

**REVISITING LEGAL IMPLICATIONS OF OIL AND GAS PIPELINE INFRASTRUCTURE DEVELOPMENT AND VANDALISATION\***

**Abstract**

*The nature of Oil and gas requires transportation through pipelines for sustained availability and security. These Pipelines must not be subjected to economic crimes such as sabotage and vandalization. The recent wave of sustained attacks on oil installations across some developing countries in Africa often attributed and wrongly too to rights campaigners, and agitators call for further strengthening of pipelines from being subject of attacks by vandals hiding under the pretext of agitation. The petroleum industry is influenced by national law, international laws, and best standards practices due to the universality of product usage, regulations are provided for by statute and, when breached, constitute both torts and crime, punishable with sanctions. The paper utilizes the doctrinal research approach and focuses on content analysis of relevant documents using primary and secondary sources of legislation such as case laws, text materials, and journals. The paper appraised the efficacy of the Oil pipelines Act in ensuring pipeline security in the face of security challenges in some developing countries such as Nigeria, Niger Republic, and some other West African subregions. The paper recommends an urgent amendment to the existing Act and advocates institutionalizing community participation in securing pipelines and decentralizing policing structures in congruence constituencies to ensure the continued and sustained availability of Energy to the West African dependants.*

**Keywords:** Crimes, Laws, Oil and Gas, Pipelines Vandalization

**1. Introduction**

The importance of oil pipelines in an economy heavily dependent on crude oil cannot be overemphasized.<sup>1</sup> The origin of petroleum pipeline development in most developing countries is closely associated with oil exploration activities during the colonial era. The first and second world wars played a pivotal role in the increased intensity of exploration activities and the eventual discovery of oil after the Second World War, facilitating the need for pipelines to transport produced crude oil. At the earlier stage, in Nigeria, the oil production commenced to the tune of 5,000 barrels per day immediately after the discovery, and this necessitated the laying of pipelines to transport the crude oil (even gas) from the oil field to the coast for export. The pipe laying for oil transportation naturally created a buffer zone that statutorily called the rights of way for petroleum products pipelines in Nigeria.<sup>2</sup> Following from this was the acute need to regulate and coordinate the usage, erecting, laying, digging, passage rights of way, monitoring, controlling, repairing, replacement, surveying, and leniency of the operators and key players in the production and management of the pipelines necessitated the need for the oil and gas pipelines law in Nigeria.<sup>3</sup>

Most countries, including Nigeria relied on crude oil and its derivatives for multiple reasons. While Nigeria depends on the crude as its primary source of foreign exchange, Ghana, Togo and Benin depends on same as a source of energy to drive its industry and for most developing countries, it is legendary as a major source of revenue despite repetitive call for decentralizing to the non-oil revenue base. Unfortunately, a large portion of this resource is wasted and lost to vandals, criminals, and oil thieves daily. The rate of vandalism near and along depots in Mosimi, Port Harcourt, and Kaduna has risen by 26.5 percent and is still rising, threatening Nigeria's economic mainstay in coming years. Currently, over 200,000 barrels of crude oil per day are lost due to these undesirable vices<sup>4</sup> amidst agitation for the reversal of state absolutism of natural resources favoring a more liberal approach. To this end, government issuance of modular refineries aimed at reducing agitation and granting licences to private organizations such as Dangote's has not solved the problem in its entirety. In 2021 alone, reports indicated over 151 pipeline vandalisation in the first quarter of 2021, despite

---

\*By Ayodeji Johnson FATEHINSE, LL.M, MBA, ACTI, BL, Lecturer, Department of Jurisprudence and International Law, Redeemer's University, Ede, Email: fatehinsea@run.edu.ng. Phone: 07038719561

<sup>1</sup> See Amalachukwu Okafor and Ayobami Olaniyan, (2017) 'Legal and Institutional Framework for Promoting Oil Pipeline Security In Nigeria' Afe Babalola University: J. of Sust. Dev. Law & Policy vol. 8: 2: 2017. DOI: <https://dx.doi.org/10.4314/jsdlp.v8i2.10> 1. Most developing countries are richly blessed in Natural resources

<sup>2</sup> The need to transport the crude oil to the refineries and the refined oil to petroleum storage depots across the country seriously characterized the importance and the essentiality of the pipelines which at the same time serve as a means of transporting, the liquefied and natural gas to the refineries and depots.

