

Establishing Oil Theft and Other Related Crimes Tribunal for Speedy Trial: Legal Issues and Challenges¹

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Abstract: Oil theft and tampering with oil pipeline have been a perennial problem in Nigeria since the early 1970s and have remained unabated despite several arrests by the law enforcement agents. The rate at which these crimes reoccur and the number of pending cases in the court have made some observers to recommend the establishment of tribunal for the speedy trial of the offenders. This paper examined the proposition and the legal issues and challenges that could arise therefrom and proffered options that can be adopted without necessarily amending the laws.

Keywords: Oil theft and tampering with oil pipeline in Nigeria, establishment of tribunal for the speedy trial of the offenders

I. Introduction

Oil theft² and other related offences like dealing with or in crude oil, petroleum and petroleum products without lawful authority or licence and tampering with oil pipeline have assumed an alarming dimension in Nigeria. As a matter of fact, the Nigerian National Petroleum Corporation (NNPC) in its November, 2015 monthly report stated that a total of 2,447 vandalised points have been documented between January to November 2015, resulting in a total loss of 637,550 cubic metres of crude and products valued at N56.68 billion.³

What started on small scale in the middle 70s to early 80s has grown into a big time organised crime. Despite various arrests, prosecutions by the Government and convictions made by the Courts, it appears these criminalities have remained unabated. In fact the number of convictions made so far did not indicate that the criminals are in any way deterred as it can be seen from the recurring incidence of arrest by the law enforcement agencies. For instance, in September, 2015, the Eastern Naval Command of the Nigerian Navy said it arrested 30 ships and a good number of oil thieves between January and September, 2015.⁴ Similarly, the Nigerian Security and Civil Defence Corps (NSCDC) in Bayelsa State said that it arrested 40 suspected oil thieves and destroyed 106 illegal refineries in 2015.⁵ It is against the background of the magnitude of these undeterred crimes that there have been calls from a number of stakeholders particularly the armed forces and law enforcement agencies in the country, that Government should establish Tribunals for the trial of the persons arrested for Oil theft and other related offences. It would appear that the assumption is that the tribunal would ensure speedy trial of those arrested for the commission of the crimes.

However, before examining these issues, it may be pertinent to briefly look at the nature of oil theft and tampering with oil pipelines as well as the legislation that criminalized them.

How Oil theft and tampering with oil pipeline evolved in Nigeria

Incidence of oil theft and tampering with oil pipeline in Nigeria originated in the middle 1970s and early 1980s as economic crimes. There seems to be no data as to the volume of the theft then as it has been observed that it was probably at a small scale because of the lower global oil prices and Nigeria's production level.⁶ The criminalisation of damage to oil pipelines was first done by the Administration of General Murtala Muhammed, which promulgated the Petroleum Production and Distribution (Anti-Sabotage) Act of

¹This paper originated from a presentation by the writer at the Law of the Sea Seminar, which held at the Armed Forces Staff College, Jaji on 8 February, 2016.

²A number of terms, such as illegal oil bunkering, oil theft, and pipeline vandalisation have been used to refer to the various forms of theft of crude oil and its refined products in Nigeria.

³NNPC's Monthly Financial and Operation Report, November, 2015, <http://www.nnpcgroup.com/Portals/0/Monthly%20Financial%20and%20Operations%20Data/NNPC%20Monthly%20Financial%20and%20Operations%20Report%20November%202015.pdf> last accessed 14 January, 2016

⁴*Oil Theft: Navy Arrests 30 Ships in 9 Months as well arrested*, <http://leadership.ng/news/461722/oil-theft-navy-arrests-30-ships-in-9-months> last accessed 31 December, 2015

⁵*NSCDC in Bayelsa Arrests 40 Suspected Oil Thieves in 2015 – Commandant*, <http://leadership.ng/news/487689/nscdc-bayelsa-arrests-40-suspected-oil-thieves-2015-commandant> last accessed 31 December, 2015

⁶C. Katsouris and A. Sayne, *Nigeria's Criminal Crude: International Options to Combat the Export of Stolen Oil*, London: Chatham House, September, 2013, p.5

1975 and the Criminal Justice (Miscellaneous Provisions) Act of 1975. In the early 1980s, the increase in the incidence of oil theft equally prompted the Military Administration of General Buharito promulgate the Miscellaneous Offences Act No 20 of 1984, (originally titled “Special Tribunal (Miscellaneous Offences) Act”) which criminalized dealing with or in crude oil, petroleum and petroleum products without lawful authority or an appropriate licence, tampering with oil pipeline and adulteration of petroleum and petroleum products as well as some other conducts which are unrelated to the petroleum industry. The provisions of these laws would be discussed in details in the next section.

