

**DESTRUCTION OF ARTISANAL (ILLEGAL) REFINERIES IN NIGERIA: AN  
ANALYSIS OF A POSSIBLE CONFLICT WITH PRINCIPLES OF RULE OF LAW  
BY**

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**ABSTRACT**

*Primarily, laws are made to regulate the activities of man in a given society, the violation of which attracts sanctions. Accordingly, Laws and Rules are put in place for the purpose of exploration and refining of oil in order to maintain international best practices, with environmental protection in utmost view. In this wise, Nigerian laws and rules (like the Petroleum Act, Hydrocarbon Oil Refineries Act, and the Rules made pursuant thereto) are enacted to ensure that in oil refining operations, certain standards are met culminating into the issuance of licenses. To operate a refinery in Nigeria, otherwise than in accordance with the extant laws is therefore a crime punishable as stipulated by those laws.*

*It is however, not uncommon today to hear and/or see on the news that security operatives have destroyed (burnt) cites used as refineries albeit, in contravention of the laws and rules.*

*This Paper examines the legal implication of the act of destroying artisanal (illegal) refineries vis-à-vis the rule of law and concludes that, to punish a person violating laws guiding the operation of refineries in Nigeria other than in accordance with the law itself, is a fundamental breach of the rule of law capable of breeding anarchy. This conclusion is hinged on the fact that the penalties prescribed by law for operating illegal refineries does not include destroying (setting ablaze) such refineries.*

**KEY WORDS: ARTISANAL/ILLEGAL REFINERIES; DESTRUCTION; RULE OF LAW**

**INTRODUCTION**

Over the years, the Military's Joint Task Force established by Nigerian Government have advocated for a total clamp down on the illicit activities of artisanal refinery operators and their collaborators. It is not surprising today to note that media are awash with reports of the relative "successes" of the JTF in Rivers, Bayelsa, Delta States among others, regarding the destruction of several illegal refineries.<sup>1</sup>

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<sup>1</sup> For instance: "We Destroyed 10 Illegal Refineries In Three States – NSCDC" available at <http://www.informationng.com/2015/09/we-destroyed-10-illegal-refineries-in-three-states-nscdc.html> accessed 19/11/2015; "Navy Destroys 7 Illegal Refineries In Warri" available at <http://www.informationng.com/2015/06/navy-destroys-7-illegal-refineries-in-warri.html> accessed 19/11/2015; "JTF Reviews Activities In N/Delta, Says 1,857 Suspected Oil Thieves Arrested, 1,951 Illegal Refineries Destroyed In 2013" available at <http://www.informationng.com/2013/12/jtf-reviews-activities-in-ndelta-says-1857-suspected-oil-thieves-arrested-1951-illegal-refineries-destroyed-in-2013.html> accessed 19/11/2015; Channels Television, "Navy

The pertinent question that has gone unanswered is on the legality or otherwise of the much touted destructions carried out by the JTF having regards to the modus operandi.

According to Obende and Amangbara “artisanal refining is the process of procuring stolen crude oil and refining them in the so-called ‘bush’ refineries with the use of local resources and skills (drawing on the indigenous technology used to distil locally brewed gin – ogogoro or kaikai). The basic materials typically involves rudimentary illegal stills – often metal pipes and drums welded together – in which crude oil is boiled and the resultant fumes are collected, cooled and condensed in tanks to be used locally for lighting, energy or transport.”<sup>2</sup>

It goes without saying that, there are legal frameworks governing the operations of oil refining industry in Nigeria. These comprises of primary sources such as Constitution of the Federal Republic of Nigeria, 1999 (as amended),<sup>3</sup> Petroleum Act,<sup>4</sup> and the Hydrocarbon Oil Refineries Act.<sup>5</sup> Secondary sources consist of subsidiary rules and regulations made pursuant to the above primary sources.<sup>6</sup>

This paper examines the propriety or otherwise of the operations carried out by the Nigerian authorities through the JTF insofar as it relates to destruction of these illegal refineries in the light of these extant laws and regulations. In achieving this objective, the paper seeks to analyse

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Destroys Illegal Refinery In Nigeria’s South-south Region” Updated on August 15, 2015 available at <http://www.channelstv.com/2015/08/16/navy-destroys-illegal-refinery-in-nigerias-south-south-region/> accessed 19/11/2015; etc.

