



# PRIVATE GAIN PUBLIC DISASTER

**SOCIAL CONTEXT OF ILLEGAL OIL BUNKERING  
AND ARTISANAL REFINING IN THE NIGER DELTA**



NIDREF



Redeemers Relief  
Agency International



BEN NAANEN  
PATRICK TOLANI

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- Illegal bunkering boat on fire
- Captured oil theft equipment
- JTF boat on patrol in the creek
- Image of poverty in the Niger Delta

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Port Harcourt  
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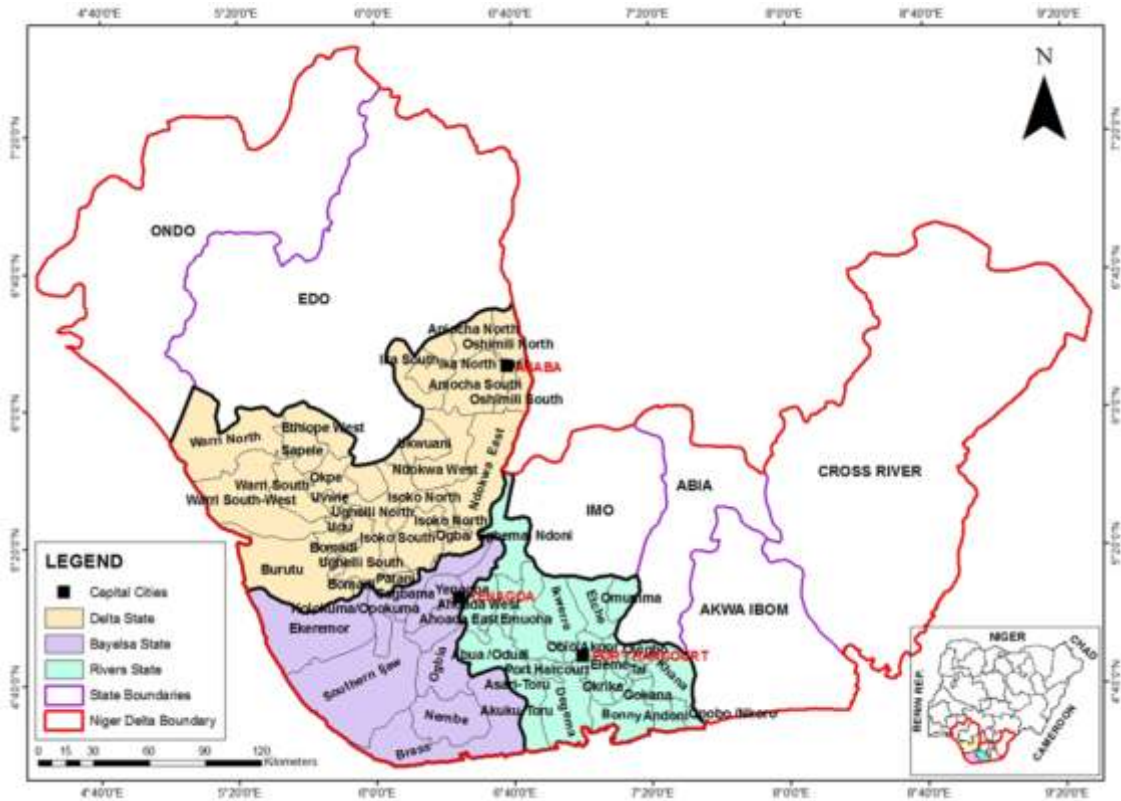
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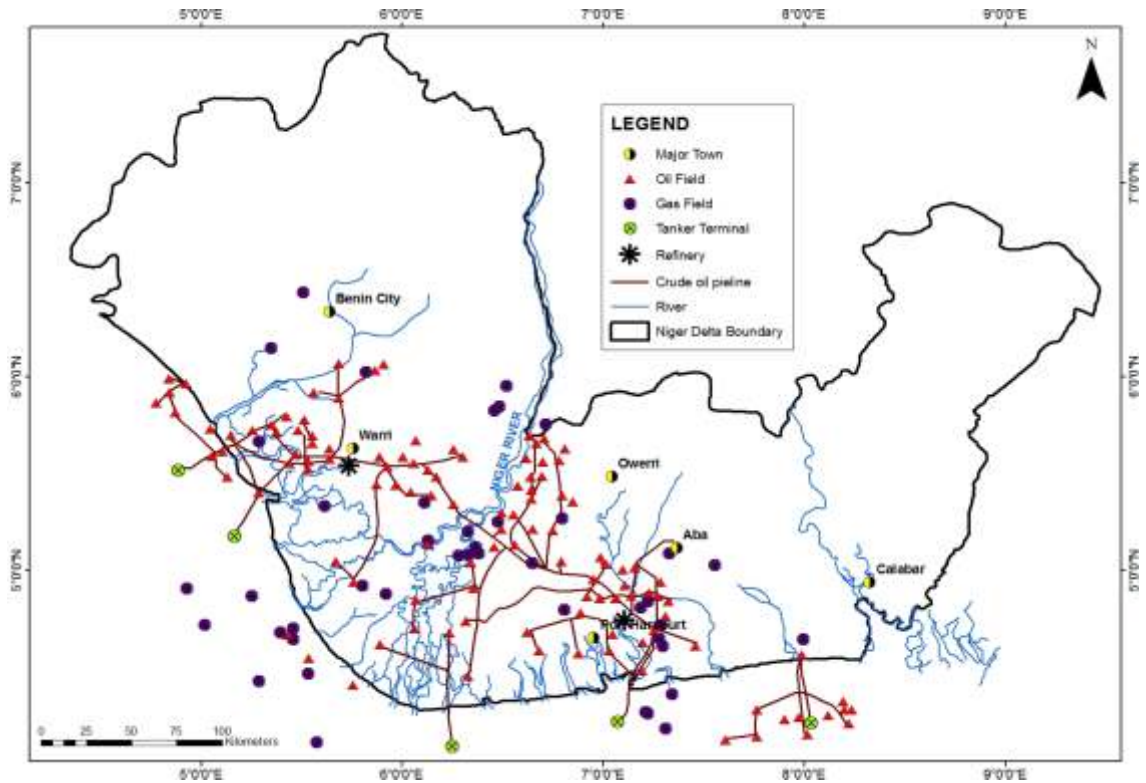
## Abbreviations

|        |   |
|--------|---|
| AGO    | Automated Gas Oil                                   |
| bbf    | Barrel(s)   |
| bpd    | Barrels per day                                     |
| CBN    | Central Bank of Nigeria                             |
| CDC    | Community Development Committee                     |
| CFRN   | Constitution of the Federal Republic of Nigeria     |
| CSR    | Corporate Social Responsibility                     |
| DPR    | Department of Petroleum Resources                   |
| FTO    | Freedom to Operate                                  |
| GDP    | Gross Domestic Product                              |
| GMoU   | Global Memorandum of Understanding                  |
| HDD    | Horizontal Directional Drilling                     |
| JTF    | Joint (Military) Task Force                         |
| JV     | Joint Venture                                       |
| KD     | Kaiama Declaration                                  |
| LGA    | Local Government Area                               |
| LTF    | Legal Task Force                                    |
| LTO    | Licence to Operate                                  |
| MOSOP  | Movement for the Survival of the Ogoni People       |
| NCTL   | Nembe Creek Trunk Line                              |
| NDDC   | Niger Delta Development Commission                  |
| NGO    | Non- governmental organization                      |
| NOSDRA | National Oil Spill Detection and Remediation Agency |
| NNPC   | Nigerian National Petroleum Corporation             |
| OBR    | Ogoni Bill of Rights                                |
| PHCF   | Petroleum Host Community Fund                       |
| PIB    | Petroleum Industry Bill                             |
| PMS    | Premium Motor Spirit                                |
| PPMC   | Pipeline Products Marketing Company                 |
| SPDC   | Shell Petroleum Development Company                 |
| TI     | Transparency International                          |
| TNP    | Trans-Niger Pipeline                                |
| TOC    | Trans-national Organized Crime                      |

Area of Study



Oil Infrastructure in the Niger Delta



## EXECUTIVE SUMMARY AND RECOMMENDATIONS

### 1.1. Executive Summary

#### Introduction

❖ The Nigerian economy is dangerously dependent on oil. In 2012, crude oil contributed 96.8 percent of the country's total export earnings, 60.5 percent of gross government receipts and 37 percent of GDP. Yet the country loses to theft more than 6 billion dollar worth of its oil production or 6.25 percent of its total export value. It is this strategic backbone of the Nigerian economy that large scale oil theft targets at disconnecting. Nigeria is literally bleeding painfully and tragically from the pipelines. This study has been unable to find a close parallel to this industrial scale theft, relative to the size of the economy, anywhere in the world. The country looks helpless, unable to combat this clear and present danger.

❖ Difficult to explain is what appears to be an indecisive and uninspiring response from the government. For sure, illegal bunkering has dominated the media, government and oil industry discourse in recent years. But beyond the public expression of anxiety, the government has not achieved much in its struggle against illegal bunkering. In official circles, there does not seem to be adequate appreciation of the danger, not even among the top oil bureaucrats at the

Ministry of Petroleum Resources (MPR), Nigerian National Petroleum Corporation (NNPC) and the Department of Petroleum Resources (DPR).

❖ We are aware of recent studies of the oil theft phenomenon, some of which were released while this work was in progress. These studies have enriched our knowledge of the subject. One of them deals with the international dimension of the problem, while the other focuses on artisanal refining. The present study has taken a somewhat different approach by examining the issue in its domestic details with the hope of identifying some critical niches that can lead to the mitigation of the problem. This has been done through extensive field work, which includes micro-study of some communities that have become illegal bunkering hotspots.

❖ Because oil theft ("illegal bunkering" in national parlance) and its corollary - artisanal refining - are fundamentally social problems, this study seeks to investigate the social context of illegal bunkering and artisanal refining. There are three main sets of actors involved in illegal bunkering – those who compromise the pipelines by breaking and installing taps on them to procure crude for sale, those who buy the crude for export, and the local operators who process stolen crude into low quality fuels for the

domestic market. Popular media and official terminology collectively band the three sets of actors as “oil thieves” or “illegal bunkerers”. This study examines the immediate and remote origins, processes, and consequences of illegal bunkering and artisanal refining, and attempts to proffer some solutions through a set of recommendations.

### Investigation Process

The research, which spanned a period of one year, involved desktop review and mostly extensive fieldwork covering illegal bunkering communities, especially the hotspots, in Rivers, Bayelsa and Delta states. These states collectively account for 80 percent of the country's onshore oil production and a predominant proportion of crude theft. Community consultations were held and more than 200 people directly connected to the illegal siphoning of oil and artisanal refining as well as community leaders, were interviewed individually and in groups. Questionnaire was also distributed to them. Top officials of the leading IOCs, NNPC, the regulatory agencies, the Navy, JTF, Police, were similarly interviewed. Also interviewed were oil dealers in Europe, especially in Rotterdam, Aberdeen and London, and people involved in transportation and marketing of illegally refined products in the Niger Delta, as well as the end users of these products. Direct observations of the refining process were made at several sites.

Urine samples were taken from the youths directly involved in refining and questionnaire given to them to assess their health status. Fish samples were collected from two heavily impacted sites in Rivers and Bayelsa states and one less impacted site, to test for the level of PAH, TPH and BTEX contamination of sea food and its potential effect on its human consumers. These samples were analysed at accredited laboratories in Nigeria and the results interpreted by an independent expert.

### Origins

- ❖ Our investigation of the broad causes of oil

- ? *Illegal bunkering and artisanal refining are rooted in the grim economic and social circumstances of the Niger Delta. Poverty is endemic and unemployment high.*
- ? *Nigeria loses 6 billion dollars to oil theft annually.*
- ? *26,000 people receive incomes directly or indirectly from illegal bunkering.*
- ? *The illegal bunkering economy has an annual value of 9 billion dollars*
- ? *Those who export 80 percent of the stolen oil are not poor people. They are connected to the political and military establishment as well as the oil bureaucracy.*
- ? *Concerted international action to check Nigerian oil theft is not feasible because the stolen oil represents a minor fraction of international oil traffic and does not present any credible threat to the world economy and international security.*

theft reveals what everyone seems to know – that illegal bunkering and refining are rooted in the grim economic and social circumstances of the Niger Delta. Poverty is endemic and unemployment high. The youths are angry and develop a deep sense of alienation. Their resort to bunkering is as much an effort to earn a living and live their dreams as it is an expression of rebellion against the state. To them and many people in the Niger Delta, the Nigerian state has appropriated the resources of their land without improving the peoples' lives in return. In a sense, therefore, illegal bunkering becomes a form of resistance against the state and IOCs.

- ❖ Furthermore, all through the investigations for this study, the problem of perception and attitude continues to loom large. The perceptions of the youths are coloured by uncomplimentary images of the IOCs and their staff, and by misconceptions about the roles and responsibilities of the state and the oil companies as against the rights of the local community and the individual. The notion that individuals and local communities can engage in self-help by tampering with strategic national assets such as oil facilities simply because those facilities are located on their land is fundamentally flawed. We observe that even under a state of conflict other societies hardly interfere with pipelines and other vital national infrastructure. There are also those who tend to believe that coming from the Niger Delta is all it takes to live a comfortable life because the region produces oil. What the youths need is the opportunity to develop their potential and grow, not pampering. The state and the oil companies have to make a creative

use of the resources of the region to create the opportunity.

- ❖ Nevertheless, what some people have probably not thought about in respect of the relationship between bunkering and poverty is that those who steal the larger volume of oil for export are not poor people. They are driven primarily by the imperatives of capital accumulation. These are operators who can muster the financial capital necessary for a high risk illegal international business, as well as the political capital to protect the business. These are not ordinary men. They are connected to the apex of Nigerian political, military and business establishment. They are known to people who should know them as they are not ghosts. Yet there has been a systematic official refusal to reveal the identity of these supposedly mysterious oil barons and make them face the law. This refusal speaks loud about the official identity of most of these illegal bunkering kingpins.

#### Processes

- ❖ This work has examined the organization of the illegal bunkering business, the profile of a typical illegal “bunkerer” and bunkering groups, the production process of artisanal refining, product marketing and distribution chain, gender and changes that have occurred in the business in recent times. Rudimentary technical innovations in oil tapping and processing, and growing market opportunity, have imbued illegal bunkering with a self-sustaining dynamism. This makes the informal illegal bunkering economy a sustainable one.

#### Impact



- ❖ The consequences of oil theft are grave and widespread. The immediate impact about which the government and oil companies are mainly concerned, is the huge, unsustainable loss of public revenues. We have calculated that the country loses about 145,000 barrels of oil per day to theft-related incidents, which is more than the production of several individual oil exporting nations. Unable to stem the tide of theft and what they consider adverse business environment, the IOCs have been selling off their onshore concessions. Although the current spate of divestment by the IOCs is not in the interest of the national economy, it has created opportunities for indigenous oil companies, which have increased their share of oil and gas production to 12 percent.

Meanwhile, the local communities most impacted by bunkering are threatened by varying degrees of environmental damage arising both from pipeline vandalism and artisanal refining. This damage compounds the existing oil-related environmental crisis connected to the IOCs. The communities are also threatened by destroyed livelihoods and social dislocation.

In respect of public health, the adverse conditions caused by existing pollution by the IOCs have been aggravated by illegal bunkering and artisanal refining. The presence of chemical substances such as PAH and TPH are much higher in the heavily impacted areas than the national average. Of the three sites examined, fish samples from Bodo creek (Rivers State) have the highest levels of TPH and PAH contamination of 0.526 mg/kg and 0.044 mg/kg

respectively. It is followed by Forcados river (Bayelsa State section) which has 0.495 mg/kg of TPH and 0.038 of PAH; and the New Calabar river at Choba (Rivers State), which has 0.338 mg/kg and 0.022 mg/kg of TPH and PAH, respectively. These figures for PAH are much higher than the Nigeria national average of 100 ng/kg (nanogramme/kilogramme). They also exceed the PAH of Potomac river (USA) of 598 ng/kg used as reference by many researchers. Exposure to PAH is considered a primary risk factor for lung cancer. The International Agency for Research on Cancer has classified PAH exposure as Group 1 carcinogen.

- ❖ Politically, the capture of oil revenues has become the driving force for political contestations in Nigeria and illegal bunkering is aiding that process. The country is increasingly passing under the control of those who have varying measures of legal and illegal interest in the oil and gas industry, a political trend we describe as *petrocracy*.
- ❖ Not all the consequences are so gloomy. We have calculated that about 26,000 people receive incomes directly or indirectly from illegal bunkering and artisanal refining. Add to that number the dependants of these income earners and we have no less than 100,000 people benefitting from this informal economy which has an annual cash value of 9 billion dollars. The industry is also providing affordable energy to communities and poor city residents in the Niger Delta, including, in some cases, corporate consumers.

#### Combating Illegal Bunkering

- ❖ The government and IOCs have tried several measures to check illegal bunkering to no avail. These include

criminalization, advocacy, pipeline surveillance, and the deployment of the armed forces (JTF). Why have these initiatives not yielded tangible results? The answer is explored in the study. The problem is not the initiatives, but their implementation. Government has not tried hard enough as it has hardly made any sustained effort to faithfully implement its own initiatives. Corruption in the anti-bunkering agencies which aid and abet oil theft, influence-peddling and weak judicial mechanism that impede the successful prosecution of arrested suspects, have combined to undermine government's struggle against illegal bunkering. A crucial omission in this struggle is the failure to effectively address the fundamental socio-economic grievances of the oil-producing communities. As noted, the majority of those involved in illegal bunkering and artisanal refining do so because they are jobless and do not have alternative means of earning a living.

- ❖ Since stolen oil represents an insignificant fraction of global oil trade and oil theft is largely regarded abroad as a peculiar Nigerian problem which does not threaten the world economy and international security, a concerted international action to combat the problem cannot be expected. Suggested measures such as genetic finger-printing and certification of Nigerian oil are similarly not feasible because of the complicated nature of international oil shipping which ensures that oil from a particular source hardly arrives at its destination without blending. Nigeria is, therefore, left to face the challenge of devising an internal solution for its self-inflicted problem.

- ❖ Combating oil theft does not lend itself to any quick-fix approach as a result of the complexity and entrenched nature of the problem. A more realist objective would be to mitigate it as it will be difficult to eradicate it. In fact, there is a growing opinion trend, including among the top officers of JTF, that since it is difficult to combat illegal refining, the industry should be legalized so that it can be regulated, contributing to tax revenues and the local economy.

#### Recommended Immediate Measures

- ❖ Among the several initiatives recommended, we have identified three specific areas which require immediate action in order to mitigate illegal bunkering and refining (details are in the recommendations below):
  1. Addressing the socio-economic foundation of illegal bunkering through an attack on poverty, and job creation targeted at the youth who must be made to come out of the creeks;
  2. Pipeline protection through community-based surveillance programme, which replaces the present private contractor surveillance system. The ineffectiveness of private contractors has been glaring and, in fact, some of them have been allegedly implicated in oil theft. By this approach, the communities will take over the surveillance of the pipelines. In exchange for this role they will receive development support from the IOCs through GMoU.
  3. Speedy prosecution of oil theft cases by setting up a special judicial mechanism exemplified by special courts.



## 1.2. Summary of Recommendations

Three areas need immediate and strategic action in order to mitigate oil theft, illegal refining, and wilful third party damage to pipelines:

1. Socio-economic initiatives
2. Pipeline protection through community-based surveillance
3. Speedy and fair prosecution of suspected oil thieves and pipeline vandals

These are issues that require implementation either by oil companies, government or both. Other recommendations would require medium to long term action as would be seen below.

### A. *Recommendations for the Oil Companies*

#### 1. Socio-Economic Initiatives – Towards a New Development Paradigm

As we have seen in this report, illegal bunkering and artisanal refining constitute a challenging strategic issue that is fundamentally connected to unaddressed economic, social and political grievances. The technical aspect of bunkering such as improved pipeline design and security are also rooted in a social dimension. If communities which are located on the RoW of these pipelines decide to protect the pipelines, the technical challenge becomes less difficult to manage. But even if the pipelines are subjected to the best engineering and security design and they run through hostile communities, there still will be problem as no design technology can adequately secure the oil facilities against the wrath of an angry people. To mitigate bunkering, therefore, requires addressing the identified social foundation of the problem.

The oil companies cannot take over the development and security responsibilities of

the government, but they can make a significantly positive difference in order to create a conducive environment in which they can operate productively and profitably. CSR should not merely be seen as a fulfilment of a corporate governance doctrine in a changing world, but as a necessary responsibility that builds trust and mutually beneficial partnership between corporate entities and their host communities. The oil companies should target the building of sustainable social capital through selective high impact socio-economic initiatives.

There is need for a new sustainable development paradigm in oil-bearing communities. Current government-centred approach through the creation of development bureaucracies such as NDDC, has demonstrated conspicuous limitations. Nor is an unguarded market-based approach desirable. What is needed is the channelling of development spending through non-state initiatives that would yield tangible result but with government participation, as opposed to control. The communities themselves would play a vital role in this approach through consultation and ownership. Funding for this new approach should not be the obstacle as the IOCs have the option of charging the expenditures to the JV account. It is a question of moving the same development fund from an inefficient channel to a more productive channel.

#### 2. Socio-Economic Approach

Mitigating exclusion, building inclusiveness in host communities by attacking poverty and unemployment through:

- 1) The rehabilitation of the youths, especially those involved in illegal bunkering, through training and empowerment. They should be trained as wealth and employment creators, not dependent job seekers, through an entrepreneurship development programme. They should be assisted with capital and mentorship to set up their own businesses.

- ii) The provision of marketable skills for alternative livelihood in technical institutions. Professional training should also be provided for those who have the requisite qualifications. Any livelihood and professional training provided should include reorientation to correct wrong and misleading perceptions and attitudes, emphasize leadership skill as well as civic, environmental, and human rights education;
- iii) Some skills acquisition programmes run by government and oil companies fail because of their post-training unemployment challenge, lack of appropriate reorientation and civic values. These should be avoided by adopting the above approach.
- iv) Oil companies' contractors should be given incentives to voluntarily employ the skills training beneficiaries. Government institutions and oil companies should as a matter of deliberate policy be made to purchase quality products produced by these beneficiaries in order to sustain their entrepreneurial initiatives while also encouraging them to be competitive.
- v) SPDC's LiveWire programme and GMoU approach should be strengthened, expanded in scope and extended to communities hosting vital oil facilities but not yet benefitting from these initiatives.

### 3. Pipeline Protection and Management

#### Review of Pipeline Surveillance Initiative: Community-Based Approach

Normally, it is the responsibility of the state to protect lives and property, including strategic economic assets such as oil and gas facilities. However, in the Nigerian circumstances, the weight of this responsibility falls on the oil companies. The IOCs should, therefore:

- i) Undertake an urgent review of their pipeline surveillance programmes by adopting a

#### **Oil and Gas Infrastructure in Nigeria**

*Total length of crude oil pipelines- 4,350 km -which must be protected against oil theft and vandalism.*

##### ❖ **Refineries**

- *Port Harcourt refinery, commissioned 1965, capacity 60,000 bpd*
- *Second Port Harcourt refinery, 150,000 bpd*
- *Warri refinery Delta State(1978), 125,000bpd.*
- *Kaduna refinery, Kaduna State (1980) 110,000 bpd, linked to Niger Delta oilfields by 600 km pipeline but designed to process imported heavy crude*
- *Only 20 percent of the total crude oil allocated to the refineries for domestic consumption is utilized, making the country to depend on imported petroleum products and artisanal refining to fill the gap*

- community-based approach in the place of the current private contractor system. The private contractors are ineffective and have in some cases been implicated in incidents of oil theft.
- ii) Under the proposed scheme, communities along the right of way (RoW) of the pipelines will bear responsibility for recruiting and controlling their youths to provide surveillance on the pipelines and other vital facilities such as wellheads and manifolds. The IOCs will pay the youths directly. The communities should be made to see themselves as co-owners of these facilities. However, in exercising this responsibility, care should be taken to ensure that the community leaders do not favour any group against the other, and that the programme becomes inclusive. Otherwise this could lead to protests, even sabotage, that would defeat the purpose of the new surveillance initiative.
- iii) In exchange for this responsibility, the communities will receive development support by entering into a GMoU with the relevant oil company.
- iv) The youths involved in the surveillance should be adequately trained, equipped and remunerated by the relevant oil companies.
- v) Setting up of a rapid intervention system under which specially trained state security units stationed at strategic locations in bunkering-prone areas, upon the receipt of an alert and using air transport, will be able to arrive on the scene in record time to abort criminal interference with the pipeline and arrest the culprits while the action is still on.
- vi) Establishment of a dedicated communication system through which anybody, upon suspecting any illegal activity on the pipeline or related facilities, can call the rapid intervention unit. We call this citizen surveillance.
- vii) Speedy detection of pipeline leakage and interference through the deployment of CCTV cameras remote sensing and other relevant technology.
- viii) Improved pipe and pipeline design
- ix) Pipeline security should be intelligence-driven (see Appendix 2 for pipeline integrity measures).
- 4. Restructuring Community Relations, Changing Perceptions and Attitudes**
- i) **Constructing Sustainable Partnerships with Local Communities**
- Communities should be made to have a sense of genuine stakeholding so that they can protect oil facilities. This requires:
- Sea-change in the strategy and patterns of engagement of these communities by IOCs: Often the wrong and unpopular self-acclaimed community leaders and contractors control these communities' access to the IOCs. These people are given contracts for community development projects, which they hardly successfully





Meeting of community leaders. Constructive community engagement can prevent oil theft and vandalism of oil facilities

implement and yet they get paid and are not sanctioned by the company. This creates resentment against the IOCs in these communities.

- Checking the impunity of these self-styled community leaders and contractors and ensuring that the oil companies deal with legitimate and honest representatives of the people.
- Increased and better managed CSR and sustainable development programmes in these communities: Current levels of expenditure in some of the communities can buy a lot of goodwill if effectively managed.
- Change of *modus operandi* and attitude by oil companies and their staff: The perceived arrogance, insensitivity and privileged status of IOC workers and the practices of these companies, for instance, regarding compensation and development assistance, generate resentment in the communities. The notion that these companies are “insincere” and “cunning” in their

relations with the communities and often employing “divide-and-rule” tactics in order to unfairly have their way, should be seriously examined by the companies.

## ii) **Building a Robust Advocacy Strategy**

The advocacy strategy should have certain strategic components:

- Extensive re-orientation campaign to change the perceptions and attitude of the youths about oil and oil companies: Most Niger Delta people see the oil drilled from their land as common wealth that should be exploited by anybody who desires it, hence there is no strong moral opinion against oil theft in most of the communities. Whatever financial losses that occur as a result of illegal bunkering are not considered to affect the communities. This attitude has to change.
- Adequate sensitization and education in the communities, focusing on the legal,

environmental, health and social consequences of illegal bunkering and artisanal refining. The youths should be made to acquire a sense of civic responsibility, the rule of law, environmental and human rights issues.

- Although the perceived moral and attitudinal inadequacies of the oil companies and their staff are sometimes exaggerated, such inadequacies need to be corrected for better relations between the communities and the IOCs.
- Targeting refineries abroad, especially those in the regions where much of the stolen oil is taken to, and sensitizing them about the adverse consequences of oil theft on IOCs and oil production in Nigeria which would in turn affect global oil prices. We have proposed to enlist the support of these refineries in an International Campaign Against Nigerian Oil Theft (ICANOT). This campaign can be designed to include international NGOs such as Oxfam, Transparency International. They might support the campaign once it is demonstrated that the theft is affecting poor people in Nigeria.
- A vigorous campaign to the National Assembly and local and international NGOs in Nigeria which could help to raise awareness about the problem.

## **B. Recommendations for the Federal Government**

### **Legal Issues**

1. **Speedy Prosecution – Special Courts**  
Government should set up special courts or any other mechanism for the speedy prosecution of cases of oil theft and criminal interference with oil facilities. This will create a deterrence effect while upholding the rule

- ◇ Nigeria has no excuse importing refined petroleum products. The country should control the petroleum products market in the ECOWAS sub-region as a way of diversifying the economy, creating quality jobs and earning foreign exchange.
- ◇ There should be policy reform to promote cottage/modular refineries that will contribute to addressing the local supply disequilibrium, build local capacity in the downstream sector and empower the local communities through job creation.
- ◇ The 10 percent community equity recommended in the PIB will create a sense of belonging in the Niger Delta. However, the management of this fund will be problematic. Effective and agreeable management mechanism should be designed. Otherwise the fund will fuel crisis in the communities.

- of law. Currently, significant numbers of people who are not able, or do not have the opportunity to buy their freedom, are languishing at detention centres without trial and in inhuman condition. The human rights of these people should be protected.
2. Strengthening the Legal Process
    - i) Combating corruption and ensuring effective enforcement of the law;
    - ii) Wilfully incompetent prosecution should be punished. The harmonization of existing anti-bunkering laws to eliminate the discretionary latitude in the application of these laws should be effected.
  3. Strengthening Enforcement Regime
    - i) Setting up the recommended Rapid Intervention Force (RIF) to combat illegal bunkering. This could still be a mixed force such as JTF but made up of credible and untainted officers.
    - ii) Close monitoring or tracking of RIF by several means, including technology.
    - iii) Creation of a rewarded whistle blowing policy among RIF to check corruption.
  4. Targeting the Market for Illegal Oil
    - i) If there is no demand, there will be no oil theft. In fact, the illegal bunkering business is demand-driven. There is widespread view that halting the transportation and marketing of illegal oil will minimize theft.
  - ii) Use of helicopters to track barges and boats and identifying the tankers involved and passing on the information to the appropriate authorities.
  - iii) Because of local supply gaps, especially in the hard-to-reach communities of Niger Delta, it will be difficult to control local demand for cheap illegally refined products. Solving this problem needs serious and urgent attention.
  - iv) A deliberate policy to ensure availability of fuel in the hard-to-reach communities of Niger Delta.
  - v) Aggressive refinery development programme to meet domestic and export demand. Nigeria has no excuse importing refined petroleum products. The country should control the petroleum products market in the ECOWAS sub-region as a way of diversifying the economy, creating quality jobs and earning foreign exchange.
5. Policy Reform - Promoting Cottage/Modular Refineries
 

The local knowledge of refining that has been acquired could be harnessed to broader economic advantage by allowing communities own and operate cottage or modular refineries. This will:

    - i) Contribute to addressing the local supply disequilibrium that has prompted artisanal refining in several communities.
    - ii) Build local capacity in the downstream oil sector.



- III) Contribute to the export market in the ECOWAS sub-region.
- IV) Empower the communities through job creation.

This policy initiative would require amending the existing oil industry laws, which could be captured in the PIB. This could well be the best opportunity to push for this policy change now that the PIB is under consideration in the National Assembly.

## **6. Political Approach**

### **i) Good Governance**

Bad governance and corruption have contributed in no small measure to generating the anger and alienation in oil-producing areas hence their negative attitude to oil facilities. It is, therefore, necessary to institute good governance and ensure government works by:

- Combating corruption
- Strengthening state institutions, especially the security forces, judiciary and law enforcement agencies, to make them effective.

### **ii) Resource Control**

The passage of PIB with the 10 percent host community equity together will go a long way in creating a sense of equity and ownership in the Niger Delta. However, the management of this fund will be problematic. Effective management mechanism or some other ways of making the communities to benefit have to be designed, otherwise the fund will fuel crisis in the communities.