Studies have shown that oil theft takes place in three main ways in Nigeria, as they are not the focus of this paper it would only be referred to briefly.⁷ Foremost is the small scale stealing of condensate and petroleum product intended for the local market.⁸ Another is the large scale theft of crude oil involving international maritime tanker transport for refining outside Nigeria.⁹ The third is the excess lifting of crude oil beyond the approved amount onto waiting crude carriers, siphoning stored crude from tank farms or refinery storage tanks onto trucks.¹⁰ Sources report that officials from Department Petroleum Resources and/or Petroleum Pipeline Marketing Company (PPMC), customs, private inspectors and carriage companies, operators, and the security services collude to disguise excess lifting through meter manipulation and forged shipping documents.¹¹ These three methods of oil theft are not mutually exclusive.¹² Some actors also steal refined products from PPMC’s network of product pipelines and storage depots.¹³

It is instructive to note that oil theft is not peculiar to only Nigeria. A Report has shown that some countries like Mexico, Indonesia, Russia and Iraq including Nigeria are the five countries most plagued by oil theft.¹⁴ Also, oil theft is rife in China¹⁵, Colombia, the United States of America mainly in Texas¹⁶ and Canada particularly in oil sites in Saskatchewan and Alberta.¹⁷

Legislation that criminalized Oil theft and tampering with petroleum pipeline in Nigeria

This section examines the laws that criminalized oil theft and tampering with oil pipelines in Nigeria with a view to determining their adequacy or otherwise. Over the years a number of legislation has been put in place to stem the wave of oil theft and tampering with petroleum pipelines in Nigeria. The foremost is the Petroleum Production and Distribution (Anti-Sabotage) Act of 1975, followed by the Criminal Justice (Miscellaneous Provisions) Act of 1975 which broadly provides stiffer penalties for damages to certain infrastructures including oil pipelines. The next enactment is the Miscellaneous Offences Act of 1984 as amended which was initially titled “Special Tribunal (Miscellaneous Offences) Act of 1984”. This Act created a number of miscellaneous offences and like the Criminal Justice (Miscellaneous Provisions) Act, it provides stiff penalties for the offences and stipulates the court that is empowered to try the offenders.

Petroleum Production and Distribution (Anti-Sabotage) Act

The Act creates the offence against any act that obstructs or inhibits the production and distribution of petroleum products in Nigeria. Section 1(1) provides that any person who willfully does anything with intent to obstruct or prevent the production or distribution of petroleum products in any part of Nigeria; or any person who willfully does anything with intent to obstruct or prevent the procurement of petroleum products for distribution in any part of Nigeria; or any person who willfully 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 so doing 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 the Act.

⁷C. Katsouris and A. Sayne, op. cit., p.2; B. Naanen and P. Tolani, Private Gain Public Disaster Social Context of Illegal Oil bunkering and Artisanal Refining in the Niger Delta, [http://www.nideref.org/files/Private_Gain_Public_Disaster_Final_Version\(1\).pdf](http://www.nideref.org/files/Private_Gain_Public_Disaster_Final_Version(1).pdf) last accessed 24 January, 2016

⁸C. Katsouris and A. Sayne, op. cit., p.3

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid

¹² Ibid

¹³ Ibid

¹⁴ Chris Dalby, “These are the 5 Countries Most Plagued by Oil Theft”, <http://oilprice.com/Energy/Energy-General/These-Are-The-5-Countries-Most-Plagued-by-Oil-Theft.html> last accessed 29 January, 2016

¹⁵ Wang Quanbao, Li Jia, “Refined Criminals”, <http://www.newschinamag.com/magazine/refined-criminals> last accessed 29 January, 2016