<sup>2</sup> Obende, M., and Amangabara, G.T., “Perspective: The Environmental Implications of Oil Theft and Artisanal Refining in the Niger Delta Region”, *Asian Review of Environmental and Earth Sciences Vol. 1, No.2, August 2014*, Pp. 25-29:26. Published by Asian online Journal Publishing Group URL: [www.asianonlinejournals.com](http://www.asianonlinejournals.com)

<sup>3</sup> Which is the grundnorm by virtue of Section 1(3) thereof. For instance, section 44(3) of the Constitution provides that “notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.”

<sup>4</sup> Cap P10, Laws of the Federation of Nigeria (LFN), 2004.

<sup>5</sup> Cap H5, Laws of the Federation of Nigeria (LFN), 2004 (hereinafter referred to as HORA).

<sup>6</sup> See sections 9(d) & 28 of the Petroleum Act and Hydrocarbon Oil Refineries Act respectively which empowers the Minister of Petroleum Resources to make Regulations for diverse reasons.

the legal frameworks identified above with a view to ascertaining the extent of its conflict with the rule of law and practices on oil refinery operations in Nigeria.

At the end of the study, this paper concludes with relevant findings and proffers recommendations which would be of immense significance to Nigerian Government, policy makers and relevant stakeholders in the oil industry in the search for a lasting solution to the legal issues and problems of artisanal refining in Nigeria.

### **LEGAL FRAMEWORK FOR OIL REFINERY OPERATIONS IN NIGERIA**

This section examines the legal frameworks for oil refinery operation in Nigeria. The following headings will be discussed in this sub-topic, namely:

- a) Petroleum Act, Cap P10, Laws of the Federation of Nigeria (LFN), 2004;
- b) Hydrocarbon Oil Refineries Act, Cap H5, Laws of the Federation of Nigeria (LFN), 2004; and,
- c) Petroleum Refining Regulations of 1974.

Each of these will now be considered seriatim:

#### **The Petroleum Act:**

The Petroleum Act provides that “No refinery shall be constructed or operated in Nigeria without a license granted by the Minister” and further that “the provisions of this section are additional to the provisions of the Hydrocarbon Oil Refineries Act.”<sup>7</sup> Consequently, by section 13(2)(a) and (4)(a) & (b) of the Petroleum Act, any person who constructs or operates a refinery in Nigeria without a licence granted by the Minister shall be guilty of an offence and shall be liable on

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<sup>7</sup> See section 3(1) and (4) thereof.

conviction to a fine not exceeding ₦2,000 and the Court may order the petroleum products to be forfeited or order the person to pay to the Minister the value of the petroleum products.

### **The Hydrocarbon Oil Refineries Act:**

The Hydrocarbon Oil Refineries Act states that “subject to the provisions of this Act, no person shall refine any hydrocarbon oils save in a refinery and a license issued under this Act...”<sup>8</sup>

The consequence of contravening this Act is captured in section 7(1) and (2) as follows: “any person who refines hydrocarbon oils in contravention of the provisions of section 1 of this Act shall be guilty of an offence, and shall be liable – (a) on summary conviction, to a fine of not less than four hundred naira or more than two thousand naira or to imprisonment for a term of two years, or to both; (b) on conviction on indictment, to a fine of an unlimited amount or to imprisonment for a term not exceeding five years, or to both. (2) any hydrocarbon oils in respect of the refining of which a person is convicted of an offence under this section shall be liable to forfeiture.”

### **The Petroleum Refining Regulations**

The Minister of Petroleum Resources is empowered by law to make Regulations to among other things; regulate refineries and refining operations.<sup>9</sup> Furtherance to this powers, the Minister, over the years has made Regulations among which is the Petroleum Refining Regulations of 1974, in order to ensure refinery construction, operations and maintenance are carried out in accordance

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<sup>8</sup> See section 1 thereof.