### **iii) Proactive Environmental Restoration Programme**

Realising the impact of oil-related

environmental degradation on livelihoods, the restiveness resulting from it, and the risk it poses to oil facilities by aggrieved communities, the Federal Government should make expeditious efforts to address the environmental challenge of Niger Delta communities. The implementation of the UNEP report on Ogoni without further delay will be a demonstration of government's commitment to the environmental health and socio-economic improvement of the Niger Delta. The government has to make every effort to undo the growing perception that all it cares about is the appropriation of oil money without concern for the environmental and other negative, collateral outcomes of oil exploration. The oil companies should similarly look beyond the bottom line by adopting sustainable methods, ensuring quick remediation of impacted sites, and paying adequate compensation promptly in order to assuage local feelings and prevent vengeful attacks on oil installations by angry youths.

## **C. Recommendations for the Local Communities**

### **1. Effective Leadership and Governance**

This is one area of critical deficit in Niger Delta communities. Most of the communities are bedevilled by leadership disputes and, sometimes, violent conflicts and corruption. Many of them lack legitimacy. Struggle over control of access to oil companies and the benefits that come with such control has been one of the most potent sources of crisis in these communities. The communities should be able to develop legitimate and effective leadership and good governance in order to:



- i) Strengthen the community's bargaining power with oil companies and government
  - ii) Have leadership who earn the support and respect of the youths and broad sections of the community
  - iii) Enjoy peace which is a crucial condition for development
  - iv) Drive socio-economic development.
2. Sustainable Partnership and Ownership
- The communities should place themselves in a position to build sustainable and mutually beneficial partnership with oil companies and development agencies. Often the IOCs are confused about who to deal with and lack of governance capacity in these communities. Such partnership could create a sense of ownership which would enhance the security of oil facilities and oil workers.

## 2

## INTRODUCTION

### 2.1 Background to the Study

Although increasing share of Nigeria's oil production has been coming from off-shore in recent years, the country's on-shore production has been concentrated in the three states of Rivers, Bayelsa and Delta. These states, on which this study focuses, are regarded as the core states of the Niger Delta and constitute the centre of illegal bunkering and artisanal refining in the country. Nigeria officially classifies nine states as oil-producing states that benefit from the 13 percent oil derivation fund. The states are Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo, and Rivers. Akwa Ibom State in 2012 overtook Rivers State to officially become Nigeria's largest oil-producing state, but most of its oil is produced off-shore where oil theft is not conspicuous, hence the state is not included in this study.

"Bunkering" is the supply of fuel to marine vessels. It becomes illegal when it is unauthorised. Illegal bunkering in the Nigerian context is the unauthorised lifting of crude oil and processed petroleum products. In official circles, this is oil theft. However, the term "oil theft" has become contentious and emotional in the Niger Delta communities where illegal bunkering is thriving, and among advocates of local or regional control of natural resources. They reject the terminology on several grounds, chief among which is their argument that

one cannot steal what belongs to him.<sup>1</sup> This is a difficult argument that brings into question the issue of sovereignty and constitutional control over certain categories of natural resources, especially minerals. The Petroleum Act of 1969 (as amended), vests ownership and control of oil and gas in Nigeria (including under its territorial waters and continental shelf) in the Nigerian state.

The ownership of oil and all minerals in Nigeria is further reinforced under section 44(3) of the 1979 constitution of the Federal Republic of Nigeria.<sup>2</sup> This position is confirmed in the PIB which states:

*Property and sovereign ownership of petroleum within Nigeria, its territorial waters, the continental shelf, the Exclusive Economic Zone and the extended continental shelf shall vest in the sovereign state of Nigeria for and on behalf of the people of Nigeria.<sup>3</sup>*

Given this legal position, any unauthorised appropriation of crude oil or processed petroleum products through siphoning from pipelines or other channels, should be regarded as an act of theft. This clarification, therefore, justifies the use of the term "oil theft" or "illegal bunkering" in the present study, until this constitutional position regarding the control of oil and gas resources, is changed.

<sup>1</sup> Ignatius Chukwu "Group justifies Oil Theft, Vows to Start New Insurgency in Niger Delta", *Businessday*, 14 Nov 2012 .

<sup>2</sup> S. 44 (3) States 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. Similarly, the Land Use Act vests the land in each of the states of the Federation in the Governor of the State and he holds the land in trust for all Nigerians. Rights to particular portions of the land can be granted by him through the issuance of a Certificate of Occupancy.

<sup>3</sup>"Fundamental Objectives" *Petroleum Industry Bill* (2008).

Oil and gas occupy a strategic position in the Nigerian economy. The petroleum sector is indeed the life wire of the national economy. In 2012, crude oil contributed 98.6 percent of foreign exchange earnings, 60.5 percent of national income and 37 percent of GDP at current basic prices (Table 1). In recent years, a significant proportion of the oil has been lost to theft. More than 7 percent of total production is lost to theft annually.

Portions of the stolen oil are processed crudely in the myriads of makeshift refineries into various petroleum products, the largest of which is AGO (diesel), followed by kerosene and petrol. These products are consumed mainly in the Niger Delta. The larger portion or about 80 percent of the oil is shipped to refineries abroad by syndicates which have ties to top levels of the political, military and business establishments in Nigeria. While unemployed youths and other local interests are mainly involved in artisanal refining, the masterminds behind the organized export-led theft are highly connected business establishments and individuals that the Nigerian authorities have failed to identify publicly.

Oil theft engenders a significant environmental impact. The theft involves hacking the pipelines to drill holes for siphoning the crude. This process spills substantial quantities of oil into the environment. The simple and inefficient processing of the crude leaves a large amount of wastes which would have been much reduced in industrial refining.<sup>4</sup> Our study has shown that between 45 percent and 48 percent of the processed crude is discarded as wastes.

These wastes are discharged into the environment. Often the processing and spill

sites catch fire, scorching vast areas of forest and marine vegetation. These are major ecological consequences of oil theft and artisanal refining, which compound the environmental crisis resulting from oil production by the international oil companies (IOCs)

Given the strategic position of petroleum in the Nigerian economy and society, the current level of oil theft, which continues to grow, is regarded by many as a clear and present danger to the national economy. Varying degrees of punishment, including death, have been canvassed. The Senate President, David Mark, is one of those top ranking national figures advocating the death sentence.<sup>5</sup> Cognizant of the threat to the oil industry and to their jobs, the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN), in July 2013 gave the Federal Government an ultimatum of sixty days to end oil theft.<sup>6</sup>

The government and IOCs may be mainly concerned about the loss of revenue. But the communities are suffering grave environmental damage, loss of livelihoods and social dislocation. The pollution has also raised serious public health issues which need greater investigation. The UNEP report on Ogoni revealed the high level of ground water contamination and its potentially catastrophic health consequences in certain communities in Ogoni. It is also important to examine the food chain in order to have a more enhanced perspective of the impact of hydrocarbon pollution on public health which is being aggravated by illegal bunkering and processing.

It is widely believed that oil theft has connections to arms proliferation and conflict in the Niger Delta. The extent of these connections has to be more firmly established.

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<sup>4</sup> Industry experts believe that the current crude refining method can only utilize about 40 per cent of what is stolen. The remainder is treated as waste and dumped into the environment, thereby contributing largely to environmental devastation of the Niger Delta.

<sup>5</sup> "Mark Insists on Death Penalty for Oil Thieves", *The Guardian*, June 26, 2013, p. 5

<sup>6</sup> "Crude Oil Theft: Oil Workers Give FG 60 Days Ultimatum", *National Mirror*, July 5, 2013, pp 1-2.

To check illegal bunkering, the government has adopted a number of measures, which include criminalization and the deployment of the security forces. But as will be demonstrated in this study, oil theft and its ramifications are more of a social problem than a law-and-order issue. There are several key reasons why it will be difficult to combat oil theft. These range from objective economic factors to political considerations and local perceptions. Contrary to widespread assumption, poverty is not the overall causal factor in oil theft. Poverty certainly drives local level oil theft for artisanal refining but not the big time kingpins who are making fortunes exporting stolen oil. Illegal bunkering both for the local and international markets will remain sustainable because it is market-driven and the deterrent (risk) factor is minimal. It will endure because it is so lucrative and so tempting a source of easy money that those who are given the crucial task to combat the illicit business are busy protecting it. This situation is also addressed in the report.

bunkering and artisanal refining is a complicated issue, this study is guided by two fundamental objectives:

1. To determine the social, economic, political, security and livelihood context of crude oil theft and refining in Rivers, Bayelsa, and Delta states.
2. Based on the above analysis, proffer solutions which might lead to the mitigation of the problem.

Thematically, the above objectives can be pursued under four broad themes: causes, processes, effect, and solution. This study is carried out according to these themes. It is important to reclaim the communities of Niger Delta from the devastating consequences of illegal bunkering, arrest the fatal bleeding of the national economy through the pipelines and prevent the decline of the oil industry. Achieving these will require dealing decisively with the social foundation of the problem.

Since the subject of pipeline attack, illegal



Lost Innocence. The lush tropical vegetation of Niger Delta creeks has been damaged by oil spills and artisanal refining





NIDEREF and RAIN researchers on field trip



Community consultations

## 2.2. Petroleum, the Nigerian Economy, State, and Society

Since the commencement of commercial oil exploration and export from Nigeria in 1956, the country, like other oil-exporting states led by OPEC, have experienced several waves of boom, starting in 1973-74 when oil prices jumped five-fold over those of the preceding year.<sup>7</sup> Crude oil prices have been increasing steadily ever since save for the relatively short interludes between 1986 and 1989, and 1993-1995 when prices per barrel averaged 15.7 dollars and 16.24 dollars, respectively.<sup>8</sup> Prices also declined following the international economic downturn triggered by the American sub-prime crisis of 2008-9. Driven by roaring demands in the new economic power houses of India, China and Brazil, lack of world-wide spare production capacity to meet the rising demand, lack of any effective

conservation efforts in Western consumer nations, especially the US where production of fossil fuel has been declining since 1970, oil prices have been climbing to unprecedented levels in recent years.

The galloping prices broke the psychological threshold of 60 dollars pbl in June 2005, reaching the 100 dollar pbl mark in 2006 and 120 dollars pbl before the sub-prime crash of 2008. These booms have meteorized Nigeria's oil earnings from 12 million dollars in 1960 to 94.6 billion dollars in 2012, giving gross earnings from oil for the period to about 932.5 billion dollars (Table 2). Between 2007 and 2011 crude oil contributed an average of 37.5 percent of GDP per annum at current market prices, and an average of 89 percent per annum of the country's total export values between 2007 and 2012 (Table 1). This shows the overwhelming dependence of Nigeria on crude oil.

<sup>7</sup>Terry Lynn Karl, *The Paradox of Plenty: Oil Booms and Petro-states*. Berkeley: University of California Press, 1997, 246, Statistical Appendix Table A1.

<sup>8</sup>Calculated from OPEC *Annual Statistical Bulletin*, 2003, Table 05.

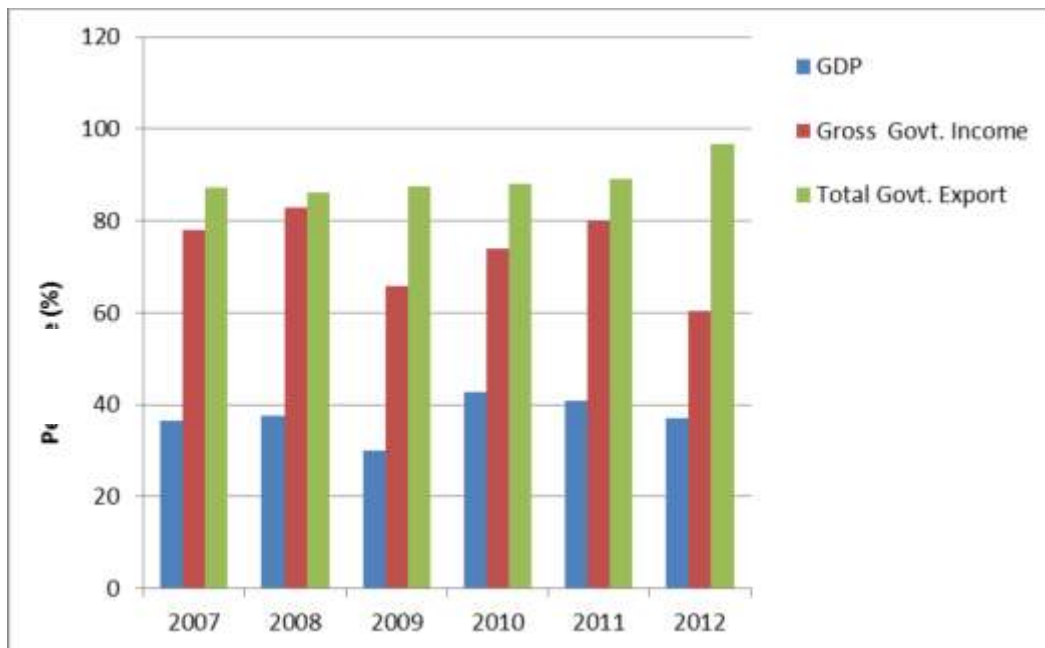
Table 1. – Oil and the Nigerian Economy, 2007-2012

| Year | GDP at Current Basic Prices (US\$b) | Share Crude oil in GDP N b | % Share of Oil and Gas in GDP | Gross | Share Oil & Gas in Gross Gov't Receipts | % Share Oil & Gas in Gross Gov't Rec. | Total Exports (Fob) US\$m | Share Crude Oil & Gas in Govt. Exports (US\$m) | % Share Crude Oil in Export |
|------|-------------------------------------|----------------------------|-------------------------------|-------|---|---------------------------------------|---------------------------|--|-----------------------------|
| 2007 | 173.6                               | 63.5                       | 36.6                          | 45.6  | 4,462.9                                 | 77.9                                  | 66,605.95                 | 58,164.51                                      | 87.3                        |
| 2008 | 204.3                               | 76.5                       | 37.5                          | 66.1  | 6,530.6                                 | 83.0                                  | 86,373.49                 | 74,303.54                                      | 86.1                        |
| 2009 | 164.9                               | 49.3                       | 29.9                          | 32.2  | 3,191.9                                 | 65.9                                  | 56,741.94                 | 49,714.31                                      | 87.6                        |
| 2010 | 224.9                               | 96.0                       | 42.7                          | 48.3  | 5,396.1                                 | 73.9                                  | 77,362.78                 | 68,149.92                                      | 88.1                        |
| 2011 | 239.3                               | 98.0                       | 41.0                          | 71.3  | 8,879.0                                 | 79.9                                  | 93,266.98                 | 83,060.99                                      | 89.1                        |
| 2012 | 255.25                              | 94.5                       | 37.0                          | 83.5  | 8,026.0                                 | 60.5                                  | 96,031.62                 | 92,983.64                                      | 96.8                        |

Sources: CBN Annual Report 2011, Tables 18, 33, 54; CBN Annual Report 2012, Table 58

Note: Exchange rate used for conversion of naira to dollar is the average interbank rate for the respective years.

Figure 1. Contribution of Oil to the Nigerian Economy



Sources of raw data: CBN Annual Report 2011 Tables 18,33,54; CBN Annual Report 2012 Table 58

Oil has brought tremendous impact on government revenues. It has engendered massive spending and investment in infrastructure, although this infrastructure has not been sustained.

However, there continues to be debate about the overall development impact of oil on the Nigerian economy.<sup>9</sup> There is an almost unanimity of opinion that Nigeria has not made the best of the oil boom. In terms of economic and social performance, the country fares the least among OPEC countries.

The impact of oil boom on job creation, for instance, has been modest. By its technically intensive nature, the oil and gas industry does not generate comparable job opportunities like manufacturing or the service industry. Once the oil fields and pipelines are established, it requires a limited number of workers to guard and keep the facilities working. This is unlike solid mineral industry in which mining and related operations employ large numbers of workers. SPDC, which produces 41 percent of Nigeria's oil, employs about 4,000 staff while its contractors employ an additional 20,000.<sup>10</sup> In the absence of reliable data, it can be reasonably estimated that both the upstream and downstream sectors of the Nigerian petroleum industry employs no more than 250,000 people. This is too modest a contribution by the leading sector of the national economy. By contrast, in South Africa, another economy dominated by extractives, the mining sector contributes

19 percent of the GDP, 50 percent of merchandise exports and generates about one million jobs.<sup>11</sup>

A growing amount of literature identifies oil as the cutting edge of the resource curse thesis.<sup>12</sup> The main factors accounting for the poor development outcomes of oil windfalls have been summarized as follows:

1. Oil booms raise expectations and increase appetites for spending.
2. Governments dramatically increase public spending based on unrealistic revenue projections.
3. Booms decrease the quality of public spending and encourage rent-seeking.
4. In developing countries, booms undermine effective governance and encourage corruption.
5. The volatility of oil prices hinders growth, distribution and poverty alleviation.
6. Booms encourage the loss of fiscal control and inflation, further hampering growth, equity and the alleviation of poverty.
7. Foreign debts grow faster in oil-exporting countries, mortgaging the future.
8. Non oil productive activities, like manufacturing and agriculture, are affected by the oil sector by producing the Dutch Disease syndrome.<sup>13</sup>
9. The struggle over access to oil wealth generates violent conflicts.

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<sup>9</sup>Mr Bill Clinton, the former US President made this point succinctly during a visit to Nigeria in February 2013 when he said pointedly: "First of all, like 90 percent of the countries, which have one big resource, you haven't done well with your oil money. You should have reinvested it in different ways." - See more at:

<http://www.vanguardngr.com/2013/02/clinton-lists-nigerias-challenges/#sthash.rNwVZkmS.dpuf>

<sup>10</sup>"Our Profile" in SPDC year book, 2013.

<sup>11</sup>Chamber of Mines of South Africa, *Annual Report 2011*, p. 16

<sup>12</sup>Leading authorities on the subject include Richard M Auty, *Sustaining Development in the Mineral Economies: The Resource Curse Thesis*. London: Routhledge and Kegan Paul, 1993; Terry Lynn Karl, *The Paradox of Plenty: Oil Booms and Petro-States*. Berkeley: University of California Press, 1997; Jahangir Amuzega, *Managing the Oil Wealth: OPEC's Windfall and Pitfalls*. London: I B Tauris, 2001.

<sup>13</sup>Ian Garry and Terry Lynn Karl, *Bottom of the Barrel: Africa's Oil Boom and the Poor*. Baltimore: Catholic Relief Services, 2003, p 18 (research report).



Table 2. Values of Nigeria's Crude Oil Exports, 1960-2012 in US Dollars

| Year | Amount (Million) | Year  | Amount (Million) |
|------|------------------|-------|------------------|
| 1960 | 12               | 1987  | 7,024            |
| 1961 | 32               | 1988  | 6,267            |
| 1962 | 48               | 1989  | 7,470            |
| 1963 | 57               | 1990  | 13,265           |
| 1964 | 90               | 1991  | 11,792           |
| 1965 | 191              | 1992  | 11,642           |
| 1966 | 258              | 1993  | 10,859           |
| 1967 | 199              | 1994  | 11,040           |
| 1968 | 109              | 1995  | 11,512           |
| 1969 | 422              | 1996  | 14,888           |
| 1970 | 718              | 1997  | 14,391           |
| 1971 | 1375             | 1998  | 8,754            |
| 1972 | 1803             | 1999  | 12,453           |
| 1973 | 3049             | 2000  | 20,040           |
| 1974 | 8997             | 2001  | 17,188           |
| 1975 | 7744             | 2002  | 17,083           |
| 1976 | 9444             | 2003  | 22,184           |
| 1977 | 11561            | 2004  | 33,309           |
| 1978 | 9452             | 2005  | 46,770           |
| 1979 | 15624            | 2006  | 54,607           |
| 1980 | 24931            | 2007  | 51,170           |
| 1981 | 17291            | 2008  | 73,825           |
| 1982 | 11883            | 2009  | 42,205           |
| 1983 | 9941             | 2010  | 66,923           |
| 1984 | 11534            | 2011  | 87,130           |
| 1985 | 12568            | 2012  | 94,640           |
| 1986 | 4770             | Total | 932,534          |

Sources: OPEC, *Annual Statistical Bulletins*, 2003-2012

All the above factors are not inevitable. OPEC members in the Gulf region have over the years learnt how to manage their windfalls better, producing spectacular progress through economic diversification and improved governance, overcoming the worst of resource curse scenarios. Nigeria has also learnt some lessons. For instance, it has been trying to control its external debt profile, having benefitted from the large international debt write-off of 2005. It has also been trying to manage its budget, avoiding unrealistic revenue projections by setting a revenue benchmark below current oil prices.<sup>14</sup>

Irrespective of these efforts, the main thrust of the resource curse thesis remains true for Nigeria. More than 60 percent of its estimated 160 million people remain abysmally poor. Endemic corruption and resource-related conflicts continue to bedevil the country. Nigeria remains high in the TI's corruption index. In 2003, it

occupied 154<sup>th</sup> and 161, 172, 158 in 2005 2008 and 2012, respectively. A 2003 study showed that out of the 47 incidents of conflict identified in Rivers, Bayelsa and Delta states, 60 percent of them were related to the control of oil-bearing lands by communities and compensation by oil companies.<sup>15</sup> Citizens in the oil producing region continue to be agitated by their perceived exclusion from the benefits of the oil economy. The Nigerian state remains dysfunctional with its institutions highly weakened while governance continues to be ineffective. Contestation for power in the country, be it under the past military dictatorships or the current civilian dispensation, continues to be driven by desire to control oil income.

### 2.3 History of Illegal Bunkering and Artisanal Refining in Nigeria

Illegal bunkering is not new in Nigeria. It seems the practice originated in the late

<sup>14</sup> This fiscal policy has not been without its pitfalls. For instance, it has caused undue delay in agreeing the Budget for 2014. It is also believed that setting unreasonable benchmark has contributed to serious leakage which has robbed the economy of so much resources that cannot be accounted for.

<sup>15</sup> Niger Delta Environment and Relief Foundation (henceforth NIDEREF), "Oil, Reinvented Ethnicity and Crisis in Nigeria: A Study of Social Movements and Social Forces in the Niger Delta". Port Harcourt, 2003 (research report)

1970s. Initial cases of bunkering were dominated by the theft of refined petroleum products. By the early 1980s the illegal bunkering of crude oil had become a growing practice. A top naval officer interviewed mentioned one of the first ships he arrested in 1983 – the Shanghai Express. He stated that the Korean crew was in detention for one week after which diplomatic pressure brought about their release. Bunkering had become a problem by this time, making the Buhari-Idiagbon dictatorship (December 1983-1985) to include it among economic crimes covered under The Special Tribunal (Miscellaneous Offences) Decree No 20 of 1984.<sup>16</sup> Buhari's military successor, Ibrahim Babangida, instituted a task force to tackle oil theft. By 1988, Professor Tam David-West, former Petroleum Minister, stated at a press briefing that Nigeria was losing about 10 million dollars annually to oil theft.<sup>17</sup> Military officers seemed to be dominant among the people that made money from illegal bunkering in the early days. By 2007, illegal bunkering by local youths was being popularized by the siphoning of condensates (the so-called "Asari fuel") from the Soku fields in Asari Toru LGA, Rivers State.

What is relatively of recent provenance is widespread artisanal refining. The technique derives from the distilling process that has been used to produce local gin from fermented palm wine in the swamps of Niger Delta for centuries. The process was applied to crude oil in producing low quality fuels which served the energy needs of the defunct state of Biafra in the late 1960s. After the collapse of Biafra, the relatively cheap price of fuel made the industry to go into abeyance. Nigeria's growing deregulation, and consequently, increasing prices of fuel and scarcity in the hard-to-reach communities of the Niger Delta, revived the practice from about 2004.

A source claimed that the new wave of artisanal refining originated in the Tuomo

community in Burutu LGA of Delta State from where it spread to other parts of the Niger Delta.<sup>18</sup> It may not be correct to ascribe the revival and commercialization to any single community as artisanal refinery is based on an indigenous Niger Delta distilling technique. The market opportunity provided by rising fuel prices and scarcity in the hard-to-reach Niger Delta communities might have stimulated artisanal refining in a number of sites.

Accounts at Bodo in Gokana LGA of Rivers State, a bunkering hub on the Trans-Niger Pipeline (TNP), claim that a certain man from Warri introduced the youths to crude oil processing during the massive oil spill that occurred in Bodo creek in 2008. That spill is the subject of an ongoing international litigation between the community and SPDC in a London court. Nevertheless, the practice did not take off there on a significant scale until 2009, but it caught on instantly in the neighbouring Kegbara Dere community in 2008.<sup>19</sup> Once it took off the industry grew phenomenally, culminating in the reported destruction of "600 illegal refineries" in Ogoni by JTF in December 2009<sup>20</sup> and the surrender of "800 illegal refinery operators" in Ogoni in March 2010.<sup>21</sup> JTF estimate of "illegal refineries" in the Niger Delta at the time was 1,500. Similar developments were also taking place about the same time in communities along the NCTL in Bayelsa State and elsewhere in the Niger Delta, introducing a new dimension to oil theft and pipeline vandalism.

While the broad and remote socio-economic origins of artisanal refining are analysed in Chapter 3, there seems to be an immediate connection between the refining business and accessibility of crude through pipeline leakage. Some of our respondents believe that the environment and the negligence of the oil companies triggered

<sup>16</sup>The decree was promulgated at the end of 1983, taking effect from January 1984

<sup>17</sup>Nigerian Tide, May 20, 2013.

<sup>18</sup>Interview at Tuomo Community, 6 June, 2011.

<sup>19</sup>Interview with one of the illegal bunkering leaders, Sept 2013.

<sup>20</sup>Dennis Naku, "JTF Destroys 600 Illegal Refineries", *Champion Newspaper Online*, 16 December, 2009

<sup>21</sup>George Onah, "800 Illegal refinery Operators Give Up in Rivers", *The Vanguard*, 15 March 2010.

<sup>22</sup>Patrick Naagbon, "The Bodo War of Attrition", unpubl. paper, 2006.

illegal refining. "Twenty years or so ago, no one cared about crude oil because we really did not have any need for it," said a community leader in Bayelsa State. In the case of Bodo, the connection between the record 2008 spill and the rise of artisanal refining is already indicated above. Before then Bodo youths knew little about the dangerous practice of siphoning oil from high pressure pipelines.

The availability of free crude oil from the spill was clearly a triggering factor. Artisanal refining at Bodo came at a time when the end of a bloody two-year cult war (2006-2007) in the community created an army of idle young men without any means of livelihood. The members of the rival cult gangs were the foot soldiers of two leading rival politicians in the community. The struggle for supremacy between the two men ignited the cult war.<sup>22</sup> When the conflict ended, the young men, who were sustained as thugs by their political masters, became jobless and without any income. Illegal bunkering and refining came to the rescue.

Other unemployed and impoverished youths from all over Gokana LGA and neighbouring Andoni and Ogu-Bolo LGAs followed the trail, making Bodo creek a cosmopolitan illegal bunkering haven.

Some opinions have linked the increase in bunkering after 2010 to the Amnesty Programme which demobilized the militants without readily available livelihood opportunities. While the rehabilitation scheme connected to the Amnesty provided vocational training for most of the former militants, post-training unemployment was a major factor that forced the beneficiaries to look further afield for income opportunities. To the former fighters, illegal bunkering provided better income and consequently became more attractive than other opportunities. Oil theft was simply a continuation of an activity that had sustained and actually made some of them rich during the years of conflict. There was hardly any demarcation between militancy and illegal bunkering in the creeks of Niger Delta.

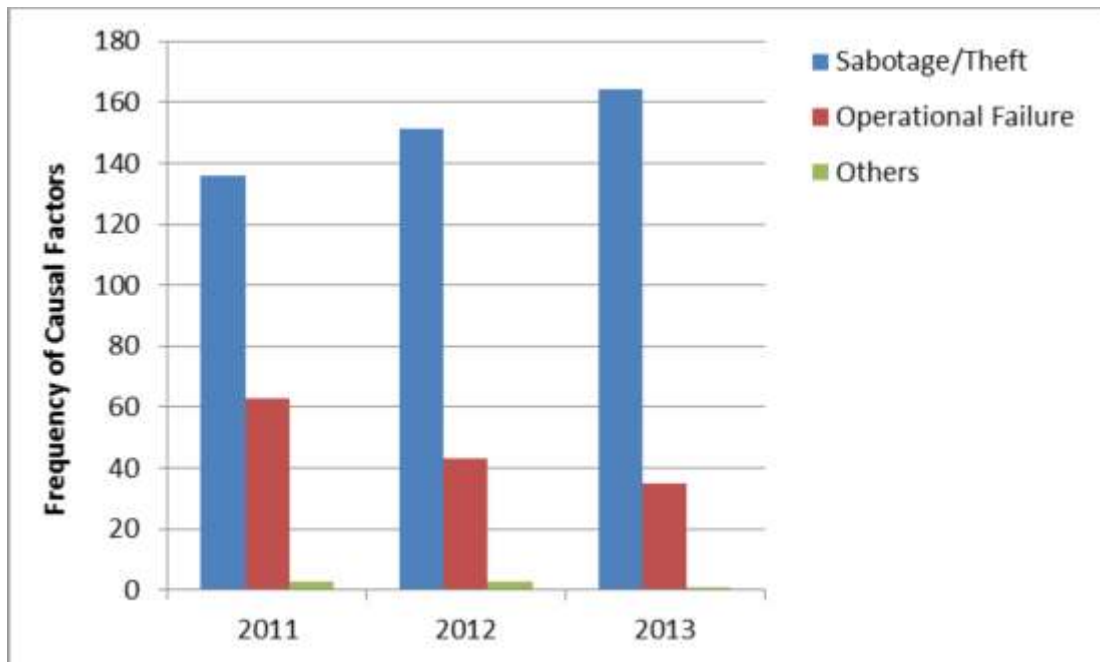


Oil drilling in the Niger Delta

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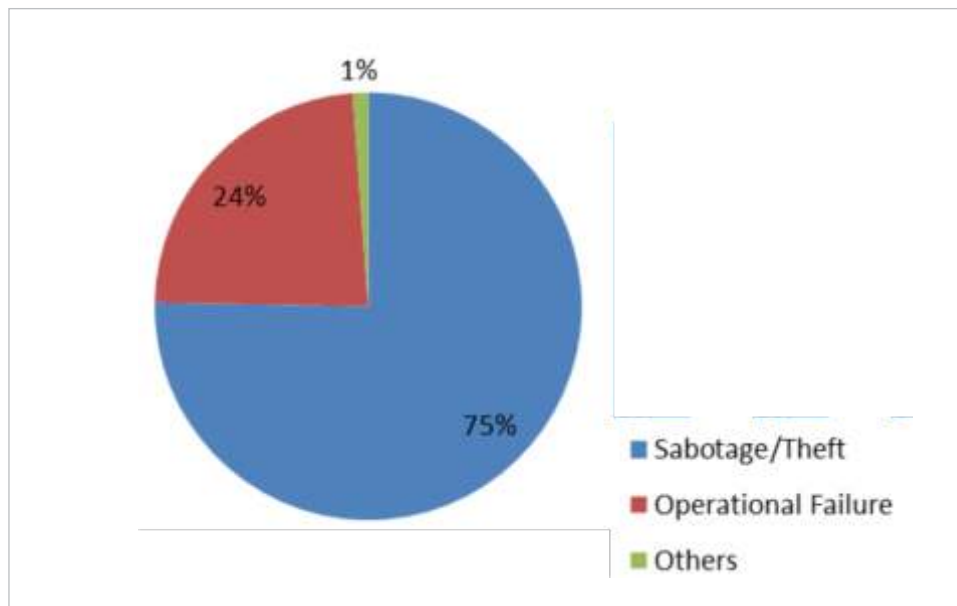
<sup>22</sup>Patrick Naagbon, "The Bodo War of Attrition", unpubl. paper, 2006.