¹⁶ Lauren Etter, “Oil Theft Soars as Downturn casts U.S. Roughnecks out of work”, <http://www.bloomberg.com/news/articles/2015-11-16/oil-theft-soars-as-downturn-casts-u-s-roughnecks-out-of-work> last accessed 31 December, 2015

¹⁷ The Canadian Press, “Saskatchewan RCMP make arrest in large-scale crude oil thefts”, <http://www.news1130.com/2016/01/21/saskatchewan-rcmp-make-arrest-in-large-scale-crude-oil-thefts/> last accessed 21 January, 2016

Section 1(2) of the Act goes further to provide that any person who aids another, incites, counsels or procure any other person to do any of the acts mentioned section 1(1), whether or not that other person actually does the act, shall be guilty of the offence of sabotage under the Act.

The purpose of this Act is to discourage the interruption of the production or distribution of petroleum products in Nigeria. Section 2 of the Act prescribe a penalty of either death sentence or a term of imprisonment not exceeding 21 years for any person convicted of any of offences in section 1. This sanction appears tough enough to deter the violation as it did not stipulate a different punishment for a person found guilty of procuring, aiding, counseling or inciting another person to commit the actual offence.

It is pertinent to note that the Act relates only to petroleum product which is defined to include motor spirits, gas oil, diesel oil, automotive gas oil, fuel oil, aviation fuel, kerosene, liquefied petroleum gases and any lubricating oil or greases or other lubricant¹⁸. It is apparent from this definition that crude oil is not contemplated within the scope of application of the Act.

The Act also defined vehicle as anything constructed or adapted for use in the transportation of petroleum products by land, sea or air.¹⁹ This definition is comprehensive enough and can be extended to include pipeline and barges.

The Federal High Court is empowered by the Act to try any of the offences and it is equally given an exclusive jurisdiction in this regard.²⁰

Criminal Justice (Miscellaneous Provisions) Act of 1975

The aim of the Act is to generally protect certain infrastructures one of which is oil pipelines or installations connected therewith. The provision of the Act that relates to damage to oil pipelines states that any person who “destroys, damages or removes any oil pipeline or installation connected therewith”²¹; or who “otherwise prevents or obstructs the flow of oil along any such pipeline or interferes with any installation connected therewith”²² shall be guilty of an offence under the Act. The Act stipulates a restitutive penalty in monetary form which is a fine of two times the value of such oil pipeline or installation that has been destroyed, damaged or removed or of any oil that might have escaped as a result of such destruction, damage or removal ₦2000, whichever is higher or imprisonment for a term not exceeding ten years or both for anyone found guilty of the offence in section 3(1)(a). In the case of the offence committed under section 3(1)(b), it provides for the penalty of a fine of ₦500 or three years imprisonment or to both fine and imprisonment.

It must be pointed out that the sanction prescribed by the Act for a person convicted of preventing or obstructing the flow of oil along any oil pipeline or interfering with the installation connected therewith is too mild and may not necessary deter such offenders. On the other hand, the punishment prescribed for the destruction, damage or removal of oil pipeline or the installation connected therewith appears to be marginally stiffer. The Act has a broad interpretation for oil as it includes crude oil within the meaning of the Petroleum Act and any refined product.²³

Miscellaneous Offences Act

This Act deals with a number of undesirable societal behaviour especially in the areas of international economic crimes, internal economic subversion, drug trafficking, examination irregularities, acts and damage to public property.²⁴ Some of the offences exist in other enactments however the penalties specified in the Act are stiffer than those for similar offences in the pre-existing legislations. It is interesting to note that this Act was originally titled the Special Tribunal (Miscellaneous Offences) Act of 1984, which established a Tribunal called “Miscellaneous Offences Tribunal”²⁵ to try any person for any of the offences specified in the Act.²⁶ It seems that the Tribunal was created in response to the slow functioning of the Nigerian courts. However, in May, 1999, the Tribunal (Certain Consequential Amendments, Etc) Decree transferred the Tribunal’s jurisdiction to the Federal High Court.²⁷