<sup>9</sup> See sections 9(d) & 28 of the Petroleum Act and Hydrocarbon Oil Refineries Act respectively.

with international standards<sup>10</sup> so as to safeguard the environment and consequently, the life of people in such environment.

Refineries, by this Regulations, are also meant to constitute restricted areas, where fire and safety regulations are observed<sup>11</sup> and before any plant installation or related facility under the refinery licence is to be constructed, the requisite approval must be sought by presenting the design specifications, purpose of construction and location of the facility, etc. to the Director, an agent of the Minister.<sup>12</sup> Even the manner of disposing residues, sludges, rusts, etc. from refining site are expressly provided for in order to ensure the safety of the environment and the people on it.<sup>13</sup> More importantly, the Petroleum Refining Regulations, in its Regulation 43 provides for refining effluent and drainage disposal method. What is more, in Regulation 45, contravention of the Regulations is criminalized and sanctioned accordingly in a manner akin to those of the principal enactments.

### **CONSTITUENTS OF AN ARTISANAL (ILLEGAL) REFINERY**

From the legal framework examined above, for a refinery to be deemed illegal, it must be one constructed and/or operated without first seeking and obtaining a license under the Petroleum Act for that purpose.<sup>14</sup>

Clearly from all of the above is the fact that the law proscribes construction and operation of refineries without licence as well as providing for the sanctions for contravention upon conviction by a court of competent jurisdiction. What is even clearer here is the fact that the law envisages the process of criminal trial and then conviction and punishment by a competent court.

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<sup>10</sup> See Regulation 7 thereof.

<sup>11</sup> Regulations 8 & 10 of the Petroleum Refining Regulations.

<sup>12</sup> See Regulation 23 of the Petroleum Refining Regulations.

<sup>13</sup> See Regulation 27 of the Petroleum Refining Regulations.

<sup>14</sup> See sections 3 and 1 of the Petroleum and Hydrocarbon Oil Refineries Act respectively.

One thing is certainly not in doubt from the analysis of the legal framework on refinery construction and operations in Nigeria: the law prescribes the punishment to be meted out to offenders only when they have gone through the criminal proceedings and found guilty, then they are accordingly sentenced. Further, setting ablaze an artisanal refinery is obviously not one of the available sanctions by law.

### **COURT WITH JURISDICTION OVER MATTERS ARISING FROM THE CONSTRUCTION AND OPERATION OF ARTISANAL REFINERIES**

Even though it appears that both the Petroleum Act and the Hydrocarbon Oil Refineries Act have no specific provision for the court with jurisdiction to try offences under the Acts, recourse can be made to section 251(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The said section vests exclusive jurisdiction on the Federal High Court on several matters including mines and minerals (which includes oil fields, oil mining, geological surveys and natural gas).<sup>15</sup>

What is more, by section 251(3) of the said Constitution, the Federal High Court shall also have and exercise jurisdiction and powers in respect of criminal causes and matters in respect of which jurisdiction is conferred by subsection 1.

According to Obende and Amangbara:

artisanal refining is the process of procuring stolen crude oil and refining them in the so-called 'bush' refineries with the use of local resources and skills (drawing on the indigenous technology used to distil locally brewed gin – ogoro or kaikai). The basic materials typically involves rudimentary illegal stills – often metal pipes and drums welded together – in which crude oil is boiled and the

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<sup>15</sup> See section 251(1)(n) of the Constitution.

resultant fumes are collected, cooled and condensed in tanks to be used locally for lighting, energy or transport.”<sup>16</sup>

The process of procuring the crude oil includes illegal oil mining and illegal operation on oil fields which falls within the purview of section 251(1) and (3) of the Constitution, bringing it within the jurisdiction of the Federal High Court for both civil and criminal causes.

Accordingly, therefore, the competent court of jurisdiction over matters of construction and operation of artisanal (illegal) refineries is the Federal High Court.