Figure 2. SPDC Oil Spill Record in the Niger Delta, 2011-2013



Source of raw data: [www.shell.com.ng/environment-society-tpkg/oilspills.html](http://www.shell.com.ng/environment-society-tpkg/oilspills.html)

Figure 3. Percentage Contribution of Causes of SPDC Oil Spills in the Niger Delta 2011-2013



Source of raw data: [www.shell.com.ngenvironment-society-tpkg/oilspills.html](http://www.shell.com.ngenvironment-society-tpkg/oilspills.html)



## 2.4. Relationship Between Illegal Bunkering and Artisanal Refining

The crude oil stolen by tapping from the pipelines and wellheads is either exported or crudely processed in simple refineries owned by individuals or small groups, hence the term “artisanal refinery”. Some sources call it crude oil “cooking” or “distilling”. The product mix include petrol (PMS), kerosene (DPK) and diesel (AGO). Before the explosion in the number of artisanal refineries from 2009, the stolen oil was mostly exported by syndicates or cartels. Estimates of the relative proportion of the bunkered oil that goes into export or processed locally vary considerably, ranging from 10 percent<sup>23</sup> to 25 percent.<sup>24</sup> Field calculations and interviews for this study indicate that a figure of about 20 percent should be closer to reality. In the Niger Delta context, illegal bunkering can take place without refining, but there cannot be refining without oil theft. For many people, the term “illegal bunkering” covers both oil theft and refining.

## 2.5. Estimates of Stolen Crude

Estimates of the amount of oil stolen in Nigeria vary widely, according to the year. Without disclosing how it arrived at its estimate, the Maritime Industry Advocacy Initiative stated in May 2011 that Nigeria was losing 600,000 bpd to illegal bunkering.<sup>25</sup> At a price 107.46 per barrel this amounted to 64.48 million dollars per day. The Minister for Finance, Ngozi Okonjo-Iweala, in July 2013, put the estimate at 400,000 bpd.<sup>26</sup> On its part, NNPC puts its estimate at 180,000 bpd.<sup>27</sup> SPDC claims it loses about 60,000 bpd through theft and vandalization of its pipelines.

To have a more realistic estimate, it is necessary to identify the main sources of illegal bunkering and how much oil is taken from each of them. The two main sources are direct tapping from the pipelines and from wellheads. Calculations from field observations tend to make a loss of 100,000 to 110,000 bpd from pipeline siphoning a more realistic figure. Wellhead siphoning might account for another 10,000 bpd. Taken together, it seems logical to state that Nigeria lost an average of 120,000 bpd to oil theft in 2013.

<sup>23</sup> Patrick Dele Cole, a former Nigerian Ambassador to Brazil, who has been working on illegal bunkering in recent years, is of the view that 90 percent of the stolen crude is exported.

<sup>24</sup> SDN, *Communities Not Criminals: Illegal Oil Refining in the Niger Delta*. London and Port Harcourt: 2012' p.14.

<sup>25</sup> Valerie Anofochi, “N3.7tn lost to illegal bunkering in Nigeria”, *Vanguard*, 25 May 20, 2011.

<sup>26</sup> Editorial, *The Nation*, July 23, 2013.

<sup>27</sup> Collins Olayinka, “Crude oil theft hits 180,000 bpd” *The Guardian*, 25 May, 2012.

- To have a more realistic estimate of the amount of oil stolen, it is necessary to identify the main sources of illegal bunkering and how much oil is taken from each of them. The two main sources are direct tapping from the pipelines and from wellheads.
- Whether oil theft increases or decreases in the short term will depend on certain factors:
  - The effectiveness or otherwise of current anti-bunkering measures;
  - The prospects of stability in the Niger Delta; and
  - International oil prices.
- Relative to the amount of oil produced, Nigeria has an incomparable rate of oil theft in the world. She lost an average of about 145,000 bpd in 2013.

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However, in assessing the overall loss to the national economy, the losses due to the numerous shut-ins and declarations of *force majeure* that follow extensive pipeline vandalism have to be taken into account. An undelivered oil contract amounts to substantial revenue loss. The TNP and NCTL have been shut down several times in the last two years. The two pipelines each has a capacity of 150,000 bpd. The TNP is a twin pipeline comprising a 24-inch line and a 28-inch line. Every infraction on any of these lines is normally followed by shut-in on that line to allow repair work which lasts one to two weeks, depending on the degree of damage. When the two lines are affected there is a shut-in on the TNP and a declaration of *force majeure*. In 2013 alone, more than 40 infractions were recorded on the two lines, leading to TNP shut-ins that lasted for an estimated total of 60 days, to take a conservative figure. This amounted to a total shut-in of 9 million bbls for the year or 24,657.5 bpd. If this figure is added to 120,000 bpd, we come to the conclusion that Nigeria lost approximately 144,700 bbl in 2013. Taking the average OPEC price of 105.8 dollars pbl in 2013, this translates to a revenue loss of 15,309,260 dollars per day or approximately 5.6 billion dollars for the year. Adding collateral costs, such as those connected to repairing the frequent theft-related third party damage to pipelines, it can be concluded that Nigeria lost about 6 billion dollars to oil theft in 2013.

#### 2.6. Size of the Illegal Bunkering Informal Economy

We have estimated that illegal bunkering and artisanal refining industry is worth an annual cash value of 9 billion dollars. This comprises 6 billion dollars that is lost to the government and oil companies as a result of theft related activities and 3 billion dollars

<sup>28</sup> Claims that illegal bunkering takes place at the export terminals.



that is generated by other activities along the value chain, including oil tapping operations, refining process and camp services, security payments, transportation, equipment fabrication, boat building and product retailing.

## 2.7. Future Trend

Based on existing data can we expect increase or decrease in oil theft in the next few years? To predict the future scenario, it is necessary to establish a pattern based on several years' data. This is a challenging task, given the unreliability of current oil theft record.<sup>28</sup> The existing data shows no clear chronological pattern. What is known is that theft increases during periods of conflict when militants are under pressure to steal oil to buy arms and it is difficult for authorities to check illegal bunkering under conflict situation. This was the case for the period between 2001 and 2010 when the Amnesty programme came into effect. The second observation is that record high oil prices in recent years tend to encourage theft as a result of large profit margin.

Whether oil theft decreases or increases in the short term will depend on certain factors:

1. The effectiveness or

otherwise of current anti-bunkering measures: Effective enforcement measures will vastly reduce oil theft while the current lacklustre approach will contribute to increasing or stabilizing theft at the current level.

2. The prospects of stability in the Niger Delta: Widespread conflict such as occurred between 2001 and 2010 will most likely lead to increase in theft.
3. International oil prices: Current price levels will continue to be conducive to theft while a fall will diminish the profit margin and act as disincentive. In fact, should there be a glut, oil thieves may find it difficult to sell and thereby reduce the rate of theft.

Based on current anti-bunkering campaign by government and the IOCs, and on existing security levels in the Niger Delta, it is likely

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<sup>29</sup> Christina Katsouris and Aaron Sayne, "Nigeria's Criminal Crude: International Options to Combat the Export of Stolen Oil. London: Chatham House, 2013 (September), p.16.

<sup>30</sup> NBC Nightly News (USA), 28 March, 2008

<sup>31</sup> Ibid.

<sup>32</sup> Ibid

# 3

## ORIGINS AND REINFORCING FACTORS OF ILLEGAL BUNKERING AND ARTISANAL REFINING

### SOCIO-ECONOMIC AND PSYCHOLOGICAL FACTORS

#### 3.1 Poverty and Deprivation

Oil theft and artisanal refining are fundamentally linked to the broad economic, social and political circumstances of the country. There are two sets of actors who are driven by different economic motivations. Many of the low level actors who steal and refine oil for the internal market are affected by varying degrees of poverty and unemployment. The big operators who export stolen oil to the international markets are by no means poor people. They are primarily motivated by capital accumulation. They are in the business to make money. These are the people who are able to muster the high financial capital requirements of a high risk illegal international business as well as the political capital to protect the business. The local actors are much more numerous than the international players. It is estimated elsewhere in this study that there are more than 26,000 people who are directly or indirectly connected to the local bunkering and refining economy. We need to examine the economic and social conditions that motivate the local players and also make it possible for the international actors to operate.

Niger Delta socio-economic problem is part of a broader national scenario. National macro-economic indicators are weak. Economic growth is slow and it hardly impacts on job creation hence there is high rate of poverty and unemployment. Nigeria has the lowest economic performance among OPEC members. The country's GDP

growth rate of 4-6percent in recent years is mainly accounted for by increased earnings from oil, not from productivity, hence it has no impact on poverty and unemployment.

The leading sector of the Nigerian petro-economy, the oil and gas industry, does not create jobs the way manufacturing and agriculture do. Oil windfalls have not been invested prudently to diversify the economy, generate development, create jobs and improve living conditions. Nigeria's total earning of 932.5billion dollars from petroleum between 1960 and 2012 has not impacted on poverty. Rather, data tends to corroborate the view that in recent years, the more the country earns from oil the poorer the people become. There is crisis in the Niger Delta – insurrection, criminality, oil theft, sabotage of oil facilities - largely because the people feel their lives have not been improved by the oil wealth taken from their land and that the government and oil companies do not care.

Niger Delta's economic and social condition appears daunting. The region's human development index (HDI) score, defined as "a measure of well being encompassing the longevity of life, knowledge, and a decent standard of living", is as low as 0.564 (with 1 being the highest score).<sup>33</sup> According to UNDP, although this figure is slightly above the national figure of 0.453, it still rates below countries or regions with comparative oil resources such as Saudi Arabia (0.800 in year 2000), and in 2003, UAE (0.849), Kuwait (0.844), Libya (0.772) and

<sup>33</sup> UNDP, *Niger Delta Human Development Report, 2006*, p. 15.

Venezuela (0.697).<sup>34</sup>

But the Niger Delta situation is aggravated by geography and decades of neglect. Until recently the inaccessibility of the region made local development very difficult. Infrastructural development remains grossly inadequate. Poverty in the region is endemic. Complicating this situation is oil-related environmental damage which has ruined the local fishing economy, dislocating livelihoods. This grim socio-economic outlook has persisted despite the significant financial transfers from oil earnings to the

impact on the Niger Delta. For communities that depended on the traditional livelihoods of fishing and farming, the massive environmental damage means the dislocation of the local economy, leading to aggravated poverty and destitution in these communities. The extent of environmental damage is demonstrated in the widely acclaimed ground-breaking study of Ogoni by the United Nations Environment Programme (UNEP). Yet three years after the release of the UNEP study, *Environmental Assessment of Ogoniland*, no appreciable effort has been made by the Federal



Images of poverty in the Niger Delta. Have 13 percent Derivation Fund and NDDC produced any change?

region in recent years. The nine oil-producing states of the Niger Delta collectively received 14.5 billion dollars from derivation from 2007 to 2012. The three leading oil-producing states of Rivers Bayelsa and Delta, which are the focus of this study, collectively accounted for 9.4 billion dollars or 64.8 percent out of this amount. (Figure 4). Intervention agencies such as the NDDC have had a limited impact on the socio-economic profile of the region.

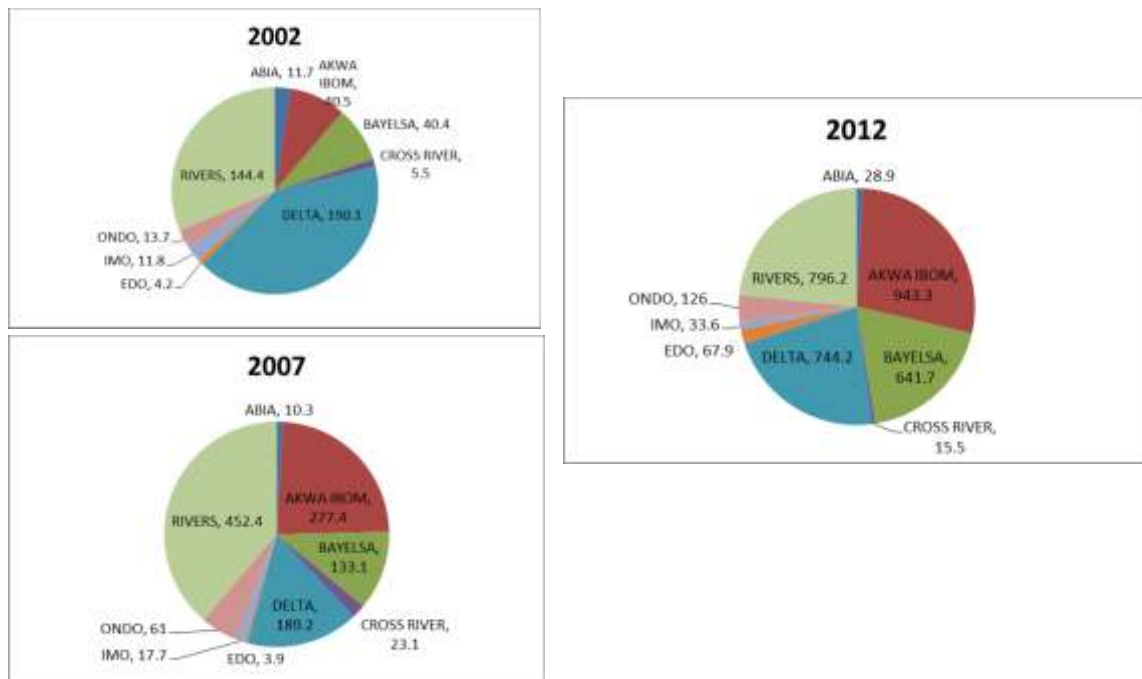
#### Environmental Degradation

It is a generally known fact that oil exploration has had a drastic environmental

Government to implement the report. The announcement of the setting up of the Hydrocarbon Pollution Restoration Project (HYPREP), to implement the report and intervene in cases of environmental pollution in other parts of the Niger Delta, has been seen by many as a diversionary initiative to pre-empt protests in Ogoni and elsewhere in the Niger Delta. Close to two years after its establishment, HYPREP is yet to have legislative backing and it is not included in Federal Government budget. This seemingly insensitive attitude of the Federal Government is compounding the existing anger and restiveness in Ogoni resulting in heightened risk to oil facilities in

<sup>34</sup> *Ibid.*

Figure 4 Distribution of Crude Oil Derivation Fund (\$m)



Source of raw data: Office of the Accountant-General of the Federation

the area.<sup>35</sup>

To engender social development in the Niger Delta, UNDP proposed a seven-point agenda:

1. Promotion of peace as the foundation for development.
2. Making local governance effective and responsive to the needs of the people.
3. Improving and diversifying the economy.
4. Providing social inclusion and improved access to social services.
5. Promotion of environmental sustainability to provide the people with sustainable livelihood.
6. Adopt an integrated approach to HIV-AIDS.
7. Build sustainable partnership for the advancement of human development.

Not much has been achieved since this

report was released. It is in the midst of this dismal social and economic condition that illegal bunkering and artisanal refining are thriving in the Niger Delta.

### 3.2. Unemployment

Unemployment has been identified as one of the root causes of illegal bunkering and artisanal refining in the Niger Delta region. A very high number of youths within the Niger Delta region are unemployed. The National Bureau of Statistics, 2005 employment figures show that millions of Niger Delta youths, perhaps 4 out of 7, were unemployed and many had never worked before. In the course of this study, most of the youths interviewed insinuated that the oil companies do not hire their employees from the oil producing communities. The obvious reason being that most of them do not have the requisite skills or education to make them employable. Unfortunately, unemployment in the Niger Delta is widespread and due to environmental

<sup>35</sup> In early December 2013, Ogoni protester under the aegis of the MOSOP and other civil society groups, blocked the strategic Eleme section of the East-West Road, disrupting movements in and out of Port Harcourt and the Eleme industrial area. The issue was the non-implementation of the UNEP report by the Federal Government.





*St Pius X College, Bodo, Gokana LGA. The first secondary school in Ogoni, taken over by the government from the Catholic Church in the 1970s, has been neglected and run down. Returned to the original church owners a few years ago, the school is now virtually empty as parents cannot afford the 88 dollar annual tuition introduced to revive the institution. Many of the students have consequently taken to the creeks to make a living from illegal oil refining*

degradation, most people can no longer practice their predominant occupation, which used to be farming and fishing.

Furthermore, statistics has shown that unemployment in Nigeria is on the increase. The National Bureau of Statistics figures show that in Nigeria unemployment increased from 11.9 per cent in 2005 to 19.7 per cent in 2009, the highest since 2000. The real unofficial figure should be about 25 percent or more. This ugly situation should therefore push the government and its agencies to explore all possible job creation strategies, especially as some experts have listed job creation as Nigeria's greatest challenge. This is more so in the Niger Delta, where joblessness has become a reason for youths to indulge in illicit businesses such as illegal bunkering and artisanal refining just to eke out a living. The Niger Delta economic growth and unemployment are thus huge

structural problems calling for large-scale government investment. An earlier survey conducted by NIDEREF showed that given the very high risk factor in illegal bunkering and refining (JTF arrest, danger in refining, etc), most of the youths would prefer alternative sustainable livelihood to bunkering.

### 3.3. Perceived Neglect by the IOCs

In almost every bunkering community in Rivers, Bayelsa, and Delta states visited for this study, the people are unanimous in their claim of neglect and indifference by the IOCs. They allege that they are not provided with pipe-borne water, electricity and health facilities. The general opinion in these communities is that the IOCs are stingy and uncaring and that the companies often use divide-and-rule tactics to create misunderstanding in the communities in

order to have their way. There is little sympathy in these communities when the companies' pipelines are attacked for bunkering. Some of the IOCs have received more criticisms than others. As a matter of fact, in certain extreme cases, there is clear animosity against some of these companies and bunkering is perceived as a means of getting at the IOCs and their policies. This appears to be the case with Shell in Ogoni. Some youths in the Gokana LGA of Ogoni tend to capitalise on the difficult relationship that has existed between the Ogoni people and Shell since the 1990s to justify their involvement in illegal bunkering.

However, the socio-economic condition of these communities has to be weighed against the efforts made by the IOCs in recent years to contribute to local development and improve community relations. For instance, NDDC records show that SPDC's JV made a total contribution to the Commission of about 166.5 million dollars between 2001 and 2005. The firm's community development spending averaged about 39 million dollars per annum between 2002 and 2006, although this seems to be mere dent in the company's operational budget averaging about 2 billion dollars per annum during the period. SPDC's current community development model centres on its GMoU. In its publication, *GMoU: Progress so Far*, the company indicated that as at the end of 2011, it had provided 79.5 million dollars for 706 community projects, 596 of which have been completed while 110 are ongoing. Although huge investments continue to be needed in order to improve social condition in the Niger Delta, the GMoU has evidently had a positive impact on relations in some of the communities where it is implemented. This provides a conducive atmosphere for pipeline protection if

appropriate measures are implemented as indicated in the recommendations of this work. A recent study has established a correlation between CSR pattern and conflict prevalence in the Niger Delta, indicating that conflict is less where there exists a robust CSR initiative by oil companies.<sup>36</sup>

### 3.4. Market Factors: Scarcity of Petroleum Products, High Oil Prices, Soaring Profits

Nigeria, the sixth largest oil exporter, has paradoxically experienced intermittent fuel scarcity in varying degrees. Inadequate refining capacity, poor maintenance of existing refineries, and poor distribution network, have been identified as some of the causes of this scarcity. This has made the government import refined products to meet internal demand. Yet Niger Delta communities continue to experience chronic scarcity resulting in exorbitant prices in a region that produces the country's crude oil. In 2010 when the regular price of petrol (PMS) was 65 naira (44 cents) per litre, it was sold at 140 naira (93 cents) in the Niger Delta.<sup>37</sup> When petroleum pricing was deregulated in January 2012, raising the official price to 97 naira per litre, the people had to pay prices much higher than the pre-regulation price of 140 naira per litre.

In almost all the riverine communities visited, there is no functioning government outlet for dispensing petroleum products. However, there are a few floating stations in some areas which are grossly inadequate for the needs of the people. These stations are more often than not without products. Respondents in communities such as Azagbene and Igbomaturu in Bayelsa State complained about how they have to spend so much money going to Nembe and Ogbia to buy fuel for cooking, for their generators, and to power boats, which are the only means of transportation in the area. Theirs is

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<sup>36</sup> Kiipoye Aaron, "Corporate Social Responsibility Pattern and Conflict in Nigeria's Oil Rich Region", *International Area Studies Review* 16 (4): 341-356.

<sup>37</sup> Chido Okafor et al "Illegal Bunkering in the Niger Delta", *The Guardian Online*, 19 March 2010.

a case of double jeopardy. Not only do they pay more for fuel, but they also have to pay separate cost for transportation in order to buy the fuel. In the 1990s the NNPC introduced floating fuel stations to the riverine communities but this initiative soon collapsed. Even in more accessible parts of the Niger Delta, the occasional shortages and cheaper price of artisanal fuel has

The communications companies also peg the prices paid to contractors who supply fuel that power their base stations in parts of the Niger Delta to the price of *kpofire* fuel. The contractors invariably supply *kpofire* diesel to meet the price benchmark.<sup>38</sup>

Certain reasons have been adduced for the inability of the authorities to take refined



NNPC floating fuel station, Nembe, Bayelsa State. Official fuel distribution to hard-to-reach communities has been discontinued and the people resort to artisanal refining to fill the gap.

created a thriving market for the latter. In Bodo creeks the price of a 200 litre drum of diesel (AGO) is between 8,000 and 9000 naira, that is, 40 naira and 45 naira per litre while the price at the regular fuel stations is 167 naira (1 dollar) per litre. Illegal bunkering and artisanal refining is a response to this supply gap.

Because of the high tolerance level of diesel engines, users of such machines as generators and construction equipment prefer the cheaper *kpofire* diesel. This study was able to identify certain construction companies that use mainly *kpofire* diesel.

products to remote Niger Delta communities. They include:

- Inaccessibility and difficult terrain in the delta region,
- Lack of innovation in distribution of petroleum products, and
- Security issues

These have made it almost impossible for the products to reach the remote communities within the Niger Delta. However, the only dedicated channel or route by the Nigerian National Petroleum

<sup>38</sup> MTN alone has over 10,000 base stations in Nigeria powered mostly with diesel oil. Some of these stations and those of other telephone companies might be using *kpofire* fuel in the Niger Delta.

Corporation (NNPC) to supply refined petroleum products to the riverine communities is through the floating station. We learnt that the number of such stations are grossly inadequate to effectively service the population in this area, thereby nullifying the impact these station could have made in bridging the gap.

There is also the problem of security. This has made it very difficult to manage these floating stations. For instance, even when NNPC is willing to increase the number of these stations to make the communities feel the impact, how will they cope with the problem of insecurity in the creeks? This question must be answered before such options are fully implemented. In the course of this research, a visit was made to the NNPC Floating Mega Stations in Nembe, Bayelsa State and Burutu LGA in Delta State to find out how it has helped to improve the supply of refined petroleum products in the area. We noted that there was no refined petroleum product to sell to the public at the time of our visit in April/May 2013. This also shows how inefficiently these floating stations are being managed. We noted that increasing the number of floating stations in the riverine communities is one issue and managing them efficiently so that the public can feel their impact is another. Therefore, we conclude that NNPC has a lot of work to do in order to surmount the huge challenges facing the petroleum sector in Nigeria.

### 3.5. High Oil Prices, Soaring Profits:

Record high international oil prices have made oil theft highly profitable to the international players. Roaring demand for energy by the new industrial economies of Asia and Latin America has contributed to the robust global demand and soaring prices. This has increased the demand for stolen oil, which is normally sold at a

discount.

### 3.6. Perceived Exclusion from the Benefits of the Oil Economy

The oil-bearing Niger Delta communities feel alienated by lack of development and improved living standard in these communities, whereas the oil and gas resources of their land have been the mainstay of the national economy. They are angry that the reward they get is a polluted environment and destroyed livelihoods. To compound this alienation, few if any, of the major Nigerian players in the oil industry come from these communities. About the only demonstration of oil wealth in these communities are corrupt and flamboyant politicians who allegedly use their position to oppress the people. Bunkering and refining are, therefore, seen by the people as a self-help initiative. They do not see it as theft or criminal activity but legitimate economic undertaking deriving from the resources of their land. They are consequently offended by the criminalization of their enterprise as demonstrated by the operations of JTF and other law enforcement agencies. They claim that one cannot steal what belongs to him.

Furthermore, some of the respondents attribute the underdevelopment of the Niger Delta to official corruption and want the government not to stop their business. They claim that corruption is also illegal and therefore urge the government not to fight illegality with illegality.

### 3.7. Corruption and Failure of CSR Projects

The alienation and anger in these oil-bearing communities is exacerbated by official corruption. Over the years development projects in some of these communities have either been diverted or abandoned, often as



a result of corruption. Community development (CSR) projects by the IOCs are not exempted from this trend. In Bodo, for instance, a water project donated to the community by SPDC never produced a drop of water. This was largely because of the poor job done by the local contractor who, among other sharp practices, deliberately used cheap undersized pipes which did not allow the distribution of the water. After collecting the contract money the project was eventually abandoned by the contractor. This is an issue which has remained a source of grouse in the community against SPDC and often used to substantiate claims of neglect, justifying hacking of pipelines for self-help. The Niger Delta has, therefore, been a veritable graveyard of failed government and oil companies development projects. As demonstrated by a major source, an SPDC internal audit of the company's CSR projects showed that 581 projects representing more than 22 percent of the projects surveyed undertaken by the company between 1992 and 2006 either failed or were not completed.<sup>39</sup>

### 3.8. Psychological Factor

The exclusive and flamboyant lifestyle in the enclave oil workers' communities which contrasts with the poverty and misery in the surrounding indigenous communities plays a role in the broad range of factors that are used to justify illegal bunkering and refining. Most senior oil workers live in exclusive enclaves in their areas of operation. These enclaves are provided with modern amenities. The enclaves and the lifestyle of

their occupants contrast sharply with the squalor and misery of surrounding indigenous communities. These amenities such as pipe-borne water and electricity which are provided in excess to these enclaves are hardly extended beyond the enclaves to these needy communities, generating resentment against the IOCs. A very senior naval officer we interviewed said when he was a commander in Delta State, he often asked why Chevron could not provide the neighbouring communities with the excess water they were pumping away or the electricity which they were generating in excess. He blamed the animosity against oil companies in the area on this indifference which he partly holds responsible for the spate of kidnappings, piracy and bunkering in the area.

## POLITICAL FACTORS

### 3.9. Failed State Syndrome: Weak institutions, Weak Governance

There have been considerable debates about failed states, their definitions and manifestations.<sup>40</sup> Some analysts have argued that given the degree of dysfunctionality of the Nigerian state, the country can be described as a failed state. Another source has distinguished between what it categorized as "structural failure" and "functional failure". Structural failure of a state has been described as the comprehensive breakdown of central authority and the dissolution of the territorial space occupied by that state into smaller entities, often without legitimate and effective control.<sup>41</sup> Functional failure

<sup>39</sup> Ben Naanen, "The Nigerian State, Multinational Oil Corporations, and the Indigenous Communities of the Niger Delta" in Suzana Sawyer and Edmund Terence Gomez (eds.), *The Politics of Resource Extraction: Indigenous Peoples, Multinational Corporations, and the State*. Houndmills, Hampshire and Geneva: Palgrave Macmillan and UNRISD, 2012, p. 174.

<sup>40</sup> See, for instance, William Zartmann (ed.), *Collapsed States: The Disintegration and Restoration of Legitimate Authority*. Boulder, CO. and London: Lynn Rienner, 1995; Mohammed Ayoob "State Making, State Breaking, and State Failure" in Chester Crocker et al (eds.), *Managing Global Chaos: Sources and Responses to International Conflict*. Washington, DC.: United States Institute for Peace, 1996.

<sup>41</sup> Ben Naanen and Kiale Nyiayaana, "State Failure and Niger Delta Conflict" in Mojubaolu O Okome (ed.), *State Fragility, State Formation, and Human Security in Nigeria*. New York: Palgrave Macmillan, 2013.

means that the state could be in existence as a territorial entity but failing in the exercise of the basic functions associated with a modern state – such as the provision of security, the basic necessities of life, and effective governance.<sup>42</sup> The Nigerian condition seems to be synonymous with functional failure. It could further be said that a nation that is unable to protect its strategic resource on which the country

money from it and protecting the trade. The glaring ineptitude on the part of the security agencies to check oil theft has been one of the strongest promoters of the practice as there is a general perception that one can perpetrate the crime and get rewarded through profit-sharing instead of being arrested and prosecuted.

### 3.10. Elite Corruption



*Nigeria's National Assembly. Can the political leaders muster the will to combat corruption and illegal bunkering?*

depends has demonstrated a major symptom of functional failure.

Bunkerers and refiners are capitalizing on the failure of the Nigerian state to perpetrate their infraction. It is only in failed states that a clearly illegitimate action such as the sabotaging of pipelines to steal oil without compunction, fear of arrest and prosecution, or shiploads of stolen oil disappearing under the watchful eyes of the security agencies without major consequences. As demonstrated in Chapter 6, the security agency that is supposed to check illegal bunkering is busy making

Competitive elite corruption weakens the state and its institutions and undermines the prospects of development. Corruption at all levels of government, the national oil bureaucracy headed by NNPC,<sup>43</sup> and the security forces, has made it difficult to effectively check oil theft. The deterrence factor is weak, thereby encouraging theft.

### 3.11. Resource Control Assumptions

The debate about local control of natural resources, especially minerals, has been intense and passionate in the Niger Delta since the 1990s in the wave of ethnic

<sup>42</sup> Ibid.

<sup>43</sup> Recent outburst by the Governor of the Central Bank of Nigeria alleged that a whopping sum of \$49.8 billion was missing in a letter to the President which was leaked to the press and response by NNPC and some of the Ministers notably the Minister of Finance Dr Ngozi Okonjo-Iweala that amount was only \$10.8 billion shows the extent to which corruption has become endemic in the country. While the figures are very conflicting, the point is that it is only in a failed state that such amounts of money can be alleged to be missing or not accounted for without qualms.

minority struggles that continue to manifest in the country. It was articulated in the Ogoni Bill of Rights (OBR) of 1990 and repeated in the Kaiama Declaration (KD) of 1998. Other minority groups such as the Egi people in the Ogba-Egbema-Ndoni LGA of Rivers State adopted various versions of it. Amongst the demands of OBR is "The right to control and use of a fair proportion of Ogoni economic resources for Ogoni development". KD was even more radical, declaring that "All land and natural resources (including mineral resources) within the Ijaw territory belong to Ijaw communities..."

Such localized control of natural resources has not been possible as the constitution vests the ownership of all minerals in the Nigerian state. Moreover, defining what should be the unit or entity of control is fraught with complications and disagreement. For instance, should it be the local community, the local government, or state government? However, the inclusion of 13 percent derivation principle in the 1999 Constitution and the 10 percent community equity participation in the proposed PIB, are initiatives aimed at assuaging the grievances of the oil-producing communities and undercut the demand for resource control.

Nevertheless, in the absence of such local control, there has been widespread view in the Niger Delta that having a share of the petroleum resources of the region is an option for exercising resource control. This opinion is strongly held in view of what is perceived as a free-for-all looting of the country's oil wealth especially at the centre. Some have described illegal bunkering and refining as resource control by other means.

