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National Institute for Legislative and Democratic Studies

Bill
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**NATIONAL INSTITUTE FOR LEGISLATIVE
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Preface

The idea of undertaking analysis/scrutiny of legislative proposals and making the report of such exercise available to the two chambers of the National Assembly was initiated in 2005 by the erstwhile Policy Analysis and Research Project (PARP), National Assembly. The primary objective of the exercise is to assist lawmakers with expert input into the conception, drafting and final passage of Bills. This pioneer initiative culminated in the production of the first edition of Bills Digest Series 1, No 1, 2007. With the establishment of the National Institute for Legislative and Democratic Studies (NILDS), the Institute is statutorily vested with the responsibility of performing this important legislative support activity. This edition of the Bill Digest initiated by the Department of Legislative Support Services (DLSS), is expected to furnish lawmakers, in a concise form, the essential expert evaluation/analysis/scrutiny of Bills in the course of undergoing the legislative process. Subjecting Bills to expert reviews and evaluations guarantee quality control of the legislative process, and ultimately promote legislative governance strengthening. The exercise is undertaken using certain technical templates including the background of the legislative proposal; comments on specific clauses contained in the proposal; existing legal order (to avoid duplication); cross-country experience from which lessons may be learnt in relation to the Bill; the recommendation made by the analyst; and conclusions to be drawn from the review/evaluation exercise.

This quarterly periodical will provide the legislature and other stakeholders with broad insight into the normative and empirical justifications for the passage or rejection of legislative proposals. The net benefit of the publication is therefore to assist law makers, their technical support aides and other stakeholders with a concise technical known-how about the legislative analysis and scrutiny process. The objective is to ensure that legislative proposals meet with the right quality before they are conceived and presented to the legislature. This edition is updated to include adequate references and materials to justify the position of the experts in their respective analysis. It is hoped that lawmakers, their technical support aides and other stakeholders will find the publication useful in the effort to promote the passage of quality legislation for the betterment of the country and its citizens, thereby strengthening the legislative governance process as a whole.

Professor Edoba B Omoregie

Editor-in-Chief, Bill Digest

Ag. Director

Department of Legislative Support Services

National Institute for Legislative and Democratic Studies

2019

Foreword

I am delighted to write the foreword to this edition of the Bill Digest, an initiative of the Department of Legislative Support Services, National Institute for Legislative and Democratic Studies (NILDS), the think tank organ of the National Assembly. The maiden edition of the Bill Digest was published in the year 2007 by the defunct Policy Analysis and Research Project (PARP) of the National Assembly which later metamorphosed into the NILDS through an Act. The publication was discontinued thereafter, even before NILDS came into being in 2011. It is therefore gratifying that this edition marks the rejuvenation of this important publication as part of the Institute's efforts to build legislative capacity in Nigeria through publication of technical manuals and periodicals of this kind, among its other legislative governance strengthening activities. I am pleased to note that the Institute is determined to sustain this publication on a quarterly basis.

As a matter of legislative practice and procedure worldwide, Bills undergoing the legislative process are usually subjected to scrutiny and analysis by experts, the results of which are published in periodicals. The exercise is aimed at assisting and providing the legislators with expert opinions on the rationale/justification of legislative proposals in the context of their likely social, financial and legal implications, among others; with insightful doctrinal, empirical and/or cross-country evidence. The publication of the Bill Digest fulfils one of the cardinal mandates of the NILDS to conduct quality research on legislative practice and procedure, and to have them published and disseminated to the legislature across the country and to other stakeholders. On this note, I commend Professor Edoba B Omoregie, Professor Yusuf Arowosaiye and the entire staff of the Department of Legislative Support Services for reviving the Bill Digest. I recommend the publication to legislators across the country, the general public and researchers whose work relate to the legislative process and practice.

Professor Abubakar Olarenwaju Sulaiman

Director General

National Institute for Legislative and Democratic Studies

National Assembly

Abuja

Preface

The idea of undertaking analysis/scrutiny of legislative proposals and the report of such exercise available to the two chambers of the National Assembly was initiated in 2005 by the erstwhile Policy Analysis and Research Project (PARP) of the National Assembly. The primary objective of the exercise was to provide expert input into the conception, drafting and final passage of Bills. This initiative culminated in the production of the first edition of the Bill Digest in 2007. With the establishment of the National Institute for Legislative and Democratic Studies (NILDS), the Institute is statutorily vested with the responsibility of performing this important legislative support activity. The Bill Digest initiated by the Department of Legislative Support Services is expected to furnish lawmakers, in a concise form, with expert opinions on the evaluation/analysis/scrutiny of Bills in the course of the legislative process. Subjecting Bills to expert reviews and evaluations is a key element of the legislative process, and ultimately promote legislative governance strengthening. The exercise is undertaken using certain technical guidelines: the background of the legislative proposal; comments on specific provisions in the proposal; existing legal order (to avoid duplication); cross-country evidence from which lessons may be learnt in relation to the Bill; the recommendations by the analyst; and conclusions to be drawn from the review/evaluation.