### **DESTRUCTION OF ARTISANAL REFINERIES: CONFLICT WITH RULE OF LAW?**

An examination of the concept of rule of law is apposite at this juncture. Black’s Law Dictionary defines the rule of law as “a legal principle of general application, sanctioned by the recognition of authorities, and usually expressed in the form of a maxim or logical proposition called a “rule” because in doubtful or unforeseen cases it is guide or norm for their decision. The rule of law, sometimes called the supremacy of law provides that decision should be made by the application of known principles of laws without the intervention of discretion in their application.”<sup>17</sup>

It is that aspect of law which prefers a system of government where activities are patterned according to laws that guarantee a good degree of objectivity in dispensing justice, defending freedom, promoting peace and prosperity because law is a reasonable expression of integrity.<sup>18</sup>

The idea is such that “if law is an obligatory rule of action prescribed by the supreme power of a state, then the rule of law means that every citizen shall not be exposed to the arbitrary desire of the ruler and that the exercise of the powers of government shall be conditioned by law. No one

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<sup>16</sup> Obende, M., and Amangabara, G.T., “Perspective: The Environmental Implications of Oil Theft and Artisanal Refining in the Niger Delta Region”, *Asian Review of Environmental and Earth Sciences* Vol. 1, No.2, August 2014, Pp. 25-29:26. Publish by Asian Online Journal Publishing Group URL: [www.asianonlinejournals.com](http://www.asianonlinejournals.com)

<sup>17</sup> Garner, B.A. *Black’s Law Dictionary*, 8<sup>th</sup> Edn. (St. Paul, Minnesota: West Publishers, 2004) Pp. 1359-1360.

<sup>18</sup> John, E.O. “The Rule of Law in Nigeria: Myth or Reality” *Journal of Politics and Law* Vol. 4, No. 1; March 2011, p.211. see also Onwanibe, R. C. “The Rule of Law and the Rule of Man” in O. C. Eze (Ed.). *Society and the Rule of Law*. (Owerri: Totan Publishers, 1989) Pp. 171-189.

can be lawfully restrained or punished except for a definite breach of law established before the courts in ordinary legal manner”.<sup>19</sup>

According to Nwabueze, rule of law envisages a situation where the law rules or reigns supreme and a situation where everything is done in accordance with the law and not rule of arbitrariness.<sup>20</sup> The concept as practiced in democracies where despotism or dictatorship is not in vogue, means that “the citizens in relationship amongst themselves *inter se* and with the government bodies and their agencies shall be beholden unto the law which shall not be ignored by anyone except at his peril, and if by the government, this will promote anarchy and executive indiscipline capable of wrecking the organic framework of the society”.<sup>21</sup> Rule of law “is a way of preventing the abuse of discretionary power” and “it accords with the dictates of reason that the court should use its awesome power to make the government of the day rule by principles recognized in civilized societies and bound by the pronouncements of the courts.”<sup>22</sup>

In *Governor of Lagos State v. Ojukwu*,<sup>23</sup> the Supreme Court per Oputa, JSC (as he then was) conceptualized rule of law thus:

The rule of law presupposes that the state is subject to the law, that the judiciary is a necessary agency of the rule of law, that the Government should respect the right of individual citizens under the rule of law and that to the judiciary, is assigned both by the rule of law and by our constitution the determination of all actions and proceedings relating to matters in disputes between persons, Governments or authority.

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<sup>19</sup> John, E.O. *Ibid.* See also John, E.O., “Social and Political Philosophy” in U. Etuk (Ed.). *Introduction to Philosophy and Logic*. (Uyo: Afahaide and Sons Publishers, 1999), Pp. 52-61.

<sup>20</sup> Nwabueze, B. *How President Obasanjo Subverted the Rule of Law and Democracy*, (Gold Press Ltd., 2007) Pp.3-8. See also Akanbi, M.M., “Rule of Law in Nigeria”, *Journal of Law, Policy and Globalization* Vol.3, 2012, p.1.