### 3.12. Vulnerability of Oil Installations

Oil installations, especially pipelines, are not

adequately protected, hence their vulnerability to attack and other forms of third party damage.<sup>44</sup> The expansion of human settlements has brought the pipelines, manifolds and wellheads into areas of human population, increasing their vulnerability. This was not the case when the facilities were installed decades ago. These days the right of way covering the pipelines are hardly respected as there are encroachments from farming and other activities. In some cases houses and other structures are erected on top of the pipelines. This happens in cities and rural areas. In Port Harcourt there are areas where mechanics workshops are built on pipelines. Removing these illegal structures is not easy as such action can quickly ignite protest, despite the danger that these illegal encroachments represent.

In some of the communities visited there are allegations of the complicity of former or serving oil workers in oil theft. It is claimed that these technical workers, who are sympathetic to the Niger Delta cause, help in manipulating oil installation such as wellheads of which the local people have no knowledge, in order to facilitate illegal bunkering. One of such accounts was obtained at Kiagbodo in Burutu LGA of Delta State. It was, however not possible to identify any former or serving oil worker that has been so compromised. Nevertheless, it is common knowledge that some sacked or retired oil workers who felt they were not fairly treated by their former employers harbour animosity towards these companies and can engaged in activities that hurt these employers if they have the opportunity.

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<sup>44</sup> In the celebrated cases instituted by Plaintiffs with the help of Friends of the Earth, a Dutch organisation, against Royal Dutch Shell PLC in the Netherlands, the organisation reproached "SPDC for failing to comply with its duty of care to produce oil in a careful manner and prevent oil spills from occurring. According to Milieudedefensie (Friends of the Earth) et al., SPDC should take more and better preventive measures to prevent oil spills from occurring, both oil spills caused directly by defective and/or obsolete material and oil spills caused directly by sabotage." See *Akpan Alfred & Anor. V. Royal Dutch Shell PLC* Case No. C/09/337050/ HA ZA 09 – 1580 of 30 January, 2013; *Fidelis Oyoro Oguru & Anor V. Royal Dutch Shell PLC* Case No. C/09/330891/ HA ZA 09 – 0579 of 30 January 2013. *Tete Doooh & Anor V. Royal Dutch Shell PLC* Case No. C/09/337058/ HA ZA 09-1581 of 30 January 2013. Although it was only in the case of Alfred V. Shell that the company was held liable to pay compensation; but this is not a good performance verdict for the company.





Pipelines. Incessant encroachment on the right-of-way makes oil installations vulnerable



A conspicuous feature at jetties in illegal bunkering communities in the Niger Delta



## 4

## ILLEGAL BUNKERING AND ARTISANAL REFINING PROCESSES

## 4.1. Organization and Profile of Illegal Bunkering Groups

*High Level Political and Military Structures*

Three categories of operators are identified in the illegal bunkering and artisanal refining business. First, the tapping or bunkering point owners who drill holes in the pipes and siphon crude for sale. Second, the big players who buy the stolen crude from the bunkering point owners and export it. With top security arrangement some of these exporters steal the crude directly by connecting hoses from their barges or vessels to the pipelines. Third, the artisanal refiners who purchase the stolen crude or occasionally steal it directly and process it into low quality fuels for the local market in the Niger Delta region.

The larger proportion of the stolen oil is linked to these powerful exporters as individuals, but mostly as organized groups, which are variously described as “syndicates” or “cartels”. They are linked to the top levels of the political and military structure in the country. The activity of this group is also complemented by the collaboration of high ranking government officials in the oil and gas industry. In terms of revenue loss to the government, this is undoubtedly the most significant group in the illegal bunkering business. The revelation in the recent years of corrupt practices in the importation of refined petroleum products and subsidy claims seem to emphasize the influence of these individuals and cartels. It is worthy of note that families, friends and relatives of prominent politicians were named among the culprits in the saga.

Understandably, this is so because in recent times the various governments of the day have used the granting of oil lifting license as an incentive to encourage political associations as well as appease influential individuals for support. It is, therefore, believed that this practice has fueled corruption and racketeering in the downstream oil and gas sector.

The local operators of the bunkering and refining business are also connected to local level authorities such as the JTF and the regular police, as well as politicians. These authorities provide protection for the bunkerers. Once these operators are arrested they call these authorities who secure their release and they return to the creeks to continue their illegal business.

## 4.2. Cult and Militant Groups

The local syndicates are mainly controlled by powerful cult groups and militant kingpins who are also believed to be involved in illegal bunkering. However, the activities of the latter have been slowed down by the implementation of the Amnesty programme by the Federal Government in 2010. One striking revelation from the fieldwork is that the majority of people involved in minor crude oil theft and interference with oil installations are mostly those not accommodated by the Amnesty programme. Also in agreement with this fact is that most of the interviewed participants in the Amnesty programme acknowledged that they have been involved in illegal oil business before the Amnesty intervention.



### Niger Delta Militants

In the Bodo axis of Rivers State, the influence of the dreaded cult groups “Deebam” and “Deewell” is prominent in the day to day running of illegal oil theft in the area. Our investigations showed that the leadership of these groups share bunkering “points” on the pipelines. It is from these points that crude oil is delivered to buyers. Nobody can install or own a point without the permission of these leaders. The permission is not easily given so that they can remain in firm control of the business. We also understand that this control is one of the major causes of communal clashes in the area which has resulted in loss of many lives.

In Bayelsa State, on our route to Egbematoro, we passed through Ezetu, which is the community of Boy Loaf, a prominent former militant kingpin. We were informed that during the militant era his boys controlled the whole area and they are still in control till now.

Large sections of Delta State are dominated

by one notable individual, Government Tompolo,<sup>45</sup> and his followers. We are also made to understand that all the major oil bunkering activities were coordinated by this group in the period before Amnesty. Several efforts to penetrate some of these groups to give more information proved abortive, as we understand that some of the members might have sworn to oath of secrecy with a view to protecting the illegal oil business. It is difficult to get Tompolo for an interview as he does not pick phone calls nor is it easier to get his spokesman. It should be noted that Tompolo allegedly got the lion's share of the multi-million dollar pipeline surveillance contract given to former militant leaders as revealed by the Wall Street Journal in 2012.<sup>46</sup> We wondered why the huge resources spent on protection of oil pipelines using these former militant kingpins have not produced the needed result.

#### 4.3. Individual Groups

Another important group involved in the illegal oil refining business are independent

<sup>45</sup> “Government Ekpemupolo a.k.a. Tompolo, a former militant has risen to become a strong ally of the federal government, and a billionaire businessman. Only three years ago (as of 2012), he was a fugitive. In May 2009, Brigadier-General Sarkin Yaki Bello, commander of the Joint Military Task Force, JTF, in Niger Delta, had declared Government Ekpemupolo the most wanted man in Nigeria. Bello had fingered Ekpemupolo, or Tompolo, as he is widely known, and his band of militants in the Gbaramutu creeks of the Niger Delta as executing the killing of 11 soldiers – one officer and 10 junior men. It was just one of the many instances of the militants' atrocities. The militants had been running riot in the Niger Delta, perpetrating illegitimate bunkering, operating illegal refineries, vandalising oil pipelines, engaging in kidnapping and doing piracy. And Tompolo was in the thick of it as one of the leaders. The JTF was intent on doing him in. Bello's men stormed the Okerenkoko, operations headquarters of Tompolo, desperately searching for him. They were successful all right, but not in nabbing Tompolo. What they found were numerous rifles, machine guns, Uzzi guns, Army mistin carriers, dynamite and gun boats. In the Niger Delta, Government Ekpemupolo, ruthless, invincible and taciturn, was and is indeed, a government all of his own.” See: <http://saharareporters.com/news-page/tompolo-billionaire-militant-thenews-africa>.

<sup>46</sup> See the Report: “Nigeria's Former Oil Bandits Now Collect Government Cash”, *Wall Street Journal*, August 22, 2012: <http://online.wsj.com/news/articles/SB10001424052702304019404577420160886588518>.

individuals who are not involved in any cult group. These individuals are simply unemployed youths with ages ranging from 18 to 30. Their wages are usually calculated on daily basis but they normally get paid at the end of the week when the products must have been evacuated and sold. The wages vary according to the bunkering area. In some areas they are paid 1,500 (9.40 dollars) per day. In other places they are paid per drum of fuel produced and sold which is 2,000 naira (12.50 dollars).

#### **4.4 Joint Military Task Force (JTF) Collaboration**

We were also informed that some members of the Joint Military Task Force (JTF) collaborate or aid the illegal bunkering process. Most of the participants in the business claimed that the JTF had at one time or another demanded fees from them in order to allow them continue with their business. A group interviewed in one of the communities claimed they paid the JTF N30,000 per week in order to continue. Some tapping point owners claim they share the proceeds with JTF on a 50-50 basis. In other areas various amounts were also mentioned, indicating that both groups only need to come to a compromise before a deal can be struck. In view of the endemic corruption in the country these claims are likely to be true and this may also explain why the Federal Government's war against illegal bunkering has not yielded the desired result, notwithstanding the presence of the JTF in every nook and cranny of the Niger Delta region.

Delta region.

Finally, marketers of the locally refined products evacuate these products from the producers and market them in bulk quantities, then the women and children take over and sell to the public in small retail units. There are thousands of micro units selling petroleum products all over the country. Majority of the units in the Niger Delta sell locally refined petroleum products. These worrisome events lay credence to the fact that illegal bunkering in Nigeria is indeed much more than the ordinary eyes can see.

#### **4.5. Crude Oil Theft**

As stated in the previous chapters, information gathered from the field revealed three types of illegal bunkering operations which currently operate in Nigeria:

- minor and small-scale stealing of condensate and petroleum product destined for the local market;
- direct hacking of pipelines or tapping with a hose from wellhead for crude oil destined for the international market and local artisanal refining; and
- excess lifting of crude oil beyond the licensed amount, using forged bills of lading mainly for the international market.



A Typical JTF Patrol in the Niger Delta





Oil and gas installations. Pipelines and abandoned wellheads are targets of illegal bunkering activities



Oil theft equipment captured by JTF. Note the pumping machines, generators and hose used in siphoning oil from tapping points into vessels.

While export-led theft is particularly significant in terms of huge revenue lost by the government, the local operation is noted for its devastating impact on the environment. Within the visited communities almost all the interviewed participants involved in local refining of petroleum products acknowledged that oil pipelines and abandoned wellheads were the sources of the crude they refined. However, they insisted they bought the crude which they use.

Direct hacking into pipelines or tapping from abandoned wellheads is also the likely cause of incessant pipeline oil spills. Shell Petroleum Development Company (SPDC) in 2012 reported about 45 spills on its Trans Niger Pipeline (TNP). Also, in 2013 more than 40 infractions have been reported on this pipeline as at November. This report is in tandem with the high illegal bunkering

and refining activities recorded on the TNP RoW. Most of these communities are in Gokhana LGA with the major activities concentrated at the Bodo axis. In Bayelsa and Delta State it was also noted that the major illegal bunkering communities are located on the trunk lines.

It is pertinent to note that in some cases stolen crude from pipelines are loaded in small barges and taken straight into the sea where it is transshipped into larger barges (mother ships) in return for money and weapons. This practice has in recent years fueled the violence communal clashes within the Niger Delta communities.

#### 4.6 Local artisanal refining

In the effort to understand how this system works, our field team accessed artisanal refining sites in most of the communities



visited. The most logical definition is that an artisanal refining unit is a simplified petroleum distillation unit which is conceptualised like a crude school science project. It can also be likened to the production of the local dry gin commonly called "Ogogoro". During the field work, one of the youths operating this unit, who pleaded to remain anonymous, explained that "the aim is to boil barrels of crude oil with naked fire in a metal constructed sealed tank. The crude then evaporates and passes through two parallel pipes connected to the tank through a wooden constructed cooling water bath, the refined products then drips out slowly into a container at the other end,

with different products emerging at different intervals".

In Gokhana and Ogu Bolo LGAs in Rivers State the stories are not different from what is obtainable in Bayelsa State and elsewhere in the Niger Delta. Our investigations revealed that Delta State has the highest number of artisanal refining sites which can be easily seen in creeks, forest and villages within the state. For instance, in Obodo in Burutu LGA, our team recorded about 15 artisanal refining units in a small forest area with the size of a football field. Also, numerous refining sites were recorded in the creek of Ojobo in Burutu LGA.



Artisanal refining operation in Rivers State



Artisanal refining unit in the creeks of Ojobo in Burutu LGA, Delta State

#### 4.7. Channels of Product Distribution

##### *Transportation*

According to local sources, it takes about two to three days to get up to 5 drums of refined petroleum products. After the refining processes the products are filled into rubber and metal drums for “trans-loading” and storage from where they are transported to their final destinations. Since most of the artisanal refining sites are located near the creeks, these refined products are usually transported through the water ways to the neighbouring towns

The largest share of the locally produced petroleum products is transported to cities where they are probably mixed with the regular products and sold in conventional filling stations. The dominant product is diesel and since the tolerance of diesel engines is high, it is usually not easy to detect locally refined diesel from the regular product. In Port Harcourt City, we observed that the main point of entry for the locally refined products is the Akpajo Sandfill jetty. Most of the refined products coming from Bodo and the neighbouring communities are brought to the jetty where buyers from



*Different means of transportation of stolen petroleum products across the Niger Delta*

and villages.

On the other hand, transportation of large volumes of crude oil to mother ships offshore is done by the use of barges. These barges and Cotonou boats are usually anchored within the creeks where they are filled with the required volumes of crude before they are transported and transferred into the mother ship which could be in the coastal waters of Ghana or Benin Republic.

In view of this it is unlikely for one to visit jetties within any of the communities involved in illegal bunkering without seeing piles of drums and rubber containers used for transporting the petroleum products. these piles are the immediate evidence of the existence of illegal bunkering activities in a community.

the city assemble to buy and resell to the public.

#### 4.8. Product Dispensing

In the course of the research, it was observed that a major driving force of thriving illegal bunkering business in Nigeria is market demand. There is a huge local and international market for crude oil stolen from Nigeria. This means that there is also a market for the locally produced petroleum products.

Our investigations revealed that while the stolen crude is sold in countries within the West African sub-region AND Europe, the locally refined petroleum products are mostly sold in the local villages and towns.



Cotonou boat, one of the means of transporting illegal crude and refined products in the creeks

However, the products also get as far as cities such Onitsha and even Lagos.<sup>47</sup> It is on this instance that we learnt that the weekly boat that sails from Ekeremor to Onitsha usually carries these products. We also gathered that a drum of locally refined diesel goes for about N7,000 in the creek and as much as N12,000 – N15,000 (75 dollars - 93.75dollars) if the product is brought to the city.

There are usually the bulk buyers who resell in small quantities to the retailers. The retailers then sell in small outlets which are spread throughout the country. These outlets are also conspicuous on the major waterways within the Niger Delta.

#### 4.9 Gender Issues and Role of Women

The involvement of women in the whole process of illegal bunkering and artisanal refining is more or less secondary. This is to say that women are generally not involved in obtaining crude or in the refining process.

However, women play pivotal roles in other services such as transportation and marketing of the refined products as well as cooking and provision of sexual services for the predominantly male operators. It is, therefore, justified to examine these issues properly bearing in mind that women are the most unemployed, least educated as well as the most exploited in times of conflict.

In Bodo in Gokhana LGA, we were informed about how women are involved in the transportation and marketing of illegally refined petroleum products. They usually purchase the product directly from the dealers and sell on retail in one- to two-litre containers in front of their houses and make shift shops.

Most of the interviewed women blamed their involvement in selling petroleum products on the incessant shortages. They also narrated that during scarcity, petroleum products are sold at two or three times their regular prices which usually translate to

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<sup>47</sup> In the course of carrying out this research, one of our researchers came in contact with an indigene of one of the villages in Bayelsa State who claimed that he cited in his village the oil bearing truck of one of the independent petroleum products marketing companies based in his area in Lagos. He was surprised that the marketer could come from such a far distance. Furthermore, some of the telephone providers use the "creek price" as their benchmark for paying the suppliers of diesel oil (AGO) to their BTS.





Some of numerous outlets retail scattered throughout the country

huge profits. Also, most times the women are lured with gifts and money by the male operators due to the large profit they make in the illicit trade. Most of the women justify their involvement in the business on the grounds of unemployment and inability to pay school fees to complete or further their education.

In Azagbene in Bayelsa State we observed that women were actively involved in the illicit business. We learnt that the women are employed to ignite as well as feed and maintain the fire for cooking of the crude. Some of the women questioned confirmed this assertion. The women are mostly married women who said that their wages are far more than what they could get if they were working on the farm. Another revelation is that children also work in the illegal bunkering sites. These children are usually between the ages of 10 and 13. We gathered that most of the children who participate in the act are orphans, who have nobody to carter for them. They easily become easy target that can be lured into the business just to get something to eat. We were also able to confirm this by asking some of the children whether they have been to artisanal refining sites before and they confirmed they have been there to work.

#### 4.10. How Many People are Involved in Illegal Bunkering and Refining?

The bunkering and artisanal refining business has three sets of operators. First are the tapping point owners who sell crude

to both second, the export buyers and third, the local refiners. The tapping point owners are not too many and may number not more than 300 in the three states surveyed. This is the most lucrative local segment of the business; it is tightly controlled by the local "big boys" either as consortiums, cult groups or as individuals. Export-led bunkering does not generate significant number of jobs beyond the transporters and security details for the local canoes, Cotonou boats and barges which convey supplies to the vessels that carry the oil off-shore.

The JTF estimated in 2010 that there were 1500 illegal refining operations in the Niger Delta. The number could have been higher for in the same year, the Bodo Creeks (Gokana LGA) alone harboured more between 800 and 1000 youths who were directly involved in refining. The JTF further claimed that in 2012 it destroyed 4,349 refining units. Let us assume we have half of this number in operation at any given time, this leaves us with 2174. In Gokana LGA of Rivers State, every refining unit has an average of 6 workers, including the absentee owner who appoints a manager to run the operation for him. Elsewhere in the Niger Delta, the units have 10 to 15 people. This gives a Niger Delta-wide average of nine people per refining unit. Multiplying 2174 by 9 gives us 19,566 refining workers. We can then reasonably state that 19,000 people are directly connected to refining operations. We estimate that another 7,000 people are involved in the product chain. These include welders who fabricate the



refining facilities, women who sell food at the refining camps, children who run errands at the camps, transporters who evacuate the products from the creeks and from the shores to the sale centres, and the numerous retailers. We, therefore, estimate that no less than 26,000 men and women directly or indirectly receive incomes from illegal bunkering and artisanal refining.

#### 4.11. The Illegal Bunkering Economy

Illegal bunkering business represents a substantial informal economy whose value has never been captured in official statistics because it is regarded as illegal. The activities include pipeline tapping, refining process, welding, food vending, running errands at the refining camps, transportation of crude and refined products, and retailing which represent value added to the economy. It is calculated elsewhere in this study that the country loses as much as 6 billion dollars per year to oil theft. We estimate that another 3 billion dollars is generated downstream of the value chain, giving the illegal bunkering sector a total cash value of about 9 billion dollars per annum. In assessing the contribution of this sector (we can actually call it a sector), we should consider the jobs created and other activities generated along the value chain.

#### 4.12. Changes in Artisanal Refining 2005-2013

A key observation is the changing dynamics of the business. The industry is undergoing structural changes featuring concentration and centralization, which now make possible "oil theft on an industrial scale". Whereas in the past any young man who could afford a steel drum and a few pipes could commence distilling, this is no longer the case. The huge storage steel tanks being constructed and other requirements, including security insurance in case of arrest, require considerable starter capital of about

1,000,000 (one million) naira (6,060 dollars). A major implication of this change is that many of the small operators of the past now work for the powerful "big boys" and financiers who can muster the capital requirement and necessary law-enforcement contacts for the protection of their business. Workers and other people with legitimate livelihoods are investing in the business in order to provide for themselves an additional and more rewarding income stream.

The industry is also undergoing technical innovations while expanding its commodity chain. Well paid specialists now drill the holes and install valves on them for siphoning the crude from the pipelines. It was gathered at Bodo that the fee for drilling a tapping point is between 250,000 (Two hundred and fifty thousand) and 300,000 (Three hundred thousand) naira, part of which goes to JTF. These changes tend to give the illegal bunkering and refining business the grounding for sustainability.

This is hardly a cheerful development for the government, IOCs and other stakeholders who want the business to stop. It also further complicates the strategies needed to combat the business.

Another strong factor in the dynamism and potential sustainability of the business is that it is market (demand) driven. As long as there is demand the industry will continue to thrive. The objective conditions of the Nigerian economy at the moment seem to guarantee growing demand for cheap and readily available energy in the cities and rural areas.<sup>48</sup>

It is also noted elsewhere in this report that the JTF, which amongst others, is charged with the responsibility of combating oil theft and illegal refining, is possibly making more money from the business than the

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<sup>48</sup> It is really sad that Government had to reverse its decision to sell the non-performing refineries. Under the current arrangement, it is doubtful if there can be willing marketers who would want to concentrate on petroleum product supply to the hard-to-reach communities.

operators. This should not be interpreted as a blanket condemnation of the JTF. There continues to exist dedicated officers who are passionate about their responsibility. But the high stakes in the business, the opportunity of making easy money without sanction, and the “pressure from above”, are too compelling not to turn a JTF archangel into a fallen angel. Same can be said of other law enforcement agencies involved in checking oil theft, such as the police. It is the responsibility of the police to prosecute suspects arrested by JTF and other agencies. Little wonder the conviction rate of arrested persons has been surprisingly negligible. Only ten convictions have so far been achieved, according to information gathered from the Nigerian Navy.

#### 4.13. The International Dimension

The international dimension of oil theft is more disturbing from social, political and economic point of view. The industry as a whole demonstrates tremendous flaws, including mismanagement, ineptitude, corruption, and lack of patriotism for the nation. The problem of oil theft is a reflection of that industry crisis. Discussions with some of the senior officials of the regulatory authorities show deep ignorance or lack of understanding of how much the hemorrhage within the sector is causing the country. For instance, in the course of our interview with one of the very senior officials in one of the agencies, he admitted that it is only recently that he knew that Nigeria's crude oil is being stolen. When asked about the magnitude of the theft, he said that he did not know and that we should find out from security agencies. According

to him, his organisation could not be expected to run security services to protect oil facilities or prevent oil theft.

It should be a matter of great concern that the greatest national asset of the country can be so blatantly mismanaged. As we have stated in this study, no less than 20 per cent of the crude oil stolen from the Niger Delta ends up in the local makeshift refineries in the region. Our estimates also suggest that we are losing about 145,000 bpd to oil thieves. Our findings further indicate that in most cases, the export bunkerers are not working directly with the people who tamper with oil installations to siphon crude oil for their refining in the creeks. As a matter of fact, there are strong indications that there is a certain degree of rivalry between the two streams of illegal operators - the exporters and the local refiners - as the two groups buy from the same sources, the tap owners.

The general notion among artisanal refiners is that the taking of the feed stock for processing is not stealing; but it is the people who break the pipes to take oil that are the thieves. In an e-mail obtained by Punch Newspaper,<sup>49</sup> the group that was described as illegal refining operators asked for amnesty and for their members who were detained by men of JTF to be released forthwith. Their moral argument, therefore, is that they are not thieves. Rather, it is those who are siphoning the oil and carrying them into the high seas that should be regarded as thieves.

From evidence which is very compelling and confirmed by by the Chatham House

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<sup>49</sup> “Illegal refinery operators, pipeline vandals demand amnesty”, *Punch*, April 25, 2013. In a shocking revelation which is probably exaggerated, they claimed that they were a very formidable group with over one million operating units across the Niger Delta. Their claim was probably exaggerated to elicit panic and force government to accede to their demands; but it serves to underscore that the estimated numbers of the industry operatives might be much higher than we have projected in this report. Similarly, in May 2013, in a report titled: “Groups Support Call for Amnesty for Illegal Refining Operators” *Vanguard*, May 13, 2013: “A coalition of youth groups in the Niger Delta weekend called on the Federal Government to accede to the amnesty call by oil bunkerers and illegal refinery operators in the region. The coalition insisted that the illegal refinery operators are not oil thieves as claimed but businessmen providing employment for youths in the region. Rising from a meeting weekend in Yenagoa held in an undisclosed location, the coalition which called for the release of over 257 arrested by the Joint Task Force and other security agencies noted that their continued arrest will not stop the over a million locally operated refineries in the region but promote unemployment, violence and sea piracy” - See more at: <http://www.vanguardngr.com/2013/05/groups-support-call-for-amnesty-for-illegal-refinery-operators/#sthash.evjH7a4A.dpuf>

report,<sup>50</sup> it is apparent that lack of transparency, greed, ineptitude and overwhelming political considerations are gravely undermining Nigeria's reputation as one of the largest oil producing countries in the world. The blame has mostly been connected to the way the country sells its crude oil. The following are some of the problems:

1. The NNPC annual lifting contracting procedure is fraught with serious flaws. It is not based on any transparent selection process that guarantees that those who can perform get the crude lifting contract.<sup>51</sup> Hence, each year, less than 30 per cent of the companies who get the NNPC contract have the capacity to fulfill their contract. That inevitably leads to racketeering thereby compromising the integrity of the market. The process of selection is based entirely on criteria that NNPC rolls out each year there is a bid. But the selection end-result, according to industry sources, are not in any way understandable as this can only be done by the President. On the average, about 50 licenses are granted each year. The holders are often a handful of refineries located abroad, international oil dealers and energy companies as well as some bilateral buyers. Regarding the latter, there were, for instance, four governments who got the contracts to buy in 2012-2013, but it is not certain if and what

volume, they were able to lift in the course of the year.

2. The compromised market leads to the emergence of briefcase sellers, facilitators, agents, mandate holders who represent no one except themselves and those with whom they share baseless information.
3. Simultaneously, fake international oil dealers understand the vulnerability of the Nigerian oil sector and the process of allocation and help to compound the fragility by making demands on the market which the Nigerian side cannot resist. For instance, most of the buyers would be asking for volumes that Nigeria as a whole cannot produce in a year.<sup>52</sup>
4. The illegal *bunkerers* are able to penetrate the market and meet the needs of the buyers who already understand that the Nigerian supply source is very vulnerable and can be easily manipulated.

Our investigations revealed that there is what is called "OPEC loading." Obviously, this is what the NNPC can allocate to contractors based on the OPEC quota and also based on the agreed allocation to those who have the crude contract with the NNPC. There are also other lifts that are described as "Off OPEC Lift." It is doubtful if there are objective criteria for these lifts. Industry practitioners are wary that such lifts might also be compromising the industry as it is not clear whether the NNPC is aware of such operations and whether the proceeds do go

<sup>50</sup> Christina Katsouris and Aaron Sayne, *Nigeria's Criminal Crude: International Options to Combat the Export of Stolen Oil*. London: Chatham House, 2013 (September).

<sup>51</sup> For instance, Chatham House report suggested that: "Under the NNPC term contract system, most legitimate cargoes change hands at least twice: first from NNPC to a trader, and then from the trader to another buyer, most often a refinery. Moreover, of the fifty term customers for 2012, perhaps only a dozen to twenty have the capacity or will to finance, ship and sell their own cargoes directly to refiners with all the market and price risks involved. Most of the remaining ones are so-called 'briefcase companies' – small entities which sell their allocations of crude to the main traders for a margin, most often at the higher end of \$0.25–0.40 per barrel in 2013." See: Christina Katsouris and Aaron Sayne, *Nigeria's Criminal Crude: International Options to Combat the Export of Stolen Oil*, Chatham House, September, 2013.

<sup>52</sup> A typical example are the so-called Chinese buyers. A particular buyer's agent was asking for about 10-20 Million Barrels a month at a ridiculous level of discount which can only be possible through stolen crude oil.

to the NNPC account or the designated account for crude oil sale for the country.<sup>53</sup>

Loading Question: It has been suggested by several sources, exemplified by the Chatham House report,<sup>54</sup> that there are numerous questionable practices, which can become veritable conduits to conceal stolen crude from Nigeria. For instance, a typical Sales and Purchase Agreement (SPA) states that the quantity of crude oil to be supplied, for the purposes of loading inspection, could be  $\pm 50$ .<sup>55</sup> Excess loading could lead to the loss of large quantities of oil as some of the tankers have as much 2 million bbl capacity. The danger with that practice is that the stolen crude of can as well be laundered officially through that conduit to any the of ports of discharge. Hence, the idea of finger-printing might not work in that case.

The loading takes place at either the regular export depot, or from a barge with stolen crude, and transferred to vessels which sail from the Nigerian waters to other ports in the Gulf of Guinea. The most frequently mentioned destination is port of Tema in Ghana or the Cotonou port in neighbouring Benin Republic. From there, those who are taking over the crude can either off-load into their own vessel or take control of the existing vessel. This practice might be legal; but it is also possible for it to be used as a conduit for stolen crude. Our findings indicate that this complicated practice is not

very common with other oil producing countries and that it has done so much to discredit the Nigerian oil market. Indeed, the generally complex nature of oil shipping does not make finger printing or certification a viable option for checking stolen crude.

We spoke to some of the international oil marketers and refinery owners to gauge their impression about the problem of crude oil theft in Nigeria and what it means to them.<sup>56</sup> Most of the respondents felt disappointed about the management of crude oil sale in Nigeria. While it is admitted that oil cannot just be sold in the market as an ordinary commodity, they decry the way Nigeria has mismanaged its national asset and created so much confusion for the sector.

Our interaction with experts in the international oil marketing and refinery business indicate that if Nigeria cannot address the irregularities of oil sale internally, the country will continue to lose resources to illegal bunkering because the way refineries are run globally does not give room for easy detection of stolen oil. While most of the refineries in the world are built to certain specifications to blend particular types of crude oil, the Nigerian crude, according to experts, can virtually be blended in any refinery in the world. Hence, it is an easy prey to those who can acquire it and blend it in any refinery. The finger-printing idea, therefore, does not seem to be a panacea to the problem.

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<sup>53</sup> It is also not impossible that this could be contributing to the allegation of unremitted funds from crude sale by NNPC as alleged by the Central Bank Governor Mr Sanusi Lamido Sanusi

<sup>54</sup> Ibid.

<sup>55</sup> We must continue to enter the caveat, though, that this has been challenged by the IOCs who ruled out the possibility of such an unwholesome thing happening under their watch. The big question, therefore, is what purpose does that clause serve and why has it been impossible for the system to be opened up for independent scrutiny?

<sup>56</sup> In the course of this research, we visited some of the buyers in Europe (Aberdeen and Rotterdam) who stated clearly that the Nigerian oil market is fraught with fraudsters and it is common to find people individuals and companies going about with fake documents such as Authority to Sell and Proof of Product which cannot translate into a barrel of oil. As a result, a Hall of Shame has been opened for some of those companies by a particular organisation. For example, a company called Global Resources LLC has opened a "Hall of Shame" where individuals and companies who have either misrepresented a transaction or committed an act of fraud against their company are listed. See: [www.GlobalPetroleumResources.com](http://www.GlobalPetroleumResources.com)



Disposal of Seized Products: Another practice that the industry experts pointed out is undermining the Nigerian oil industry is the practice of putting seized products in the market without proper guidelines or procedure. Often the products are sold but it is not clear whether there are established procedure for sales, remittance and accountability by the agency that effected the seizure, especially the Navy. It has been suggested that in most cases, the content of the seized vessels are sold in the international market in a way that is difficult to know where the proceeds are sent. As such transactions are often done in cash, it is often difficult to know and track where the funds are channelled into since there will be no evidence to trace their movement. The further danger that this practice has engendered is the popular tanker-to-tanker (TTT) sales. This occurs when a tanker discharges its content into another tanker after some exchange of cash, often with doubtful documentation to confirm its source. In London, Aberdeen and Rotterdam where we visited, it was confirmed that this happens on a daily basis.

