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An Evaluation Of The Conundrum Of Crude Oil Theft And The Need For Petroleum Pipeline Surveillance Contracts In Nigeria

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Abstract

The loss of over 437,000 barrels of crude oil amounting to \$10 Billion from crude oil theft and petroleum pipeline vandalism from January to July 2022 can be termed "an economic sabotage" to the Nigerian economy and the environment. This act of criminality has occurred in the face of plethora of legislation and policies promulgated to avert the activities of stolen crude in Nigeria, in addition to the post-COVID-19 pandemic financial crunch in most countries. The paper evaluates the emergence of petroleum pipeline surveillance contracts. It also analyzes the impacts of pipeline vandalism and crude oil theft in Nigeria. It adopts the doctrinal research method by contextualizing scholarly materials relating to the title by revealing that although pipeline surveillance contracts lacked transparency in the award processes by the Nigerian Government; its use has more impact in reducing crude oil theft and petroleum pipeline vandalism in Nigeria. The paper recommends the use of pipeline surveillance contracts as well as the involvement of host community's contractors in petroleum pipeline surveillance in Nigeria's oil and gas industry. It concludes by arguing that pipeline surveillance contracts and other measures to promote petroleum pipeline security in Nigeria will serve as a panacea to crude oil theft and petroleum pipeline vandalism in Nigeria.

Keywords: Crude Oil Theft, Economy, Environment, Pipeline, Regulation, Vandalism, Surveillance Contract

I. Introduction

Crude oil theft and petroleum pipeline vandalism capture media attention on a regular basis in Nigeria. This is because, crude oil theft and petroleum pipeline vandalism has become the most thriving and lucrative business in Nigeria's Niger Delta region, as well as other communities serving as host to petroleum pipelines belonging to the Nigerian National Petroleum Company Limited and multinational oil companies (MOCs). Recent report has revealed that both the top echelons of government, top military brass and host community leaders are involved in the activities of crude oil theft and petroleum pipeline vandalism.¹ The complicity in crude oil theft

¹ C. Wizer and E. Wali, "Crude Oil Theft in the Niger Delta: The Oil Companies and Host Communities Conundrum" *International Journal of Research and Scientific Innovations*, 7 no 4 (2020): opined that crude oil theft involves communities, government officials, oil workers and security agencies. See also E. Amaize, "Oil Theft: How Security Operatives, Government

and petroleum pipeline vandalism either with syndicate groups within the Nigerian Government has also made this atrocious activity to be sustained these past years.² Nigeria has Africa's largest proven reserve of natural gas and crude oil³ and since its discovery in 1956, revenue from petroleum resources accounts for over 97 percent of Nigeria's foreign exchange earnings and 85 percent of the country's GDP.⁴ Paradoxically, the Niger Delta region that accounts for, and generates the revenue has been left unattended by successive governments, save for some government intervention agencies enmeshed in massive corruption to enrich political cronies.⁵ Nigeria is still besieged with inadequate infrastructure, epileptic power situation, low foreign exchange reserves, low savings and an abysmally low standard of living, host community agitations, militancy and militarization of the region, kidnapping amongst others.⁶ Although it is not clear whether the current report of the alleged culprits in crude oil theft and petroleum pipeline vandalism are now in cahoots with the military, one thing is now certain—the Nigerian government decision to employ private security firms to monitor and secure the

Officials Run Bunkering Cartel" Vanguard Newspaper Nigeria (27 August 2022) <https://www.vanguardngr.com/2022/08/oil-theft-how-security-operatives-govt-officials-run-bunkering-cartel/> Accessed 4 February 2023. As the report noted, 'it is not hidden information that a sophisticated mafia of powerful Nigerians and foreigners, including top military operators, government officials, highly-placed and retired oil industry personnel, politicians and businesspersons are the big-time oil thieves and financiers of oil bunkering syndicates, which over the years have to suck the life out of the country's economy.'

- ² D. Elumoye, E. Addey and U. Orizu, 'Presidency: We Will Soon Reveal Those behind Crude Oil Theft in Nigeria' This Day Newspaper Nigeria (August 2022) <<https://www.thisdaylive.com/index.php/2022/08/21/presidency-well-soon-reveal-those-behind-crude-oil-theft-in-nigeria/>> Accessed 4 December 2022.
- ³ The British Statistical Review of World Energy Report, 2022: <<https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/statistical-review/bp-stats-review-2022-full-report.pdf>> Accessed 11 November 2022. Nigeria accounts for 1.8 percent share of crude oil proven reserve and 4.2 percent of proven natural gas reserve.
- ⁴ E. Okumagba, "Oil and Gas Pipeline 'Vandalism' in Nigeria: Analyzing Alternative Options Beyond the Traditional Legal Approach" *International Energy Law Review* 37, no 7 (2019): 181, and E. Okumagba, 'A Critical Analysis of Laws and Policies for the Prevention of Petroleum Pipeline Vandalization in Nigeria' *Environmental Law Review* 23, no. 4 (2021): 306.
- ⁵ E. O. Okumagba, 'Niger Delta Development and the Role of Government Intervention Agencies: The Need for Alternative Legal Approach' in Readings in Law and Policy: Current Issues and Trends (2017) In Commemoration of the Golden Jubilee of Rivers State 1967-2017 (Rivers State University of Science and Technology, 2017), 586 at 593-600. The intervention agencies in this regard includes the Niger Delta Development Board, 1960, Niger Delta Basin Development Authority, 1967, Oil Mineral Producing Areas Development Commission 1992, and the Niger Delta Development Commission, 2000, and the Amnesty Programme, 2009 and the creation of the Ministry of the Niger Delta Affairs, and M. Eboh, 'Nigeria Earned, Squandered N77 Trillion Oil Revenue in 17 Years' in Vanguard Newspaper Nigeria (5 September 2022) <<https://www.vanguardngr.com/2017/09/nigeria-earned-squandered-n77trn-oil-revenue-17-years/>> Accessed 4 February 2023. Commenting on this situation, Executive Secretary of the Nigeria Extractive Industries Transparency Initiative, NEITI, Waziri Adio, disclosed that in the last forty years of oil production, Nigeria has extracted about 31 billion barrels of its oil reserves, while from 1980 to 2015, the country exported crude oil worth about \$1.09 trillion.
- ⁶ O. A. Oluyemi, "The Military Dimension of the Niger Delta Crisis and Its Implications on Nigerian National Security" *SAGE Journals* 10, no. 2, observed that the creation and continued deployment of a Joint Task Force (JTF) composed of Nigerian armed forces by the government and their various military operations in the Niger Delta crisis are main arguments behind the military dimension of the crisis. Militarization of Niger Delta crisis has resulted to the rise of many ethnic militias such as Movement for the Survival of the Ogoni People (MOSOP), Movement for the Emancipation of the Niger Delta (MEND), the Movement for the Actualization of the Sovereign State of Biafra (MASSOB), and Niger Delta Peoples Volunteer Force (NDPVF).

entire petroleum pipeline routes in Nigeria has gained momentum in recent time. This is coming strongly on the strength of both economic and environmental concerns occasioned by crude oil theft and petroleum pipeline vandalism.⁷ Although it is reported that global crude oil theft is estimated at USD133 billion per annum,⁸ this poor governance in the oil and gas industry in Nigeria is reported to have led to a loss more than 150,000 barrels of crude oil per day.⁹ This amount is also consistent with the Nigeria Extractive Industry Transparency Initiative's (NEITI) Report, that Nigeria lost USD 41.9 billion daily to oil theft between 2009 and 2018.¹⁰ The current loss to Nigeria has been put at more than \$10 billion, which is equivalent to N4.3 trillion (at N430 to a dollar) in seven months in 2022,¹¹ hitting a record high. Sadly, the activities of petroleum pipeline vandalism left deleterious impacts on the environment where petroleum is illegally refined.¹² In addition, legislation such as the *Petroleum Production and Distribution (Anti-Sabotage) Act*¹³ and the *Miscellaneous Offences Act*,¹⁴ among others which criminalizes the tampering and stealing of crude oil from pipelines or any means of transportation in Nigeria with stiffer death penalty and life imprisonment have not deter the activities of crude oil theft.¹⁵ Rather the activities have continued to thrive successfully as one of the most lucrative businesses in Nigeria. The use of private security firm as part of a new arrangement involving community participation for petroleum pipeline surveillance has been on the rise since the 1990s, and gained momentum recently due to the revelations that companies contracted to monitor and protect petroleum pipeline routes are owned by members within host communities in the Niger Delta. Although the Nigerian Government choice of private security companies have received some backlash, evaluating the use of pipeline surveillance contract from the standpoint of an MOC in Nigeria is imperative not only in giving credence to such contracts, but also to buttress involvement of host communities in detecting crude oil theft and petroleum pipeline vandalism. The aim of this paper therefore is to justify the use of pipeline surveillance contractors involving host communities participation with a view to unearthing petroleum vandalized pipelines in Nigeria. In the light of the above, this paper will examine the emergence and criticism of pipeline surveillance contracts. Justification of pipeline surveillance contracts and evaluating a typical pipeline surveillance contract is further examined with a view to analyzing key provisions which supports host community participation. In addition, considering the deleterious impacts of crude oil theft on the economy and the environment, the paper argues for the use of pipeline surveillance contracts.