<sup>21</sup> Pats – Acholonu (J.C.A), “Threats to the Jurisdiction of the Court and the Rule of Law in Nigeria”, In All Nigeria Judges Conference Papers, (Abuja: Federal Ministry of Justice, 1995), Pp.43-47. cited in Akanbi, M.M., “Rule of Law in Nigeria”, *Journal of Law, Policy and Globalization* (ISSN 2224-3259 (Online)), vol.3, 2012, p.1.

<sup>22</sup> *Ibid.*

<sup>23</sup> (1986) 1 NWLR(Pt 18), 621 at 647.

“The doctrine of Rule of Law is one of the pillars upon which true democracy and good governance is established upon.”<sup>24</sup> The summary of the rule is that every person and/or authority is equal before the law and must act in accordance with the dictates of the law at all times. It is even such that, failure, particularly on the part of the government, to operate within the tenets of the law is capable of creating anarchy. Suffice it to say that, in the Oil Refinery Industry, like other spheres of life and governmental activities in Nigeria, more precisely, where there are laws, rules and regulations for such activities, then they must be conducted in accordance with those laws, rules and regulations otherwise, it will be a case of arbitrary government.

From the provisions of the Law examined earlier, it is apt to state that any place or facility used for the purpose of refining oil but without the requisite license is an illegal refinery. It is not illegal merely because it is artisanal, it is illegal because it is constructed and operated in contravention of the law. The provisions of the law are necessary in order to curb the potentially devastating environmental effect unregulated refining of oil can cause, in that it poses a huge threat to the living environment, the health of the operators and the safety of the people living in and around the environment where it is conducted.<sup>25</sup>

Hence, to determine whether a refinery is legal or otherwise, it must first be established that the operation is without the lawful license envisaged by sections 3 and 1 of the Petroleum Act and the Hydrocarbon Oil Refineries Act respectively. Assuming that this first hurdle is usually crossed in the apprehension of the operators of illegal refineries across the country, the next hurdle is: what is expected by law to be done in the circumstance?

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<sup>24</sup> Akomodele, I.T., “Good Governance, Rule of Law and Constitutionalism in Nigeria”, *European Journal of Business and Social Sciences*, Vol. 1, No. 6, September 2012, Pp. 69 – 85:73.  
Available at <http://www.ejbss.com/recent.aspx>

<sup>25</sup> Ikanone, G., et al., *Crude Business: Oil Theft, Communities and Poverty in Nigeria*, (Port Harcourt: Social Development Integrated Centre, 2014), p. 39.

By the way, the penalty of fine prescribed by both the Petroleum Act and the Hydrocarbon Oil Refineries Act<sup>26</sup> leaves so much to be desired and goes to show how archaic our laws can be and how our legislature is hardly interested in updating our laws to meet current realities.

An act or omission becomes an offence where there is a laid down law(s) prohibiting same and prescribing punishment for violators.<sup>27</sup> There is no gain saying therefore that constructing and operating a refinery without the requisite licence of the Minister is an offence. However, can offenders be brought to justice other than as prescribed by the law? We answer emphatically in the negative.

What then is the proper procedure for punishing violation of both the Petroleum Act and the HORA? We hold the view, most humbly that it involves investigation, arrest, detention, prosecution before a competent court, conviction and sentencing. Anything outside that is a gross violation of the rule of law.

Moreover, the law in Nigeria is that an accused person is presumed innocent until proven guilty.<sup>28</sup> It extends that to ascertain the legality or otherwise of a refinery, the whole process of criminal proceedings from arrest, trial, conviction and sentencing must be completed. Only then, can it be properly determined the status of such refinery. It is therefore, arguable that there is presumption of regularity until a refinery is proven to be illegal.

Another question that begs for an answer is: what is the punishment prescribed by law for constructing and operating a refinery without the requisite licence? A look at section 13(2)(a) and (4)(a) & (b) of the Petroleum Act together with section 7 of the HORA, reveals clearly the

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<sup>26</sup> Sections 13 and 7 respectively.

<sup>27</sup> See section 36(12) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). See also the case of *Ahoko v. Fagbemi*.