<sup>3</sup> US Energy Information Administration, 'Country Analysis Brief: Nigeria' (EIA, 6 May 2016) accessed 31 October, 2021

<sup>4</sup><https://www.vanguardngr.com/2021/02/nigeria-losing-0-2m-barrels-of-oil-daily-to-theft-vandalism/#:~:text=NEWS,Nigeria%20losing%200.2m%20barrels%20of%20oil%20daily%20to%20theft%2C%20vandalism,February%2025%2C%202021>

Nigeria's refineries' inactivity. This was reported to reflect an upsurge of 26.5% in comparison with same period in the previous year.<sup>5</sup>

Nigeria's oil production was projected to be 1.88 million barrels per day in the 2022 budget. The Federal Government of Nigeria announced oil benchmark price of \$57 per barrel for 2022. The Medium Term Expenditure Framework (MTEF) forecasts 4.2 percent GDP growth and 13 percent inflation in 2022. The government's efforts to improve pipeline security include hiring private security firms and equipping the armed personnel to protect government facilities. These, however, have not stopped the high rate of pipeline destruction and other oil facility destruction. In fact, criminal cartels with international ties have emerged. The security of the pipelines is important, and providing solutions to energy insecurity largely caused by economic saboteurs becomes of interest.<sup>6</sup> These suggested that significant investment in pipeline security remains ineffective and unaccounted for, and the method of security is deemed ineffective.

The enactment of Oil Pipeline Act in 1956, applicable in Lagos and the Southern Cameroons only, further amended in 1965 and became applicable through Nigeria as part of Laws of the Federation 2004 with inter-functionality with some statutes and legislative enactments that are pointedly related in application and total implementation of the regulated issues in the enacted act. The Act has been described as 'the most comprehensive legislation on disturbance and injurious affection to land in Nigeria'. Yet in only relatively few instances has it been resorted to or applied by the courts.<sup>7</sup> Provisions were made for the grant of a permit to survey and an Oil Pipelines' License both of which fundamentally affect the holders' rights in the Oil Pipeline Act. The issues and matters related to pipeline are covered by under the exclusive list of Constitution of Nigeria.

## **2. Definition of Pipeline and Pipeline Act**

Section 11 (2) gave a statutory definition of pipeline thus: 'For the purpose of this Act, an oil pipeline for the conveyance of mineral oils, natural gas and any of their derivations or components and also any substance (including steam and water) used or intended to be use in the production or refining or conveying of mineral oils, natural gas, and any of their derivatives or components'. The Pipeline Act is the principal statute regulating pipelines in Nigeria. The Act is divided into five (5) unequal parts with 34 sections. The first, Part A, deals with preliminary matters. It deals with the holistic extent of applicability of the Act and the minister's involvement. Part B is about the permit to survey. That everybody is qualified to apply for a permit to survey the route for an oil pipeline to convey natural gas, mineral oil, or any petroleum product to any destination for any purposes connected with petroleum trade or operations.<sup>8</sup> The license holder must satisfy certain pre-conditions before he can claim or enjoy any entitlement classified in Sect 5 (1) of the Act<sup>9</sup>. Part C is oil pipeline license (OPL) where a holder of the permit to survey has completely surveyed the specified pipeline route, then he shall apply for the natural oil pipelines license from the minister in respect of any oil pipeline survey route he had successfully undertaken.

## **3. Oil Pipeline License**

Holders have possessory and obligatory rights to utilize or use strait of land of a width granted not exceeding two hundred feet or any width specified in the license: to construct; maintain, and operate oil pipeline and/or auxiliary installations subject to the express restrictions provided under section 14, 15 and 16 of the Oil Pipeline Act. The powers given a holder of an oil pipeline license (OPL) are, however exercisable under the provisions of the Act and the rule of law<sup>10</sup>.

<sup>5</sup> Crude Oil: Pipeline vandalism in Mosimi, PH, Kaduna rise by 26.5% <https://www.vanguardngr.com/2021/10/crude-oil-pipeline-vandalism-in-mosimi-ph-kaduna-rise-by-26-5/> accessed 15<sup>th</sup> October, 2021

<sup>6</sup> . E. Adishi and M.O. Hunga, 'Oil Theft, Illegal Bunkering and Pipeline Vandalism: It's Impact on Nigeria Economy' (2017), IIARD IJEBM 3 (2) 47.

<sup>7</sup> <https://www.hrw.org/reports/1999/nigeria/Nigew991-05.htm> accessed 15<sup>th</sup> September, 2021

<sup>8</sup> See Section 3 (1) of the Act. The application is to the minister (of petroleum and mineral resources) where the proposed, route shall be specified. The application through the director of petroleum inspectorate Division of NNPC shall enable the holder to (i) survey, and take levels of the land. (ii) Dig and bore on to the soil and subsoil (iii) to cut and remove such trees and other vegetation as may impede the purposes specified in the lincence. (iv) to do necessary act suitable for the establishment of an oil pipeline and ancillary installations, (v) to allow the holder and his agents to pass over land adjacent to the specified route.