This quarterly periodical will provide the legislature and other stakeholders with broad insight into the normative and empirical justifications for the rejection of legislative proposals. The net benefit of the publication is to assist law makers, their technical support aides and other stakeholders with the technical know-how about the legislative analysis and scrutiny process. The objective is to ensure that legislative proposals meet with the right quality before they are conceived and presented to the legislature. This edition is updated with adequate references and materials to justify the position of the expert on the respective analysis. It is hoped that lawmakers, their technical support aides and other stakeholders will find the publication useful in the effort to promote the quality legislation for the betterment of the country and its citizens, thereby strengthening the legislative governance process as a whole.

Professor Edoba B Omoregie

Editor-in-Chief, Bill Digest

Ag. Director

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National Institute for Legislative and Democratic Studies

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ANALYSIS REPORT ON A BILL FOR AN ACT TO PROVIDE FOR THE PROHIBITION AND PREVENTION OF ELECTRICITY THEFT, THE VANDALISATION OF PUBLIC POWER INFRASTRUCTURE AND PROTECTION OF POWER COMPANY PERSONNEL AND OTHER RELATED MATTERS

Mohammed Amali*

Bill Number: SB 496

Sponsor: Senator Yahaya A Abdullahi

OBJECTIVES OF THE BILL

The Bill seeks to establish a legal and regulatory framework to:

- 1) Curb and deter illegal and unauthorized use of electricity by criminalising acts of electricity theft and vandalism;
- 2) Protect public power generation, storage, transmission, and distribution infrastructure;
- 3) Prescribe punishment, prosecution and conviction of any person found, on prosecution and conviction, to have engaged in willful and criminal damage to public power infrastructure, installation, equipment and facilities;
- 4) Protect and deter acts of hostile and violent attacks against power company personnel, by consumers, and or their privies.

SUMMARY OF THE BILL

The Bill is divided into four parts of 13 clauses as follows:

- Part 1 deals with the objectives and application of the Bill.
- Part 11 relates to the application of the Bill.
- Part 111 covers the protection of public power personnel and Infrastructure.
- Part 1Vrelates to offences and penalties generally.

*. LLB. LLM. PhD. BL. Bill and Legislative Drafting Division. Department of

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BACKGROUND

The use of power without a contract with the supplier amounts to electricity theft and this deliberate theft of electricity usually happen through various schemes.¹ Electricity theft creates a situation where power flows through the lines in an unusual manner, and this creates power surge, sag, swell, outages and system failures due to high loads which can also lead to greater possibility of fires and even explosions.² Electricity pilferage is an economic issue for electricity companies due to unbilled revenue for consumers who commit such actions. Given Nigeria's power generation and transmission deficit and the need to attract significant capital investments in order to improve availability, access and service delivery in the industry, the importance of the eradication of electricity theft cannot be overstated.

Electricity theft does not consist only of generated electricity being stolen- infrastructure theft is much more than just an inconvenience, and in fact, one of the biggest threats to uninterrupted and reliable electricity supply is the theft of electricity distribution infrastructure. As such, vandalism has been identified as the biggest challenge the power sector faces and consequently, the cause of poor power supply in Nigeria.³ The Nigeria Police Force recently disclosed that the Abuja Electricity Distribution Company (AEDC) lost over N500 Million between the months of January and October 2017 due to the

¹. These include direct connection to the overhead low-tension distribution cables, bypassing the meter so only a small load is connected to it while the rest are connected directly to the supply behind the meter or tampering with the meter to make its reading accurate. The use of smart meters that are able to send their status readings to a central server are easily outfoxed. The smart meter will only have records of the electricity passing through the network it is connected to if it is bypassed, or the connection is directly to the distribution line, the smart meter is unable to detect and report the anomaly.