⁷ Okumagba, (2019) supra note 4, for an extensive discussion on the economic and environment effects of crude oil theft and petroleum pipeline vandalism

⁸ E. Romsom, 'Global Oil Theft: Impact and Policy Response' *Wider Working Paper* 16 (2022): 1. This estimation equates to some 5–7 percent of all crude oil and refined fuels produced globally.

⁹ O. J. Olujobi, E. S. Olarinde and T. Yebisi, 'The Conundrums of Illicit Crude Oil Refineries in Nigerian and Its Debilitating Effects on the Nigerian Economy: A Legal Approach' *Energies* 15, no 17 (2022): 3. Although C. Chika and A. F. Ndidi, 'Illegal Oil Bunkering Sabotage and Vandalism in Niger Delta Area of Nigeria' *Academic Journal of Current Research*, 9, no 9 (2022): 2, estimated that the figure could be as high as 300,000 barrels per day.

¹⁰ Olujobi, Olarinde and Yebisi, *ibid.* and Chika and Ndidi, *ibid.*

¹¹ See K. Yusuf, 'Analysis: How Broke Nigeria Lost \$10 Billion to Crude Oil Theft in Seven Months' in Premium Newspaper Nigeria (8 September 2022):

<<https://www.premiumtimesng.com/news/headlines/552781-analysis-how-broke-nigeria-lost-10-billion-to-crude-oil-theft-in-seven-months.html>> Accessed 10 February 2023.

¹² Okumagba, supra note 4. See, also P. I. Gasiokwu, 'Appraising Applicable Laws on Waste Management in Nigeria' (2022) 8 *Commonwealth Law Review Journal*, 221-238.

¹³ S. 2 of the Petroleum Production and Distribution (Anti-Sabotage) Act Laws of the Federation of Nigeria 2004, which highlighted the inadequacies in several environmental legislation on waste management. The view reflects the wastages occasioned by crude oil theft in Nigeria.

¹⁴ S. 7 (1) of the Miscellaneous Offences Act LFN 2004.

¹⁵ Okumagba, (2021) supra note 4, gave a detailed account of the legislation in Nigeria with direct impacts on crude oil theft and petroleum pipeline vandalism in Nigeria to no avail.

II. Emergence of Pipeline Surveillance Contracts in Nigeria

The prevalence of crude oil theft and petroleum pipeline vandalism can be described as a one of the lucrative businesses flourishing in Nigeria today. From the demand for better living conditions by the people of the Niger Delta to environmental concerns without any positive corresponding response from the Nigerian Government and MOCs, in the face of persistent crude oil exploration and production, may have led to crude oil theft and petroleum pipeline vandalism. The overwhelming impacts on the economy and environment have led to responses from both government and the private sector. Petroleum pipelines are a primary recurrent feature of the petroleum industry to transport petroleum and its associated products from one location to another.¹⁶The use of pipelines surveillance contracts is not limited to Nigeria. There are a plethora of pipeline vandalism incidents globally by terrorists, militant groups (rebels) or organized crime members. Pipelines have been intentionally damaged by terrorist and vandals, using cyber-attacks on computer control systems or attack on electricity grids or telecommunication networks.¹⁷ For instance, in 1996 attempts by the Irish Republican Army (IRA) to bomb gas pipelines and other utilities across London was foiled the London Metropolitan police. While the city of London was lucky, it has not been the case for Colombia, where it has been reported that the Cano Limon oil pipelines have been bombed 950 times since 1993.¹⁸In 2007, a Mexican rebel group, the Popular Revolutionary Army (Ejercito Popular Revolucionario or EPR), a Marxist Guerrilla group formed in the 1990s similarly detonated bombs along Mexican oil and natural gas pipelines on the 6th and 10th of July, belonging to the Mexico's State oil giant, Petroleos Mexicanos (PEMEX).¹⁹ On 10th of September of that same year, the EPR set off twelve explosions simultaneously on gas pipelines, leading to an estimated loss of \$1.6 Billion.²⁰ Also from Mexico, the *Washington Post* reported that over \$1 billion of crude oil had been stolen directly from Mexican pipelines by organized criminals and drug cartels.²¹In China, it is estimated that oil companies lost about One Billion Chinese Yuan yearly.²² This is also not different from the account of Royal Dutch Shell which alleges that loses over \$7 Billion to crude oil theft in Nigeria. It must however be mentioned that unlike what is currently been experienced with pipeline management in Nigeria, oil and gas pipelines risk are very minimal in the U.S and most western countries and the countries mentioned above.²³

In the case of Nigeria, the use of pipeline surveillance contracts to secure and monitor petroleum pipeline routes in Nigeria may be traceable to multinational oil companies (MOC) occasioned by the spate of crude oil theft, kidnapping of staff and destruction of pipelines belonging to these companies. According to Tricker and Tricker, to resolve the security situation, Shell Petroleum Development Company (SPDC) developed a policy of paying 'protection money' to armed militants to provide security and contract surveillance to reward local communities for reporting oil theft.²⁴ Hakim, Albert and Shiftan, also noted that the need to secure pipelines in the Niger Delta within Nigeria must be given serious attention owing the

¹⁶I. Febaide and G. Uzedhe, 'Pipeline Control Systems: A Review of Surveillance Methods and Applications in the Nigerian Oil and Gas Sector' (2021) 9 (3)*Journal of Science Technology and Education*, 167.

¹⁷P. W. Parfomak, 'Keeping America's Pipelines Safe and Secure: Key Issues for Congress' *CRS Report for Congress* (2011): 3.

¹⁸J. L. Shreeves, 'Science and Technology: The Enemy Within' *The Independent*. London, UK, May 31 2006. 8, cited in Parfomak.

¹⁹A. G. Schaefer, B. Bahney and K. J. Riley, *Security in Mexico: Implications for U.S. Policy Options* (Rand Corporation: 2009) 17.

²⁰Schaefer, Bahney and Jack Riley, 2009.

²¹*Ibid.*

²²Wizor and Wali, *supra* note 1.

²³The Transportation Security Administration, Office of Intelligence, Pipeline Threat Assessment, January 18, 2011, 3, cited in Parfomak, *supra* note 17, 4.

²⁴B. Tricker and G. Tricker, *Business Ethics: A Stakeholder Governance and Risk Approach* (Routledge, 2014) 94.

country's commitments under the Western African Gas Pipeline.²⁵ These pipelines currently supplies natural gas from Nigeria to Benin Republic, Togo and Ghana.²⁶ Alluding to the above view, it was also observed that the failure of the government to provide basic public services and security in the Niger Delta resulted in a significant breakdown of the social contract. In this regard, the MOCs are often seen as a government proxy, spending millions of US Dollars in areas of operation and locations through various formal and informal corporate social responsibility (CSR) and security instruments.²⁷ The *SDN Report* further observed that apart from the fact that it was meant to secure oil and gas pipelines, local communities saw surveillance contracts as 'cheap money' realized through the threat of vandalism of pipelines.²⁸ As the report further noted, many communities became addicted to easy money with no enforcement or incentive to actually complete the contracted work.²⁹

While the MOCs were grappling with how to manage a 'business gone wrong, the Nigerian Government under the Oil Pipeline Surveillance and Protection Contracts (OPSPC), awarded a contract to Global West Vessel Specialist Agency (GWVSL), for the strategic concessioning partnership to provide platform for tracking ships and cargoes, enforce regulatory compliance and surveillance of the entire Nigerian maritime domain in 2011 to the tune of \$103 Million.³⁰ The contract was to last for ten years, with a possible renewal for another five years.³¹ The terms of the contract includes amongst others provide platforms, security boats, equipment and expertise to help in securing the country's waterways etc.³² A justification for the award of the contract was hinged on the fact that 'it was in the country's interest, because crude oil production jumped up from 1.8 million barrels per day (MBPD) to 2.6 MBPD...an income of over \$700 million per day to the government.'³³ In addition, the Government was quoted to have justified the award of the contract to ex-militants when he noted thus:

... the ex-militants have good local knowledge of the waters so can better secure the pipelines, repel pirates and apprehend oil thieves than government forces. This could also mean jobs...for thousands of youths not covered by the

²⁵S. Hakim, G. Albert and Y. Shiftan, (eds)*Securing of Transportation Systems* (Wiley, 2003) 287.