#### 4.14. Refinery Operations

In probing how refineries work, we have noted that refineries are often purpose-built to blend specific types of crude oil. Most refineries run on three production systems:

i. Refineries that Buy Crude Oil for their own Blending and Sell Directly to the End Users: These refineries are the ones that major oil dealers run globally. The four refineries in Nigeria get allocation of crude oil from NNPC and refine for the Nigerian consumers. Most of such refineries when operating at full capacity have no room to deal in crude oil other than from their regular sources. They have stand-by contracts from sellers who supply

them with crude oil of a particular grade for refining. When the refining process is completed, the products are delivered directly to their supply chain.

- ii. Refineries that Run on Toll Basis: These refineries do not buy crude oil. Anyone who has an agreement with them can bring their crude oil to the refineries for blending and pay an agreed rate for refining the products. Such refineries are not concerned about where the crude oil is originating from and where the products are sold. Europe has many of such refineries.
- iii. Refineries that Blend their own Crude and also Run Toll Refining for their Customers: These are also very common in Europe and the United States. They can be adapted to different grades of products and can also service their own production line as well as other clients who patronize them.

From the above analysis, it is apparent that Nigeria cannot win the war against illegal oil bunkering until it has put its house in order. Efforts made to also find out whether it is possible to get international dealers to assist Nigeria by boycotting or at least refusing to receive stolen oil from the country appears to be unpopular. Our investigations at the ports in Ghana and at Cotonou in Benin Republic confirm that, indeed, some oil transshipment takes place there; but, again, the line between the transshipment of legal and illegal oil remains as blurred as ever.

#### 4.15. Ports of Discharge and Transshipment Locations

We also checked at some of the most popular discharge ports in Europe,



*Foreign refineries are the major recipients of Nigeria's stolen crude*

particularly Aberdeen (Scotland) and Rotterdam (The Netherlands). Our inquiry confirmed that the industry has lost confidence in the Nigerian supply route. We were told most serious dealers would like to source for oil from Nigeria, but that the activities of illegal *bunkerers* and those who operate with fake allocation papers have already compromised the Nigerian crude oil market. We could not identify any particular discharge spot or oil farm where Nigerian oil is received. We, however, believe that working with the Trading Associations that have direct collaboration with refineries in the popular destinations of Nigerian oil can assist in solving this problem.

#### 4.16. Nationals and Destinations

Our investigations also confirmed that the nationals who are mostly involved in moving stolen Nigerian crude are mainly non-English speaking. Our contacts, who are very conversant with the industry and the practice, insist that it is common to sight Lebanese, Ghanaian, Cameroonian, Pilipino, Romanian, and Thai nationals. It is very difficult to confirm the most popular destinations; but there seems to be consensus that the recipients refineries are located as far afield as United States, Brazil, and the Gulf of Guinea. Several years ago,

the Obasanjo administration made an agreement with the government of Ivory Coast to enable that country buy crude from Nigeria at concessionary rate in order stop Nigerian oil going there illegally. Some of the distances seem to make claims of illicit oil transportation from Nigeria implausible; but the easy way to sustain such trips would be to have an admixture of stolen and legally procured crude in one vessel.

#### 4.17. Crude Oil Theft and Import Revolving Door

An idea, which needs further investigation, is the potential link between illegal crude oil dealings and the importation of refined products into Nigeria. Nevertheless, it is an important lead to follow. According to our sources, the reason the domestic circulation has been kept running without hitches is because some of the crude oil stolen from the country comes back as refined products with no rigorous means of verifying their origin. Our sources pointed to the fact that if we check what the importers have imported from their permit in the recent years, we would notice a sizeable reduction and yet there has not been fuel scarcity in the country. Late 2013, one of the major oil marketing companies reported that it has reduced its import by 30 per cent and yet it

continued to sustain its profitability.<sup>57</sup> Import reduction of such a magnitude which might not be limited to that company alone should cause some degree of scarcity if there are no other sources to fill the gap. This should call for a tighter control of our fuel importing regime

#### 4.18. Local Solution

The problem Nigeria is facing regarding oil theft and wilful damage to oil facilities is not insurmountable. It can be mitigated. We are strongly of the opinion that the main challenge arises from corruption, institutional weaknesses, and the politicising of every aspect of our national life. While it is admitted that the sale of crude oil cannot be compared to the sale of any other ordinary commodity, there is still the need for a sustainable structure that should make things work for us. Although we are a member of the OPEC, it is doubtful if we do keep to our commitment within the organisation. Be that as it may, there is the need to put our house in order. The procedure that NNPC uses to allocate contracts for the sale of crude oil is hardly transparent. From our investigation, the NNPC released the bidding advert in May, 2013 with a deadline of June, 2013. It is not clear when the contractors who were finally selected were approved. It goes to show that the process is shrouded in secrecy thereby creating an environment where underhand practices can thrive.

The advertised criteria for contracts do not reflect any sound business ideal. While it is important for the country to get the best out of its natural resources, from a business

point of view, some of the conditions appear very unreasonable and ludicrous. They look as if the country is doing its business partners a favour by selling oil to them. Little wonder the country does not have credible companies applying to lift its crude oil. Because the conditions are unreasonable and the selection procedure is not transparent, several companies which are awarded the term contract do not have the capacity to deliver. Out of about 50 organisations (companies, refineries and countries) which secured the contract during the 2012/2013 year, only about a dozen of them had the capacity to actually oil during the life of the contract, which is usually a year.

There are certain issues which undermine the effectiveness of the contracts. The first is that the selection process is flawed. The applications are collated by the relevant department at the NNPC and the list of short-listed companies is sent to the Presidency for final selection. Anything can happen at the points of short-listing and final selection. What can be expected from such a process would definitely not be an objective outcome. As it has been from year to year, those who emerge at the end of the exercise would not necessarily be those who have the technical and financial capacity to execute the contract.

Second, the contract is awarded for one year duration. Taking into account that the contractors are selected through a flawed process, more than two third of those who were successful could not perform. Because the contract has a one year tenure, the country is stuck for another one year with

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<sup>57</sup> For legal reasons, we feel it is better not to name this oil company because we are not directly insinuating that they are involved in any illegal activities. Our argument is that the revolving door could give room for sharp practices on the part of the operators in a country where the regime is so lax with officials who are ever too ready to look the other way even when they are aware that criminal activities are going on. The important point we are making is that these loopholes are capable of compromising the integrity of the market and we should do whatever we can to block them.

those who do not have the capacity to perform and in the end, they are passed on to “brief case sellers” who forge the documents to con unsuspecting buyers. The aftermath of this is that the winners try to sell the contract to third parties, which is the beginning of the proliferation of contract documents to the embarrassment of the country. When dud contract papers cannot deliver any crude oil, the resort to stolen oil becomes attractive. At least it keeps the racketeers busy.

These are serious problems that can be addressed at the political level. We strongly hold the view that Nigeria can handle the sale of its crude oil in a more commercially transparent manner in the best interest of the country. When you create artificial scarcity as the present contract system tends to do, black market thrives. For instance, this author met a business person who has one of the largest oil marketing outlets in his country<sup>58</sup> and has been desirous of buying crude oil from Nigeria for some time but has not been able to get the term contract.

Every attempt he has made in the past has been unsuccessful. Rather, he has been inundated with dubious documents from individuals claiming that they can facilitate his getting the contract if he is willing to part with large amounts of money. He has also been finding a way to buy from anyone who has authorisation to sell, to no avail. This is not helping the oil sector.

Furthermore, the one-year term contract appears not to be ideal because it ties us to a contract that is not being executed effectively. If the process can be reduced to quarterly performance-based contract, it will be better to sift out those who are not performing while those who are performing can even get more generous lifting allocation from the NNPC.<sup>59</sup> The onerous conditions attached to participation is out of touch with reality and should be jettisoned. We need a simple process that will be based on commercial imperatives and not unnecessary political conditions that are not being met by any of the applicants.

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<sup>58</sup> The businessman from Pakistan has one of the largest retail outlet for petroleum products in the country. Every effort he made in the last few years to buy crude oil from Nigeria has been abortive because he could not get the direct lifting contract neither could any of the so-called sellers deliver a single barrel of crude oil to him.

<sup>59</sup> For instance, the petroleum product license granted by PPPRA to import fuel into the country is done quarterly. If we are honest and transparent, the processing should not be anything difficult especially if it is on a performance-based basis. Subjecting it to Presidential selection process has helped to do nothing other than to politicise the industry which is completely unwarranted. In cases where there are rolling contracts in place with direct buyers, nothing should stop preclude automatic approval for the contract holders. We quite understand that the argument against quarterly rounds of allocation might create too much administrative burden to the contractor; but that fear can be allayed if the process is made simple and transparent based on realistic criteria. If it works for the imported fuel regime where subsidy is paid to importers, why can it not work with the exporters who don't receive subsidies?



## IMPACT OF ILLEGAL BUNKERING AND ARTISANAL REFINING

Oil theft and artisanal refining are fraught with grave economic, environmental, socio-economic and political consequences.

### 5.1. Economic Issues

In assessing the economic impact of illegal bunkering and refining, we have to take into account the gains and losses in order to arrive at a balance. Illegal bunkering represents a highly profitable informal sector and the refining units could be regarded as cottage industries. No doubt the sector adds value to the local economy, creating jobs and providing livelihoods and incomes. It is stated elsewhere in this report that as much as 26,000 persons receive incomes directly or indirectly from illegal bunkering and refining and that the total cash value of the sector is about 9 billion dollars, out of which 6 billion dollars represents the value of oil theft-related losses to the government and 3 billion dollars being the value of the other activities and opportunities generated along the value chain. However, in assessing the aggregate costs to the national economy and local communities, illegal bunkering represents a huge loss.

In economic terms, the immediate casualty of this high level of oil theft is government

revenue. As stated, a loss of 6 billion dollars per annum to theft represents 6.25 percent of Nigeria's total export value in 2012. We have been unable to find a parallel to this industrial scale theft of natural resources in in any functioning modern state, relative to the size of the economy. Such a scenario is mainly reminiscent of failed states. Nigeria is having difficulties with economic growth as economic diversification has not been possible. The country continues to depend on crude oil and gas for 96.8 percent of its foreign exchange earnings and 60.5 percent of public revenues. Current GDP growth of about 5 percent per annum is accounted for mainly by increasing earnings from oil. It does not reflect overall economic progress. It hardly impacts on job creation and living conditions of the population, 65 percent of who continue to live in absolute poverty.<sup>60</sup>

Developments in the international economy, especially the energy market, are not cheering news for the country. The discovery of shale oil, the development of oil reserves in countries that have traditionally imported energy, which is about to make other African countries compete with Nigeria in the global oil and gas market, are issues with deep implications for the Nigerian economy. Already, India has replaced the US as the largest buyer of Nigerian oil. The US is beginning to have an internal oil<sup>61</sup> glut and should Congress lift the

<sup>60</sup> The level of poverty has risen in the country and by all standard, the level of inequality in the country is so much that if nothing is done urgently, as one lone protester wrote at a time: "a time is coming that the poor will have nothing to eat except the rich." Little wonder the World Economic Forum is focusing on "Inequality" between the rich and the poor this year in Davos.

<sup>61</sup> Russel Gold and Nicole Friedman, "Bargain Prices for US Oil," [www.wsj.com](http://www.wsj.com), 5 December 2013.

ban on American export of oil – which is very likely within a few years - this would spell doom for fossil energy exporters such as Nigeria. While the external economic environment does not give much cause for cheer, internal factors such as corruption will be increasing the pressure on the country's limited and inelastic finances and development opportunities. Last year, Nigeria lost 5 billion dollars to corruption. Add this to the 6 billion lost to oil theft to make 11 billion or 20 percent of the GDP that is leaking from the economy.

Rampant oil theft and insecurity have been important factors in what the IOCs consider as adverse business environment that is responsible for the current divestment from their onshore concessions. These factors, coupled with the yet unresolved PIB, are hindering international investment in the oil and gas industry and the development of new reserves. Added to this is the potential decline in oil prices. Given this scenario Nigeria may be headed for a major economic crisis should the present level of oil theft and corruption continue. With financial crisis comes social unrest as governments – federal, state and local – find it difficult to pay salaries and finance social programmes.<sup>62</sup> As the economy is not resilient, lacking as it were a productive base that can be quickly restructured to respond to adverse market conditions and ensure recovery, any economic crisis could be long term.

Bunkering and refining have also created occupational disequilibrium. The migration from the traditional occupations of fishing and farming by youths has been a steady economic trend. The trend has been aggravated in the Niger Delta by the oil-related ecological pollution which has

affected the fishing economy especially. The massive shift to illegal bunkering and refining has led to the dearth in the local communities of occupations that are relevant to the modern economy but do not rake in comparatively quick returns. In heavily impacted communities such as Ogu-Bolo, Bodo, and Soku, all in Rivers State, artisans such as masons, carpenters, auto mechanics and welders have taken to the creeks to make better incomes from the bunkering and refining economy. Builders have to go all the way to Port Harcourt to recruit construction workers. Same is true of bunkering hotspots in Bayelsa and Delta states. When business is good these bunkering youths make 20,000 to 50,000 naira per week, whereas this could sometimes be a month's income for a village carpenter or farmer.

## 5.2 Environmental

Illegal bunkering and artisanal refining cause almost the same kind of pollution as oil spill and gas flaring by oil companies. The environmental devastation caused by the oil companies has been scientifically documented by the UNEP study, *Environmental Assessment of Ogoniland*. The study, which examined impact on soil and ground water, terrestrial and aquatic vegetation, and public health, concluded that it would take 25 to 30 years to restore the Ogoni environment. This environmental condition in Ogoni is typical of other communities in the Niger Delta that have been subjected to the same degree of unsustainable oil exploration. The situation has been aggravated in recent years by oil theft and refining.

At the beginning, the pipes were crudely hacked in order to siphon or tap the crude. This generated large spills as it was not easy

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<sup>62</sup>Patrick Tolani, "Oil Theft: Sleep-walking into Bankruptcy," *The Guardian*, Wednesday, July 24, 2013.



Oil theft and artisanal refining have huge environmental impact

for the hackers to control the force of oil under pressure in the pipelines. In recent time, the techniques for creating the tap holes or tapping points have improved as specialists who use drills or welding machines are engaged, reducing the amount of oil that is wasted and discharged into the environment. Furthermore, the simple inefficient refining process generates far greater volume of wastes than conventional industrial refining. This sludge is also discharged into the environment, covering large areas. The refining camps are muddied by oil sludge, creating a very unhealthy operational environment. Crude oil being a highly combustible commodity, the spills and the sludge, which cover large areas stretching for miles, often catch fire, scorching the vegetation and everything that stands on its way. The mangrove and rain forest swamps of the Niger Delta, where the bunkering and artisanal refining take places, is a tragic ecological sight to behold.

The flares from refining sites create the same kind of effect as gas flaring from the oil wells. In some localities the flares are so numerous their combined capacity could be

greater than the flares coming from the oil wells in the area. At the height of refining in Gokana LGA, the vegetation, buildings and every conceivable surface were covered with soot. This compounded the contamination of rain water which has been the main source of drinking water in these communities. The impact of such toxic smoke on the human respiratory system is yet to be reliably determined.

The operational method of JTF also has its environmental implication. Often, intercepted barges and boats loaded with crude oil or refined products are set ablaze, unleashing huge fire into the environment as large quantities of oil are released into the environment. The destruction of the mangrove vegetation in combination with oil spills which cover the water with an oil film has literally wiped off the fishing industry in the most heavily impacted areas of Niger Delta.

This study does not examine soil and ground water contamination related to bunkering and artisanal refining but it is reasonable to expect that on a long term basis, they would

have the same effect as UNEP found in Ogoni areas that have been exposed to contamination for a long time. UNEP has stated in its report that “pollution of soil by petroleum hydrocarbons in Ogoniland is extensive in land areas, sediments and swampland. Most of the contamination is from crude oil...At 41 sites the hydrocarbon pollution has reached the groundwater levels in excess of the Nigerian standard as per the EGASPIN legislation” (pp. 9-10).

### 5.3. Public Health

Decades of environmental pollution deriving from hydrocarbon exploration has been complicated in recent years by artisanal refining. Two aspects of public health are examined in this study – the health of the direct refiners working in a toxic environment and inhaling the dangerous fumes emanating from the crude oil processing process, and the impact of hydrocarbon pollution on food chain.

Table 3. Metal and Hydrocarbon Analysis

| SN | Sample identity<br>Bodo, Rivers State | Lead analysis (mg/1) | Total hydrocarbon content<br>(mg/1) |
|----|---------------------------------------|----------------------|-------------------------------------|
| 1  | A                                     | 0.001                | 0.023                               |
| 2  | B                                     | 0.002                | 0.028                               |
| 3  | C                                     | 0.002                | 0.008                               |
| 4  | D                                     | 0.002                | 0.023                               |
| 5  | E                                     | 0.001                | 0.023                               |
| 6  | F                                     | 0.0                  | 0.025                               |
| 7  | G                                     | 0.002                | 0.023                               |
| 8  | H                                     | 0.0                  | 0.020                               |
| 9  | I                                     | 0.002                | 0.006                               |
| 10 | J                                     | 0.003                | 0.023                               |
|    | Choba, Rivers State                   |                      |                                     |
| 11 | A                                     | 0.001                | 0.028                               |
| 12 | B                                     | 0.0                  | 0.003                               |
| 13 | C                                     | 0.001                | 0.023                               |
| 14 | D                                     | 0.0                  | 0.001                               |
| 15 | E                                     | 0.0                  | 0.023                               |
| 16 | F                                     | 0.002                | 0.003                               |
| 17 | G                                     | 0.003                | 0.025                               |
| 18 | H                                     | 0.002                | 0.020                               |
| 19 | I                                     | 0.0                  | 0.002                               |
| 20 | J                                     | 0.002                | 0.030                               |
|    | Azagbene, Bayelsa State               |                      |                                     |
| 21 | A                                     | 0.001                | 0.023                               |
| 22 | B                                     | 0.0                  | 0.002                               |
| 23 | C                                     | 0.002                | 0.008                               |
| 24 | D                                     | 0.001                | 0.003                               |
| 25 | E                                     | 0.001                | 0.020                               |
| 26 | F                                     | 0.001                | 0.002                               |
| 27 | G                                     | 0.002                | 0.008                               |
| 28 | H                                     | 0.0                  | 0.0                                 |
| 29 | I                                     | 0.0                  | 0.002                               |



Questionnaire were administered to determine the presence of common ailments such as cough and rashes associated with sustained contact with smoke and hydrocarbon. The questionnaire and physical examination did not reveal any symptoms uncommon among the people

Bayelsa section of the Forcados river and from the New Calabar River at Choba. The samples were tested for Total Petroleum Hydrocarbon (TPH), Polycyclic Aromatic Hydrocarbon PAH, and Benzene, Toluene, Ethyl benzene Xylene (BTEX). Their levels show discernible variations between the

Table 4. Hydrocarbons in Sea Food

| S/N | SAMPLE ID                              | TPH<br>(mg/kg) | PAH<br>(mg/kg) | BTEX<br>(mg/kg) |
|-----|--|----------------|----------------|-----------------|
| 1   | Bodo Creek (Rivers State)              | 0.526          | 0.044          | <0.001          |
| 2   | New Calabar River Choba (Rivers State) | 0.338          | 0.022          | <0.001          |
| 3   | Rivers Forcados (Bayelsa State)        | 0.495          | 0.038          | <0.001          |

that are not directly exposed to hydrocarbon fumes and oil. None of the results gives a conclusive health statement as they were intended to serve as indicators. Clearly, a detailed health impact assessment is needed to arrive at definitive results and conclusion.

Urine samples to test for heavy metals were taken from artisanal refining operators in two heavily impacted sites, Bodo in Gokana LGA (Ogoni) in Rivers State and Azagbene in Bayelsa State. The third set of samples were taken from Choba near Port Harcourt where the impact is considerably less. For all the three sites the result for lead and total hydrocarbon content did not demonstrate any marked variation as shown in Table 3.

To test for heavy metal presence in food chain, fish samples, specifically cat fish, were similarly taken from the Bodo Creek, the

three sites. The highest levels of TPH and PAH were recorded for Bodo (0.526 mg/kg and 0.044mg/kg, respectively) followed by River Forcados (0.495/0.038) then Choba which recorded the lowest levels at 0.338 and 0.022 (Table 4).

The results are not entirely surprising, given that Bodo recorded some of the worst cases of oil spill in 2008 and 2009 and thereafter became a major centre of illegal bunkering and refining, while the New Calabar River at Choba has less contamination than the other two sites. There is clearly an observable correlation between the levels of oil pollution and the presence of these metals and chemicals in food chain. The health implications of these findings are yet to be fully determined. The logical conclusion is that existing levels of contamination caused by the oil companies in a place such as Bodo has been exacerbated by illegal bunkering and



*Health sample collection*

artisanal refining. It is unlikely that continuous consumption of sea food with such high levels of contamination will not affect the health of the consumer.

Regarding the level of PAH contamination, an expert opinion has stated that:

*The values obtained in this current report in fishes from rivers in Ogoni [Bodo Creek], Choba and Bayelsa are far above the [rivers around] Lagos and Nigerian averages [between 71.760 and 264.610 ng/g and 100 ug/kg, respectively] and were in fact in mg/kg compared to ng/kg in these other reports. The value in this report also exceeds the PAHs of Potomac [USA] of 598 ng/kg used as reference by many researchers.<sup>63</sup>*

In respect of the potential health implication of PAH contamination, it is asserted that “Exposure to PAH from various environmental sources are considered

*primary risk factor for lung cancer” and that “ Polycyclic aromatic hydrocarbons are a large group of organic compounds included in the European Union and United States Environmental Protection Agency priority list because of their mutagenic and carcinogenic properties.”<sup>64</sup> In the case of TPH, it has been demonstrated that “benzo (a) pyrene (BaP) [components of TPH] can be accumulated to potentially hazardous levels in fish and invertebrates and pose serious health risk to humans that consumes such fish(es).”<sup>65</sup> Specifically in the Ogoni [Bodo] case, it is observed that:*

*The present report showing high values of the measured parameters in Ogoni exposes the human inhabitants to possible lungs, kidneys, heart and testicular damages. The elevated urinary total hydrocarbon content in the Ogoni subjects is a positive deleterious finding.<sup>66</sup>*

<sup>63</sup> Ogunari Georgewill, see Appendix 1 of this report.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

A medical opinion has stated that crude oil has been reported to have a negative effect on the reproductive hormones, affects the testicles leading to infertility, heart (cardiac muscular congestion), lungs, kidneys and livers.<sup>67</sup> Certain experts have established a correlation between exposure to petroleum and reproductive health disorders.

*I have come to realise that virtually most of our patients presenting with [sic] infertility who come from the oil-producing regions have several toxins and heavy metal overload, such that even the best of IVF with good embryos would not yield a positive result unless they go through a Mayr therapy detoxification process.*<sup>68</sup>

However, short term results may not give any clear indications of long term effect of sustained exposure to toxic fumes and hydrocarbon at illegal bunkering sites. That heavily impacted areas such as Bodo could be a potential Chernobyl or Bhopal may be an overstatement to some people, but the impact of today's exposure could portend significant danger for tomorrow. A medical doctor who served at Bodo has written that:

*Across the community there is a rising incidence of chronic cough not responding to antibiotic medication, many currently experience a progressive weight loss of unknown origin, while general body weakness and loss of appetite is now a general complaint. Young men and women are fast ageing and there is an obvious decline in the reproductive age brackets. These facts are*

*evidence-based and a common experience of medics within and around Bodo community.*<sup>69</sup>

According to the famous maxim by Paracelsus, the father of toxicology, "the dose makes the poison." The people involved in artisanal refining have taken what could be regarded as an overdose of harmful petroleum substances and may not be expected to escape the long term effect.

#### 5.4. Fire

A major risk that bedevils bunkering and refining operators is fire. Crude oil is a highly incendiary commodity and outbreak of fires has been a constant feature of the business. These fires occur at theft and refining sites. They are often started by cigarette smoking, careless handling of the fire used in heating the crude in the refining process, or sparks from generators used in powering machines that pump oil into waiting boats and barges. Sources at Kalafiugbene in Burutu LGA of Delta State claimed that artisanal refining in the community stopped after 2007 mainly as a result of the high casualty rate from fire incidents.<sup>70</sup> In Rivers State, this study has documented a list of more than 50 victims in Kegbara Dere and Bodo in Gokana LGA, who have either been burnt to death or have sustained various degrees of injury between 2009 and 2013.

These deaths and injuries are never reported to the authorities or treated in government hospitals for fear that the injured or relatives of the dead could be arrested for committing the crime of bunkering and refining. Gokana has two hospitals (one of which is located in Bodo)

<sup>67</sup> Dr Francis Nubari Nabien, interview, June 2013.

<sup>68</sup> Oladapo Ashiru, "Oil Sector Workers Prone to reproductive Disorder", The Punch, 13 August 2013, p.17. Prof. Ashiru is a Consultant Reproductive Endocrinologist.

<sup>69</sup> Dr Francis Nubari Nabien

<sup>70</sup> Interview with the CDC Chairman and others in Kalafiugbene community, 13 April, 2013.



Illegal bunkering boat on fire. When JTF captures illegal bunkering boats/vessels it sets them ablaze, leading to further environmental damage

and two health centres located at Kegbara Dere and Kpor, but none of these institutions has any record of burnt victims of *kpo-fire*. The victims are rather taken to private clinics which maintain a code of confidentiality. Some of them are treated in local chemists.

As an operational procedure, JTF sets fire to captured boats loaded with illegal oil or fire at these boats when they fail to stop. The fire may consume the fleeing boat passengers and cause widespread damage to property. Such incidents are fairly common. Sometimes the *kpo-fire* boys also use fire to chase away JTF operatives. These fires often spread rapidly as the water surface is covered with oil. Three of the major fire incidents which occurred at Bodo between 2011 and 2012 illustrate these points.

1. On February 15, 2012 JTF set ablaze a boat suspected to be carrying illegal crude at Numuu Forge (Forge waterfront). The fire spread uncontrollably, consuming canoes and other assets at the waterfront and threatening the section of Bodo community close to the waterfront. The owners of those assets demanded compensation and

rehabilitation as those assets were their main source of livelihood. This demand was eventually abandoned when the JTF failed to listen.

2. On March 16, 2011, there was another fire outbreak connected with illegal bunkering at the Bodo City Girls' Secondary School waterfront. The fire was so severe students and staff of the school and neighbourhood residents had to flee to safety. Because the fire occurred in the daytime, some people were able to save their canoes at the waterfront.
3. Yet another major fire occurred on July 4, 2011, causing an uproar in the community. Some sources claim that the fire which originated at Numuu Lelasi Bookpo, spreading to Numuu Tene-ol, was started by bunkerers who wanted to chase away JTF operatives that were making bunkering difficult in the area. Other sources claim that the fire was accidentally started by certain youths who were returning from their bunkering expedition to Bille in Akakutoru LGA in Rivers State.<sup>71</sup>

<sup>71</sup>When strong JTF presence in Bodo makes bunkering difficult the youths temporarily migrate to other areas with less security to ply their business. Bille, another bunkering hotspot, is one of such areas.



### 5.5. Social Problems

One of the most outstanding social problems in the communities under study is the sharp decline of education. Poverty resulting in inability to pay the cost of education and post-qualification unemployment have contributed to declining interest in education in these communities. The advent of bunkering and refining have further made education to suffer a great setback and the number of school dropouts has become high. Instead of being in school, young men, women and children take to the creeks to make quick money from illegal refining. Even children who are not able to go the creeks move about with jerry cans hawking bunkered fuel.

At Bodo, St. Pius X College, the first secondary school in Ogoni founded in 1956, has between 10 and 15 students in most of the classes. Like most secondary schools in Rivers State, the government had in the 1970s taken over the school founded by the Catholic Church and only returned it to the church a few years ago. The new management decided to charge a tuition of 15,000 naira (88 dollars) per annum. Many parents could not afford the payment. The boys drifted to the creeks. This is the typical scenario in almost all the communities in Rivers, Bayelsa, and Delta states surveyed for this study. Once these children make a little money from bunkering they become a problem to the community. They join any of the cult groups in town, take to cigarettes and alcohol, rape girls and engage in sundry social vices. Incidents of rape are high in these communities but they are seldom reported.

Out of a sample of 50 boys aged 14 to 19 years questioned in Bodo for this study, only

10 of them were found to be still active in school, 9 drifted in and out of school, sharing their time between the community and the creeks. The rest had taken to the creeks fully. Bunkering communities are now faced with a new generation of illiterates, which is bad for the future of these communities. The elders and elite of Bodo are lamenting this trend as the community has been known for long to be a leader in education in the area.

### 5.6 Youth Revolution

Our research found evidence that bunkering and the social power it confers on its operators is accelerating the disintegration of traditional modes of social control that ensured stability in the communities. Parents are finding it increasingly difficult to guide their children even as the traditional institutions and communal authority system continue their rapid decline. There has been a youth revolution in the Niger Delta. The new generation has challenged with increasing success the authority of the elders who are accused of corruption and collaboration with the government and oil companies to oppress their people. The immediate cause of this revolution has been the control of funds paid to the communities by IOCs as compensation or for community development. Local chiefs have been killed by irate youths. The fear of youth has become the beginning of wisdom.<sup>72</sup> Unlike the period before the 1990s, every community now has a youth council and youths leader, who is an important part of the community leadership in the same manner that every major ethnic organization has its youth wing.<sup>73</sup> In some communities the youth wing is synonymous with the military wing. The financial power conferred on illegal bunkerers has strengthened this revolution.

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<sup>72</sup>Ben Naanen, "The Political Economy of Oil and Violence"

<sup>73</sup>Ibid

## 5.7. Political Trend

Certain authorities, which have tried to develop a theory of Nigerian politics, have demonstrated that whether under the military or civilian regimes, Nigerian politics has been driven by the desire to control oil revenues.<sup>74</sup> This explains the ferocity and relentlessness that characterize the contestation for power in Nigeria and subsequently unbridled primitive accumulation that has become the hallmark of the political elite in the country. Most politicians do anything and form all manner of alliances to capture and retain power.<sup>75</sup> An alliance between the ruling party and warlords, who provided the terror infrastructure for containing the opposition and for rigging, ensured the control of Rivers State by the ruling party in the 2003 election. In return, the warlords were allowed to reward themselves with bunkering from which they made fortunes.<sup>76</sup> With their new wealth they were able to buy more arms and recruit more followers to consolidate their position in subsequent confrontation with the government and the IOCs in the long-drawn Niger Delta conflict that culminated in the Amnesty Programme of 2010.<sup>77</sup>

## 5.8. The Petro-State and Petrocracy

The ambition to control power by all means and the corrupt enrichment that comes with such control, has brought about overwhelming influence of money on Nigerian politics. Much of this money comes from oil – legitimately or illegitimately. Nigerian politics is moving to a point where the influence of those who have made money from oil and in return continue to enrich themselves with oil money, is becoming unmistakable. This is very much so in the Niger Delta where about the only talk in town is oil. Connections to illegal bunkering and to the oil companies provide a substantial part of that money. It may not amount to overstating the issue if

*The central objective of political contestations in Nigeria is the unrelenting desire to control oil revenues... Nigerian politics is moving to a point where the influence of those who have made money legally and illegally from oil is becoming unmistakable. This is very much so in the Niger Delta where the only talk in town is oil money. Connections to illegal bunkering and the oil companies provide a substantial part of that money. It may not amount to overstating the issue if one discerns the gradual emergence of petrocracy. Petrocracy is contextually articulated here as a government which is under the significant influence of legal and illegal barons of the oil industry.*

*Niger Delta creeks and coastal waters are infested with the related crimes of illegal bunkering, arms trafficking, piracy, armed robbery and kidnapping, which constitute a major threat to national security.*

<sup>74</sup> Ben Naanen, "The political Economy of Oil and Violence in the Niger Delta"; Ben Naanen and Kiale Nyiayaana, "State Failure and Niger Delta Conflict" in Olubaolu Okome (ed.), *State Formation, State Fragility and Human Security in Nigeria*. New York: Palgrave Macmillan, 2013.