Three of the offences created by the Act relate to the petroleum industry. Two of the offences are directly related to the topic under discussion.²⁸ The first provision is section 1(7) of the Act which provides that any person who wilfully or maliciously breaks, damages, disconnects or otherwise tampers with any pipe or

¹⁸Section 4

¹⁹Section 4

²⁰Section 3

²¹ Section 3(1)(a)

²² Section 3(1)(b)

²³Section 9

²⁴M. AdekunleOwoade, “The Military and the Criminal Law in Nigeria”, [1989] Vol. 33 No. 2 J.A.L., p. 141; OlawaleAjai, “An Appraisal of the Special Tribunal (Miscellaneous Offences) Decree No. 20 of 1984”, (1986) 1 & 2 UNIFE L.J. p. 58.

²⁵Section 1 Special (Miscellaneous Offences) Act, CAP.410 Laws of the Federation, 1990

²⁶Section 3 Special (Miscellaneous Offences) Act, CAP.410 Laws of the Federation, 1990

²⁷Section 2(1) and Part 1 of the Schedule to the Decree.

²⁸The third offence relates to adulteration of petroleum, petroleum products, etc. see section 1(18) of the Act.

pipeline for the transportation of crude oil or refined oil or gas; or 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. There is no doubt that the punishment prescribed for this offence is severe enough to deter any offender.

The second provision is section 1(17) which provides that any person who without lawful authority or an appropriate licence imports, exports, sells, offers for sale, distributes or otherwise deals with or in any crude oil, petroleum or petroleum products in Nigeria; does any act for which a licence is required under the petroleum Act, shall be guilty of an offence and liable on conviction to be sentenced to imprisonment for life, and in addition, any vehicle, vessel, aircraft or other conveyance used in connection therewith shall be forfeited to the Federal Government. The penalty specified for this offence is equally strong enough to deter any offender. It must be pointed out that the penalty in some other jurisdiction like Mexico is not as severe as that of Nigeria. It was not until recently that Mexico's Congress approved a measure that increased the range of prison sentences for anyone convicted of stealing oil or natural gas to 15 to 25 years.²⁹ This represents a substantial increase from the 8-14 years range that was previously in place in the country.³⁰

It is not certain if the Nigerian courts apply the punishments specified in this Act to persons convicted of these offences. Two things are clear from the two provisions highlighted above and they are that there is no option of fine and a lesser term of imprisonment is not contemplated. It is however disturbing to find some courts giving an option of fine to offenders upon conviction when the Act does not prescribe it. Also some courts give lesser terms of imprisonment. A very disturbing example of such case was the recent decision of the Federal High Court of Lagos, where the court sentenced nine foreign citizens to five years imprisonment each after convicting them for stealing 3,423,097 metric tons of crude oil from Nigeria.³¹ The Court went further to state that "for purposes of clarity, each convict is to serve five years term of imprisonment with effect from 27 of March, 2015 or a fine of N20 million for all the four counts".³² The offences were said to have been committed contrary to section 1(17) of the Miscellaneous Offences Act.³³ It is our opinion that the judge appeared to have acted without due regard to the prescription of the law as it relates to the offences which they were found guilty.

The judgment has attracted serious criticisms from the public particularly that it was too mild. For instance, SegunAdeniyi in his Column titled "Crime and Punishment in Nigeria" made the following observations on the judgment: "Against the background that we are talking of stolen crude running into hundreds of millions of Dollars, even at the current price, is that a commensurate punishment? Of course it is possible that the judge was also applying the law and what the offence prescribes but we also know there is a pattern to this kind of slap-on-the-wrist sentences for big time crooks in our country. Yet when you run a system where the bigger the offence (and the offenders), the higher the possibility of escaping justice, it is the larger society that is in danger".³⁴

Similarly, the Punch newspaper in its editorial on 4 January, 2016 also made the following opinion "...there is not much to cheer about this judicial pronouncement. Buba was right when he said that the activities of these rogues had made the country a laughing stock in the eyes of the world. They deserve to be paid back in their own coin. 'The court must send a strong signal that Nigeria is a nation; not a nation of booty,' he said. Ironically, the judge vitiated the message. Even locals in the trade would have jumped at the leeway he provided in the fine, let alone international criminals in a multi-million dollar business".³⁵