<sup>9</sup> . Oil Pipeline License

<sup>10</sup> . Section 14, 15 & 16 of the Oil Pipeline Act

**Conditional Restrictions to holders of OPL license:**

- (a) There shall be no construction of any work upon the land which is the site of or is within 50 yards of any public road, dam, reservoir, or building belonging to or occupied by the federal, state, or local government or land for railway or within 100 yards of rail lines.
- (b) There shall not be an obstruction with the free safe passage of vessels, canoes, or other craft or any alteration in the flow of water in any navigable waterway.
- (c) There must not be constructed on the flow of water required for industrial, domestic, or irrigational use without a permit.
- (d) There must not be entering upon and taken possession of or use any land occupied by any burial ground or cemetery and any land containing any grave, grotto, area, or tree held to be sacred or object of veneration. Any dispute on such land about the owners, occupiers, or interested persons shall be resolved only by the decision of the High Court.

The licensee shall renovate or procure alternative works, facilities, bridges, culverts, customary tracks, bridges, crossings, and other facilities for the use of owners and occupiers except he had earlier on pay compensation in respect thereof. The licensee can also, after the notification to the owners, alter the level or position of any pipe, conduit, watercourse, drain or electric, telephone or telegraphic wire or post, or any tree.<sup>11</sup>

**Renewal of Oil Pipeline License**

The term of an Oil Pipeline Licence is at the pleasure of the minister, it must not exceed 20 years and such license may continue to be valid for more than 20 years unless previously revoked<sup>12</sup>. There is no express provisional clause for the renewal of the Oil Pipeline licence upon expiration. However, every holder of OPL is to be guided by the following rules:

1. Timely commencement and completion of construction of pipeline and auxiliary installations within time allotted.
2. Control his agents and monitor them not to overstretch or under the place the dictates in the granted license.
3. Indemnify the minister against any third-party claims arising from exercising his rights under the licence by the licensee or his agent(s).
4. Except with the Minister's approval under the Act<sup>13</sup>, A licensee is expected not to sublet, assign, mortgage or encumber any of rights or obligations of the licensee.
5. Any dispute by the granting of license between the government and the licensee shall be referred to arbitration.

Apart from the licensee, any other person may make use of the pipeline provided that the minister favourably considers this application in consultation, agreement, and upon terms with the licensee and the applicant.

**License Preliminaries**

An Oil pipeline is not granted without some preliminaries.

***Permit to Survey***

The grant is preceded by a permit to survey. This entitles the dealer to survey the route through which he intends the Oil Pipelines to pass. Under section 5 of the Act, the permit shall entitle the holder to enter on any land upon the route or reasonably close to it to survey the ground and dig and bore into the soil. The permit holder is also empowered to act and remove such trees that may impede the survey. Furthermore, the holder may pass over adjacent land if necessary to enable him access to land upon the route. The effect of section 5 is to validate entry upon land and other acts in relation thereto which would otherwise be trespass for purposes of the survey. However, the holder of the permit is enjoined, under section 6 (3)<sup>14</sup>, 'to take all reasonable steps to avoid unnecessary damage to any land entered upon and any buildings, crops or profitable trees thereon, and shall make compensation to the owners or occupiers for any damage done under such authority and not made good'. Further, section 2 (1)<sup>15</sup> provides that if a claim is made under section 6(3), 'the court shall award such compensation as it considers just in respect of any damage done to any buildings,

---

<sup>11</sup> *ibid*

<sup>12</sup> See Section 17(1), 17(2), 17(3) of the Act.

<sup>13</sup> *ibid*

<sup>14</sup> *Ibid*

<sup>15</sup> *ibid*

crops or profitable trees by the holder of the permit in the exercise of his rights thereunder and in addition may award such sum in respect of disturbance (if any) as it may consider just'. It is clear from section 6(3), that compensation is payable only in respect of damage that is 'not made good'. Presumably, for any damage made good, compensation will not be paid. Again where damage is 'unnecessary' will be a question of fact.

#### **Responsibility of Holder of Permit to Survey**

A permit to survey only entitles its holder to survey the route through which he intends the Oil Pipeline to pass. For the building, installing or operating, and maintenance of an Oil pipeline and ancillary installations, an Oil Pipeline License granted by the Minister of Petroleum Resources is necessary. Section 11(5)<sup>16</sup> of the Oil Pipelines Act provides:

The holder of a license shall pay compensation:

- (a) to any person whose land or interest in land (whether or not it is land in respect of which the license has been granted) is injuriously affected by the exercise of the rights conferred by the license, for any such injurious affection not made good; and
- (b) to any person suffering damage by reason of any neglect on the part of the holder or his agents, servants or workmen to protect, maintain or repair any work, structure or thing executed under the license, for any such damage not otherwise made good; and (d) to any person suffering damage (other than on account of his own default or on account of the malicious act of a third person) as a consequence of any breakage of or leakage from the pipeline or any ancillary installation, for any such damage not otherwise made good...