². Olaleye Gbolahan Olaoluwa, (2017) "Electricity Theft and Power Quality in Nigeria," International Journal of Engineering Research and Technology, vol. 6, Issue 6

³. This was revealed by Godknows Igali, Permanent Secretary in the ministry of power at a budget defence before the Senate Committee on Power in 2015. <https://www.premiumtimesng.com/news/more-news/177056-vandalism-responsible-for-poor-electricity-supply-power-ministry.html>

activities of vandals in four states.⁴ Also, in an effort to improve the Power Holding Company of Nigeria (PHCN) infrastructure, the PHCN is stated to be accountable for more than 60% of blackouts in the country.⁵ There is, therefore, an intrinsic link between the availability of electricity to Nigerians and the availability of infrastructure. In view of this, there is the need to put a stop to the menace, in addition to the physical security protection of both the facilities and projects.

Section 214(1) of the Constitution of the Federal Republic of Nigeria (as amended) establishes the Nigeria Police Force with the primary duty for the protection of lives and property. In respect of public safety and public order as provided for in section 215 of the Constitution, the Inspector-General such directions with respect to maintenance of public safety and public order as he may consider necessary, and the Inspector-General shall comply with those directions and cause them to be carried out. From the foregoing, it does appear that the Police should not be limited to the protection of /and transgressions against Nigeria's (critical) infrastructure. The scope of the powers of the Police is general and wide, which includes sectors which require specialist, critical and specific attention and resources such.

Away from the Police, there are other agencies, security agencies and Government offices performing roles within the realm of (critical) infrastructure assets not as their primary duties, but as appendages to their respective primary duties. However, like the Police, the scope of those agencies is wide and

⁴. This was revealed by the Inspector General of police < Ibrahim Idris > in a report off of the Nigeria Anti-Electricity Vandalism Response Signal. <http://www.nigeriaelectricityhub.com/2017/10/26/over-n500-million-lost-to-electricity-vandalism-police/>

⁵. Uzoigwe, M 2014. "Nigeria Ranks World's Number One in Power Assets Vandalism." Daily Independent, January 22.

⁶. The *Nigeria Security and Civil Defence Corps (NSCDC)* established by an Act of the National Assembly in 2003 (and amended by Act no 6 of 2007) is a paramilitary force of the Federal Government tasked with providing measures against any form of attack or disaster against the nation and its citizenry. The Act gives the NSCDC the powers amongst other functions to maintain twenty-four hour surveillance of critical infrastructures, sites and projects for the Federal, State and Local Governments.

activities of vandals in four states.⁴ Also, in an earlier study, vandalism of Power Holding Company of Nigeria (PHCN) installations and facilities were stated to be accountable for more than 60% of blackouts recorded across the country.⁵ There is, therefore, an intrinsic link between the quality of power available to Nigerians and the availability of infrastructural facilities; hence there is the need to put a stop to the menace, in addition to ensuring that there is physical security protection of both the facilities and personnel alike.

Section 214(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) establishes the Nigeria Police Force with the primary responsibility for the protection of lives and property. In respect of public safety and public order as provided for in section 215 of the Constitution, the President may give the Inspector-General such directions with respect to maintaining and securing public safety and public order as he may consider necessary, and the Inspector-General shall comply with those directions and cause them to comply with. From the foregoing, it does appear that the Police should naturally deal with the protection of /and transgressions against Nigeria's (critical) assets, but the scope of the powers of the Police is general and wide, which naturally means sectors which require specialist, critical and specific attention are deprived of such.

Away from the Police, there are other agencies, security operatives and Government offices performing roles within the realm of (critical) national assets not as their primary duties, but as appendages to their responsibilities.⁶ However, like the Police, the scope of those agencies is wide and lacks the

⁴. This was revealed by the Inspector General of police < Ibrahim Idris during the flag-off of the Nigeria Anti-Electricity Vandalism Response Squad (AEIRS) <http://www.nigeriaelectricityhub.com/2017/10/26/over-n500-million-lost-to-electricity-vandalism-police/>

⁵. Uzoigwe, M 2014. "Nigeria Ranks World's Number One in Power Assets Vandalism" Daily Independent, January 22.

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specificity and expertise needed to tackle the issues of vandalism with the potency the problem demands.