The Legal Issues Associated with the establishment of a Tribunal for the trial of persons accused of oil theft and other related crimes

This topic raises a number of questions as it did not indicate the clear objective(s) or underlying principle for the establishment of tribunal for the trial of person(s) involved in oil theft and other related offences. Two issues of ambiguity that the topic throws up are: one, it is not clear from the topic whether the establishment of a tribunal to try oil theft and other related offenses is meant to compliment the Federal High Court. Secondly, it did not indicate whether the intention is to make the Tribunal exclusively responsible for the trial of such crimes. With the absence of this clarity or specificity, this paper examines the topic from a broad

²⁹P. Corcoran, "Tougher Penalties for Oil Theft in Mexico unlikely to Fix Problem", <http://www.insightcrime.com/news-analysis/tougher-penalties-oil-theft-mexico-unlikely-fix-problem> last accessed 18 January, 2016

³⁰ibid

³¹ Federal Republic of Nigeria vs. MT Asteris and 9 Ors, Charge No. FHC/L/239^c/2015 delivered on 15th December, 2015: O. Dania, "9 foreigners jailed 5 years for oil theft", <http://www.vanguardngr.com/2015/12/9-foreigners-jailed-5-years-for-oil-theft/> last accessed 16 December, 2015

³² ibid

³³Y. Ibrahim, "Court jails 9 foreigners 20 yrs for oil theft", <http://www.dailytrust.com.ng/news/news/court-jails-9-foreigners-20-yrs-for-oil-theft/124453.html#QuXrcMZ0gbXu3p9d.99> last accessed 28 December, 2015

³⁴SegunAdeniyi, "Crime and Punishment in Nigeria", <https://www.today.ng/opinion/65825/crime-and-punishment-in-nigeria> last accessed 16 January, 2016

³⁵The Punch, Monday, January 4, 2016, p.22

point of view, rather than a restricted one, taking into consideration all the above questions. An attempt would be made to proffer answers to them in this section.

Before addressing the issues raised above, it may be appropriate to observe that the topic appears to have been borne out of some perceived inadequacies of the Federal High Court to promptly conclude trials of persons accused of the offences. This position is reinforced by the comments made recently by the Chief of Naval Staff, Vice Admiral IbokIbas, during a lecture he delivered to Course 24 participants at the National Defence College titled 'Nigerian Navy: Challenges and Future Perspectives' where he said: "Over 163 suspects were arrested by the Navy for various crimes and handed over for prosecution by relevant law enforcement agencies between Jan. and Dec. 2015. "Experience has shown that suspects explore lapses in our judicial system to evade prosecution. We believe that the establishment of a special court or tribunal that is mandated to address all the outstanding cases with respect to the seizures and arrests made by the Navy will reduce the incidences of the illegality in the maritime sector".³⁶

The observations of the Chief of Naval Staff is not new as such remarks had been made in the past by the head of the Joint Task Force (JTF) (operation Pulo Shield) in the Niger Delta at Okubot creek in Bayelsa State on 21 April, 2013, when he said "One of the factors militating against the complete eradication of the menace of oil theft is the issue of prosecution. The JTF does not possess legal powers to prosecute suspects. Therefore, all suspects arrested are handed over to the NPF, EFCC or the NSCDC. These cases, when pursued in the courts follow the normal court bureaucracy of granting bails and several adjournments. Some of these suspects return immediately to their illicit businesses the moment they are released on bail. It is almost a vicious cycle. This seriously delays the quick dispensation of justice and jeopardizes the entire effort. To overcome this challenge, it has been suggested severally by the JTF that a special court for the prosecution of oil thieves be instituted. However, that is yet to see the light of the day."³⁷

It can be deduced from the foregoing comments that the delay in the trial of those arrested for oil theft and tampering with oil pipelines is one of the reasons behind the call for the establishment of a tribunal.