#### **Compensation**

Section 11 (5) a-c of the Act make provisions for compensation that<sup>17</sup> (i) any person whose land or interest in land injuriously affected by the exercise of the rights of the license shall be compensated; (ii) any person suffering any damage because of any neglect on the part of the holder or his agents, servants, or workmen to protect, maintain or repair any work or thing executed under the license shall be compensated.

#### **4. Liability for Trespass and relevant Penal Provisions**

It is established that not every interference with or destruction of oil pipelines by third parties can be labelled sabotage because such interference may not be intentional but accidental. If the interference is willful or calculated, such interference is otherwise referred to as encroachments on the licensee's pipeline rights – of –way, and the action is termed to be pipeline vandalization. The first category of liability is for injurious affection (to land) not made good and extends to land affected even if it is not the land for which the license is granted, which should cover all types of injurious affection affecting land or interest in land whether such as would constitute nuisance, negligence or escape under the rule in *Ryland v. Fletcher*<sup>18</sup>. It would appear that all the plaintiff would need to show when claiming compensation under the statute would be 'injurious affection,' in other words, damage. It does not appear that he would be burdened by (the need to satisfy) the other elements of the various common law torts so that where, for example, injurious affection occurs in circumstances which may, for instance, ground action in negligence, the plaintiff would have shown damage from the defendant's operations and not merely a breach of duty of care.<sup>19</sup> Moreover, the 'injurious affection to land' must be an actual injury to land itself, as by loosening the foundation of buildings on it, obstructing its light, or its drains, making it inaccessible by lowering or raising the ground in front of it, or by some such physical deterioration. The second category of liability under section 11 (5)(b) is not limited to holders of land or interest in land but applies to any person suffering from the neglect of the holder to protect, maintain or repair anything executed under the license terms as statutory negligence and contends that it subjects the victim to the same rigours of proof as common law negligence.<sup>20</sup> The third category of liability under section 11(5)<sup>21</sup> is concerned with compensating damage caused by breakage or leakage from a pipeline or an ancillary installation. Ancillary installations include roadways, telephone and electricity cables, pumping stations, storage tanks, or loading terminals. The provision in section 11(5)(c) is a statutory variant of the rule in *Rylands v. Fletcher* except that only two's are applicable - the default of the plaintiff and the malicious

<sup>16</sup> *ibid*

<sup>17</sup> Oil Pipelines Act., [https://www.chr.up.ac.za/images/researchunits/bhr/files/extractive\\_industries\\_database/nigeria/laws/Oil%20Pipelines%20Act.pdf](https://www.chr.up.ac.za/images/researchunits/bhr/files/extractive_industries_database/nigeria/laws/Oil%20Pipelines%20Act.pdf) Accessed 15<sup>th</sup> October, 2021

<sup>18</sup> (1868) L.R.H.L 330

<sup>19</sup> What must be established to prove a 'breach of duty of care'?. <https://www.lawteacher.net/free-law-essays/tort-law/proving-breach-duty-care-5792.php> accessed 15<sup>th</sup> October, 2021

<sup>20</sup> Oil Pipeline Act

<sup>21</sup> *ibid*

act of a third party. Damage may equally include personal injury in contrast to the rule in *Rylands v. Fletcher*, under which personal injury is not actionable.<sup>22</sup> However, where the parties cannot agree on the compensation payable and a claim is made under section 11(5) for compensation, ‘the court shall award such compensation as it considers just ...’ however, this does not mean that specific proof of the damage alleged is unnecessary. In *Sam Ikpede v. Shell B.P.*<sup>23</sup> Ovie Whiskey J. held that whether or not the plaintiff refers to the particulars of damage pleaded by him as grounding a claim for ‘reasonable and adequate compensation’ or by any other name, they still must be strictly proved. However, in *Shell Petroleum Development Company of Nigeria Limited v Chief Graham Otoko and Ors*,<sup>24</sup> A claim for compensation under section 19(2) of the Oil pipelines Act 1958 for injurious affection to and deprivation of use of the Andoni River and creeks was upheld on Appeal<sup>25</sup>. The Appellate Court held that the onus of proof had not been discharged by the plaintiffs and allowed the malicious act of a third party.<sup>26</sup> Section 6(3), like 11(5) to sections 19 and 23, made provisions for payment of compensation for land acquired for purposes of laying pipes and for compensation for damages resulting there. Section 20(4) (5) of the oil pipelines Act imported the Land Use Act<sup>27</sup> into its provisions. The National Emergency Management Agency wanted a regime of compensation that could serve as a deterrent to pipelines vandals. Also, that the Federal Government shall not be made to pay compensation to the structures and properties destroyed by NNPC or any oil related pipelines disaster as long as the structures and the properties are obstructive to the pipeline's right of way. Section 7 of the Act<sup>28</sup> criminalizes the construction, maintenance (illegal tampering with), or operation of an oil pipeline except by the holder of an OPL license, and by section 7(5), any person who contravenes this subsection shall be guilty of an offence and shall be liable on conviction to a maximum term of imprisonment depending on the gravity and kind of the offence. Section 32<sup>29</sup> deals with corporate criminality. To curtail the rising incidence of pipelines vandalization and sabotage, the criminal justice (miscellaneous provisions) Act was in use, and as at present, the NSCDC Act (2003, amended 2007) was promulgated which criminalizes the interference with or obstruction of the flow of oil and destruction or removal of oil pipelines or installations connected in addition to that and with a prescribed penalty. Section 27 (1) (2) of the Act<sup>30</sup> empowers the minister to revoke in writing a license where the licensee breaches the terms and the provisions of the license.