There is, therefore, the need for a law as explicit as that which this Bill seeks to enact, and this was recently echoed by the Managing Director of Abuja Electricity Distribution Company (AEDC) Mr Ernest Mupwaya when he appealed to members of the National Assembly to enact a law that would curtail persistent issue of electricity theft as well as act of vandalism of property of companies operating under the power sector in the country.⁷

CROSS-COUNTRY EXPERIENCE

Kenya:

The *Energy Act, 2006* is the primary law governing the energy sector in Kenya and it provides for the establishment of the *Energy Regulatory Commission (ERC)* as the single regulatory Agency with the responsibility for economic and technical regulation of the energy sector. Amongst other functions, the ERC regulates petroleum and related products, renewable energy and other forms of energy.⁸

The body also performs any other function that is incidental or consequential to its functions under the Energy Act or any other written law.⁹ It is also mandated under the Energy Act to come up with energy plans and in line with this, the ERC established a Committee with the responsibility for preparing and updating the *Least Cost Power Development Plan (LCPDP)*, which is a 20 Year developmental plan updated annually. It is Kenya's power industry generation and transmission system planning and is undertaken on the basis of a 20 year rolling Least Cost Power Development Plan (LCPDP), updated

⁷. He made the appeal while speaking with members of the House of Representative committee on privatization and commercialization that were on an oversight visit to the AEDC corporate headquarters in Abuja, yesterday. Enumerating the challenges faced by the company, Mupwaya identified electricity pilferage and vandalism of power sector assets as some of the key facts hindering growth of the sector. : <https://leadership.ng/2018/03/02/aedc-calls-anti-electricity-theft-vandalism-law/>

⁸. See <https://www.erc.go.ke/about/>.

⁹. *Ibid.*

every year.¹⁰ The investments in the power sector in Kenya; it also plans to meet the demand for power can be met for power cost-effective Kenyan experience.

COMMENTS

Existing Legal Order

Constitution of the Federal

Section 4(2) of the 1999 Constitution

“make laws for the peace, order and good government of any part thereof with respect to the Legislative List set out in Part IV of this Constitution.”

any part thereof with respect to the Legislative List set out in Part IV of this Constitution.”

Legislative List set out in Part IV of this Constitution.”

Safeguarding National Assets and Promoting Sustainable Governance, and a key factor in the

governance, and a key factor in the

Nations is its economic strength

and the nation's economic strength

consequence, such assets are

to toy with them. This brings

the Constitution without any

Electric Power Sector Regulation Act

The Act established the National Energy Regulatory Commission (NERC) to provide for the

(NERC) to provide for the

transmission, distribution and

performance standards, consumer protection, and

determination of tariffs. The

¹⁰. See <http://www.ica.org/kenya/en.php?return=PGShdhp2SG9tZTwyYT4gJnJlcXVvOy8iPIBvbGljaWVzIGFudC9saWNpZXNhbmlzZWVzYWRW5lcmM5PC9hPjwvbnVnd>

every year.¹⁰ The LCPDP is instrumental in identifying the possible investments in the generation and transmission of power in the energy sector in Kenya; it also places emphasis on coming up with techniques on how the demand for power can be made cost-effectively. The need to make a demand for power cost-effective is a formidable lesson that can be learnt from the Kenyan experience.

COMMENTS

Existing Legal Order

Constitution of the Federal Republic of Nigeria (CFRN) 1999

Section 4(2) of the 1999 Constitution empowers the National Assembly to “make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part 1 of the Second Schedule to this Constitution.” Safeguarding National Assets is necessary for peace, order and good governance, and a key factor that earns a nation respect within the comity of Nations is its economic strength. There is a direct correlation between a nation’s economic strength and its assets (physical and virtual). As a consequence, such assets are of invaluable relevance and no nation can afford to toy with them. This brings this Bill in tandem with the letters and spirit of the Constitution without any conflict.

Electric Power Sector Reform Act Cap E7 LFN 2004

The Act established the **Nigeria Electricity Regulatory Commission (NERC)** to provide for the licensing and regulation of the generation, transmission, distribution and supply of electricity, to enforce such matters as performance standards, consumer rights and obligations and to provide for the determination of tariffs. The NERC’s responsibility is to regulate standards of

¹⁰ See [5](http://www.iea.org/policiesandmeasures/pams/kenya/name-127279-en.php?return=PG5hdiBpZD0iYnJlYWRjcnVtYiI-PGEgaHJIZj0iLyI-SG9tZTwwYT4gJnJhcXVvOyA8YSBocmVmPSIvcG9saWNpZXNhbmRtZWZdXJlcY8iPIBvbGljaWVzIGFuZCBNZWFzdXJlczwvYT4gJnJhcXVvOyA8YSBocmVmPSIvcG9saWNpZXNhbmRtZWZdXJlcy9yZW5ld2FibGVlbnVyZ3kvIj5SZW5ld2FibGUgRW5lcmd5PC9hPjwvbmF2Pg.,&s=dHlwZT1yZSZzdGF0dXM9T2s,”</p></div><div data-bbox=)

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performance for all electricity licensees and monitor performance to ensure that those standards are met and maintained or even exceeded.