²⁶Ibid.

²⁷The SDN Report, 'Building Bridges: Community-Based Approaches to Tackle Pipeline Vandalism' <<http://www.stakeholderdemocracy.org/wp-content/uploads/2015/11/SDN-Building-Bridges-Community-Based-Approaches-to-Tackle-Pipeline-Vandalism.pdf>> Accessed 5 November 2022.

²⁸Ibid.

²⁹Ibid. A member of a community was noted to have observed thus: 'as long as they (oil companies) are here there is money...why would I change my ways?' While another noted that 'look, it is not easy for community contractors too. I had to give the head of department N2, 500,000 to get a big job. Interestingly, the same job has been given to two different companies before and paid for. Well it's my turn to benefit.'

³⁰See, A. Olawonle, 'Maritime Concessioning Partnership: A Dangerous Contract with Grave Apprehension' in Sahara Reporters Newspaper, 1 March 2012: <<http://saharareporters.com/2012/03/01/maritime-concessioning-partnership-dangerous-contract-grave-apprehensions-ajayi-alowonle>> Accessed 5 November 2022. It is also pertinent to note that GWVSL was owned by the former militant warlord, Chief Government Ekpemukpolo (AKA Tompolo). See also R. Adibe, E. Nwagwu and O. Albert, 'Rentierism and Security Privatization in the Nigerian Petroleum Industry: Assessment of Oil Pipeline Surveillance and Protection Contracts' (2018) 156 (45)*Review of African Political Economy*, 353-354.

³¹Adibe, Nwagwu and Albert, *ibid.*

³²E. Ujah, 'Why we Awarded Waterways Contract to Tompolo-FG' in Vanguard Newspaper Nigeria(20 March 2012) <https://www.vanguardngr.com/2012/03/why-we-awarded-waterways-contract-to-tompolo-fg/> Accessed 11 December 2022.

³³See, the Guardian Editorial, 'The Oil Pipeline Surveillance Contracts' in Guardian Newspaper Nigeria, (6 July 2015).

amnesty program and who might otherwise turn to crime. Citing the increase in crude oil production as evidence...³⁴

Although this contract has since been terminated by this current administration,³⁵ it also marked an era of lack of transparency in the award of pipeline surveillance contracts in Nigeria.³⁶The Nigerian Government awarded the same pipeline surveillance contract it revoked in 2015 to another indigenous company, Ocean Marine Solutions. This multimillion dollar contract was not different from the contract awarded to GWVSL in terms of duties but covered about 87 kilometres of the Trans-Forcados Export Pipeline (TFEP) as well as the Bonny-Port Harcourt and Warri-Escravos crude evacuation lines.³⁷ In a dramatic and unexplained circumstance, the Nigerian National Petroleum Company Limited (NNPCL),³⁸ successor to the NNPC, on the recommendation of the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), has re-awarded part of the Nigerian petroleum pipeline routes to Tantita Security Services Nigerian Limited (TSSNL).³⁹The company has justified the award by making shocking revelations on some major export pipelines bridged by crude oil thieves. See Images 1, 2 and 3) below. The justification for this award by the NNPCL was put thus:

the financial loss is more than 50 per cent of Nigeria's external reserves. It is also more than double Nigeria's total revenue between January and April, a period when Nigeria's total revenue was unable to service its debt and the country had to borrow for everything else including payment of workers.⁴⁰

For oil producing countries, 2020 has been further marked by a price war for market share that was quickly followed by a global collapse in oil demand due to lockdowns, travel restrictions, and much reduced global economic activity. This was followed by a partial price recovery later in 2020.⁴¹Crude Oil theft and petroleum pipeline vandalism not only deprives governments of internal revenues but it also has direct and indirect impacts on the economic development of neighboring countries, which is the case for neighboring countries like Benin Republic and Togo, where most of the vessels loading the stolen crude departs from. In addition, Romsom further argued that the impact of stolen crude also erode regional business confidence, investment, and domestic development.⁴²

III. Criticisms against the Adoption of Pipeline Surveillance Contracts in Nigeria

³⁴The International Crisis Group Report, 'Curbing Violence in Nigeria III: Revisiting the Niger Delta' *Africa Report No. 231* (2015):

<https://www.ecoi.net/en/file/local/1245530/1226_1443530552_231-curbing-violence-in-nigeria-iii-re-visiting-the-niger-delta.pdf> Accessed 5 November 2022.

³⁵The Street Journal, 'NNPC Terminates Ex-Militants, OPC Pipeline Surveillance Contracts' Online Street Journal: <<http://thestreetjournal.org/2015/06/nnpc-terminates-ex-militants-opcs-pipeline-surveillance-contracts/>> Accessed 10 November 2022.

³⁶The Business News Report, 'Amaechi, Dakuku in Trouble over N70.2 Billion Maritime Security Contract as Buhari Cancels Deal' in *The Business News Nigeria* (4 June 2018):

<<https://www.businessnewsreport.com.ng/amaechi-dakuku-in-trouble-over-n70-2bn-maritime-security-contract-as-buhari-cancels-deal/>> Accessed 10 November 2022.

³⁷K. Jeremiah, 'Why we gave Pipeline Protection Contract to OMS, by NNPC' *Guardian Newspaper Nigeria* (5 December 2018): <<https://guardian.ng/energy/why-we-gave-pipeline-protection-contract-to-oms-by-nnpc/>> Accessed 10 November 2022. A justification for this award was that the government lost over \$800 Million US Dollars under the former contractor. Although not mentioned specifically in the report, it is submitted that the former contractor referred to was the GWVSL, owned by the former militant.

³⁸See, s. 53 of the Petroleum Industry Act (PIA) 2021. It provides for the unbundling of the erstwhile NNPC to be called NNPCL as a private company in accordance with the Company and Allied Matters Act LFN 2004, dealing with the incorporation and registration of companies in Nigeria.

³⁹Titinia Nigeria Limited is owned by the former Commander of the MEND, whose contract was terminated in 2015. See also Yusuf, *supra* note 11.

⁴⁰Yusuf, *ibid*.

⁴¹See, Romsom, *supra* note 8.

⁴²*Ibid*.

Prior to the events leading to large scale crude oil theft and petroleum pipeline vandalism, the SPDC was in the forefront leading the campaign to sensitize the Nigerian media on the impacts of crude oil theft and petroleum pipeline vandalism. According to the SPDC, crude oil theft on pipeline network resulted in the loss of about 5,660 barrels of oil per day (BBL/D) in 2016, which is less than 25,000 BBL/D in 2015. It attributed the reduction in oil theft and sabotage related spills from 2015 to the continued improvements in air and ground surveillance and response by government security forces.⁴³ SPDC's account further revealed that for the year 2017, over 9,212 BBL/D of crude oil was lost to oil theft compared to 2016. The report of the SPDC briefing note will thus serve as a benchmark to measure the impacts of the use of pipeline surveillance in Nigeria's oil and gas industry when it observed thus:

Crude oil theft on the pipeline network resulted in the loss of about 9,000 barrels of oil a day in 2017, which is more than the approximate 6,000 bbl/d in 2016 but less than 25,000 bbl/d in 2015. The number of sabotage-related spills in 2017 increased to 62 compared to 48 in 2016 but less than 94 in 2015. The increase in 2017 can be in part be explained by the militant-induced shutdown of the Forcados export terminal in 2016 which reduced opportunities for third party interference. This demonstrates that continued air and ground surveillance and action by government security forces to prevent crude oil theft remains necessary.⁴⁴