### **Rationale behind Legislation of Oil Pipelines Act**

The competition for the exploration of petroleum by companies is one of the major rationales behind the legislation of oil pipelines Act. Together with this, the exploration, production and transportation of natural (and other kinds) gas products through channels call essentially for the legislation of the pipelines Act.

### **Tortious Right of Action on Pipeline Vandalization**

A tort is an aspect of law that is of common law. The aim of tortious right of action on pipeline vandalization is to compensate persons harmed by the wrongful conduct of act of pipeline vandalization. Compensation payable on the damage as physical injury to persons, damage to property, damage to economic interests, and other damages that shall necessitate the victim in seeking remedy for the wrongful act suffered. To sue for damages in tort, the claim harmful act must be the one which the law regards as tortious, that is, which is actionable as a tort. Vandalization of pipeline is a crime. The law provides for ranges of punishment on conviction from imprisonment, confiscation of properties, heavy fines, restrictions, and even capital punishment. To this day, an act may be both a tort and a crime. The offenses like trespass and malicious damage to property.<sup>31</sup> This falls under the civil and criminal remedies concurrently, which may be the case in trial and prosecution of illegal pipeline vandalization in the country. Considerably, in proving a case of tortious right of action on pipeline Vandalization, affected individuals, communities bodies and combination of people in the area of the damage like, fire damages to their properties, pollution of their water and environment due to spill of oil as a result of vandalization pipeline and other hazards that directly affect the above motioned people can be generally brought as a torts of strict liability against the government or oil

---

<sup>22</sup> *ibid*

<sup>23</sup> (1973) MWSJ, 61.

<sup>24</sup> (1990) 6 NWLR (pt 159) 693 at 712.

<sup>25</sup> which is identical to section 20(2) of the 1990 Act

<sup>26</sup> New Judgment: Shagang Shipping Company Ltd (in liquidation .... <http://ukscblog.com/new-judgment-shagang-shipping-company-ltd-in-liquidation-v-hna-group-company-ltd-2020-uksc-34/> accessed 18<sup>th</sup> October, 2021

<sup>27</sup> See Section 28, Laws of the Federation of Nigeria, 2004

<sup>28</sup> Oil Pipeline Act

<sup>29</sup> *ibid*

<sup>30</sup> *ibid*

<sup>31</sup> Kodiliye G & Aluko O. (1999). Nigerian Law of Torts.

companies that are escape to pay compensation for the damage done. The action of the tort of strict liability motioned here is in line with the rule in *Rylands v. Fletcher*.

The rule is as follows<sup>32</sup>:

The person who, for his own purposes (and in the course of non-natural user of land) brings on his land and collects and keeps there, anything likely to do mischief if it escapes, must keep it at his peril and if he does to do so, is prima facie answerable for all the damage which is the natural consequence of its escape.

For the rule to apply, the plaintiff must establish that there was an escape of a dangerous thing under the defendant's control while using land in a non-natural manner. The *locus classicus* in applying the rule to the oil industry in Nigeria is the case of *Umudje v. Shell B.P*, which arose out of the defendant's oil exploration activities<sup>33</sup>. The plaintiffs who owned land adjacent to the defendant's area of operation complained *inter alia* that;

- (a) In the cause of road building, the defendants had blocked and directed a natural stream, thus substantially interfering with the plaintiffs fishing rights and
- (b) The defendants had accumulated waste oil on land under their control, and this oil had escaped into the plaintiff's land and caused damage there. The court held the defendants liable under the rule since there was evidence that crude oil had escaped onto the plaintiff's land where it caused damage.