<sup>75</sup> Human Rights Watch, *Criminal Politics*.

<sup>76</sup> Naanen, "The Political Economy of Oil and Violence", pp. 6-7.

<sup>77</sup> Peterside et al, Amnesty Programme

one discerns the gradual emergence of *petrocracy*. *Petrocracy* is contextually articulated here as a government which is under the significant influence of legal and illegal barons of the oil industry. In the days ahead we are likely going to see a greater influence of *petrocrats*, especially with growing participation of indigenous players in the oil industry as the IOCs continue their divestment. Indigenous firms now produce 12 percent of Nigeria's crude.<sup>78</sup>

At the local level in the Niger Delta the influence of illegal bunkering and refining kingpins is growing. They and the local politicians constitute the gilded elite who "declare surplus" at bars and have unlimited access to the local women. The *petrocrats* constitute a threat to democracy as they sustain the influence of money on elections through rigging, bribery and violence. Given the orchestrated crisis that has overwhelmed some of the major parties in the forerun to the 2015 elections, the influence of the *petrocrats* may yet become even more discernible. They could use their money to acquire more arms for political intimidation much in the same manner that the politicians acquired arms for militants for the 2003 elections.

### 5.9. National Security Implications

The Niger Delta creeks and coastal waters are now infested with the related crimes of illegal bunkering, arms trafficking, piracy, armed robbery and kidnapping that constitute a major threat to national security. Nigeria now has a strong potential of demonstrating the effect that narco-trafficking is having on states in Latin and

Central America. Drug barons in these regions are able to install their protégés in high and strategic state offices, deeply compromise the state security apparatus, attempt to silence the media through assassinations, and provide social programmes for the poor, all in the attempt to protect their illegal business. In the Nigerian petro-state, we are witnessing the unfolding of petrocracy. A top security chief interviewed was concerned about the growing possibility of powerful oil bunkerers overthrowing the government through their money, access to sophisticated arms, and corrupt influence. Some of the former warlords who have made fortunes from pipeline surveillance have started playing Robin Hood by launching humanitarian foundations to which top political functionaries, including governors and ministers of the state, have competed to make donations.<sup>79</sup>

There has also been a connection between illegal bunkering and the proliferation of arms and conflict in the Niger Delta. Arms acquired with bunkering proceeds fuelled the Niger Delta insurgency, intra-community and inter-community conflict. Former militants interviewed narrated how they smuggled arms into the country with incomes from the sale of bunkered oil. Between 2006 and 2007 Bodo experienced a deadly conflict between two main rival cult groups, Deewell and Deebam. The conflict revolved around two political personalities in the community, who were jostling for political supremacy.<sup>80</sup> Arms were freely smuggled into the community. At the end of the conflict most of the cultists, who were

<sup>78</sup> *The Nation*, 14 May 2013, p. 48, "DPR: Indigenous Firms Now Supply 12% of Crude Oil".

<sup>79</sup> Tampolo Foundation. The list of people who contributed to the launching of the Tampolo Foundation reads like a "who is who" in political and corporate Nigeria. The appreciation include the President and Vice President, Dr Goodluck Ebele Jonathan and Namadi Sambo; the governors include Emmanuel Uduaghan of Delta State, Serieke Dickson of Bayelsa State. Ministers include Nyesome Wike, Minister of State for Education; from the corporate establishment came Tunde Ayeni, Chairman, Skye Bank. See the *Nation* 7 December 2012, p.50 Tampolo Foundation, Appreciation". Asari Dokubo, leader of the militant group, Niger Delta People's Volunteer Force, who also made money from the surveillance contract, is reported to be setting up a university.

<sup>80</sup> Patrick Naagbantou, "The Bodo War of Attrition", unpublished paper, 2006.

sustained by political payouts, became jobless. It was most of these jobless youths that took to illegal bunkering and refining to sustain themselves. To this day bunkering in Bodo is controlled by these cults. To enter into the business one has to register with the leadership of these cults. Despite the traditional rivalry between the two cults their leaders surprisingly work together harmoniously. They do not see themselves as cult or militant leaders but as leaders of social groups.

#### 5.10. Human Rights Violations

The operations of security personnel trying to combat oil theft and refining in these communities have their human rights implications. There have been incidents of death resulting from the operations such as when the JTF fires at a fleeing boat carrying stolen oil or refined products. As in other circumstances of human rights abuses by security agencies, these ones have never

been reported. Although we have not been able to document any case of extra-judicial execution, investigations in these communities have revealed a number of missing bunkerers, presumably killed in the course of firing when a fleeing boat refuses to stop.

More common, however, are cases of people who have been arrested and detained without trial. This study has compiled a list of 16 persons from Bodo who have been detained without trial for periods ranging from a few months to three years. This is part of a long and growing list of alleged bunkerers awaiting trial across the Niger Delta. Often the detention takes place when the person arrested is not able to pay for his freedom on the spot. Once the arrested suspect gets to the station or detention centre, securing his freedom becomes more complicated even with the payment of money. Our record does not show any big (export) bunkerer that has been arrested.



## 6

## INITIATIVES TO COMBAT ILLEGAL BUNKERING AND THEIR LIMITATIONS

### The Legal Approach

#### 6.1. Criminalization

Illegal interference with pipelines and related infractions have been growing in scale since the early days of oil boom in the 1970s, requiring legislation and prescribed punishment ranging from death sentence to varying prison terms and fines. The laws include the following:

1. Petroleum Production and Distribution (Anti-Sabotage) (PPDA) Act, 1975, Sec 1(1)(a), (b) and (c).
2. Criminal Justice (Miscellaneous Provisions) Act of 1975, now Cap. C39 Laws of the Federation of Nigeria (LFN), 2004, Sec 3(1) and (2).
3. Miscellaneous Offences Act, formerly Special Tribunal (Miscellaneous Offences) Decree No. 20 of 1984, now Cap M17 of Laws of the Federation of Nigeria, 2004 Sec 1 (7), Cap 410.
4. Petroleum Act, Sec 4(1), Sec 4(6), Sec 13(2) (b) (iv) and the Petroleum (Drilling and Production) Regulations.
5. Oil and Gas Regulations, 1995.
6. The Criminal Code Act, Sec 245 and 247(a).

Concerned by the poor implementation of the relevant laws, the Federal Government, in July 2013, had to set up a Legal Task Force under the chairmanship of the Minister for

Justice and Attorney-General, Mohammed Bello Adoke. The main task of the LTF is to prosecute cases of oil theft across the country.<sup>81</sup> The major challenge which will confront the LTF is the wide discretionary latitude allowed in the application of these laws and the huge disparity in the prescribed punishment.

It is not the absence of laws that is the problem, but the failure to apply the existing laws through diligent prosecution. There is also the issue of flexibility which the laws provide in the prosecution process as well as the huge disparity in punishment. Whereas punishment under the laws enacted by the military governments could be regarded as draconian by today's human rights standard, the punishment under the other relevant laws are so light they can hardly serve any effective deterrent purpose. For instance, while the PPDA Act of 1975, which deals with the distribution of petroleum products, carries the death sentence or a maximum prison term of 21 years, the relevant section of the Petroleum Act which relates to illegal (unlicensed) dealing in petroleum products, provides for a penalty of two years imprisonment or the option of 2,000 naira (12.50dollars) fine. The implication of this kind of legal paradox is that whereas under the PPDA Act, a hapless jobless youth who tampers with petroleum products pipeline to earn a modest amount of cash can be sentenced to death or to a maximum prison term of 21 years, the big bunkerer who carries or procures shiploads of stolen oil but not directly involved in breaking pipeline can be given a pat on the wrist with 2,000 naira fine under the Petroleum Act.

<sup>81</sup> *Thisday* 19 July, 2013, p.10.

Table 5. Existing Laws Regulating the Nigerian Oil Industry with Particular Regard to Illegal Bunkering and Refining

| Law  | Description of Offence   | Punishment  |
|--|--|---|
| Petroleum Production and Distribution (Anti -Sabotage) (PPDA) Act, 1975, Section 1 (1)(a),(b) & (c) (now Cap., P12 Law of the Federation of Nigeria, 2004) | Any person who (a) wilfully does anything with intent to obstruct or prevent the distribution of petroleum products in any part of Nigeria; or (b) does anything with intent to obstruct or prevent the procurement of petroleum products for distribution in any part of Nigeria; or (c) wilfully does anything in respect of any vehicle or public highway with intent to obstruct or prevent the use of that or that public highway for the distribution of petroleum products, shall, if by doing that he, to any significant extent, causes or contributes to any interruption in the production or distribution of petroleum products in any part of Nigeria, be guilty of the offence of sabotage under this Act. | Death sentence or imprisonment for a term not exceeding twenty one years.                           |
| Criminal Justice (Miscellaneous Provisions) Act, 1975  | Any person who "destroys, damages or removes any oil pipeline or installation connected therewith; or who "otherwise prevents or or obstructs the flow of oil along any such pipeline or interferes with any installation connected therewith."  | A fine or ten years imprisonment in the first, or a fine or three years imprisonment in the second. |

|   |   |   |
|---|---|---|
| <p>Special Tribunal (Miscellaneous Offences) Decree No 20, 1984, Miscellaneous Offences Act, Cap. M17 LFN, 2004</p> | <p>"Any person who wilfully or maliciously (a) breaks or damages, disconnects or otherwise tampers with any pipe or pipeline for the transportation of crude oil or refined oil or gas; or (b) obstructs, damages, destroys or otherwise tampers or interferes with the free flow of any crude oil or refined petroleum product through any pipeline, shall be guilty of an offence and liable on conviction to be sentenced to imprisonment for life."</p> | <p>Life imprisonment.</p>   |
| <p>Petroleum Act (Cap. P10, LFA, 2004), Section 4 (1)</p>   | <p>A person must obtain licence from the Minister to sell, store or distribute any petroleum products in Nigeria.</p>   | <p>Two years in prison, or a fine of 2,000 naira, or both and the forfeiture of the petroleum products in respect of which the offence was committed.</p> |
| <p>Petroleum Act, Section 13 (2)(b)(iv)</p>   | <p>Any person who explores or prospects for petroleum or wins or works in petroleum or acts without the appropriate licence required under any regulations made under the Act.</p>  | <p>A fine not exceeding 2,000 naira.</p>  |
| <p>Oil and Gas Regulation, 1995</p>   | <p>Requires licence for the construction and operation of pipeline. Section 26 prescribes the punishment for anyone who contravenes the regulation on pipeline construction. Act provides for international standards and materials to be used for the construction of pipelines, things to guard against in selecting the location of route to be followed by the pipeline.</p>  | <p>Fine of up to 500,000 naira or imprisonment for a term of six months or both.</p>  |

|                              |  |                                |
|------------------------------|--|--------------------------------|
| <p>The Criminal Code Act</p> | <p>Section 245: "Any person who corrupts or fouls the water of any spring, stream, well, tank, reservoir or place so as to make it less fit for the purpose for which it is ordinarily used, is guilty of misdemeanour and is liable to imprisonment for six months. Section 247(a) "Any person who vitiates the atmosphere in any place in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, is guilty of misdemeanour, and is liable for six months imprisonment."</p> | <p>Six months imprisonment</p> |
|------------------------------|--|--------------------------------|

To enhance the effectiveness of criminalization and make prosecution less difficult, the following measures are recommended:

- 1) The range of existing anti-bunkering laws should be harmonized and unified.
- 2) More deterrent punishment (excluding the death sentence) should be prescribed.
- 3) Rigorous prosecution enforced.
- 4) Lackadaisical prosecution should be punishable to deter wilfully slipshod prosecution by prosecutors.

### Legal Approach to Combating Illegal Bunkering

#### 6.2. Background

Pipeline vandalism is the illegal or unauthorised act of destroying or puncturing of oil pipeline with the intent to disrupt supply or to steal crude oil or its refined products for the purpose of appropriating it for personal use or for sale in

the black market or any other outlet.<sup>82</sup> The vandals rupture oil pipelines belonging to the IOCs. They fix their hoses at the broken points and siphon the oil into boats or barges that are hidden in creeks with mangrove forest cover from where the oil is sold to prospective buyers for local processing (artisanal refining) or for export. *Illegal bunkering*, or simply *bunkering*, is the local term for oil theft.

Nigeria is not alone in fighting the menace of crude oil theft. Mexico, a relatively developed OECD country and China, are also affected by crude oil theft. For instance, Pemex, the Mexican state oil company recorded 730 illegal siphons in the first four months of 2013, in comparison to 377 in 2012, and thus, between 2011 and 2012, the number of illegal siphons detected jumped 23.2 percent, from 1,416 to 1,744.<sup>83</sup> Oil pilferage by thieves who drill into oil pipelines is the cause of at least 40 percent of China's oil pipeline leaks. Statistics revealed that between 2002 and 2009, several oil stealing cases were recorded by Sinopec, with some 19,804 cases involving

<sup>82</sup> Gbenga Komolafe, quoted in Osagie, Crusoe, "NNPC: Nigeria Lost N163bn in 3 Years to Pipeline Vandalism", *This Day Live*, 3 June 2013, at <http://www.thisdaylive.com/articles/nnpc-nigeria-lost-n163bn-in-3-years-to-pipeline-vandalism/149218/>

<sup>83</sup> James Bargent, Oil and Gas Theft in Mexico Doubled in 2013, *Insight Crime*, 10 May 2013, at <http://www.insightcrime.org/news-briefs/oil-and-gas-theft-in-mexico-doubled-in-2013>



drilling into oil pipelines and 12,167 cases of direct theft from production wells.<sup>84</sup>

In a bid to curb oil thefts and vandalism of oil pipelines, the Federal Government set up the Oil Field Surveillance Limited (OFSL) to monitor and report on oil theft. OFSL staff mainly comprised ex-militants with over 100 people. This was aimed at providing jobs for local youths that surrendered their weapons and signed up to the amnesty programme. It is also believed that as locals, they know the environment better than engaging someone from outside. However, OFSL was disbanded by the Government in September 2012, following allegations of poor performance levied against the leadership of OFSL. The Federal Government of Nigerian had earlier set up a Special Security Committee on Oil Producing Areas in November 2001, "to address the prevailing situation in the oil producing areas which have, in recent past, witnessed unprecedented vandalisation of oil pipelines, disruptions, kidnappings, extortion and a general state of insecurity." In a report submitted to President Obasanjo in February 2002, the committee observed that a "major threat to the oil industry ... arises from the activities of a 'cartel or mafia', composed of highly placed and powerful individuals within the society, who run a network of agents to steal crude oil and finished produced from pipelines in the Niger Delta region."<sup>85</sup>

Indeed, some IOCs such as Shell, Agip and Eni have been forced to close down operations in some parts of the Niger Delta region in March 2013 as a result of oil thefts, and forced several oil MNCs to declare *force majeure* on oil shipments; and none have yet fully resumed their operations.<sup>86</sup> As stated by SPDC Managing Director, the activities of vandals and oil thieves led to shut-in by SPDC of Nembe Creek Trunk Line where it was losing an average of 60,000 barrels of crude oil per day, which represents a surge since January 2013.<sup>87</sup> While Agip also suspended oil production in Bayelsa State where 60 per cent of its production of about 90,000 barrels per day was reported stolen, the Italian firm, ENI shut down its activities in the swampy oil fields in Bayelsa.<sup>88</sup> Between 2009 and 2012, the NNPC said Nigeria lost about N163 billion, which loss would have been able to take care of the budget of two states in the country.<sup>89</sup>

Recently, the Minister of Finance and Coordinating Minister for the Economy, Ngozi Okonjo-Iweala, said that Nigeria loses \$1 billion (N155 billion) revenue every month to oil theft.<sup>90</sup> The International Energy Agency (IEA) also estimated that Nigeria loses N1.1 trillion naira (\$6.8 Billion) yearly to oil theft activities, which loss is just over 20% of the Nigeria's budget in 2012, a budget figure of N4.8 trillion naira.<sup>91</sup> Oil theft thus constitutes serious economic sabotage, causing a drastic reduction in the revenues accruing to the Government from the oil

<sup>84</sup> Xina Xie and Michael J. Economides, "The Growing Problem of Oil Theft in China", *Business Insider*, 11 June 2010, at <http://www.businessinsider.com/the-growing-problem-of-oil-theft-in-china-2010-6>

<sup>85</sup> Report of the Special Security Committee, para. 40, quoted in Human Rights Watch (2003), *The Warri Crisis: Fueling Violence*, Lagos: Human Rights Watch, Vol. 15, No. 18 (A), p. 19

<sup>86</sup> IRIN News, "Rising Niger Delta oil theft threatens security", at <http://www.irinnews.org/report/98155/rising-niger-delta-oil-theft-threatens-security>.

<sup>87</sup> *Ibid*; see also Benoit Faucon, "Nigerian Oil Thefts Prompt Shell to Act", *The Wall Street Journal*, 12-14 April 2013, p. 13

<sup>88</sup> Emmanuel Edukugho, Oil Pipeline Vandalism: What we Lost, *Vanguard*, 11 May 2013, at <http://www.vanguardngr.com/2013/05/oil-pipeline-vandalism-what-we-lost/>

<sup>89</sup> Osagie, Crusoe, "NNPC: Nigeria Lost N163bn in 3 Years to Pipeline Vandalism", *Op cit*

<sup>90</sup> Okonjo Iweala, she stated this while fielding questions from newsmen on the drop in oil production at the Spring Meeting of the World Bank and the International Monetary Fund, in April 2013 in Washington, U.S.A., quoted in Premium Times, Nigeria Loses N155bn Monthly to Oil Theft, others - Okonjo Iweala, *Premium Times*, 18 April 2013, at <http://premiumtimesng.com/business/130288-nigeria-loses-n155bn-monthly-to-oil-theft-others-okonjo-iweala.html>

<sup>91</sup> AAN-Network, "Does the Nigerian Government have the Political Will to Combat Oil Theft", *AAN-Network*, 28 March 2013, at <http://www.aan-network.org/aan-news/Oil-Theft.pdf>

industry, leading to the inability of the State to fulfil its obligations to the citizens. Pipeline vandalization and oil bunkering are economic crimes because they have enormous impact on the Nigerian economy and deprive the state of its resources. Section 40 of the EFCC Act defines 'Economic and Financial Crimes' to mean "the non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc".<sup>92</sup> The Act treats illegal oil bunkering as economic crime and the EFCC is thus empowered to investigate and prosecute the perpetrators before courts of competent jurisdiction.

As part of the efforts to eradicate oil bunkering in the region, the Federal Government set up a Military Joint Task Force to keep a surveillance watch on the region and to arrest perpetrators. It was indicated that between 1995 and 1998, 131 cases of vandalisation of pipelines and other oil industry installations were recorded in Nigeria. However, in 1999 alone, 497 cases or more than threefold of the cases in the four years to 1998 were recorded; and in

2000, an all-time high of 909 cases of pipelines and other oil installation vandalisation were recorded. In the years 2001 and 2002, the records show that 461 cases and 507 cases of vandalisation were recorded respectively. Thus, the total cases for the four years from 1999 to year 2002 is 2,374.<sup>93</sup> It was reported by the JTF media coordinator, Lt-Col Onyema Nwachukwu, that in 2012 they arrested 1,945 suspects and destroyed 4,349 illegal refineries, 133 barges, 1,215 open boats, an unspecified number of illegal fuel dumps and tankers, over 5,500 surface tanks, and 36,000 drums of illegally refined products; and in 2013, they have arrested 498 people and seized 18 boats.<sup>94</sup>

Notwithstanding the efforts of the JTF, oil theft in the region has continued to be on the increase. Several factors have been said to account for this. First is the allegation of corruption levied against the JTF members by the local inhabitants. There were allegations of collusion between the perpetrators and the JTF members (and other security personnel) as it is believed that since JTF members are largely made up of lowly paid officers, they often aid and abet the perpetrators for financial reward thus making it difficult to stamp out crude and refined products theft, vandalisation of pipelines and installations, and illegal oil bunkering. As noted by the Human Rights Watch, "[F]requently, both in the riverine areas and on dry land, the police and military are involved in the process or are paid off to take no action against those tapping into pipelines".<sup>95</sup> It has also been alleged that bunkerers pay protection fees to security agencies and that some security personnel either connive with or actually escort

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<sup>92</sup> Economic and Financial Crimes Commission (Establishment) Act 2004

<sup>93</sup> Salisu N'inna Dambatta, "Tackling Vandalism in Nigeria's Oil Industry", *Legal Oil*, 14 October 2003, at <http://www.legaloil.com/NewsItem.asp?DocumentIDX=1067894579&Category=news>

<sup>94</sup> IRIN News, *Rising Niger Delta oil theft threatens security*, at <http://www.irinnews.org/report/98155/rising-niger-delta-oil-theft-threatens-security>.

<sup>95</sup> Human Rights Watch (2003), *The Warri Crisis: Fueling Violence*, *Op cit*, p.19

bunkerers' barges and vessels to the high seas.<sup>96</sup> This allegation has been denied by the JTF.

There was information that top military officers were also involved in bunkering on account of suspicion of corruption and negligence. This suspicion was confirmed during an inquiry into the disappearance of the Ship named MT African Pride, a 12,000-ton Russian tanker which was intercepted on the high seas on 8 October 2003 and was found to have taken on board 11,000 tonnes of crude oil without authorisation. In January 2005, the Court Martial that tried the Naval Officers involved ruled that Rear Admirals Francis Agbiti and Samuel Kolawole should be demoted to the rank of Commodore and dismissed from the Nigerian Navy for their negligence in allowing the arrested tanker, African Pride, to escape from naval custody in Lagos harbour in August 2004.<sup>97</sup> Although found guilty, they were merely demoted and sacked but not sentenced to prison. A third defendant, Rear Admiral Antonio Bob-Manuel, was found innocent of all charges. Ten officers, including a Rear Admiral, were retired in July 2007, because of "formal intelligence reports" that they were involved in smuggling stolen crude oil.<sup>98</sup> The Chief of Naval Staff, Ganiyu Adeyeye,<sup>99</sup> admitted, "they were involved in oil bunkering." These cases serve as official confirmation of long-held suspicions that top navy officers were deeply involved in bunkering.<sup>100</sup>

In addition, there is also the belief that the JTF lacks the manpower required to control

over 4,347km of pipelines simultaneously. This fact is well attested to by Attah that: "But even when we identify and report blatant theft to the Joint Task Force- the combined force command structure deployed by the government in the Delta- they are often unable to take immediate action- allowing thieves to operate without much hindrance."<sup>101</sup> They lack the training and equipment such as helicopters, boats, GPS, and communication technology necessary to detect and control activities carried out by the oil bunkerers, which many times can be better equipped and trained than they.<sup>102</sup> This is further compounded by the complex terrain and numerous creeks in the Delta region thus making it not only difficult to tackle incidence of illegal bunkering and artisanal refineries in the region but providing safe havens for criminals.

As part of the efforts towards building a vigilant, disciplined security force that could help tackle the security challenges in the region, priorities of the Nigerian Government could include "stronger administration and regular payment of salaries to all security forces; systematic penalties for unprofessional, violent, or corrupt conduct; ending the practice of privately financed police details for protecting elites and their families; training in the use of intelligence and other non-violent, unarmed methods; and guidance in building relationships with ordinary citizens and creating working partnerships with community security groups."<sup>103</sup>

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<sup>96</sup> Augustine Ikelegbe, "The Economy of Conflict in the Oil Rich Niger Delta Region of Nigeria", *Nordic Journal of African Studies* 14(2): 208-234 at 224 (2005)

<sup>97</sup> IRIN News, Nigeria: Conviction of Admirals Confirms Navy Role in Oil Theft, at <http://www.irinnews.org/report/52598/nigeria-conviction-of-admirals-confirms-navy-role-in-oil-theft>

<sup>98</sup> United Nations Office on Drugs and Crime (UNODC), *Transnational Trafficking and the Rule of Law in West Africa: A Threat Assessment*, UNODC 2009, Vienna, p.4, at [www.unodc.org](http://www.unodc.org)

<sup>99</sup> As he then was.

<sup>100</sup> Reuters, "Nigerian navy ousts 10 officers for smuggling oil", 27 July 2007

<sup>101</sup> Tony Attah (Vice President HSE & Corporate Affairs, Shell Sub-Saharan Africa), *Oil theft and artisanal (illegal) refining in Nigeria – scale, impacts and the need for a multi-dimensional response*, Chatham House – Gulf of Guinea Security Conference, London, 6 December 2012

<sup>102</sup> Paul Francis, Deirdre LaPin, and Paula Rossiasco, *Securing development and peace in the Niger Delta: a social and conflict analysis for change*, Study prepared for publication by the Woodrow Wilson International Center for Scholars Africa Program and Project on leadership and Building State Capacity, Washington, DC, 2011, p.50

<sup>103</sup> Paul Francis, Deirdre LaPin, and Paula Rossiasco, *Ibid*, p. 110

Illegal oil bunkering also helps to sustain the culture of armed insecurity in the Niger Delta and of organised crime both within the country and probably in the wider Gulf of Guinea region. In 2008 alone, IOCs operating in the Niger Delta spent \$3.7 billion on security.<sup>104</sup> In the same year, a sizeable proportion of the federal government's budgetary allocation to the Niger Delta was allocated to security, even though the military and police had among the largest chunks of the budget. Oil pipeline sabotage constitutes a serious threat to national security, particularly Nigeria that depends heavily on oil exports for survival.<sup>105</sup>

Given the over-dependence of Nigeria on oil, it follows therefore that attacks on its oil infrastructure portends grave danger for its security and development. Besides, oil pipeline sabotage undermines the capacity of the government to generate resources needed to fulfil its responsibilities, of which the security of its citizens is a primary consideration.<sup>106</sup>

Importantly, oil theft or oil bunkering has contributed significantly to the proliferation of small arms and light weapons in the region as well as the threat to national security in Nigeria. It has been revealed that a day's worth of illegal oil bunkering in the Niger Delta (at 100,000 barrels and USD15/b) will acquire quality weapons to sustain a group of 1,500 youths for two

months.<sup>107</sup> Illegal weapons and oil bunkering thrive on each other in that while oil bunkering makes money readily available to acquire sophisticated weapons through black market networks, access to firearms facilitates brazen oil bunkering activities.<sup>108</sup> This has led to the attraction of a swarm of illegal oil buyers and arms dealers to the Gulf of Guinea coast off Nigeria, making the Niger Delta highly volatile.<sup>109</sup> More often, the shadowy foreign partners supply arms in exchange for cash or stolen oil. It provides the armed groups with enormous financial resources and better networks, which in turn enables them to acquire not only weapons but also more and better-quality weapons, making it possible for them to overpower rival groups and use them as proxies.<sup>110</sup> Indeed, many security personnel and law enforcement agents assigned to police the region have lost their lives in the hands of these vandals through the sophisticated weapons in their possession. The size of the theft requires resources far beyond the reach of local inhabitants or the unemployed youths as it requires strategic support. Powerful interests and highly placed individuals are deeply involved in illegal oil bunkering. Oil moved on barges and ocean vessels requires at least the tacit approval of some top officers of the Army and Navy and the former militants paid to guard pipelines.<sup>111</sup> According to the Director General of the Nigerian Maritime Administration and Safety Agency (NIMASA), Ziakede Patrick Akpobolokemi, "Equipment used by the oil thieves, such as

<sup>104</sup> John Beattie, "How Nigeria's Oil is Stolen", *African Business*, 21 June 2012, at <http://africanbusinessmagazine.com/features/oil-gas/how-nigerias-oil-is-stolen>

<sup>105</sup> Ukoha Ukiwo, "The Nigerian State, Oil and the Niger Delta Crisis", in Cyril Obi & Siri Aas Rustad (eds), *Oil and Insurgency in the Niger Delta: Managing the Complex Politics of Petro-Violence*, Zed Books, London/New York, p. 18.

<sup>106</sup> A.J. Alawode and I.O. Ogunleye, "Maintenance, Security, and Environmental Implications of Pipeline Damage and Ruptures in the Niger Delta Region", *The Pacific Journal of Science and Technology*, Vol. 12 No. 1, 565-573 at 569 (2011)

<sup>107</sup> WAC Global Services, *Peace and Security in the Niger Delta*, Conflict Expert Group Baseline Report, December 2003, p. 43

<sup>108</sup> Charles Ukeje, "Small Arms and Light Weapons Proliferation in the Niger Delta in Historical Perspective", in Amadu Sesay and Antonia Simbine (eds), *Small Arms & Light Weapons Proliferation and Collection in the Niger Delta*, Nigeria, College Press & Publishers Ltd., Ibadan, p. 30, yr?

<sup>109</sup> Antonia T. Simbine, "The Political Economy of Small Arms and Light Weapons Proliferation in the Niger Delta", in Amadu Sesay and Antonia Simbine (eds), *Ibid*, p. 60

<sup>110</sup> Nils Duquet, Swamped with Weapons: "The Proliferation of Illicit Small Arms and Light Weapons in the Niger Delta", in Cyril Obi & Siri Aas Rustad (eds), *Op cit*, pp. 147-148.

<sup>111</sup> Benoit Faucon, *et al.*, "Nigerian Oil Thefts Prompt Shell to Act", *Royal Dutch Shell Plc.com*, 12 April 2012, at <http://royaldutchshellplc.com/2013/04/12/nigerian-oil-thefts-prompt-shell-to-act/>



boats with massive tanks, vessels, imported arms and ammunition, are beyond the reach of the poor. They are obviously supplied by the rich who stay in their mansions and expect returns from the boys on the field.”<sup>112</sup> Similarly, the United Nations Office on Drugs and Crime (UNODC) stated that:

*Bunkering and related activities are facilitated by widespread corruption. Uniformed officers get their cut for providing information, looking the other way, or actively protecting the bunkerers. Employees of the state oil company can also cash in on their positions by supplying information and access. Even the beleaguered farmers and fishermen who can no longer support their families on the oil-tainted land can profit from the odd compensation claim. Local communities can also be “settled” for allowing bunkering to occur on their land.*<sup>113</sup>

This partly accounts for the failure of the government to effectively tackle the problem. Steps must be taken to tackle corruption among security personnel that are supposed to check the illicit trade.