It can be seen that pipeline surveillance contracts commenced with MOCs such as SPDC, however, their preference for government security forces cannot be overemphasized. But shockingly, that the Nigerian military failed in securing petroleum pipelines is no longer a secret. The use of the military to guard oil and gas installations in Nigeria remains debatable considering recent reports stating that the Nigerian top brass are complicit on crude oil theft being one of the most thriving businesses in Nigeria.⁴⁵ On the other hand, the use of indigenous contractors to guard petroleum pipelines has also come under scrutiny. Alluding to the fact that the use of ex-militant as pipelines surveillance contractors in the policing of crude oil pipelines in Nigeria is not having any impact, Onwuka and Dike agreeing with this, noted thus:

It is disheartening that the former militants, well mobilized for the task of surveillance, cannot keep vandals off the nation's oil and gas pipelines. This confirmed the ineffectiveness of surveillance on pipeline vandalism in the downstream sector of Nigeria. The Nigerian Government and Industry Operators should explore ways and means other than what is available currently in order to abate this 'monster'-pipeline vandalism. The implication is that the huge investment on pipeline surveillance operation has failed and the urgency of another strategy cannot be neglected.⁴⁶

Condemning government insistence on the use of ex-militants to guard petroleum pipelines in Nigeria, Olawonle remarked on the concessioning of Nigeria's maritime security to GWVSL owned by the former ex-militant leader of MEND thus:

...to say the least, this so called strategic concessioning partnership is not only insensitive, but diametrically corruption-driven and a deliberate stultification of the unity/oneness and cohesiveness of the Nigerian nationhood. This singular action of government attests to sheer executive rascality and profuse insensitivity to the frailty of the nation's unity. The perceived and real implications of this un-weighed action of government have far reaching effect on the nation's sovereignty, national security, economy, corporate existence, accountability and transparency in governance, and national interests.⁴⁷

⁴³See, Shell in Nigeria Briefing Notes, 2017, 21.

⁴⁴Ibid. 25.

⁴⁵Wizor & Wali, supra note 1.

⁴⁶See E. Onwuka and O. N. Dike, "Effects of Surveillance on Oil Pipeline Vandalism in the Downstream Sector Nigeria' (2015) 4 (3)*European Journal of Business and Social Sciences*, 127-135 particularly at 128.

⁴⁷Olawonle, supra note 30.

Rather than strengthen the Nigerian Navy and Maritime agency such as NIMASA, the Government opted for private concessionaire to monitor the petroleum pipelines in Nigeria. Olawonle further amplified the criticism for the mode of the award of the maritime contract to GWVSL by the Nigerian Government thus:

it will be recalled that late President Umaru Musa Yar'Adua sent a memo to the National Assembly entreating it to consider the setting up of Maritime Security Agency made up of coastal guards to be drawn from various agencies of government related to maritime functions; this no doubt was a creative idea that obviously took the security implications of maritime functions and the fragility of the Nigerian nationhood into consideration. Quite unfortunately and thinking in opposite direction, the Jonathan administration, perceived in some quarters as an extension or continuation of the Yar' Adua administration, took Nigerians aback by going ahead to withdraw this well intended bill and replaced it with another that seeks to outsource the security of the country's maritime domain to a private firm under the guise of strategic concession partnership between NIMASA and GWVSL in total disregard to the very grave security implications of this new move and the shaky nature of the country's nationhood.⁴⁸ The argument for consideration is whether a policy of this nature can succeed in checking the spate of crude oil theft and petroleum pipeline vandalism one the one hand and survive another administration in one of Nigeria's most critical assets.

IV. Justification for the use of Pipeline Surveillance Contracts in Nigeria

In spite of the above criticism, the use of pipeline surveillance contractors continued to gain momentum within government circles and MOCs preference due to the continued rise in crude oil theft and petroleum pipeline vandalism in the face of stringent provisions of key legislation. The Petroleum Production and Distribution (Anti-Sabotage) Act and the Miscellaneous Offences Act, prohibits the willful, malicious, stealing and tampering of crude oil pipelines in Nigeria.⁴⁹ What is shocking is that Section 3 of the Petroleum Production and Distribution (Anti-Sabotage) Act provides that "any person who commits an offence of sabotage under section 1 of this Act, shall be liable on conviction to be sentenced either to death or to imprisonment for a term not exceeding 21 years." While Section 7 (b) of the Miscellaneous Offences Act, provides punishes the above offences if convicted with an imprisonment for life. With these provisions, crude oil theft and petroleum pipeline vandalism have thrived as one of the lucrative businesses in Nigeria.⁵⁰ While the Federal High Court is vested with jurisdiction to try cases of crude oil theft and petroleum pipeline vandalism, delays in the trial of suspects and tampering and destruction of evidence before trial is rampant in Nigeria. In addition, the lack of data showing convictions under this legislation is nonexistent to determine the impacts and role of law in reducing crude oil theft and petroleum pipeline vandalism. With the above, the Nigerian Government justification becomes obvious.

Adibe, Nwagwu & Albert while alluding to the justification for the award of pipeline surveillance contracts between 2011 and 2015 observed that the Federal Government reason for awarding pipeline surveillance contracts was based on the assumption that those responsible for oil pipeline vandalism will be the most knowledgeable in knowing how to stop the crime they are guilty of.⁵¹ While this may be true, between 2015 and 2022, Nigeria's OPEC production quota dropped closed to a million barrels per day, and this has proved worrisome for the Nigerian Government. In 2022, the Government awarded another pipeline surveillance contract to the former commander of the defunct MEND leader which made shocking discoveries and revelations mostly on the Trans Forcados Export Pipeline.⁵² Since the award of the surveillance contract to TSSNL, report indicates that the TFEP has restored over 500,000 barrels a day to the national production, and that the recent pipeline surveillance contract to address oil theft

⁴⁸Ibid.

⁴⁹See s. 1 of the Petroleum Production and Distribution (Anti-Sabotage) Act and s.7 of the Miscellaneous Offences Act.

⁵⁰Okumagba, 2021, supra note 4.

⁵¹Adibe, Nwagwu and Albert, supra note 30.

⁵²See, Yusuf, supra note 11. The Trans Forcados Export Pipeline is one of Nigeria's largest export pipeline and the subject of tampering and stealing of crude oil.

was yielding positive results as the country's oil production capacity has increased.⁵³ The NNPC, while equally justifying the award of the surveillance contract to TSSNL, noted that the award was necessitated by the need for Nigeria to hire private contractors to man its oil pipeline network nationwide due to massive oil theft. In furtherance, the NNPC, noted thus:

First, to ensure the government's security agencies play their part, we have our Navy, the Army and they are doing an excellent job of containing this, but as you do this sustenance is everything and therefore we also decided that we need private contractors to man the right of way and also operate outside the right of way so that they can also join us to manage members of the community.⁵⁴

Giving credence to the involvement of host communities in securing petroleum pipelines, it is imperative to note that oil producing communities or host communities are stakeholders of the petroleum resources development in Nigeria as well as stakeholders of the country's petroleum industry.⁵⁵ Amplifying the need for host community involvement in the Nigerian oil and gas industry, Atsegbua puts it thus:

The oil producing host communities constitute one of the three major stakeholders of the Nigerian petroleum industry. The other two major stakeholders are the oil and gas companies operating in Nigeria, and the partner of these companies, namely the Nigerian National Petroleum Corporation which represents the Federal Government.⁵⁶

With the above, just like the previous Nigerian Administration, the current Nigerian Government has resolved to legalize the use of pipeline surveillance contracts. It is pertinent to note that typical of the business of petroleum in Nigeria, the content of the contracts are still elusive and not within reach of the public for scrutiny. Nonetheless, pipeline surveillance contracts still persist from MOCs, who engage host communities personnel's to secure pipeline routes within several host communities.

Arising from the decision of the Nigerian Government to engage contractors from oil bearing communities or host communities, which communities will qualify as host communities will have tremendous ramifications and implications not only on the geographical meaning of host communities but also on the legal meaning previously ascribed to host communities. The term host communities will include communities all communities where any form of extractive industry activities take place, where an extractive industry has its facilities, and communities that will be directly suffer impacts of the extractive industry whether or not there is an activity going or not.⁵⁷ While this definition fits into any form of exploration and production activities, the definition of host communities by Atsegbua, as the communities of areas bearing the petroleum resources in the Niger Delta area of Nigeria, appears more restrictive and not inclusive. This is because, there are several communities outside the Niger Delta region hosting petroleum pipelines across Nigeria, and may be subject petroleum pipeline surveillance contracts.⁵⁸ Wizer and Wali, on the other hand noted that host communities are communities

⁵³See the Report of the Senate of the Federal Republic of Nigeria Endorsing the Award of Pipeline Surveillance Contract to Tompolo in Vanguard Newspaper Nigeria (22 November 2022): <<https://www.vanguardngr.com/2022/11/senate-endorses-annpcl-pipeline-surveillance-contract-to-tompolo/>> Accessed 12 November 2022. It observed that the Bonny and Forcados Terminals, were shut down for a over seven months due to pipeline vandalism and oil theft.