The rule in *Rylands v. Fletcher* also applies if there has been an escape. There was an escape of either crude oil in all instances where the rule has been applied in relation to the Nigeria petroleum industry. In *Umudje v. Shell BP*. Idigbe JSC stated: 'Escape for the purpose of applying the proposition in *Rylands v. Fletcher* means escape from a place where the defendant has occupation or control to a place which is outside his occupation and control'.<sup>34</sup> The rule in *Rylands v. Fletcher* is not actionable per se without proof of damage.<sup>35</sup> The harm primarily protected is damage to land, buildings, and fixtures thereon. The plaintiff may recover for damage to chattels but not for personal injury. In *Sam Ikpede v. Shell B.P Ovie Whiskey J.* held that particulars of damage alleged under the rule in *Rylands v. Fletcher*, must be strictly proved.<sup>36</sup>

## 5. Relevant Nigerian Legislation on the Subject Matter

Pipeline vandalization in Nigeria has a severe implication on its economy. To avoid this, a number of legislations and institutional frameworks were put together towards coordinating measures to checkmate and properly hold on to the rules of law in preventing and abating the menace.

### *Constitution of the Federal Republic of Nigeria 1999*

Section 20 of the Constitution of the Federal Republic of Nigeria states: The state shall protect and improve the environment and safeguard the water, air, and land, forest and wild life of Nigeria. There is also the Second Schedule of legislative powers (Part 1) Exclusive legislative list item 39: Mines and minerals, including oil fields, oil mining, geological surveys and natural gas.

### *Land Use Act 28 (1)*

It shall be lawful for the Government to revoke a right of occupancy for overriding public interest. Section 28 (2) (b) (c) provides:

- (b) the requirement of the land by the Government of the state or by a local government in the state in either case for public purpose within the state, other requirement of the land by the government of the federation for public purposes of the Federation.
- (c) The requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith

<sup>32</sup> Commonwealth Caribbean Tort Law: Text, Cases & Materials.... <https://vdoc.pub/documents/commonwealth-caribbean-tort-law-text-cases-materials-5soqeobg04h0>

<sup>33</sup> Animal Rights Groups in Nigeria | ANIMAL RIGHTS IN NIGERIA. <https://animalrightsinigeria.wordpress.com/tag/animal-rights-groups-in-nigeria/>

<sup>34</sup> *Rylands v. Fletcher* - Tort law - The rule in *Rylands v.*.... <https://www.studocu.com/en-gb/document/university-of-london/tort-law/rylands-v-fletcher-tort-law/8489979> accessed 15th October, 2021

<sup>35</sup> Res Ipsa Loquitur (Proof of Negligence) » Law Faculty. <https://lawfaculty.in/res-ipsa-loquitur-proof-of-negligence/> accessed 18<sup>th</sup> October, 2021

<sup>36</sup> THE EFFICACY OF LIABILITY UNDER THE RULE IN *RYLANDS v FLETCHER*. <https://studylib.net/doc/14884078/the-efficacy-of-liability-under-the-rule-in-rylands-v-fle...> accessed 18th October, 2021

### ***Criminal Code Act***

The Criminal Code Act (and the Penal Code Act) is the comprehensive Act enacted from the pre-colonial period era to weigh offences and punish the offender base on the level, types, nature and gravity of the committed offences. The kind of offence is already tabled and the penalty for any offence tends to have committed by the offenders. The criminal code Act is used in the southern Nigeria while the Penal Code Act (consideration) is the punitive scale and offences reference Act in the Northern Nigerian. The Act is a criminal responsibility code in use where all the offences is coded in sections with actual penalties. It aids other enacted Acts on criminal punitive measures. The code under the construction of acts, laws, rules, regulations, and other instruments put in the sect 3 (3) of its short title: 'When in any Act, law or instrument, public or private, reference is made to any offence by any specific name, it shall be taken that reverence is intended to be the offence which under the provisions of the code, is constituted by the act or omission that would here to fore have constituted the offence referred to'. The Code also define offence as act or omission which renders the person doing the act or making the omission liable to punishment under this code, or under any Act, or law this is called an offence. The code talks of kinds of offences (felonies, misdemeanors, and simple offences) and parties to an offence. It makes provisions for: offences against laws of a state (Section 12 (a) ); offences procured or counselled by persons out of Nigeria (section 13); offences against the state laws procured (Section 13 (a)); punishments (Section 17-21); criminal responsibility (Section 22-35). Sections 382 -462 are mostly related to the topic in consideration under the following headings: Stealing, offences analogous to stealing, stealing with violence (extortion by threats) Burglary and like offences, obtaining property by false pretences, receiving property stolen or fraudulently obtained and the likes, frauds by trustees and officers of companies and corporations, injuries to property, and punishment in special cases.

### ***Economic and Financial Crimes Commission (Establishment) Act***

The economic and financial crimes commission was established by the legislative Act of 2004 and its commencement. The commission established with the sole mandate of the designated Financial Intelligence Units (FIU) in Nigeria, which is charged with responsibility of co-ordinating the various institutions involved in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes in Nigeria. As a result, the commission has power to prosecute and try individual(s) involved in economic sabotage activities in the country. Sections 6 (g) and (o) of the EFCC Act elaborate factually on the above submission.