The Law this Bill seeks to establish will work in tandem with this Act without any conflict.

The Police Act Cap P19 LFN 2004

The Police Act is the enabling law for Policing in Nigeria. It is an Act to make provisions for the organisation, discipline, powers and duties of the police, the special constabulary and traffic wardens. Section 3 of the Police Act states that:

the Police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act.

There is no conflict between the Police Act and the objects informing this (Establishment) Bill. Moreover, the Police Act mandates Police Officers to cooperate fully with all legally authorised agencies and their representatives in the pursuit of justice. This means that the Police Force will work side by side with the apparatus that this (establishment) Bill postulates.

The National Security and Civil Defence Corps (NSCDC) Act 2007

The NSCDC Act mandates the Corp to amongst other duties, “*maintain twenty-four-hour surveillance over infrastructures, sites and projects for the Federal, State and Local Government.*” This provision notwithstanding, the specificity of the law this Bill seeks to establish gives will strengthen the workings of the Corp without any conflict.

Content and Structure

- The Enacting Formula of the Bill should be in the National Assembly of the Republic.
- The term “Act” used in reference to the Bill is still a Bill. This is specifically provided for in sections 9 (1) and (2) and 12.
- The term “section” used to refer to a part of the Bill since this is a Bill. This is specifically provided for in section 12.
- The term “subsection” used to refer to a part of a section because this is still a Bill.

RECOMMENDATIONS

- The enacting formula should be in the National Assembly of the Republic by deleting the words “Do hereby enact” and the word “Enacted,” and also deleting the word “Act” appearing immediately after the word “Enacted.” The Bill will read thus: “ENACTED by the National Assembly of the Republic of Nigeria-“
- The word “Act” used in the Bill should be replaced by the word “Bill.”
- The words “section” and “subsection” used in the Bill should be deleted for the proper words of “section” and “subsection” respectively.

CONCLUSION

Electricity theft is a threat to the entire value chain of the electricity sector borne substantially by the distribution companies in the country. The overall effect of electricity pilferage affects the entire electricity sector goes without saying that Nigeria is currently experiencing a high level of unauthorized use of electricity, outright electricity theft.

¹¹ Olaleye Gbolahan Olaoluwa, (2017) “Electricity Theft and its Impact on the Nigerian Economy” International Journal of Engineering Research and Technology

Content and Structure

- The Enacting Formula of the Bill does not conform to that adopted by the National Assembly which has been in use since the Fourth Republic.
- The term “Act” used in reference to this Bill is inappropriate since this is still a Bill. This is specifically in Clauses 1, 2, 4 (c), 5 (c), 8 (3) (a), 9 (1) and (2) and 12.
- The term “section” used to refer to clauses in the Bill is improper since this is a Bill. This is specifically in clauses 3(2) (c) and 4 (c)
- The term “subsection” used to refer to sub-clauses is improper because this is still a Bill.

RECOMMENDATIONS

- The enacting formula should be redrafted to conform to the adopted model of the National Assembly which has been in use since the Fourth Republic by deleting the words “*Be it*” appearing immediately before the word “*Enacted,*” and also deleting the words “*as follows*” appearing immediately after the word “*Nigeria,*” and in which case it will read thus: “ENACTED by the National Assembly of the Federal Republic of Nigeria-“
- The word “Act” used in the Bill should be deleted for the appropriate word “Bill.”
- The words “section” and “subsection” used in the Bill should be deleted for the proper words of “clause” and “sub-clause” respectively.

CONCLUSION

Electricity theft is a threat to the entire value chain. Although its impact is borne substantially by the distribution companies in terms of loss of revenue, the overall effect of electricity pilferage affects the value chain in totality.¹¹ It goes without saying that Nigeria is currently grappling with illegal and unauthorized use of electricity, outright electricity theft, vandalism of public

¹¹. Olaleye Gbolahan Olaoluwa, (2017) “Electricity Theft and Power Quality in Nigeria,” International Journal of Engineering Research and Technology, vol. 6, Issue 6.

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power generation, storage, transmission and distribution infrastructure as well as attacks on power company personnel by consumers or their privies.

Consequently, this proposed legislation is important and may be sent for further legislative action subject to the foregoing recommendations.