⁵⁴Ibid.

⁵⁵See, L. Atsegbua, *Oil and Gas Law in Nigeria: Theory and Practice* 4th Ed (Four Pillars Publishers, 2021) 277. It must be noted that the involvement of host communities will also create a sense of belonging among host communities who felt short-changed over the ownership of mineral rights in Nigeria. See, generally, P. I. Gasiokwu, 'Appraising the Rights to Acquire and Own Immovable Property in Nigeria and South Africa' (2022) 25 (6) *Journal of Legal, Ethical and Regulatory Issues*, 1-10.

⁵⁶Ibid.

⁵⁷Ibid. 276.

⁵⁸Ibid.

where oil is extracted from and houses the facilities for exploration and extraction of crude oil.⁵⁹ While this definition is apt for the purpose of determining what communities will qualify for a pipeline surveillance contracts within the Niger Delta region, it is pertinent to note that the discovery and commissioning of the Kolmani Oil Fields also means that the use of the word host communities needs to be broadened beyond the Niger Delta region.⁶⁰

V. Evaluating the Descriptive Nature of Petroleum Pipeline Surveillance Contracts

The use of petroleum pipeline surveillance contracts although stands as a policy in Nigeria, its use and adoption by the Nigerian Government still lacks transparency, and not available for critical analysis at the time of writing, save for private contracts between host community contractors and MOCs. A typical petroleum pipeline surveillance contract between Shell Petroleum Development Company (SPDC) of Nigeria⁶¹ and a local contractor will be examined and evaluated to show that its provisions is designed to involve host community participation rather than the Nigerian military with a view to reducing of incidences of crude oil theft and petroleum pipeline vandalism in Nigeria.⁶² A typical petroleum pipeline surveillance contract from the perspective of SPDC is divided into five segments thus:

- i. Section One- The Form of the Agreement⁶³
- ii. Section Two- The Articles of the Agreement⁶⁴
- iii. Section Three- The Schedule of Prices⁶⁵
- iv. Section Four- The Scope of Work⁶⁶
- v. Section Five- Health, Safety and Environment⁶⁷

It is pertinent to note that a typical SPDC pipeline surveillance contract is very detailed and exhaustive. Be that as it may, this paper focuses on the scope of the work to determine why in spite of these laudable provisions, crude oil theft and pipeline vandalism still persists, a situation that has led to the some of the criticism above. Under Section 4,⁶⁸ the contractor is mandated to provide pipeline surveillance contract and grass cutting in the particular location, usually spelt out in the contract, including the range.⁶⁹ In addition, it is the duty of the contractor to provide and mobilize all resources including labour, materials, tools, plants,

⁵⁹Wizor and Wali, *supra* note 1.

⁶⁰ See This Day Newspaper 'In the Arena: Will Kolmani Oil Field Change Nigeria's Story?' in This Day Newspaper Nigeria (27th November 2022):

<<https://www.thisdaylive.com/index.php/2022/11/27/will-kolmani-oil-field-change-nigerias-story/>> Accessed 30 November 2022. The Kolmani River Oil Field is the first commercial discovery of crude oil and natural gas in the Northern part of Nigeria in the Upper Benue Trough covering Kolmani Oil Prospecting Lease 809 and 810 straddling Bauchi and Gombe States with an estimated one billion barrels, and 500 billion cubic feet of gas of proven reserves.

⁶¹The choice of SPDC was borne out of the fact that apart from SPDC being the largest MOC in terms of shareholding joint venture operations (JVO) in Nigeria, the company has been at the receiving end when it comes to crude oil theft and petroleum pipeline vandalism.

⁶²See, SPDC Standard Form Contract for Pipeline Surveillance. Extract of the SPDC Surveillance Contract shall be reproduced to justify the need for pipeline surveillance contracts in Nigeria.

⁶³This aspect of the contract relates to the general purchase order between SPDC and the contractor.

⁶⁴This aspect of the contract relates to the general contractual terms dealing with the parties rights. For instance, issues relating to work completion, methods of payment, indemnities, insurance and termination etcetera.

⁶⁵ This aspect of the contract deals with the contract price and the likely cases for variation as it relates to the scope of the work in the contract.

⁶⁶ This is the most detailed and important aspect of the contract. Its stipulations range from the terms of the work, mobilization of staff, surveillance of pipeline routes and other responsibilities of the contractor.

⁶⁷ This aspect of the contract deals with the minimum HSE requirements which the contractor shall comply with, such as hazard assessments, contract HSE requirements, HSE briefing, HSE incidents, reporting of accidents, the contractor HSE plan etcetera.

⁶⁸See Art. 1. Pipeline Surveillance Contract of Shell Petroleum Development Company

⁶⁹See Art. 1 *ibid*.

equipment etcetera to perform the work.⁷⁰ Another key aspect of the pipeline surveillance contract is contained in Article 2, dealing with the work of the contract, but not limited to mobilization, surveillance, grass cutting, as well as disciplinary actions. In this regard, the contractor in addition to the mobilization of personnel, materials and equipment, is also mandated to vet all his employees, issue uniforms, identity cards and personal protective equipment (PPE).⁷¹ On the aspect of surveillance, the contractor is mandated to operate 24 hours, and 7 days a week, with all appropriate materials approved by SPDC. In addition, the contractor is also mandated to attach four personnel per kilometre for the execution of the surveillance, with a two shift rotating over a 12 hour period.⁷²

It is believed that the essence of having such number of personnel monitoring oil facilities is to allow for quick response and reporting of any incident, upon the personnel becoming aware of movement of unauthorized persons, attempting to access or have accessed any part of flowlines, wellhead, pipelines, and associated facilities, or where there are clear intent of illegal acts of sabotage, bunkering, theft, tampering, or encroachment, etc (*emphasis mine*). The personnel are also duty bound to report within 30 minutes of discovery, the occurrence and location of; oil spill, pipeline damage or illegal bunkering activities. The contractor or his personnel are also mandated to log all entries by persons and materials into and out of the guarding or covered area, and report the presence of unauthorized persons within or around the specified contract area. Other mandate of the contractor includes:

- i. Prevent and report any unauthorized work, and report oil/gas leaks, theft, fires or any other suspicious incident.
- ii. Report any encroachment, bunkering activities, trunk line, and or delivery line sabotage or flow lines cutting, or stealing as well as all other illegal or suspicious activities to SPDC.
- iii. Conduct on the spot emergency oil spill containment through excavation of trenches around the oil spill site where possible.
- iv. Assist in the apprehension and prosecution of unauthorized persons who conduct illegal activities against SPDC oil facility. This requirement also extends to the contractor being made a witness in the prosecution of the suspects.⁷³

In furtherance of the above, the pipeline surveillance contract also includes the cutting of grass around the contract area. In this regard, the contractor is mandated to do the following:

- i. Ensure that the contract area remains free from obstacle/obstruction, and that is fully accessible at all times to enable the pipeline surveillance team (PST) access and patrol the pipelines effectively.
- ii. Ensure that any leaks, pipeline damage, illegal act of sabotage or bunkering are visible and not hidden or impaired by undergrowth or vegetation.
- iii. Clear all vegetation to ground level within the contract area or any other area as specified
- iv. Clear all facilities and infrastructure, including drains, culvert and manifolds.
- v. Ensure that no personnel employed as PST and supervisor for surveillance shall be engaged or used for grass cutting or maintenance.⁷⁴

From the above analysis, it is obvious that from the tenor of the contractual stipulations of a typical SPDC pipeline surveillance contract, using it as model standard contract form, there ought to be fewer incidence of pipeline vandalism in the country even though this has not been the case. The use of host community personnel have also aided contractors in identifying bridged pipelines used for the transportation of crude and natural gas in Nigeria. Nonetheless, it must be argued that other measures will be required to sustain the successes in the use of pipeline surveillance contract by SPDC and other MOCs. Some of the measures have been discussed below.

⁷⁰See Art. 1. 2 *ibid*.