Section 6 (g) The facilitation of rapid exchange of scientific and technical information and the conduct of joint operations geared towards the eradication of economic and financial crimes.

Section 6 (o) maintaining a liaison with the office of AGF, the Nigeria customs service, the immigration, prison service and NSCDC Board, the central bank of Nigeria. The Nigerian Deposit insurance Corporation, the National Drug law Enforcement Agency, all government security and law enforcement agencies and such other financial supervisory institutions involved in the eradication of economic and financial crimes.

### ***Police Act***

The police Act is another major relevant legislation against the pipeline vandalization in Nigeria. The police force in Nigeria is endowed with the major role of 'maintenance and securing of public safety and public order as it may consider necessary...' The constituted powers of Nigeria police under the 1999 constitution are in sections 214- 216 of the constitution. Section (4) of the police Act put that

The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or without Nigeria as may be required by them by, or under the authority of, this or any other Act.

### ***Armed Forces Act***

The Nigerian armed forces (the Army, the Navy, and the Air force) are interconnected and relevant by law to the protection of the country oil and gas pipelines against vandalization. The armed force is empowered by the (1999) constitutions in section 217 (2) (b) (c) (d).

217 (2) The Federation shall subject to an Act of the National Assembly made in that behalf, equip and maintain the armed forces as may be considered adequate and effective for the purpose of

(b) maintaining its territorial integrity and securing its borders from violation on land, sea or air,

- (c) suppressing insurrection and acting in aid of civil authorities to restore order when called upon to do so by the president, but subject to such conditions as may be prescribed by an Act of the National Assembly and,
- (d) Performing such other functions as may be prescribed by an Act of the National Assembly

Presently, the Army and other security agencies formed (JTF) joint task force to protect the oil pipelines and arrest the perpetrators. The Navy with flying boats and other equipment are guiding the flow stations, and oil vessels. The Air force compliments the operation with the air surveillance of dark spots around the Greek.

#### ***National Security and Civil Defence Corp Act (NSCDC)***

The Nigeria security and civil Defence Corps is one of the latest security outfits of the Federal Government of Nigeria with the legislation of the Act of parliament of 2003 and as also amended in 2007. The corps established in 2003 has the Core mandate of protecting the oil and gas pipelines among other complimentable security roles. Recently, a Federal High Court in Lokoja<sup>37</sup> (presided over by Justice Ekwo) ruled that the mandate of arresting and prosecuting the oil and gas pipelines offenders and thieves is sole mandate of NSCDC. The related sections contain in the NSCDC 2003 Act as amended in 2007 are:

- Section 3 (e): maintain twenty-four hour surveillance over infrastructures, sites, and projects for the Federal, state and local government
- (e)(1): enter and search premises and seize any material suspected to have been used in vandalization or suspected proceed of vandalization.
- e (11): enter and search premises of any suspected illegal dealer in petroleum products or material used by any other public utility or infrastructure,
- section 3 (f): have power to arrest with or without a warrant, detain, investigate and institute legal proceedings by or in the name of the AGF in accordance with the provisions of the constitution of the FRN against any person who is reasonably suspected to have committed an offence under this Act or is involved in any
- f(i) criminal activity
  - (ii) chemical poison or oil spillage nuclear waste, poisoning
  - (vi) power transmission lines or oil pipelines, NIPOST cables, equipment, water board pipes or equipment of vandalization.

#### **6. Pipeline Vandalization under Relevant Environmental Law**

The lack of proper environmental accountability and integrity of the part of the oil and gas companies operating in this country over the decades has resulted in colossal damage to the environmental. On the other hand, the failure of effective regulatory controls of the oil and gas operations has help worsen the situation. Government over dependence on the oil sector (oil accounts for 95% of foreign exchange earnings and 80% of budgetary revenues) is a fundamental problem that heightens regulatory failures. Therefore there is need for government to adopt measures that would provide ecological and human protection as the oil business in the country at the present inevitable. With environmental degradation the existing environmental legislation is amorphous in addition to being inequitable with respect to overlying communities affected. Every oil pipeline vandalization ever recorded in Nigeria constitutes an environmental hazard. The environmental hazard range from oil pollution to water pollution, fire hazard, farm and planted crops effect as a result of oil spillage from the effect of pipelines rupture, land poisoning and gas flaring which is also dangerous to the environment. Omorogbe<sup>38</sup> defined environmental pollution as ‘The addition to the natural environment of any substance or energy form (e.g., heat, sound) at a rate that results in higher than natural concentrations of that substance, and therefore has an adverse effect’.