In considering the issues raised by the topic, it may be necessary to discuss the differences between a court and a tribunal as well as understand the nature of a tribunal. Tribunal has been described as a special adjudicatory or fact-finding body set up outside the normal hierarchy of the court.³⁸ It has also been referred to as a court having special jurisdiction merely because the legislature requires it to consist of experts in a particular area of law or to deal with a particular area of law, or to deal speedily with certain aspects of the law, or to adopt a procedure different from the usual court procedure, or for any two or more of those reasons.³⁹ From the abovementioned definitions, it can be seen that a tribunal is different from a court. Some of the key distinctions between a tribunal and a court are as follow: courts are established by the Constitution while most tribunals are created by statute except the Election Petition Tribunal and the Code of Conduct Tribunal. Courts are permanent in nature as removing them would require a Constitutional amendment. On the other hand, tribunals are usually temporary in nature apart from the Code of Conduct Tribunal which is permanent. Courts are superior, while tribunal particularly those not established by the constitution are inferior. The jurisdiction of a court is broader, while that of the Tribunal is limited in scope.

There is no doubt that the successive Military Administrations in Nigeria established a unique number of Special Tribunals which were vested with enormous judicial powers particularly in the administration of criminal justice. These Tribunals complemented the existing Courts and operated outside the normal hierarchy of the regular courts. Nevertheless, it is doubtful if such tribunals can be established under this democratic system of government as there are no provisions for the establishment of the nature of such Tribunals under our Constitution.

The Tribunals created by the Constitution are the Code of Conduct Tribunal⁴⁰ and the Election Petition Tribunals.⁴¹ Their establishment, functions and powers are specified in the Constitution of the Federal Republic of Nigeria, 1999. Both are special courts but then again the Election Petition Tribunals unlike the Code of Conduct Tribunal, lack criminal jurisdiction. It is pertinent to note that criminal jurisdiction of the Code of Conduct Tribunal is equally circumscribed and the punishment it can give does not include imprisonment.⁴²

³⁶ Naval Chief says pipeline attack in Delta is terrorism; vows to deal with perpetrators, <http://theeagleonline.com.ng/naval-chief-says-pipeline-attack-in-delta-is-terrorism-vows-to-deal-with-perpetrators/> last accessed 26 January, 2016

³⁷ Full Text of the Media Briefing on the Operations of Joint Task Force (Operation Pulo Shield) in Azuzuama and Anti Oil Theft Operational Activities for the First Quarter of 2013, <https://beegeagle.wordpress.com/2013/05/08/full-text-of-the-media-briefing-on-the-operations-of-joint-task-force-operation-pulo-shield-in-azuzuama-and-anti-oil-theft-operational-activities-for-the-first-quarter-of-2013/> last accessed 28 December, 2015.

³⁸ B. Ajibola, "Military Tribunals and Concept of Justice", *The Lawyer* Vol.18, 1988.

³⁹ A.O. Obilade, "The Nigerian Legal System", Spectrum Books Limited, Ibadan, (2011) pp.222-223

⁴⁰ Paragraph 15 of the Fifth Schedule, Part I of the Constitution of the Federal of Nigeria, 1999

⁴¹ Sections 233(2)(e), 239(2) and 285

⁴² Paragraph 18(2) of the Fifth Schedule, Part I of the Constitution of the Federal of Nigeria, 1999

Having highlighted the nature of a tribunal and the types of tribunal established by the Constitution. The question that therefore arises is whether the establishment of other tribunal or special court is contemplated by the Constitution. In order to answer this question, it is apposite to examine the provisions of the Constitution on judicial powers which is in section 6. Section 6(1) of the Constitution provides that “the judicial power of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation.” On the other hand section 6(2) of the Constitution provides that “the judicial powers of a State shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution, for a State.” The implication of these two provisions is that the judicial power of the Federation and any State within the Federation primarily resides in the Court specified in that section.

Section 6(3) of the Constitution identified the courts and ascribed a status to them. It provides thus “the courts to which this section relates, established by this Constitution for the Federation and for the States, specified in subsection (5) (a) to (i) of this section, shall be the only superior courts of record in Nigeria; and save as otherwise prescribed by the National Assembly or by the House of Assembly of a State, each court shall have all the powers of a superior court of record.” The specified courts in this provision are enumerated in section 6(5) (a) to (i) of the Constitution and they are the Supreme Court of Nigeria; the Court of Appeal; the Federal High Court; the High Court of the Federal Capital Territory, Abuja; a High Court of a State; the Sharia Court of Appeal of the Federal Capital Territory, Abuja; a Sharia Court of Appeal of a State; the Customary Court of Appeal of the Federal Capital Territory, Abuja; a Customary Court of Appeal of a State; and the National Industrial Court. These courts are the only superior courts of record in Nigeria that are established by the Constitution. It must be stressed that superior Courts usually have minimal jurisdictional limits and exercise supervisory jurisdiction over inferior courts. As a rule, nothing is meant to be outside the jurisdiction of a superior court, unless it is so specified in the Constitution.