### 6.3. Legal Framework Regulating Oil Exploitation in Nigeria in Relation to Oil Bunkering

The oil industry in Nigeria has quite a number of laws put in place to regulate its operations but only a few apply to pipeline vandalism and oil bunkering. The following applies in relation to pipeline vandalism:

Petroleum Production and Distribution (Anti-Sabotage) (PPDA) Act: The offence of “sabotage” was first defined by the Petroleum Production and Distribution (Anti-Sabotage) Act of 1975.<sup>114</sup> This is a military decree promulgated under the Gen. Murtala Mohammed led administration. It provides that a person who does any of the following things:

- (a) wilfully does anything with intent to obstruct or prevent the production or distribution of petroleum products in any part of Nigeria; or
- (b) wilfully does anything with intent to obstruct or prevent the procurement of petroleum products for distribution in any part of Nigeria; or
- (c) wilfully does anything in respect of any vehicle or any public highway with intent to obstruct or prevent the use of that vehicle or that public highway for the distribution of petroleum products, shall, if by doing that thing he, to any significant extent, causes or contributes to any interruption in the production or distribution of petroleum products in any part of Nigeria, be guilty of the offence of sabotage under this Act.<sup>115</sup>

Any person who aids, incites, counsels or

<sup>112</sup> Quoted in Ogodo Douglas, “Oil Bunkering in the Niger Delta”, *Nigeria’s Oil and Gas*, 20 December 2012, at <http://www.nigerianoilgas.com/?p=945>

<sup>113</sup> United Nations Office on Drugs and Crime (UNODC), *Transnational Trafficking and the Rule of Law in West Africa: A Threat Assessment*, Vienna, Austria, 2009, p.25

<sup>114</sup> Now Cap. P12 LFN 2004

<sup>115</sup> *Ibid*, section 1 (1) (a), (b) & (c)

procures any other person to do any of these things is equally guilty of sabotage. The decree provides for the penalty of death sentence or imprisonment for a term not exceeding twenty-one years for anyone found guilty of the offence.<sup>116</sup>

Criminal Justice (Miscellaneous Provisions) Act of 1975: This PPDA was followed by the Criminal Justice (Miscellaneous Provisions) Act of 1975 which makes any person who “destroys, damages or removes any oil pipeline or installation connected therewith”; or who “otherwise prevents or obstructs the flow of oil along any such pipeline or interferes with any installation connected therewith” guilty of an offence. It provides for the penalty of a fine or ten years imprisonment in the first case, or a fine or three years imprisonment in the second.<sup>117</sup>

Special Tribunal (Miscellaneous Offences) Decree No. 20 of 1984: These laws were followed by the Special Tribunal (Miscellaneous Offences) Decree No. 20 of 1984,<sup>118</sup> which created a range of offenses triable by “Miscellaneous Offenses Tribunals” and provides that: Any person who wilfully or maliciously-

- (a) breaks, damages, disconnects or otherwise tampers with any pipe or pipeline for the transportation of crude oil or refined oil or gas; or
- (b) obstructs, damages, destroys, or otherwise tampers or interferes with the free flow of any crude oil or refined petroleum product through any oil pipeline, shall be guilty of an offence and liable on conviction to be sentenced to imprisonment for life.<sup>119</sup>

This Act reduced the maximum penalty under the PPDA 1975 to life imprisonment.

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<sup>116</sup> *Ibid*, section 2.

<sup>117</sup> The Criminal Justice (Miscellaneous Provisions) Decree No. 30 of 1975. Now Cap. C39 Laws of the Federation of Nigeria 2004, Section 3(1) and (2)

<sup>118</sup> Now Cap M17 Laws of the Federation of Nigeria (LFN) 2004

<sup>119</sup> Section 1(7), Cap. 410, Laws of the Federation of Nigeria; see generally, Human Rights Watch, “The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria’s Oil Producing Communities” Washington, USA, January 1999, pp.74-79.

*“The size of the theft requires resources far beyond the reach of local inhabitants or the unemployed youths... Powerful interests and highly placed individuals are deeply involved in illegal oil bunkering... Equipment used by oil thieves such as boats with massive tanks, vessels, imported arms and ammunition, are beyond the reach of the poor. They are obviously supplied by the rich who stay in their mansions and expect returns from the boys in the field”*

Petroleum Act<sup>120</sup> and the Petroleum (Drilling and Production) Regulations: The Petroleum Act was made to regulate the exploitation of oil from exploration to production. Section 4(1) of the Act provides that a person must obtain licence from the Minister to sell, store or distribute any petroleum products in Nigeria. Section 4(6) provides a penalty upon conviction, of two years in prison or a fine of N2, 000 or both as well as the forfeiture of the petroleum products in respect of which the offence was committed. And section 13(2)(b)(iv) of the Petroleum Act provides for a fine not exceeding N2, 000 for any person who explores or prospects for petroleum or wins or works petroleum or acts without the appropriate licence required under any regulations made under the Act. In view of the economic, environmental, social and human rights consequences of illicit oil bunkering, it is submitted that the penalty of N2, 000 or conviction of two years will have no deterrent effect on the offenders. Such is inadequate to tackle oil bunkering and pipeline vandalism when compared with the penalty for failure to construct a pipeline in line with the laid down regulation as provided for in section 26 of the Oil & Gas Pipeline Regulations. This lack of adequate sanctions for these illegal activities that causes harm to the environment and the people in the region has continued to promote and reinforce a culture of impunity in the Niger Delta. There is therefore the need for its upward review.

The Oil and Gas Regulations, 1995: This makes provision for application for license to

construct and operate a pipeline. Section 26 of the Regulations provides for the punishment for any person who contravenes the regulation on pipeline construction. Such an offender will be liable upon conviction to a fine up to N500, 000 or imprisonment for a term of six months or to both fine and imprisonment. It further provides for clear international standards that indicate special materials to be used in the construction of a pipeline and things to guard against in selecting the location of the route to be followed by the pipeline. The implication therefore is that where an operator fails to secure its facility against trespassers, the operators shall at least be partly responsible for any damage done to third parties by, for example, thieves who have malicious intent.<sup>121</sup> Besides, there are also international standards that must be met by the operators to avoid sabotage of their oil facilities. The American Petroleum Institute provided that, where there is a high risk of third-party interference, an operator must adopt measures such as; sabotage-resistant pipe specifications; alternative routing away from high risk areas; burial and concrete casements around a pipe; enhanced leak detection systems; and more importantly, enhanced pipeline surveillance capable of detecting any disturbance to the integrity of the pipeline.<sup>122</sup> The operators are expected to adopt rigorous safety measures to protect themselves and their facilities from the activities of vandals. Unfortunately, oil MNCs do not comply with many of these provisions and international best practice thereby contributing to making their facilities susceptible to the sabotage and oil

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<sup>120</sup> Cap. P10LFN 2004

<sup>121</sup> Essex Business and Human Rights Project Report, Corporate Liability in a New Setting: Shell and the Changing Legal Landscape for the Multinational Oil Industry in the Niger Delta, p.16, yr?

<sup>122</sup> API, Standards, at <http://www.api.org/publications-standards-and-statistics/annual-standards-plan/standards%20plan%20segments/pipeline>, quoted in Essex Business and Human Rights Project Report, *Ibid*, pp.12-

theft witnessed in the Niger Delta region.”<sup>123</sup>

The Criminal Code Act<sup>124</sup>: The Criminal codes has some provisions concerning the prohibition of pollution. Sections 245 and 247(a) of the Act can be applied to hold and prosecute individuals engaged in oil bunkering and artisanal refineries on account of pollution of water or air in Nigeria. Section 245 states that “Any person who corrupts or fouls the water of any spring, stream, well, tank, reservoir or place, so as to render it less fit for the purpose for which it is ordinarily used, is guilty of a misdemeanor, and is liable to imprisonment for six months”. Also section 247(a) provides that “Any person who vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood, or passing along a public way; is guilty of a misdemeanor, and is liable to imprisonment for six months”. Although not targeted against illegal bunkerers or oil-related crimes, these provisions could creatively be used to deal with illegal oil bunkering. However, the penalty of six months imprisonment or one year is quite insufficient to serve as deterrent to others, and may not be commensurate to the damage resulting from these illegal acts. Also, by virtue of section 44 (3) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), the ownership and control of all minerals and mineral oil, in, under and upon any land, and of rivers, streams and watercourses in Nigeria are vested in the federal government. The Land Use Act on the other hand which generally

vests ownership of land in the state allows land to be appropriated for any oil-related activities subject to the payment of meagrely compensation. In the same vein, Section 1 of the Petroleum Act,<sup>125</sup> vests the entire ownership and control of all petroleum in, under or upon any lands to which Petroleum Act applies, in the State. Oil extraction outside the framework of an agreement with the federal government is illegal, as is the possession of crude oil by anyone not licensed to do so.<sup>126</sup> Having no legal claim to the “ownership” of oil produced from under their lands and waters, the oil-communities 'had little or no leverage in making successful compensatory claims as a result of land expropriation or pollution by the oil industry.<sup>127</sup> The Kaiama Declaration of 1998 by Izon youths described the Land Use and Petroleum Decrees as laws that “rob our peoples/communities of the right to control of our lives and resources”. All these culminated in the Niger Delta hostility against the oil MNCs and the Nigerian State leading to conflict situation in the region.<sup>128</sup> Based on the above, it can therefore be submitted that the law, particularly the Constitution that regulates the relationship between the federating units and the federal government as well as the legal framework regulating Nigeria's oil industry, is the fundamental cause of oil-related restiveness in the region as it takes away the rights the people have over their natural resources, leading to the illegal activities daily occurring in the region, particularly the illicit oil bunkering.

<sup>123</sup> UNEP Report, *Environmental Assessment of Ogoniland*, United Nations Environment Programme (UNEP), Kenya, 2011, p.100

<sup>124</sup> Cap. C38 LFN 2004

<sup>125</sup> Cap. C10 Laws of the Federation of Nigeria, 2004

<sup>126</sup> Human Rights Watch (2003), *The Warri Crisis: Fuelling Violence*, *Op cit*, p.17

<sup>127</sup> I. Obi, Oil Extraction, Dispossession, Resistance, and Conflict in Nigeria's Oil-Rich Niger Delta, *Canadian Journal of Development Studies*, 30, Nos. 1-2, pp.219-236 at 223 (2010)

<sup>128</sup> Rhuks Ako, Resource Control in the Niger Delta: Conceptual Issues and Legal Realities, *e-International Relations*, 25 May 2012, at <http://www.e-ir.info/2012/05/25/resource-control-in-the-niger-delta-conceptual-issues-and-legal-realities/>



#### 6.4. Human Rights Dimension to Oil Bunkering

Oil Bunkering/theft has in no small measure escalated the violence in the region and worsened the human rights abuses suffered by its people. Few of the human rights implicated by these illegal acts will be examined here.

**Right to Life:** The consequences of pipeline vandalism are grave as in most cases caused explosions and fires, which eventually results in loss of lives (looters and bystanders) and properties. Since 1998, thousands of people have been burned to death in Nigeria when ruptured fuel pipelines caught fire. On 18 October 1998, a pipeline explosion in Jesse community of Ethiope West Local Government Area of Delta State, led to the loss of about 2,000 lives in what was described as the “worst pipeline explosion in Nigeria.”<sup>129</sup> These people lost their lives ostensibly in a bid to steal oil from the pipeline to supplement their meager incomes. In 2003, some youths of Afam Uku and Afam Nta communities in Oyigbo Local Government Area of Rivers State ruptured a Shell gas pipe. The ruptured pipe ignited fire, which killed more than 50 youths in one spell and set the entire communities ablaze. It took Shell more than three weeks to put out the fire.<sup>130</sup> Other NNPC pipeline explosions include Ovwore-Amukpe Okpe community; Ijegun 2008 pipeline fire in Lagos, the Ilado village NNPC pipeline fire which killed about 200 caused by vandalism, the Abule Egba pipeline explosion in a Lagos suburb which killed over 2000 people,<sup>131</sup> fire disaster in Arepo, Ogun

State caused by vandals where no fewer than 30 people lost their lives. The deaths and injuries resulting from pipeline explosions negatively impact the individual, family and community throughout Nigeria. They have led to fractured family structures, children have been left without parents and husbands without wives; and when a family unit is disrupted, children suffer and their future outlook is often bleak.<sup>132</sup> People must come to realization that in the fight against abject poverty and gross neglect by the Nigerian State, they need to exercise caution and recognize that it is only the living that can continue to demand for environmental justice. There is also the need for prompt response by the appropriate agency to pipeline incidence.

**Right to Health:** The polluted environment from oil spillage and gas flaring results in incidence of cancer and other fatal conditions. The rising smoke and hydrocarbon exposure from these illegal oil refineries could lead to serious health problems for the people living within the communities where these unlawful artisanal refineries are taking place. There are cases where babies are being born with disabilities in certain parts of the Niger Delta. There are reports that most children of school age have abandoned their education to join the illegal business of artisanal refining of stolen crude oblivious of the negative effects on their health and the implication to their future. The low-tech method used in artisanal refineries is usually marked by dark plumes of smoke rising from the ?res, and this constitutes a huge environmental, health and safety problem.

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<sup>129</sup> Emmanuel Edukugho, *Opcit.*

<sup>130</sup> Victor Edozie, Nigeria: “Oil Theft and Illegal Refineries in Rivers”, *Daily Trust*, 24 March 2013, <http://allafrica.com/stories/201303270432.html?viewall=1>

<sup>131</sup> Emmanuel Edukugho, *Opcit.*

<sup>132</sup> Freedom C Onuoha, “Oil pipeline sabotage in Nigeria: Dimensions, actors and implications for national security”, *African Security Review* 17(3), 99-115 at 111 (2008)

According to UNEP report, "there is a high risk of self-harm from artisanal refining- a large number of accidents, fires and explosions on refining sites claim dozens of lives every year, quite apart from the longer-term health effects of ingestion, absorption and inhalation of hydrocarbons."<sup>133</sup>

Right to Food: oil spills from pipeline vandalisation have been known to turn areas that have been known to be fertile for farming in the past to suddenly become barren or are getting closer to being so.<sup>134</sup> Aside from affecting the soil fertility making it unfit for vegetation, oil spills on farms and grassy lands can also lead to the die-off of plant life.<sup>135</sup> For the aquatic wildlife, such as fish and their habitats, oil spills from illegal oil bunkering may "cause damage like reduced growth, improper heart and respiration rates, and reproductive mutilation. Oil spills can even destroy the insulation capacity of a marine bird's feathers or a mammal's fur, which leads to death by hypothermia. When oil is ingested by these species, it leads to damage of the lungs, liver, and kidneys, followed by death."<sup>136</sup> This has adverse effect on the inhabitants who are predominantly farmers and fishermen as they would have to look elsewhere for their livelihood. Government has an obligation "not allow private parties to destroy or contaminate food sources, and prevent peoples' effort to feed themselves."<sup>137</sup> By the continued destruction of the land, air, water and the means of

livelihood of the people by the illegal oil bunkerers, the Nigerian Government has clearly failed to protect the natural resource base upon which people depend for food in the Niger Delta, and has violated its obligation to ensure the availability of food making food security even more precarious.<sup>138</sup>

Right to Healthy Environment: Oil theft and sabotage results in serious environmental degradation of air, land and fresh water ecosystem. The region which "is very fertile, providing a habitat for a vast biodiversity and supporting a high population density of people who derive their livelihoods from its rich resource base"<sup>139</sup> is being degraded by the activities of oil bunkering syndicates. The illegal crude is refined in makeshift illegal refineries lacking standards for safety and environmental safeguards. The inefficient process of the makeshift distilleries results in the treatment of only a third of the raw oil, leaving the rest as waste or they pour the remaining into the rivers. As noted by Tony Attah, SPDC Vice-President, Health Sector and Corporate Affairs, "significant portions of the stolen crude are spilled, blighting large swathes of the ecosystem."<sup>140</sup> These wastes from activities can last for decades before the land could be recovered for productive activities. In addition, the wood used in the illegal refinery in the cracking process (break up by heating to reduce its thickness and enable it to flow through pipelines) is hacked from forests in the Niger delta, contributing to the environmental blight.<sup>141</sup> The Nigerian Government has an obligation to "protect and improve the environment and safeguard the water, air

<sup>133</sup> UNEP Report, "Environmental Assessment of Ogoniland", *Op cit*, p.104

<sup>134</sup> A.J. Alawode and I.O. Ogunleye, "Maintenance, Security, and Environmental Implications of Pipeline Damage and Ruptures in the Niger Delta Region", *The Pacific Journal of Science and Technology*, Vol. 12 No. 1, 565-573 at 570 (2011)

<sup>135</sup> *Ibid*, p.570

<sup>136</sup> *Ibid*, p.570

<sup>137</sup> African Commission on Human and Peoples' Rights, Decision on Communication of The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria (155/96), para 68.

<sup>138</sup> Amnesty International, *Petroleum, Pollution and Poverty in the Niger Delta*, Amnesty International Publications, United Kingdom, 2008, p.33

<sup>139</sup> Cyril I. Obi, "Oil Extraction, Dispossession, Resistance, and Conflict in Nigeria's Oil-Rich Niger Delta", *Op cit*, p.222

<sup>140</sup> Quoted in Gbenga Kayode, "Nigeria: Why is Oil Theft on the Increase?", *Daily Trust*, 11 April 2012, at [allafrica.com/stories/201204110485.html?viewall=1](http://allafrica.com/stories/201204110485.html?viewall=1)



NIDEREF workshop on Local Government Accountability and Poverty Reduction. Effective local government can contribute to reducing poverty and illegal bunkering

and land, forest and wildlife of Nigeria.”<sup>142</sup> Furthermore, Article 24 of the African Charter on Human and Peoples' Rights to which Nigeria is a party, recognizes the right of all peoples to a “general satisfactory environment favourable to their development”, known as the right to a healthy environment. The African Commission briefly considers the right to a satisfactory environment as a right that requires a government to: take reasonable measures to prevent pollution and ecological degradation;<sup>143</sup> promote conservation and ensure ecological sustainable development and the use of natural resources;<sup>144</sup> permit independent scientific monitoring of threatened environments;<sup>145</sup> undertake environmental and social impact assessments prior to industrial development;<sup>146</sup> provide access to information to communities involved;<sup>147</sup> and grant those affected an opportunity to be heard and participate in the development

process.<sup>148</sup>

The UN Committee on Economic, Social and Cultural Rights has also clarified that the right to health under Article 12 of the International Covenant on Economic, Social and Cultural Rights extends to the underlying determinants of health, including “a healthy environment”.<sup>149</sup> It further clarified in para. 15 that the obligation of a State under Article 12(2)(b) extends to “the prevention and reduction of the population's exposure to harmful substances such as ... harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health.” Nigeria is a party to the Covenant and therefore has an obligation to take necessary measures such as adopting the necessary and effective legislative and

<sup>141</sup> Nick Kochan, Diezani Alison-Madueke: “The Woman Working to Clean up Africa's Dirty Oil”, *The Independent*, 4 June 2013, at <http://www.independent.co.uk/news/business/analysis-and-features/diezani-alisonmadueke-the-woman-working-to-clean-up-africas-dirty-oil-8643054.html>

<sup>142</sup> Constitution of the Federal Republic of Nigeria (as amended), section 20

<sup>143</sup> Para 52 of the Communication

<sup>144</sup> *Ibid*

<sup>145</sup> Para. 53 of the Communication

<sup>146</sup> *Ibid*

<sup>147</sup> *Ibid*

<sup>148</sup> *Ibid*

<sup>149</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc E/C.12/2000/4, 11 August 2000, para 4., quoted in Amnesty International, *Petroleum, Pollution and Poverty in the Niger Delta*, *Op cit*, p.12

other measures to prevent third parties, including the organized theft of oil by illegal bunkering or hot tapping, from polluting or contaminating food, water supplies and air, including by the failure to enact or enforce laws.<sup>150</sup> Such a failure can constitute violations of the rights to health under Article 12, water and to adequate food under Article 11 of the Covenant.

Right to Water: Environmentally abusive practices on the part of the illegal oil bunkerers in the Niger Delta region of Nigeria have caused devastation of the natural resources of the people in the region, particularly the pollution of their water in the last decades. The impact of oil related pollution on underground water as a result of these illegal acts is very grave. According to the Nigerian National Oil Spill Detection and Response Agency (NOSDRA), between 2006 and 2010, approximately 2,400 oil spills had been reported that resulted from sabotage, bunkering, and poor infrastructure.<sup>151</sup> A spill can cause severe harm for the population dependent on these streams and creeks as source of their water. The oil spills have caused land, air, and water pollution and severely affected surrounding villages by decreasing fish stocks and contaminating water supplies and arable land.<sup>152</sup> Some of the spills from pipeline vandalisation seep into the ground and contaminate ground water which serves the domestic rural water supply needs of most of the communities. Several of the local inhabitants in the Niger Delta region have complained that water from their sunk boreholes show evidence of oil contamination, thus making the water

undrinkable even after some treatment.<sup>153</sup> Water is essential for securing livelihoods (right to gain a living by work), for enjoying certain cultural practices (right to take part in cultural life), ensuring environmental hygiene (right to health), to sustain life (right to life), to produce food (right to adequate food), etc. The protection of this right is clearly an essential prerequisite to the enjoyment of many other human rights.

## 6.5. USING LEGAL APPROACH TO SOLVING ILLEGAL OIL BUNKERING

Strict Regulations on Laying of Pipelines to Meet International Standards/Replacing of Old Pipelines: There is the need for a complete overhaul of the pipeline system. Most of the pipes being used to convey petroleum products have been in use for over 50 years without proper maintenance, which creates space for damaging practices like pipeline vandalisation and oil theft. Part of the potential impact of pipelines on the environment include destruction caused to seabed by dredging for pipeline installation; sedimentation along pipeline routes; water pollution from leaking pipes; explosion of pipes resulting from sabotage; and destruction of environmentally sensitive estuaries which sometimes causes erosion and flooding. All these have serious effect on human and animal health.<sup>154</sup> Hence, these pipelines need to be replaced, and most importantly, positive steps should also be taken to deploying new technologies to ensure that new pipelines are buried deeper into the earth to prevent vandals from having access to them. The IOCs must ensure regular and efficient maintenance of their pipelines and facilities. In addition, the oil

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<sup>150</sup> Amnesty International, *Ibid*

<sup>151</sup> EIA U.S Energy Information Administration, Nigeria, 6 October 2012

<sup>152</sup> *Ibid*

<sup>153</sup> A.J. Alawode and I.O. Ogunleye, *Op cit* p.570

<sup>154</sup> See Friday Adejoh Ogwu, *Petroleum Pipeline Distribution System: The case of Oil and Gas Pipeline Network in Nigeria- 'an environmental justice approach*, ESRC Seminar, 13 July 2009



MNCs in line with international best practices must ensure they install ICT-based sensors within their pipelines to provide early warning of acts of sabotage. The oil companies should be made to publish every six months a list of pipelines operating outside best practices, along with detailed information on decommissioning; and the statutory penalties for non-compliance with maintenance and decommissioning guidelines should be reviewed.<sup>155</sup> Periodic integrity checks should be carried out during the lifespan of pipelines, in addition to a comprehensive clearing of all structures that lie within the right of way along these pipelines.<sup>156</sup>

Ensuring that there is Necessary Surveillance and Training to Safeguard the Existing Pipelines from being Damaged by Vandals: Most of the oil MNCs have surveillance contractors responsible for monitoring their network of pipelines in the region. Unfortunately, some of these contractors are not effective and not dedicated to safeguarding these pipelines from being vandalized. This has been attributed to the manner in which they were employed by the oil companies as the oil MNCs sub-let the employment of surveillance teams to contractors. It was reported of recent that some surveillance contractors were arrested trying to vandalise a pipeline at Kporgho in Gokana Local Government Council.<sup>157</sup>

Stressing the efforts made by Shell in curbing

oil theft in the region, the Managing Director of Shell, Mutiu Sunmonu states that: "SPDC replaced about 658 kilometres of pipelines and flow lines between 2009 and 2011 with an additional 43 kilometres in 2012. We employ people from local communities under pipeline surveillance contracts to ensure timely identification and response to any incidents across SPDC's operations. Since January 2011, we've established a website for reporting all spills, the only IOC in Nigeria to do so. This brings new levels of transparency and accountability such that we report all spills along with JIV reports."<sup>158</sup>

While these are welcome developments for other oil companies to follow, much is still needed to be done to stem the tide of illegal oil bunkering in the Niger Delta region. The oil MNCs must therefore overhaul the pattern of employing their surveillance contractors and their manner of deployment. Companies should insist on screening security force members assigned for the protection of their oil infrastructures, to ensure that no member of the military or police credibly implicated in past human rights abuses is engaged in protecting oil facilities.<sup>159</sup>

Strengthening of Existing Institutions: These agencies include the Nigeria Maritime Administration and Safety Agency (NIMASA), DPR, NNPC and the Nigerian Navy, all of which have helped in monitoring and regulating bunkering. They should be

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<sup>155</sup> Facility for Oil Sector Transparency in Nigeria (FOSTER), Fixing the Legal and Operational Frameworks for Niger Delta Oil Spills, Policy Brief, November 2011, p.3

<sup>156</sup> Freedom C Onuoha, "Oil pipeline sabotage in Nigeria: Dimensions, actors and implications for national security", *Op cit* p.111

<sup>157</sup> Major General Johnson Ochoga, in a chat with Osa Okhomina, *Nigeria: Niger Delta Communities Collude with Oil Thieves- JTF Boss*, *allAfrica*, 3 January 2013, at <http://allafrica.com/stories/201301030229.html?viewall=1>

<sup>158</sup> Mutiu Sunmonu, quoted in Adeola Yusuf, Rallying International Community against Oil Theft, 30 April 2013, *Daily Independent*, at <http://dailyindependentnig.com/2013/04/rallying-international-community-against-oil-theft/>

<sup>159</sup> Human Rights Watch (1999), *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities*, New York, pp.154-155

adequately equipped with modern equipment to be able to function effectively and be allowed to carry out their duties without interference. It is also important to strengthen institutions such as the EFCC, ICPC and other security agencies to make them more effective in fighting corruption and improving the security situation in Nigeria.

Observance of the rule of law in dealing with persons suspected of oil bunkering: Any individual caught to have allegedly carried out violent acts, damaged oil installations, including pipeline vandalisation should be charged with the appropriate offence(s) and promptly brought before a regular court recognizing international standards of due process.<sup>160</sup> Such an individual should not be subjected to torture, or to cruel, inhuman or degrading treatment or punishment, nor to arbitrary arrest or detention as guaranteed under Articles 7 and 9 of the ICCPR. And in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, he should be "entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."<sup>161</sup> The rights of a suspect must be respected because as provided by section 36 (5) of the 1999 Constitution of Nigeria (as amended), every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty.

Reviewing the Revenue-Sharing Agreement: Disputes over the current revenue-sharing arrangement is one of the main issues driving the oil theft, and sabotage in the Niger Delta. As at today, the Niger Delta States are paid 13percent of oil

revenues that accrue to the Federation Account, according to the derivation principle in accordance with Section 162(2) of the 1999 Constitution of Nigeria (as amended). Notwithstanding the plausible arguments that increased derivation fund to the oil producing states will exacerbate land-related conflicts in the region, increase fraud, deepen misappropriation, corruption and may not produce any significant increase in the standard of living in the region as past experiences suggest,<sup>162</sup> phased increase in derivation as opposed to absolute resource control being canvassed by the leaders in the region, will go a long way in ensuring development in the region. However, to ensure sustainable peace and development in the region, the proposed phased derivation increase must be accompanied by accountability, transparency, equity and community participation in the management of the resources. Corruption and lack of accountability account for poor development and poverty in the region despite increases in oil derivation from 1.5percent in the early 1990s to 13percent under the 1999 Constitution.

Niger Delta people must be allowed to Enjoy the Right to Free, Prior, and Informed Consent (FPIC) in Relation to Resource Extraction Under the UN Declaration on the Rights of Indigenous Peoples.<sup>163</sup> In contemporary international law, indigenous peoples have the right to take part in the decision-making process and to give or withhold their consent to activities affecting their lands and resources or rights in general.<sup>164</sup> As noted by Shrader-Frechette, in medical ethics, four conditions to be met to satisfy informed consent are: those creating

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<sup>160</sup> Human Rights Watch, *The Price of Oil*, *Ibid*, p.171

<sup>161</sup> See Article 14 of the ICCPR

<sup>162</sup> See Rhuks Ako, *The Struggle for Resource Control and Violence in the Niger Delta*, in Cyril Obi & Siri Aas Rustad (eds), *Op cit*, pp.48-52

<sup>163</sup> UN Declaration on the Rights of Indigenous Peoples, Articles 19 and 32.

<sup>164</sup> See Olubayo Oluduro, *Oil Exploration and Human Rights Violations in Nigeria's Oil Producing Communities*, being a PhD dissertation, University of Ghent, Belgium, 2012

the risk must disclose full information, the potential victims must be competent to evaluate the information, they must understand the danger involved, and they must voluntarily accept the risk.<sup>165</sup> This consent must be “freely given, obtained prior to implementation of activities and be founded upon an understanding of the full range of issues implicated by the activity or decision in question; hence the formulation, free, prior and informed consent.”<sup>166</sup> Dan Magraw and Lauren Baker define prior informed consent as “a consultative process whereby a potentially affected community engages in an open and informed dialogue with individuals or other persons interested in pursuing activities in the area or areas occupied or traditionally used by the affected community.”<sup>167</sup>

It is submitted that much of the illegal activities in the form of oil bunkering, pipeline vandalism and other crimes taking place in the Niger Delta region would have been avoided if free, prior and informed consent have been fully taken into consideration. Discussions with the people should take place prior to, and continue throughout, the period the activity is carried out, with the community having the right to withhold its consent during the life cycle of the project. The community should be able to have a clear understanding of how the proposed project is going to benefit or harm it, and the projects should take into account cultural valuations of impact or benefits and traditional modes of decision making<sup>168</sup> - according to the customary laws and

practices of the affected community.<sup>169</sup> Nigerian Government and oil MNCs must “ensure the widest possible consultation of the people who will be affected by oil installations in their planning, and the greatest possible transparency in what is planned, so that oil operations have the consent of those who will suffer their negative consequences.”<sup>170</sup>

Diversification of the Nigerian Economy: Diversification of resource wealth in Nigeria will greatly help in reducing the high incidence of pipeline vandalism and illegal oil bunkering in the Niger Delta region. Nigeria needs to reduce its heavy dependence on oil as the sole foreign exchange earner by diversifying its economy into other alternative areas like agriculture and industrialization. Such diversification of the oil resource will not only help in reducing the rate of pipeline vandalism but will further save the ecology of oil-producing communities, as well as the local inhabitants in these communities, from death, environmental contamination and health hazards.<sup>171</sup>

#### 6.6. Ensuring Speedy Administration of Justice/Diligent Prosecution of Offenders

Despite the media reports of arrests and seizures, information regarding prosecutions and sentences is very difficult to find. Government must ensure that investigations, arrests and prosecution of offenders are not affected by political

<sup>165</sup> Kristin Shrader-Frechette (2002), *Environmental Justice: Creating Equality, Reclaiming Democracy*, Oxford University Press, Oxford, p.77, quoted in David Schlosberg, *Defining Environmental Justice: Theories, Movements, and Nature*, Oxford University Press, Oxford, p.69

<sup>166</sup> International Network for Economic, Social & Cultural Rights (ESCR-Net) Corporate Accountability Working Group, *Joint NGO Submission Consultation on Human Rights and the Extractive Industry*, Geneva, 10-11 November 2005, p.18 at <http://www.earthrights.org/sites/default/files/documents/escr-joint-ngo-submission.pdf>

<sup>167</sup> Dan Magraw and Lauren Baker, Globalization, Communities and Human Rights: Community-Based Property Rights and Prior Informed Consent, 35 *Denv. J. Int'l L. & Pol'y* 413-428, 421 (2007).

