67</sup>Ibid

<sup>68</sup>Cap.77 LFN 1990

<sup>69</sup>Section 245

<sup>71</sup>Section 247 -248