<sup>28</sup> See section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

sanction for persons found guilty of contravening the Acts ranging from imprisonments, payment of fines, and forfeiture of the petroleum products to the exclusion of setting ablaze such refinery found by the courts to be illegal. Punishment for offences must as well, be administered in accordance with the dictates of the law creating them in the first place.

The Supreme Court of Nigeria, in *Miscellaneous Offences Tribunal v. Okorafor*<sup>29</sup> held that:

Nigerian constitution is founded on the rule of law, the primary meaning of which is that everything must be done according to law. It means also that government should be conducted within the framework of recognized rules and principles which restrict discretionary powers.

For the umpteenth time, there is no gainsaying that it is illegal to operate a refinery in violation of the law, the law having laid down the manner (albeit inadequate) of curbing the activities of offenders must be followed *strictu sensu*. Doing anything other than following the law in the protection of the law is in itself illegal and in direct conflict with the principles of rule of law. To say the least, setting ablaze illegal refineries is akin to jungle justice!

It is equally worthy of note that oil fires may, depending on their size, locations and duration, create a serious threat to environmental and human health. They produce dense clouds of soot, liquid, aerosols, and gases with variable concentrations of particulate matter, metals, sulfur compounds and oxides of nitrogen – similar to typical constituents of smog. In general, smoke produced by burning unrefined petroleum or crude oil contains a mixture of gaseous and particulate compounds including carbon dioxide, carbon monoxide, sulfur dioxide, nitrogen oxides, volatile organic compounds, polycyclic aromatic hydrocarbons (PAHs), hydrogen sulfide, acidic aerosols, and soot. The elements and chemical compounds present in the smoke vary with the composition of the oil and factors related to how it is burned. Inhalation of the smoke particles, gases, and other components can cause acute or chronic health effects. Known

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<sup>29</sup> (2001) 18 NWLR (Pt 745) 310 at 327.

immediate health effects from inhaling large amounts of smoke and particulates are primarily respiratory, including coughing, wheezing, increased airway resistance, and respiratory infections. Toxic gases that can be found in oil-fire smoke-such as hydrogen sulfide and sulfur dioxide-can cause eye and nose irritation, decreased pulmonary function, and increased airway reactivity.<sup>30</sup>

Aside the fact that the destruction of illegal refineries is done in contravention of the law by the government itself, regard is never had to the consequences of oil fires (as a result of burning the illegal refineries) on the environment as well as human health. Need we be reminded that the environment in question is already subjected to all manner of degradation ranging from gas flaring to oil spillage among others?

## **CONCLUSION/RECOMMENDATION**

Granted, people operating refineries in contravention of the law are engaged in illegal activities and should be condemned (of course, in accordance with the law), however, what could be the explanation for law enforcement officers themselves “proudly” contravening the law? The questions are endless: do we pick and choose what laws, and how to obey them? Is the government really interested in the safety of our environment? In fact, is the government even aware of the dangers of oil fires on the environment and human health? When the law enforcement agents are the law breakers themselves, to whom do we run?

It is accordingly recommended that, all attempts at curtailing the activities of oil thieves/illegal refinery operators must be done at all times in accordance with the law and nothing less.

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<sup>30</sup> Minnesota Department of Health Fact Sheet “Health Concerns Associated with Oil Fires”, (St. Paul, Minnesota: Minnesota Department of Health, 2007), available at [www.health.state.mn.us](http://www.health.state.mn.us)

Offenders should be prosecuted and punishment laid down by the law be meted on them by the courts.

Also, there is urgent need to review the punishments for contravening the law on construction and operation of illegal refinery as contained in the extant laws, so as to make consequences of violation more dreaded hence, committing the offence becomes less attractive. This is because, the punishments are there were, can even encourage people to engage in the illicit activities considering the huge sums of money they could make from it only to merely pay a fine or be imprisoned for a few years.

Remarkably, the courts have discretion to order that fines be paid or imprisonment alone. The danger of such discretion on issues of monumental dimension as this is better imagined than experienced. An amendment and/or speedy passage of the Petroleum Industry Bill to include our suggestions here may be of immense help to the subject matter.