⁷¹See Art. 2 dealing with PPE will include green monogrammed T-Shirts and Long Sleeve monogrammed chinos shirt per guard, brown Dockers chinos trouser, jungle boots, rain boots, face caps, touch lights, rock sack bags etc. See generally Art. 3.

⁷²Art. 3 *ibid*.

⁷³Art. 3 *ibid*.

⁷⁴Note that in the event of sabotage due to surveillance guards not reporting to duty, SPDC shall immediately terminate the contract.

VI. Measures to Promote Effective Pipeline Surveillance Contracts in Nigeria

Given the strategic importance of pipelines in Nigeria and the potential threat to its security, further measures is needed by the Nigerian Government and other stakeholders in the oil and gas industry to address issues revolving around the security of pipelines. Although the list of measures to be put in place in this critical moment are enormous, emphasis will be based on improved funding for technological gadgets relating to pipelines, localization of pipeline security surveillance, creation of a special security agency for pipeline surveillance and harmonization pipeline related legislation.

Improved Funding for Technological Gadgets and Security Operatives

The use of drone technology has gained momentum in recent times mostly within military warfare. The introduction of drone technology will further assist in detecting movement of persons around pipeline area for apprehension before any pipeline is bridged. Utilizing drones means that any attempt by crude oil thieves or vandals to vandalize pipeline, will require quick response and intervention on the part of the contractor.⁷⁵ In addition, the Nigerian Government should train local contractors on best practices from the developed countries so as to overcome hindrances of this nature once and for all.⁷⁶ Countries like Mexico and Colombia have had a checkered history of pipeline vandalism issues in the past, and have deployed various technologies system along the pipeline route to monitor and detect tampering.⁷⁷ Presently, Satellites are designed to monitor pipeline right of way for ground motion, encroachment and leakage. A satellite is an object that moves around a larger object. Earth is a satellite moving round the sun so also is moon and these are called natural satellites.⁷⁸ Research in Satellite method of pipeline monitoring has advanced reasonably well since the 1990s. In 1996, a Joint Industry Project (JIP) "The Use of Satellites for Pipeline Surveillance" was sponsored by many pipeline operators to:

- i. Review remote sensing capabilities.
- ii. Review pipeline surveillance requirements
- iii. Assess the suitability of satellite data for pipeline surveillance.⁷⁹

Currently, these satellite techniques are used in Europe, the U.S and China to monitor pipelines.⁸⁰ Also, Synthetic aperture radar (SAR) has been used to provide Radar Satellite images to show the presence of vehicular, earthmoving equipment and leakages.⁸¹ In addition, the use of visual inspection technology and ground penetrating radar will allow a contractor to monitor overground and underground pipelines using image and video sensors to observe the pipeline infrastructure vicinity.⁸² These new technology in pipeline surveillance will require funding from the Federal Government of Nigeria and MOCs in order to train local contractors in these design methods. Another area requiring critical attention is the funding for security operatives. In the remark of Okafor and Olaniyan, 'proper funding of the security agencies motivates them to carry out their responsibilities efficiently. A major challenge that usually inhibits their effectiveness is corruption. Security agents can be easily bribed and made to

⁷⁵E. Ukwuosa, 'How to Tackle Pipeline Vandalism in Nigeria' in Guardian Newspaper Nigeria, (6 June 2016): <<https://guardian.ng/business-services/how-to-tackle-pipeline-vandalism-in-nigeria-by-ukwuosa/>> Accessed 12 November 2022.

A.Okafor and A. Olaniyan, 'Legal And Institutional Framework For Promoting Oil Pipeline Security in Nigeria' (2017) 17 (2) *Afe Babalola Journal of Sustainable Development Law and Policy*.

⁷⁷Shreeves. Supra note 18.

⁷⁸J. Eze, 'Integrated Oil and Gas Pipeline Monitoring and Incident Mitigation Systems Framework' being a thesis submitted in partial fulfillment of the requirements of the University of Wolverhampton for the Degree of Doctor of Philosophy, 2017.

⁷⁹Ibid.

⁸⁰Ibid.

⁸¹See, K. Yuhana, et al, 'An Exploratory Study of Techniques for Monitoring Oil Pipeline Vandalism' (2017) 1 (1) *Covenant Journal of Engineering Technology*. 61. See also Okafor and Olaniyan, supra note 75.

⁸²Ibid.

compromise pipeline security. A good remuneration package could make them more effective in their surveillance work.⁸³ It is pertinent to note that the TSSNL were alleged to report that one of the points bridged in TFEP was behind a military checkpoint.

Localization of Pipeline Security Surveillance

Although measure is currently in place in most of the operational areas of the MOCs, this cannot be said with respect to award of pipeline surveillance contracts by the NNPC. Since the award of the ill-fated maritime and surveillance contracts by the President Goodluck Jonathan administration, 2011-2015, all subsequent awards have been hijacked by politicians and those at the corridors of powers in Nigeria. According to Okafor and Olaniyan, 'supporting indigenous oil companies to operate and manage oil pipelines could encourage effective participation of Nigerians; especially the local residents along the pipeline routes located as part of developing community surveillance initiatives to protect oil pipelines.'⁸⁴ It is strongly believed that when local communities invest in or operate pipelines in their communities, it gives them a greater sense of belonging, therefore motivating them to protect their investments from destruction.⁸⁵ This will also bring this aspect in conformity with the intent of the *Nigerian Oil and Gas Industry Content Development Act, 2010*, which encourages the development of Nigerian content in the Nigerian oil and gas industry.⁸⁶ This provision states that indigenous oil companies will be given first consideration where the award of contracts to maintain oil pipelines is carried out so far as they meet the specifications provided for by the Minister of Petroleum Resources.⁸⁷

Creation of a Special Security Agency for Pipeline Surveillance

Prior to the award of the maritime and pipeline surveillance contract to GWVSL, the idea of a special security agency for pipeline surveillance was muted by the Federal Government. It is pertinent to note that a bill for the creation of a maritime security agency was before the House Committee on Marine Transport in 2010. But surprisingly, this idea was jettisoned for a concessioning partnership with GWVSL, a private firm. The implication of government action then was aptly described by Olawonle thus:

...with the militants manning the maritime domain from Lagos to Calabar, as allegedly envisaged, anything can happen to the nation's waterways. The security implication of this so called strategic concessioning partnership is grave, especially in the light of the current challenges in the nation's waterways. One is promptly tempted to ask: How could people who were once security risks to a nation's waterways secure such waterways? For some time, fear and anxiety has become a constant companion of people living in the coastal area of Bayelsa State, following upsurge of criminal activities in the sea. Pictures of gloom have gradually taken root in the minds of victims, and the inhabitants of the riverine communities located in Brass, Nembe, Southern Ijaw and Ekeremor Local Government Areas. Those who travel on these routes have their hearts in their mouths, due to the frightening security challenges along the waterways. The menace of the pirates has added another dimension to the problems bedeviling the coastline communities, as the criminality has become a daily occurrence on the high seas, plunging many families into deep sorrows, from either the loss or maiming of their loved ones.⁸⁸

⁸³Okafor and Olaniyan, *ibid.*

⁸⁴*Ibid.*

⁸⁵*Ibid.* See also Okumagba, 2019 *supra* note 4, where it canvassed ownership of petroleum between the Nigerian Government and host communities as a likely panacea to forestall further incidence of crude oil theft and petroleum pipeline vandalism.

⁸⁶Okafor and Olaniyan, *supra* note 75. See s. 2 of the Nigerian Oil and Gas Industry Content Development Act, 2010 (hereinafter the Nigerian Content Act).

⁸⁷See, s. 3 of Nigerian Content Act.

⁸⁸See, Olawonle, *supra* note 30.

The maritime security agency was to be made up of coastal guards to be drawn from various agencies of government related to maritime functions. It was intended also to compliment the efforts of Nigerian Navy, who are trained for combat missions etc.⁸⁹ Although, this novel idea has received its own backlash,⁹⁰ under the present circumstance, an agency of this nature will surely be a welcome idea, especially with recent reports above confirming Nigerian military involvement in crude oil theft.