Notwithstanding the above, section 6(4)(a) of the Constitution provides that “Nothing in the foregoing provisions of this section shall be construed as precluding the National Assembly or any House of Assembly from establishing courts, other than those to which this section relates, with subordinate jurisdiction to that of a High Court”. The most plausible interpretation of this provision is that the National Assembly or any House of Assembly can establish a court and it can be safely assumed that this also includes the establishment of a tribunal. However, such court or tribunal would have a subordinate jurisdiction to the High Court. In other words such court or tribunal would have a status lower than the High Court and would be an inferior court.

It flows from the foregoing that the Constitution contemplates the establishment of other courts or tribunal as the case may be, which certainly would be inferior courts. The Courts generally referred to as inferior courts, which are created by States and the Federation for the Federal Capital Territory are Magistrate Courts, Juvenile Courts, Customary Courts or Area Courts and Rent Tribunals etc. It must be pointed out that inferior courts generally have limited powers and jurisdiction.

In the light of the above, the legal implication of establishing a tribunal to try oil theft and other related offenses is that such a tribunal would be an inferior judicial body in status that is it would have a subordinate jurisdiction to the High Court. As inferior courts generally have limited powers and jurisdiction, it may be unable to try offences like oil theft and tampering with oil pipelines, which have life imprisonment as their penalties. It goes without saying that it would be unable to have concurrent jurisdiction with the Federal High Court that could enable it compliment such court in view of the provision of the Constitution in section 6(4)(a).

Another legal challenge with the establishment of a tribunal for oil theft and other related offenses is that the laws that created oil theft and other related offenses have already empowered the Federal High Court with the exclusive jurisdiction to try the crimes.⁴³ Although, it may be argued that what is simply required is just an amendment by the National Assembly. It is not certain if doing so would achieve the desired result taking into consideration the other limiting factors highlighted above. Also, with these implications in mind, it would be most inappropriate to make the Tribunal exclusively responsible for the trial of such crimes.

Options that can be explored to fast track trials of persons accused of oil theft and other related crimes

Having identified that there are serious legal implications with the establishment of a tribunal to try oil theft and other related offences and that the major drawbacks relate to its functionality and status. An appropriate question to ask is that, what are the other legal alternatives that can be explored to fast track the trials of persons accused of oil theft and other related offences without necessarily establishing a tribunal or special court? In order to answer this question, it may be necessary to ascertain some factors that appear to be limiting the quick dispensation of criminal justice in this regard.

Some of the challenges encountered by the prosecuting agencies in the prosecution of oil theft cases are delay in trial due to prolonged adjournment, destruction of exhibits by the arresting agencies, inability of arresting or investigating Officer to testify in Court because of the challenge in obtaining official release from

⁴³ Miscellaneous Offences Act, CAP.M17, Laws of the Federation, 2004; Section 3, Petroleum Production and Distribution (Anti-Sabotage) Act

the line authority or command; delay in carrying out test on Petroleum Products by appropriate government agency as well the high cost of the test, delay in the assignment of the cases by the Administrative Judge of the Judicial Division, preservation of exhibits, inability of the witnesses to attend court due to funding challenges.

It must be emphasised that a number of these challenges cannot be solved by law but administratively. For instance the delay in carrying out test on Petroleum Products by appropriate government agency as well the high cost of the test can be dealt with administratively. Similarly, obtaining official release from the line authority or command by arresting or investigating Officer to testify in Court can also be resolved by the appropriate authority.