There are many environmental related laws put in place for the control and general regulation of the environmental hazards experienced due to the pipeline vandalization across the pipelines rights of way in Nigeria. The first considered environmental related law to pipeline vandalization is the submission in the rule in *Rylands v. Fletcher*. The Rule in *Rylands v. Fletcher* has often been evoked by victims of environmental hazards especially in cases of oil pollution and river blockage. The rule states:

The person who, for his own purposes (and in the course of non-natural user of land) brings on his land and collects and keep there, anything lively to do mischief, if it escapes, must keep it at his peril and if he does not do so, is prima facial answerable for all the damage which is the natural consequence of its escape.

<sup>37</sup> *Ibid.*

<sup>38</sup> Omorogbe Yinka (2001). Oil and Gas Law in Nigeria. P. 127

Furthermore, the environmental consequences of blow-up or vandalized oil and gas pipelines range from pollution of land atmosphere, vegetation, rivers, air and water. Over 2 million tons of soil are lost annually in south-central Nigeria and this has caused great decline in agricultural yield. According to NNPC report, a large properties (63%) of the gas produced in Nigeria is being flared. Health related environmental problem due to above analysis. According to the World Development more than 2 million deaths and river blindness and guinea worm and attributed to water pollution and poor house hold hygiene. This led to 1992 United Nation Conference on the human environment (Stockholm conference) United Nation Conference on the environment and development (UNCED) with 21 agenda and with the aims of improving the quality of the environment. It emphasized the need for environmental education as a weapon that could be used by all nations to arouse people's consciousness, positively change their attitudes and install in them those values and skills that can promote effective environmental management.<sup>39</sup>

The Oil Pollution Act (OPA) of 1990 is responsible for many of the nation's improvements in oil spill prevention, mitigation, clean up and liability. OPA 1990 also created a comprehensive scheme to ensure that sufficient financial resources are available to clean up the oil that spill (either as result of vandalized pipes) and to compensate persons damaged by the spill. It also ensures that the federal response system is adequately prepared to manage the impacts of oil spills that occur. The OPA mandates that industry implement prevention and preparedness measures and that tankers and inland oil facilities develop individual response plans. The OPA equally mandate enhancements to the national response system and development of area contingency plans. There is also National Oil Spill Detection and Response Agency (NOSDRA) which is under the ministry of environment. The agency have the responsibility to discover the likely cause of the oil spill (either from the vandalized pipelines) and the relevant solution to such. The federal ministry of environment (FME) administers and enforces environmental laws in Nigeria since 1999. It took over from FEPA which was created under the FEPA act.

#### **7. Oil Pipeline Protection Contract and its Legal Implication to Nigeria Legislation**

The oil pipeline protection contract by the government to those that (suit) meet the unsellable qualifications or standard rather than capable. Security bodies or experts in the oil and gas engineering field is of greater concern. The oil and gas pipeline Act made provision for the protection contract of the pipelines. The Act that is meant to 'make provision for licences to be granted for the establishment and maintenance of pipeline, incidental and supplementary to oil fields and oil mining and for purposes ancillary to such pipelines.' Section 4 of the oil pipelines act under the title – permit to survey call for restriction and re-consideration to portray decency and geometry. The section (4) put that;

Any person may make an application to the minister in accordance with the provisions of this act and of any regulations made there under for the grant of a permit to survey the route for an oil pipeline for the transport of mineral oil, natural gas or any product of such oil or such gas to any point of destination to which such person requires such oil, gas, or product to be transported for any purpose connected with petroleum trade or operations.

The above establish that there is no restriction to the caliber of individual in Nigeria that can genuinely apply for the permit to survey. This also exposes the recklessness and other lively personal consideration alone in giving out oil and gas pipeline licence. The legal implication of given the oil and gas pipelines monitoring (contract) licence to the questionable character will affect the operations and security architectural state sponsored security bodies and every installation of the Government at the Federal, state and local levels. Instead, security bodies should performing supervisory roles over local community who should play a more centralist role in watching over installations in their communities.

#### **8. Conclusion**

Finally, by any other consideration of the act, there is need to make better provision for the means of updating the fines, punishments and compensation therein included. There should be means of random amendment to the Act which is obviously of age and not tandem with modern reality. Conscious attempt must be made to coordinate regulatory measures guiding the oil and gas pipelines as means for the conveyance of mineral oils, natural gas and any of their derivations or components and also any substance intended to be used or even used in the production or refining or conveying of mineral oils, natural gas, and any of the derivatives of components. The general legal framework of pipeline vandalism in Nigeria base on comprehensive review of pipeline Act is considered. The conditions and the prerequisite before issuing an OPL (oil pipeline licence) to successful applicants and the renewal of the OPL and the general means of compensating the affected individuals and bodies by the laying and running of pipelines across their territory or properties should be community focused by allowing community participation of safety of collective resources of the country.

---

<sup>39</sup> UNEP