Unification of Pipelines Surveillance Related Legislation

There are currently a plethora of laws⁹¹ regulating the offence of crude oil theft and petroleum pipeline vandalism in Nigeria. In addition to the suggestion of the creation of a single maritime agency charged with the responsibility of monitoring and preventing pipeline vandalism, there is the need for an all-encompassing law to deal with this issue of security of oil pipelines squarely. This law should also contain detailed provisions on oil pipeline security and provide for the proposed agency to implement the provisions of this law religiously. The law should also harmonize the punishments for violating the security of pipelines as contained in several other laws in Nigeria.⁹² The views expressed above have further justification from the remark of Okafor and Olaniyan thus:

...this was the approach that government used to deal with corruption when it created the Economic and Financial Crimes Commission (EFCC) and Independent Corrupt Practices Commission (ICPC). Top officers of these agencies were recruited from the police, customs and similar security formations in the country. This approach will ensure proper coordination of efforts and the sharing of intelligence to deal with every kind of sabotage of the oil infrastructure in a single legislation (emphasis mine).

In addition, the demand for the creation of a special court to try cases of crude oil theft and petroleum pipeline vandalism in Nigeria predates this paper.⁹³ However, it is pertinent to state creating such a court via constitutional means may be herculean considering the challenges to constitutional amendments in Nigeria.⁹⁴ While the argument for special court is presumed tenable, the Federal High Court⁹⁵ is saddled with the responsibility of trying cases relating to federal offences which includes petroleum pipeline vandalism and crude oil theft. It exercises

⁸⁹Ibid.

⁹⁰See M. Igbokwe, "The Maritime Security Agency (Establishment Etc) Bill 2017: Why the Bill should not be Passed into Law" being Memorandum Submitted To The House Committee On Maritime Safety, Education And Administration At The Public Hearing on The Maritime Security Agency (Establishment Etc) Bill 2017 Held at The National Assembly On 24 July 2018. Available at: <<https://mikeigbokwe.com/wp-content/uploads/2018/07/MARITIME-SECURITY-AGENCY-BILL-2017.WHY-IT-SHOULD-NOT-BE-PASSED.pdf>> Accessed 12 November 2022. He cited the duplication and multiplicity of government agencies as one the reasons for the opposition of the Bill.

⁹¹See Okumagba, 2021, *supra* note, 4.

⁹²See, Okafor and Olaniyan, 75.

⁹³See, M. Abubakar, 'NEC Canvasses Special Courts to Prosecute Oil Thieves' in The Guardian Newspaper Nigeria (20 May 2016): <<https://guardian.ng/news/nec-canvasses-special-court-to-prosecute-oil-thieves/>> Accessed 15 September 2021, where the National Economic Council (NEC) headed by the Vice President of Nigeria considering the committee's report adopted the recommendation of the committee. See also T. A. Ogunleye, 'Establishing Oil Theft and Other Related Crimes Tribunal for Speedy Trial: Legal Issues and Challenges' (2021) 21 (4) *Journal of Humanities and Social Sciences*, 21, and O. K. Anaabo and E. O. Ekhaton, 'Realising Substantive Rights to Healthy Environment in Nigeria: A Case for Constitutionalisation' (2015) 17 (2) *Environmental Law Review*, 82 at 96-97, equally recommended the creation of a special environmental court in Nigeria to focus on environmental rights and ancillary issues amongst others.

⁹⁴E. O. Ekhaton, 'Public Regulation of the Oil and Gas Industry in Nigeria: An Evaluation' (2016) 2 (1) *Annual Survey of International & Comparative Law*, 21, at 43.

⁹⁵See s. 251 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) 2011.

jurisdiction to the exclusion of any other court over nineteen items which includes election petition cases at the federal level. Apart from having similar functions and composition of the Federal High Court, the special court will operate as a division of the Federal High Court but rather than dealing with array of subject matters typical of the Federal High Courts, the special court will try only cases relating to petroleum pipeline vandalism and crude oil theft as the case may be.⁹⁶ This will also have the additional benefits of reducing delays in trial due to prolonged adjournments, destruction of exhibits by arresting government agencies, delays in the assignment of cases, as well as delays in carrying out test on petroleum products by the appropriate government agency.⁹⁷ Alluding to the above, Ogunleye observed that the creation of a special court will be further enhanced by the provisions of the Administration of Criminal Justice Act, 2015 (ACJA),⁹⁸ which seems to have addressed some of the challenges relating to trial of persons deemed to have committed the offence of tampering and stealing of crude oil and vandalizing petroleum pipelines mentioned above.

VII. Conclusion

The activities of crude oil theft and petroleum pipeline vandalism have become the biggest threat to the Nigerian economy and environment. The loss of over \$10 Billion in seven months together with the indelible mark left by the activities of vandals on the immediate environment calls for solutions beyond what is provided in existing legal frameworks. Pipeline surveillance contracts have emerged as one of the measures to promote petroleum pipeline security in Nigeria. The award of pipeline surveillance contract to host communities' contractors gives credence to the needed community participation which has brought about shocking revelations and complicity on the part of top government officials, MOCs, and the Nigerian military's involvement in crude oil theft and petroleum pipeline vandalism. The sample pipeline surveillance contract by the SPDC adumbrated above is inclusive to support job creation for host communities personnel involved in crude oil theft and pipeline vandalism thereby reducing the incidence of crude oil theft and pipeline vandalism in Nigeria. It is therefore submitted that the use of pipeline surveillance contracts to monitor petroleum pipelines within oil producing communities in Nigeria and other measures to promote petroleum pipeline security have proved to be more effective in recent time in the face of existing legal frameworks for the prevention of crude oil theft and petroleum pipeline vandalism in Nigeria considering the loss to Nigeria's economy and the environment.

References:

a. Books

- Atsegbua, Lawrence, *Oil and Gas Law in Nigeria: Theory and Practice* 4th Ed. (Four Pillars Publishers, 2021) 277-278.
- Hakim, Simon, Albert, Gila and Shiftan, Yoram, Eds *Securing of Transportation Systems* (Wiley, 2003) 287.
- Okumagba, O Edward, "Niger Delta Development and the Role of Government Intervention Agencies: The Need for Alternative Legal Approach" in *Readings in Law and Policy: Current Issues and Trends. In Commemoration of the Golden Jubilee of Rivers State 1967-2017* (Rivers State University of Science of Technology, 2017) 586 at 593-600.
- Parfomak, W Paul, *Keeping America's Pipelines Safe and Secure: Key Issues for Congress* (CRS Report for Congress, December 13) 3.
- Schaefer, Agnes, Bahney, Benjamin and Riley, K Jack, *Security in Mexico: Implications for U.S. Policy Options* (Rand Corporation, 2009) 17.
- Tricker, Bob and Tricker, Gretchen, *Business Ethics: A Stakeholder Governance and Risk Approach* (Routledge, 2014) 94.

⁹⁶For instance, the Lagos State Chief Judge in 2007 created the Lagos State Family Court after the passage of the Child's Right Act, a Federal legislation, dealing with issues and matters relating to the child's legal rights, interests, claims and obligations owed to the child amongst others. See B. Ramos, 'Assessing the Civil Jurisdiction of the Lagos State Family Court' (2018) DNL Legal & Style Nigeria <<https://dnllegalandstyle.com/2018/assessing-the-civil-jurisdiction-of-the-family-court-of-lagos-state-bolaji-ramos/>> Accessed 15 November 2022.

⁹⁷See, Ogunleye, supra note 93.

⁹⁸See also s. 396 (3) (4) (5) and (6) of the Administration of Criminal Justice Act, provides for day to day trial of a defendant upon arraignment, and where day to day trial is impracticable, no party shall be allowed more than five adjournments amongst others.