On the other challenges like delay in trial, delay in the assignment of the cases by the Administrative Judge of the Judicial Division, inability of the witnesses to attend court due to funding challenges, it is gratifying to note that there are provisions in the Administration of the Criminal Justice Act (ACJ Act), 2015 that seem to have addressed these challenges. With respect to criminal trial, the Act provides that upon arraignment, the trial of the defendant shall proceed from day-to-day until the conclusion of the trial.⁴⁴ On the other hand, where day-to-day trial is impracticable after arraignment, no party shall be entitled to more than five adjournments from arraignment to final judgement.⁴⁵ It stipulates that the time between each adjournment shall not exceed fourteen working days.⁴⁶ Where, however, it is impracticable to conclude a criminal proceeding after the parties have exhausted their five adjournments each, the interval between one adjournment to another shall not exceed seven days inclusive of weekends.⁴⁷ These provisions if they are applied strictly, will certainly address the delays that are currently being experience in the trials of persons accused of oil theft and other related crimes.

Apart from this, efforts can be made to prevail upon the Chief Judge of the Federal High Court to extend the scope of the Practice Directions⁴⁸ issued for the speedy criminal trials relating to offences of terrorism, kidnapping, trafficking in persons, rape, corruption and money laundering cases to include oil theft and other related crimes.

The ACJ Act has also addressed the delay encountered by prosecuting agencies in the assignment of the criminal cases by the Chief Judge or the Administrative Judge of the Judicial Division. It provides that where an information has been filed in the court, the Chief Judge shall take appropriate steps to ensure that the information filed is assigned to a court for trial within 15 working days of its filing.⁴⁹

The issue of funding challenges experienced by witnesses to attend court has been addressed in the ACJ Act. Unlike the provisions in the Criminal Procedure Act which restricted the payment to witnesses on summons, recognisance or by virtue of a warrant⁵⁰, the ACJ Act provides “that where a person attends court as a state witness, the witness shall be entitled to payment of such reasonable expenses as may be prescribed”.⁵¹ The amount of expenses payable to such a witness is required to be processed and paid by the Registrar of the Court out of the relevant vote as appropriated by the Judiciary.⁵² This is a well come development as it is the Accountant-General of the Federation that was saddle with that responsibility of payment in the Criminal Procedure Act.⁵³

Notwithstanding the above, a quick and less cumbersome option for speedy trial of these crimes which does not require an amendment of the law or the constitution is the designation of special judges for the trial of these crimes as it is presently done with corruption cases. This would ensure that the judges become specialised and would dedicate their time and energy to hearing and determining the cases expeditiously.

II. Conclusion

There is no doubt about the far-reaching implications of the oil theft and tampering with oil pipelines in Nigeria. Apart from the negative economic consequences, there is also serious environmental damage caused by these activities. It is therefore not surprising that the prompt trial of the offenders is of great concern to people and stakeholders at national and international levels. It has been made crystal clear from the foregoing discussion that most of the penalties prescribed in the laws that created the offences are sufficient enough to deter offenders where they are appropriately applied by the court. What has remained unresolved in the country is the quick dispensation of justice in this regard. This has prompted the security as well as prosecuting agencies

⁴⁴ Section 396(3) Administration of the Criminal Justice Act, 2015

⁴⁵ Section 396(4) Administration of the Criminal Justice Act, 2015

⁴⁶ Section 396(4) Administration of the Criminal Justice Act, 2015

⁴⁷ Section 396(5) Administration of the Criminal Justice Act, 2015

⁴⁸ Federal High Court (Criminal) Practice Direction, 2013

⁴⁹ Section 382(1) Administration of the Criminal Justice Act, 2015

⁵⁰ Section 195 Criminal Procedure Act

⁵¹ Section 251 Administration of the Criminal Justice Act, 2015

⁵² Section 251 Administration of the Criminal Justice Act, 2015

⁵³ Section 198 Criminal Procedure Act

to call for the establishment of a tribunal. It has been discovered that this proposal is not without serious challenges which may not indeed solve the problem.

Nonetheless, it has been observed that there have been major changes in the legal framework for the administration of criminal justice, which appeared to have addressed some of the challenges associated with the delay in trial of such offenders. It is hoped that if the provisions in the ACJ Act are applied, it would resolve most of the problems of delay which the tribunal is anticipated would resolve.

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