b. Articles in Journals

- Adibe, Raymond, Nwagwu Ejikeme and Albert Okorie, "Rentierism and Security Privatization in the Nigerian Petroleum Industry: Assessment of Oil Pipeline Surveillance and Protection Contracts" *Review of African Political Economy* 156, no. 45 (2018): 353-354.
- Anaebo. Onyenka and Ekhaton, Eghosa O, "Realising Substantive Rights to Healthy Environment in Nigeria: A Case for Constitutionalism" *Environmental Law Review* 17, no. 2 (2016).
- Chika, C and Ndid, A F, "Illegal Oil Bunkering Sabotage and Vandalism in Niger Delta Area of Nigeria" *Academic Journal of Current Research* 9, no. 9 (2022).
- Ekhaton, Eghosa O, "Public Regulation of the Oil and Gas Industry in Nigeria: An Evaluation" *Annual Survey of International & Comparative Law* 21, no. 1 (2017):43.
- Eze. Johnson, "Integrated Oil and Gas Pipeline Monitoring and Incident Mitigation Systems Framework" Being a Thesis Submitted in Partial Fulfillment of the Requirements of the University of Wolverhampton for the Degree of Doctor of Philosophy (2017).
- Febaide, Isaac and Uzedhe, Godwin, "Pipeline Control Systems: A Review of Surveillance Methods and Applications in the Nigerian Oil and Gas Sector" *Journal of Science Technology and Education* 9, no. 3 (2021).
- Gasiokwu, P. I. "Appraising Applicable Laws on Waste Management in Nigeria" (2022) 8 *Commonwealth Law Review Journal*.
- Gasiokwu, P. I. "Appraising the Rights to Acquire and Own Immovable Property in Nigeria and South Africa" (2022) 25 (6) *Journal of Legal, Ethical and Regulatory Issues*, 1-10.
- Ogunleye, Taiwo Adebola, "Establishing Oil Theft and Other Related Crimes Tribunal for Speedy Trial: Legal Issues and Challenges" *Journal of Humanities and Social Sciences* 21, no. 4 (2021): 21
- Okafor, Amalachukwu and Olaniyan, Ayobami, "Legal And Institutional Framework For Promoting Oil Pipeline Security in Nigeria" *Afe Babalola Journal of Sustainable Development Law and Policy* 17, no. 2 (2017).
- Okumagba, O Edward, "Oil and Gas Pipeline Vandalism in Nigeria: Analyzing Alternative Options Beyond the Traditional Legal Approach" *International Energy Law Review* 37, no. 7 (2019).
- Okumagba, O Edward, "A Critical Analysis of Laws and Policies for the Prevention of Petroleum Pipeline Vandalization in Nigeria" *Environmental Law Review* 23, no. 4 (2021).
- Olujobi, Olushola J, Olarinde, Elizabeta S and Yebisi, Tunde, "The Conundrums of Illicit Crude Oil Refineries in Nigerian and Its Debilitating Effects on the Nigerian Economy: A Legal Approach" *Energies* 15, no. 17 (2022).
- Oluyemi, Opeoluwa Adisa, "The Military Dimension of the Niger Delta Crisis and Its Implications on Nigerian National Security" *SAGE Journals* 10, no 2.
- Onwuka, Emmanuel and Dike, Onwubiko N, "Effects of Surveillance on Oil Pipeline Vandalism in the Downstream Sector Nigeria" *European Journal of Business and Social Sciences*, 4, no 3 (2015).
- Romsom Etienne, "Global Oil Theft: Impact and Policy Response" *Wider Working Paper*, 16 (2022).
- Wizor, Collins H and Wali, Elekwachi, "Crude Oil Theft in the Niger Delta: The Oil Companies and Host Communities Conundrum" *International Journal of Research and Scientific Innovations* 7, no. 1 (2020).
- Yuhana, Kefas, Sunday Olumide Adewale, Abraham Ayegba Alfa and Misra Sanjay "An Exploratory Study of Techniques for Monitoring Oil Pipeline Vandalism" *Covenant Journal of Engineering Technology* 1, no. 1 (2017).

c. Legislation

- Administration of Criminal Justice Act, 2015
- Company and Allied Matters Act, Laws of Federation of Nigeria 2004
- Nigerian Oil and Gas Industry Content Development Act, 2010
- Miscellaneous Offences Act, Laws of Federation of Nigeria 2004
- Petroleum Industry Act, 2021
- Petroleum Production and Distribution (Anti-Sabotage) Act, Laws of Federation of Nigeria 2004.

d. Online Newspapers

- Abubakar, Mohammed, "NEC Canvasses Special Courts to Prosecute Oil Thieves" *Guardian Newspaper Nigeria* (20 May 2016): <https://guardian.ng/news/nec-canvasses-special-court-to-prosecute-oil-thieves/>.
- Amaize, Emma, "Oil Theft: How Security Operatives, Government Officials Run Bunkering Cartel" *Vanguard Newspaper Nigeria* (27 August 2022): <https://www.vanguardngr.com/2022/08/oil-theft-how-security-operatives-govt-officials-run-bunkering-cartel/>.
- Eboh Michael, "Nigeria Earned, and Squandered N77 Trillion Oil Revenue in 17 Years" *Vanguard Newspaper Nigeria* (5 September 2022): <https://www.vanguardngr.com/2017/09/nigeria-earned-squandered-n77trn-oil-revenue-17-years/>.
- Elumoye, Deji, Addey, Emmanuel and Orizu, Udora, "Presidency: We Will Soon Reveal Those behind Crude Oil Theft in Nigeria" *This Day Newspaper Nigeria* (August 2022): <https://www.thisdaylive.com/index.php/2022/08/21/presidency-well-soon-reveal-those-behind-crude-oil-theft-in-nigeria/>.
- Jeremiah, Kingsley, "Why we gave Pipeline Protection Contract to OMS, by NNPC" *Guardian Newspaper Nigeria* (5 December 2018): <https://guardian.ng/energy/why-we-gave-pipeline-protection-contract-to-oms-by-nnpc/>.

- Olawonle, Ajayi, "Maritime Concessioning Partnership: A Dangerous Contract with Grave Apprehension" Sahara Reporters Newspaper. 1 March 2012: <http://saharareporters.com/2012/03/01/maritime-concessioning-partnership-dangerous-contract-grave-apprehensions-ajayi-olawonle>.
- Shreeves, J L "Science and Technology: The Enemy Within" The Independent London, UK, May 31 2006.
- Ramos, Bolaji, "Assessing the Civil Jurisdiction of the Lagos State Family Court" DNL Legal and Style Nigeria: <https://dnllegalandstyle.com/2018/assessing-the-civil-jurisdiction-of-the-family-court-of-lagos-state-bolaji-ramos/>.
- Ujah, Emma, "Why we Awarded Waterways Contract to Tompolo-FG" Vanguard Newspaper Nigeria (20 March 2012).
- Ukwuosa, Emeka, "How to Tackle Pipeline in Nigeria" Guardian Newspaper Nigeria (6 June 2016) <https://guardian.ng/business-services/how-to-tackle-pipeline-vandalism-in-nigeria-by-ukwuosa/>.
- Yusuf, K.abir, "Analysis: How Broke Nigeria Lost \$10 Billion to Crude Oil Theft in Seven Months" Premium Newspaper Nigeria (8 September 2022) <https://www.premiumtimesng.com/news/headlines/552781-analysis-how-broke-nigeria-lost-10-billion-to-crude-oil-theft-in-seven-months.html>.

e. Internet Sources

- British Statistical Review of World Energy Report 2022: <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/statistical-review/bp-stats-review-2022-full-report.pdf>.
- Igbokwe, Mike, "The Maritime Security Agency (Establishment Etc) Bill 2017: Why the Bill should not be Passed into Law" Being a Memorandum Submitted to the House of Representative Committee on Maritime Safety, Education And Administration at the Public Hearing on The Maritime Security Agency (Establishment Etc) Bill 2017 held at The National Assembly 24 July 2018. (<https://mikeigbokwe.com/wp-content/uploads/2018/07/MARITIME-SECURITY-AGENCY-BILL-2017.WHY-IT-SHOULD-NOT-BE-PASSED.pdf>).
- The Business News Report "Amaechi, Dakuku in Trouble over N70.2 Billion Maritime Security Contract as Buhari Cancels Deal" The Business News Nigeria (4 June 2018) <https://www.businessnewsreport.com.ng/amaechi-dakuku-in-trouble-over-n70-2bn-maritime-security-contract-as-buhari-cancels-deal/>.
- The International Crisis Group Report, "Curbing Violence in Nigeria III: Revisiting the Niger Delta" 2015 Africa Report No. 23: https://www.ecoi.net/en/file/local/1245530/1226_1443530552_231-curbing-violence-in-nigeria-iii-revisiting-the-niger-delta.pdf.
- The Report of the Senate of the Federal Republic of Nigeria Endorsing the Award of Pipeline Surveillance Contract to Tompolo in Vanguard Newspaper Nigeria (22 November 2022): <https://www.vanguardngr.com/2022/11/senate-endorses-nnpcl-pipeline-surveillance-contract-to-tompolo/>.
- The Street Journal, "NNPC Terminates Ex-Militants, OPC Pipeline Surveillance Contracts" Online Street Journal: <http://thestreetjournal.org/2015/06/nnpc-terminates-ex-militants-opcs-pipeline-surveillance-contracts/>.
- The Transportation Security Administration, "Office of Intelligence, Pipeline Threat Assessment" January 18 2011.