<sup>168</sup> Dan Magraw and Lauren Baker, *Ibid.*

<sup>169</sup> See generally Olubayo Oluduro, Oil Exploitation and Human Rights Violations in the Oil Producing Communities of Nigeria, *Op cit*

<sup>170</sup> Human Rights Watch, The Price of Oil, *Op cit*, p.20

<sup>171</sup> Chijioke J. Eboh, Green Crimes, Petro-Violence and the Tragedy of Oil: The Case of the Niger-Delta in Nigeria, *In-Spire Journal of Law, Politics and Societies*, Vol. 4, No.1, pp.40-60 at 55 (2009)

considerations. Those found guilty must be made to face the wrath of the law to serve as deterrent to others. The spokesman for the JTF, Lt. Col. Onyema Nwachukwu, lamented that: "We do our anti-oil theft patrol every time and we have as a result of this made a lot of arrests of these thieves. In some cases we confiscated their vessel load of fuel and handed all these to the prosecuting agencies like the Police, the Nigerian Security and Civil Defence Corps (NSCDC) and the Economic and Financial Crimes Commission (EFCC), because we do not have the mandate to prosecute. But what we discovered is that they are later released and they go back to continue the illicit trade."<sup>172</sup>

According to Shell, "prosecutions for sabotage are extremely rare since, in order to obtain a conviction, the perpetrators must either be caught in the act or there must be other evidence to place them at the scene of the crime. Also, since the law provides severe penalties, it has not been in the interest of sustained community relations to press for charges, even when there is circumstantial evidence."<sup>173</sup> Chevron confirmed that "while it is usually not too difficult to determine sabotage, there are often very few evidences to identify who is responsible;"<sup>174</sup> while Elf stated that "Sabotage cases are normally reported to the police, but we do not enforce prosecution for the interest of peace."<sup>175</sup> More disturbing is the fact that trials of some of these suspects are often obstructed by

the interference of highly placed individuals who may themselves be complicit in this illegal business. The lack of a properly functioning legal system which could promptly and fairly determine cases involving oil-related crimes such as oil bunkering, pipeline vandalism, or oil theft increases the rate at which such illegal acts continue to predominate in the region. Hence many of the trials are abandoned halfway and the rates of conviction not only low, but do not reflect the numbers and the seriousness of the costly crime.<sup>176</sup> Notwithstanding the fact that section 8 of the Miscellaneous Offences Act provides for life imprisonment for anyone stealing crude oil or petroleum products or vandalizing the pipelines, the few caught have hardly been prosecuted.

The numbers of successful prosecution have been quite few. In January 2013, Justice Ibrahim Buba of a Federal High Court sitting in Asaba, Delta State sentenced two women, Helen Itemba and Aladini Money, to three years imprisonment for illegal dealings in petroleum products. The duo were prosecuted by the Economic and Financial Crimes Commission (EFCC) for illegally conveying 136 plastic drums of petroleum products in a truck at Egbidi, Isoko Local Government Area of Delta State, in 2009 without a licence contrary to section 3(6) of the Miscellaneous Offences Act. They were found guilty on the two count charges and sentenced to three-year jail term on each count with an option of N300, 000 fine.<sup>177</sup>

<sup>172</sup> Lt. Col. Onyema Nwachukwu, in chat with *Daily Independent* Newspaper, Adeola Yusuf, "Rallying International Community against Oil Theft", 30 April 2013, *Daily Independent*, at <http://dailyindependentnig.com/2013/04/rallying-international-community-against-oil-theft/>

<sup>173</sup> Shell International Ltd letter to Human Rights Watch, February 13, 1998, quoted in Human Rights Watch, *The Price of Oil*, *Op.cit* p.79

<sup>174</sup> Chevron Nigeria Ltd letter to Human Rights Watch, February 11, 1998, quoted in Human Rights Watch, *Ibid*

<sup>175</sup> Elf Petroleum Nigeria Ltd letter to Human Rights Watch, May 8, 1998, quoted in Human Rights Watch, *Ibid*

<sup>176</sup> The Citizen, Oil Bunkering, Criminals Should be Prosecuted, *The Citizen in Public Affairs*, 31 January 2013, at <http://thecitizenng.com/public-affairs/oil-bunkering-criminals-should-be-prosecuted-thisday/>

<sup>177</sup> See Ifeanyi Okolie, "Two Women Jailed 3 Years for Illegal Bunkering in Delta", *Vanguard*, 10 January 2013, at <http://www.vanguardngr.com/2013/01/two-women-jailed-3-years-for-illegal-bunkering-in-delta/>



In November 2011, the EFCC secured the conviction and sentencing of two Ghanaians (Nelson Seanehia and Teko Peter), and seven Nigerians (Felix Ogogo, Augustine Elomofe, Yakubu Otun, Lucky Tonwei, Sunday Apoh, Segun Agbeyegbe and Felix Mogbeyiteren) to 810 years imprisonment by an Asaba Federal High Court for conspiracy and illegal dealing in petroleum products.<sup>178</sup> The accused persons were arrested in May 2010 aboard a vessel called MT TROICA at Forcados Bay. There have been a lot of arrests of persons allegedly involved in oil bunkering and some seizures of the vessels involved. But in spite of these, there are few if any successful prosecutions for involvement in the theft of oil, and it is not always clear what happens to the cargoes of oil that are seized.<sup>179</sup> While not in any way justifying their illegal activities, it is recommended that such arrests and prosecution should not be limited to the small-time crooks on the ground who make small profits by siphoning off oil and selling it to their communities but be extended to the main players—the elites and the foreign businessmen.<sup>180</sup> Making high-profile arrests and ensuring their successful prosecutions and imposing sentences that fit the crimes will convey in strong terms the seriousness of the Government about curbing oil bunkering.

In the alternative, it is suggested that a special court, manned by competent and honest personnel, be set up to handle cases on illegal oil bunkering and other oil-related crimes. Such courts/tribunals should be given a time limit of six months maximum within which to begin the trial and conclude

cases filed before them. Special courts to try illicit oil bunkering cases will not only enhance the speedy trial of these offences, and reduce the rate of the commission of these crimes, but will also help to strengthen the trust of the people in the judicial system. The call for special courts is not a vote of no confidence on the judiciary or an attempt to create yet another malfunctioning institution, especially in a country with systemic corruption and weak institutions.<sup>181</sup>

Rather, it is a call to avoid the long delays presently witnessed in the trial of suspects arrested for oil-related crimes in the regular courts, giving the impression that the country is not serious in its fight against oil bunkering. In fulfilment of their law-making function under section 4 of the CFRN 1999 (as amended), the National Assembly should as a matter of urgency begin the process of enacting a law to create a special court to try offences of oil bunkering and other related crimes. The inability of the Government to effectively prosecute those arrested for illegal bunkering and other oil-related criminal acts has perpetuated the illegal activities and encouraged them to occur again and again. So long as impunity for abuses of the environment and havoc to the economy in the Niger Delta remains uncontrolled, so too will the poverty, deprivation and environmental damage.

Compensation Arising from Sabotage: Section 11(5)(c) of the Oil Pipelines Act<sup>182</sup> provides that compensation is due “to any person suffering damage (other than on account of his own default or on account of the malicious act of a third person) as a consequence of any breakage or leakage from the pipeline or an ancillary installation,

<sup>178</sup> See Ike Abonyi, “2 Ghanaians, 7 Nigerians Jailed 810 Years for Bunkering”, *This Day Live*, 25 October 2011, at <http://www.thisdaylive.com/articles/2-ghanaians-7-nigerians-jailed-810-years-for-bunkering/101263/>

<sup>179</sup> Human Rights Watch (2003). *The Warri Crisis: Fueling Violence*, Lagos: Human Rights Watch, Vol. 15, No. 18 (A), pp. 19-20

<sup>180</sup> Judith Burdin Asuni, *Blood Oil in the Niger Delta*, United States Institute of Peace Special Report 229, August 2009, p. 12

<sup>181</sup> U4 Anti-Corruption Resource Centre, *Special courts for corruption cases*, at <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=19>; Olubayo Oluduro, *Oil Exploration and Human Rights Violations in Nigeria's Oil Producing Communities*, *Op cit*

<sup>182</sup> Cap O. 7 LFN 2004

for any such damage not otherwise made good." While this section should be commended for creating a strict liability for the license holder, it went further to prohibit the payment of compensation for damages arising from sabotage-induced oil spillage. Sabotage is an act of individual or groups of individuals and not a community action usually caused for economic gains. The Act fails to take into consideration the innocent individuals in the community who may not be involved in sabotage and yet suffer considerable loss as a result of the act of sabotage. Again, if the oil spills occur in the river and oil is washed by the river flow into several communities away from the point of spill, this then implies that the local populations affected in these communities would be denied compensation despite their non-involvement in the sabotage.<sup>183</sup>

Information by the oil companies to establish sabotage are often too cursory to be convincing;<sup>184</sup> nor are the perpetrators arrested. In the absence of proof of complicity, it is wrong to deny innocent claimants of their right to be compensated for their damaged properties caused by an unknown third party.<sup>185</sup> In one of such cases the trial judge, Justice Ovie-Whiskey refused to make an order of compensation sought by the plaintiff for damages to fishing ponds, streams, farmlands and economic trees as a result of oil which escaped from the defendant's pipeline, stating that "the hole in the pipe [oil pipeline] was deliberately drilled by an unknown mischievous person, over whom the defendant company had no control."<sup>186</sup> Such a refusal to pay compensation not only amounts to double

jeopardy but also constitutes a violation of human rights.<sup>187</sup> The non-payment of compensation to such innocent victims who have suffered losses may create ill-feelings between communities and the oil companies, forcing the former to take the laws into their hands by engaging in intentional and wilful damage of oil pipelines as a form of revenge. While perpetrators who are caught should be treated as saboteurs, innocent victims should be compensated on ground of equity and fairness and the laws against their being compensated should be repealed as it could provide an escape route for the licensee to escape liability for pollution.

#### 6.7. Lack of Strong Political Will

Another major challenge in curbing the rate of oil bunkering in Nigeria is the lack of political will. Political will in this regard has been referred to as the demonstrated credible intent of political actors (elected or appointed leaders, civil society watchdogs, and stakeholder groups, to attack perceived causes<sup>188</sup> of oil bunkering at a systemic level. It refers to the sincerity, or the level of commitment, of these leaders towards enacting and implementing the various measures and initiatives necessary for oil bunkering. Lack of political will not only robs citizens of their basic needs, but threatens the rule of law and human rights, which are pillars of democracy. As discussed earlier, Nigeria has not done enough in prosecuting high-profile illicit oil bunkering cases, which gives the impression that the Government is not sincere in its avowed commitment to

<sup>183</sup> Olubayo Oluduro, "Oil Exploration and Ecological Damage: The Compensation Policy in Nigeria", *Canadian Journal of Development Studies*, Vol. 33 No.2 pp.164-197 at 169-170 (2012)

<sup>184</sup> Human Rights Watch, *The Price of Oil*, *Op cit*, p.77

<sup>185</sup> Olubayo Oluduro, Oil Exploration and Ecological Damage: The Compensation Policy in Nigeria, *Op cit*, p.170

<sup>186</sup> Suit No. UHC/48/73 of 25 November 1974

<sup>187</sup> Ibaba, I.S. and Olumati, J.C., Sabotage induced oil spillages and human rights violation in Nigeria's Niger Delta, *Journal of sustainable development in Africa*, 11 (4), 51-65 at 61-62 (2009).

<sup>188</sup> Sahr J. Kpundeh, *Political Will in Fighting Corruption*, in *Corruption and Integrity Improvement Initiatives in Developing Countries*, p.92 at <http://mirror.undp.org/magnet/Docs/efa/corruption/Chapter06.pdf> [accessed 3 March 2010].

fight illicit oil bunkering.

#### 6.8. Inclusion of provisions to address oil bunkering and theft in the Petroleum Industry Bill (PIB)

The inclusion of provisions to address oil theft in the PIB would help to curb the menace of oil theft. Also important is the involvement of local inhabitants of the oil-producing communities in oil production processes through the Petroleum Host Community (PHC) Fund. Sections 116 and 117 of the proposed PIB provides for the establishment of a Petroleum Host Community Fund. 10 per cent of the net profits of oil companies-for the development of socio-economic infrastructure in the Niger Delta communities. This would make them to be recognized as important stakeholders in the industry, hence, partners in the oil industry, which will ultimately, drastically reduce, if not eliminate, the issue of oil theft and artisanal refineries and further minimize environmental degradation due to these activities. Section 118 (5) of the Bill provides that where an act of vandalism, sabotage or other civil unrest occurs that causes damage to any petroleum facilities within a host community, the cost of repair of such facility shall be paid from PHCF entitlement unless it is established that no member of the community is responsible.

The proposed Bill indirectly assigns oil and gas infrastructure security to the host communities. However, it is doubtful if the host communities will have the capacity to contain the high-tech operations involved in

bunkering. It has been contended that deducting the repair costs of damaged installations from the PHCF will amount to foisting collective punishment on communities for the vandalism of oil installations, and therefore, apparently outsourcing government's primary responsibility of securing lives and property to host communities.<sup>189</sup> There is, therefore, an imperative need for the initiation of community surveillance operations across communities hosting oil installations, in order to complement the efforts of the national government and its security agencies.<sup>190</sup> In addition to dealing clearly with the issue of measurement of oil production, efforts should be made to ensure that the PIB has transparency, accountability and control measures as its nucleus in a bid to put an end to this scandalous theft.<sup>191</sup>

#### 6.9. Community participation in the oil industry

The involvement of the local community, particularly where the oil pipelines pass through, as part-owners along with the other stakeholders in the oil industry will give them a sense of belonging as owners of the assets. This is a form of equity participation that can reinforce the sense of inclusiveness. This will provide a good strategy to end pipeline vandalism as the community joint ownership interest will be safeguarded while the environment will be better protected for the present and future generations.<sup>192</sup> In this direction, the Government may borrow a leaf from the 'Akassa model' as an example of community participation in sustainable development

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<sup>189</sup> Spaces for Change, Conference Communiqué: PIB and Host Communities, 29 April 2013, at <http://spacesforchange.blogspot.com/2013/04/conference-communique-pib-host.html>

<sup>190</sup> *Ibid*

<sup>191</sup> *The Citizen*, "Oil Theft and Nigeria's Oil Output", *The Citizen in Public Affairs*, at <http://thecitizenng.com/public-affairs/oil-theft-and-nigerias-oil-output-the-guardian/>

<sup>192</sup> Godwin Uyi Ojo & Jayeoba Gaskiya (eds), *Environmental Laws of Nigeria: A Critical Review*, Environmental Rights Action (ERA), Benin-City, Nigeria 2003, p. 44

process.

The development of Nigeria's Akassa programme, which evolved in 1997 out of a partnership between Pro-Natura International (Nigeria) (PNI) and the BP/Statoil Alliance is considered today one of the most successful models of sustainable development in the world.<sup>193</sup> It involves the active representation and participation of the ordinary people, including women and the youth in the decision making process towards achieving sustainable development. Akassa Model institutionalized community ownership and participation in the management of oil wealth and benefits, thus providing the community with an objective interest in protecting oil company facilities.<sup>194</sup> It was reported in Akassa, that community leaders, rather than turning a blind eye to "oil bunkering" activities taking place in their neighbourhood, rounded up and handed over youths who attacked the oil company facility to law enforcement agencies.<sup>195</sup> They were able to do this knowing that they have a lot to lose by the disruption of the oil operations in their communities. As part of the measures to curbing illegal oil bunkering and promoting sustainable development in the region, Akassa Model can be replicated in the entire Niger Delta region and adapted to the peculiar circumstances of each community.

#### 6.10. Implementation of previous reports on Niger Delta

These reports include those of the Ledum Mitee-led Niger Delta Technical Committee

and the 2001 Ogomudia Committee; Steps should be taken to implement some of the recommendations of the report of the Niger Delta Technical Committee 2008, notably, an increment of the derivation from 13% to 25% with gradual increment to 50% over a period of time. This will help to meet the infrastructural and human development needs of the people in the region. Other recommendations include the prosecution of the suppliers of small arms and light weapons and those involved in oil bunkering by identifying highly placed persons in and outside of government who are engaged in sponsoring violence for economic and political reasons; equipping the security services to effectively monitor activities within coastal waters and checking illegal bunkering and trafficking of arms; developing international protocols that will identify and classify those engaged in the criminal trade in stolen oil (also known as *blood oil*) and develop mechanism for their prosecution; exploring ways to support communities to prevent oil thefts locally and developing stiff penalties, including returning to the Niger Delta of monies recovered from sales of stolen oil.<sup>196</sup>

#### 6.11. Installation of Metering Infrastructure at Flow Stations

The Nigerian Extractive Industries Transparency Initiative (NEITI) in their audit, recommended the installation of metering infrastructure at the flow stations. Under the present regime, oil MNCs only pay royalties and taxes on the amounts they export rather than on their production figures.<sup>197</sup> Metering

<sup>193</sup> Pro-Natura International. (2011), *How to Transform the Lives of 1.6 Million People in Nigeria*, Pro-Natura International Newsletter. June edition, at <http://www.pronatura.org/wp-content/uploads/2011/11/Akassa-Nigeria-Pro-Natura-2011-En.pdf>

<sup>194</sup> Ukoha Ukiwo, *Opcit*, p.27

<sup>195</sup> *Ibid.*

<sup>196</sup> Report of the Technical Committee on the Niger Delta, Vol. 1, November 2008

<sup>197</sup> Uche Igwe, "How much is oil theft costing Nigeria?", *afrimind*, 10 October 2012, at <http://www.afrimind.org/article/12/how-much-is-oil-theft-costing-nigeria.html>



infrastructure at the source would imply that the Nigerian government would be able to quantify oil production (ascertain how much oil is being produced, loaded or distributed) and be able to base taxes on production not exports.<sup>198</sup> By so doing, oil MNCs would be made to bear a significant economic burden of lost oil, thus creating incentives for them to ensure that the oil is policed safely to the export terminal.<sup>199</sup> The National Assembly should look into this NEITI recommendation by passing same into law.

#### 6.12. Clampdown on revenues from stolen oil

Efforts should be made by the Nigerian Government to move against institutions that launder proceeds from stolen oil, also termed "blood oil". The recipients of the stolen oil are refineries in Africa, Eastern Europe, Asia, and even the US and those involved in these transactions move from bank to bank in these regions. This money can be tracked through the anti-terrorism and money laundering legislation.<sup>200</sup> By making it difficult for oil theft to be financed, the Nigerian Government will be taking a giant stride towards bringing a lasting solution to oil theft. As noted by Alison-Madueke, the Minister of Petroleum, "Oil theft is lucrative because thieves find it easy to sell their consignments either to private buyers or on the international spot market. Who are the buyers of the stolen crude oil, and through what fiscal institutions is the money being laundered? It is not being sold in the ECOWAS [Economic Community of West African States] region, neither are the financial institutions represented in

ECOWAS countries."<sup>201</sup> The assistance could be in the prevention of lodgement of funds gotten from sale of stolen Nigerian crude in their financial institutions.

#### 6.13. The use of Horizontal Directional Drilling (HDD) technology in laying oil pipelines

In order to find a lasting solution to pipeline vandalism, PPMC proposed to embark on the use of Horizontal Directional Drilling (HDD) technology in laying oil pipelines in the Niger Delta. According to the Executive Director, NNPC and Pipelines Products Marketing Company (PPMC), Gbenga Komolafe, "Horizontal directional drilling is an innovative trenchless construction method utilising equipment and techniques from horizontal oil well drilling technology and conventional road boring. As an environmentally friendly, safe and efficient alternative to conventional construction methods, HDD construction is used to install petroleum pipelines where conventional open trench construction is not feasible or difficult."<sup>202</sup> This has been proven to be a more long-lasting and effective method of burying pipeline especially through swarms and difficult terrain, as it provides a more attractive alternative to conventional methods, which are easy targets for vandals, especially in swampy areas.<sup>203</sup> The adoption of this technology in the Niger Delta needs to be backed up by proper maintenance to ensure its durability.

#### 6.14. Imposition of Stricter Penalties

There are moves by the Senate to prescribe

<sup>198</sup> *Ibid*

<sup>199</sup> *Ibid*

<sup>200</sup> Patrick Dele Cole, Guest Column: 'We have to track down the oil thieves', *Financial Times*, 23 July 2012, at <http://www.ft.com/intl/cms/s/0/2957c0da-d0c1-11e1-8d1d-00144feabdc0.html#axzz2HO9vOBWH>

<sup>201</sup> Quoted in Nick Kochan, Diezani Alison-Madueke: The Woman Working to Clean up Africa's Dirty Oil, *The Independent*, 4 June 2013, at <http://www.independent.co.uk/news/business/analysis-and-features/diezani-alisonmadueke-the-woman-working-to-clean-up-africas-dirty-oil-8643054.html>

<sup>202</sup> Quoted in Osagie, Crusoe, *Op cit*

<sup>203</sup> *Ibid*

capital punishment for oil thieves. The Senate President, David Mark insisted that “the law must have stiff punishment for those that steal our oil to serve as a deterrent to other people, who plan to steal our oil. The Bill must also ensure that the current rate of oil theft in the country is minimised to the barest minimum. It seems we are having a bad name internationally because of the rate of oil theft in the country. Oil theft deserves capital punishment.”<sup>204</sup> The recommendation of death penalty for oil thieves and pipeline vandals is in consonance with the provision of PPD Act earlier discussed. Suffice to say that though pipeline vandalisation is a heinous economic crime that deserves stringent sanctions for offenders, the recommendation of death sentence for oil thieves and vandals may not likely bring an end to this practices. This is because such laws which were already in existence for some serious crime such as murder, armed robbery have not been effective in deterring the offenders from continuing with these acts since the “rewards are too great for criminals to quit, even at the risk of the death penalty.”<sup>205</sup> It is enough if stricter punishment of 21 years imprisonment as prescribed by the PPD Act or life imprisonment as contained in the Miscellaneous Offences Act is effectively implemented. In addition, the perpetrators should be made to forfeit<sup>206</sup> the wealth derived or acquired from illegal bunkering activities, notwithstanding the position of the person in the society.

#### 6.15. Involvement of the Local Inhabitants in Helping to Police the Oil Regions

This is one of the strategies adopted by Theodore Orji, the Abia State Governor, in tackling this problem in Abia. He inaugurated the community intelligence

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<sup>204</sup> Quoted in Isioma Madike, “Oil Bunkering War: Who’s Winning?”, *National Mirror*, 2 June 2013, at <http://nationalmirroronline.net/new/oil-bunkering-war-whos-winning/>

<sup>205</sup> Xina Xie, “The Growing Problem of Oil Theft in China”, Oil Price.com, 11 June 2010, at <http://oilprice.com/Energy/Energy-General/The-Growing-Problem-Of-Oil-Theft-In-China.html>

<sup>206</sup> See section 21 of the EFCC Act 2004

#### *Poor Legal System Weakens Fight against Oil Theft – NIMASA*

*The Nigerian Maritime Administration and Safety Agency, NIMASA, has said that the poor legal system in the country with the attendant delay in the administration of justice, constitutes a major threat to rid the nation's maritime domain of criminal activities such as illegal oil bunkering and illegal midstream discharge as well as piracy and sea robbery...*

*Director General of the agency, Akpobolokemi, who spoke at the fifth Strategic Admiralty Seminar for judges of the Federal and State High Courts held in Lagos, pleaded with judicial and legal officers operating in the country to assist the agency in the timely prosecution of persons suspected to be involved in illegal activities in the nation's maritime domain...Very little result has been recorded in the prosecution of these suspects who go back to the same crime.*

network which involves the engagement of select local inhabitants in monitoring of movements and activities along the oil areas. These local inhabitants were equipped with special security phone numbers to quickly alert the authorities of any suspicious movement in the area.<sup>207</sup> The various security agencies were also equipped with patrol vans and other communication gadgets so as to ensure the effectiveness of the security measures put in place, such that whenever there is a report, the security units would respond immediately.<sup>208</sup> This measure largely accounted for why there is less report of oil spillage in Abia State. To ensure adequate security of oil infrastructure, there is need for the support and cooperation of the host communities. Nigerian Government has adopted several measures to guard its oil installation. It started by using the oil companies internal security to ensure minimal security and sometimes patrol identified trunks.

As a result of the inability of the companies internal security to properly curtail the activities of vandals, the Government started using the SPY (supernumerary) Police sponsored by the Joint Venture Companies. According to Chuka Uneagbu, Chairman of the Trade Union Congress Rivers State brance,<sup>209</sup> the SPY Police later grew into irrelevance thereby necessitating the use of private security firms to augment internal securities, the method which again became less effective. This was followed by the deployment of the Nigeria Security Civil

Defence Corps strategically along some of the pipeline networks to patrol petroleum pipelines, apprehend suspected fuel thieves but with no success. The Joint Task Force was then brought into being to safeguard oil and gas installations and deal with the menace of militants in the Niger Delta, but this has not been able to put an end to this crude oil theft which is still increasing at an alarming rate.

President Goodluck Jonathan later awarded contracts worth billions of naira to some ex-militants to provide security for oil installations but this measure has also failed to address this menace.<sup>210</sup> This underscores the importance of the involvement of the community in policing the oil infrastructure. In addition, there is the need to adequately strengthen and properly fund the security institutions in Nigeria to provide the maximum guard against pipeline vandalization and oil theft. As noted by Quakers: "Proactively, proper surveillance machinery should be put in place and monitors connected to a central computer system should be used in detecting any leakage or bust on any of the pipelines in the country. Once this is in place, any form of tampering will be immediately and easily detected and proper actions taken to prevent the destruction from escalating to a disaster."<sup>211</sup>

## 6.16. Addressing Poverty and Unemployment

One of the complaints of the local

<sup>207</sup> Godwin Adindu, "Tackling oil bunkering: Lessons from Abia", *Business Day*, 4 Oct 2012, at <http://www.businessdayonline.com/NG/index.php/analysis/commentary/45350-tackling-oil-bunkering-lessons-from-abia>

<sup>208</sup> *Ibid*

<sup>209</sup> Quoted in Mohammed Shosanya, "In Search of Solution to Crude Oil theft", *Daily Trust*, 9 May 2013, at <http://www.dailytrust.com.ng/index.php/business/54063-in-search-of-solution-to-crude-oil-theft>

<sup>210</sup> Mohammed Shosanya, *Ibid*.

<sup>211</sup> Norrison Quakers, quoted in *Precious Igbonwelundu*, Should Oil Theft Attract Death Penalty, *The Nation*, 9 April 2013, at <http://thenationonlineng.net/new/law/should-oil-theft-attract-death-penalty/>

inhabitants of the region is that they do not derive any profits from the oil exploitation and therefore so justify oil theft as a means of taking ownership of a resource from which the region is being made to benefit little. Most of the Niger Delta's 31 million people live on less than \$1 a day.<sup>212</sup> The environmental degradation occasioned by the oil spill through the oil exploration activities of the oil MNCs damage farmlands, aquatic lives and the ecosystem, leaving the people of the Niger Delta whose major occupation is fishing and farming jobless. The people are thus made to suffer losses that threatened their livelihoods and financial well-being. The insurgency in the region, including illegal oil bunkering and oil theft, are thus driven by deprivation and alienation. As noted by the World Bank:

*The widespread perception of relative deprivation in the core Niger Delta states is driven by the considerable mismatch between the level of wealth extracted from the region and the benefits accruing to the region and its people. Levels of self-assessed poverty are much higher in the Delta than those revealed by household income and expenditure data. In the South South zone, over three quarters of the population (77 percent) consider themselves to be living in poverty, compared to the official figure of one third (35 percent).<sup>213</sup>*

means of survival, including vandalizing oil pipelines for the purpose of stealing oil to refine and sell on the black market to eke out a living. Illegal oil bunkering has won the approval of the marginalized and the impoverished Niger Delta people because of the money they realize from it. In the process, they created worst environmental degradation as only 30 per cent of stolen crude is refined through artisanal means.<sup>214</sup> As a result of poverty, unemployment, economic misery and hopelessness, they embrace a culture of impunity and violence as a mode of survival and accumulation and participate in and profit from illegal oil theft from pipelines or illegal oil bunkering.<sup>215</sup> Hence, "they either directly engage in illegal oil bunkering (they consider the oil theirs as it is produced from their land), offer protection to barges laden with stolen oil plying the creeks or levy tolls on barges passing through their 'territories.'<sup>216</sup> The oil syndicates that specialize in illegal oil bunkering can never be short of recruits as this serves as a lucrative means of self-sustenance for the unemployed youths in the region. A high level of unemployment leads to crime being perceived as a career option<sup>217</sup> and has helped in sustaining the high levels of violence and criminality in the region. Hence there is the need to address the issue of poverty and unemployment, particularly in the Niger Delta region.

#### 6.17. Environmental Restoration of the Region

When poverty prevails, people turn to every

What appears to be the insensitivity of the

<sup>212</sup> Heather Murdock, "Nigerians are Stealing Corporate Oil, Refining it themselves, and Selling it on the Black Market", *Business Insider*, 12 July 2012, at <http://www.businessinsider.com/nigeria-illegal-oil-refining-2012-7>

<sup>213</sup> World Bank (2008), *Niger Delta Social and Conflict Analysis*, Washington, DC: World Bank, pp.8-9

<sup>214</sup> Jide Ojo, "Stemming the Menace of Vandalising Pipeline and Oil Theft", *The Punch*, 27 February, 2013, p. 25

<sup>215</sup> Augustine Ikelegbe, Popular and Criminal Violence as Instruments of Struggle in the Niger Delta Region, in Cyril Obi & Siri Aas Rustad (eds), *Op cit*, pp. 129, 130

<sup>216</sup> Augustine Ikelegbe, *Ibid*, 129

<sup>217</sup> Major Eero Tepp, "The Gulf of Guinea: Military and Non-Military Ways of Combating Piracy", *Baltic Security and Defence*, Vol. 14 Issue 1, pp.181-214 at 193 (2012)



government and the IOCs to ecological damage of the region and their inadequate regard of compensation have culminated in a wave of violence, which include protests, illegal oil bunkering, pipeline vandalism, shutting down of flow stations, hostage-taking, and killings, that now pervade the entire region. The perceived insensitivities were revealed in some of the Niger Delta Declarations. The Ogoni Bill of Rights<sup>218</sup> promoted by the Movement for the Survival of the Ogoni People (MOSOP), is the first of several declarations to assert the demands and claims of the Niger Delta people towards the Federal Government and the oil MNCs.<sup>219</sup> Paragraph 7 of Addendum to the Ogoni Bill of Rights demanded that the Ogoni people [Niger Delta] be granted political autonomy which guarantees the right to “(1) protect the Ogoni environment and ecology from further degradation; . . . (4) ensure the full restitution of the harm done to the health of our people by the flaring of gas, oil spillages, oil blow-outs, etc” by IOCs.

The monumental environmental damage to the local fishing and farming, habitat and biodiversity, and the means of livelihood of the people in the region was confirmed by the UNEP study, *Environmental Assessment of Ogoniland* when it called for initial \$1 billion fund to set up an independent fund to clean up pollution in Ogoniland which it believed may take 25-30 years to remediate. There is need for prompt and adequate clean-up of the affected communities to enable the local inhabitants support themselves through farming and fishing. As a way of dealing with illicit oil bunkering in the region, efforts must be made by the Government to remediate the affected sites because of oil spillage impact on the human

health and the environment. However, the cleaning up of the Niger Delta region will only be successful if there is an effective policy in place to end oil theft which contributes largely to damaging the environment. Such clean-up effort would be an exercise in futility as what is cleaned today will end up being spilled tomorrow by repeated oil theft and illegal refining.

#### 6.18. Good Governance

This entails the provision of good roads, pipe borne water, hospitals, infrastructure, and other social amenities, and the improvement of educational facilities. The disastrous neglect of the Niger Delta has contributed in fuelling criminal enterprises, such as oil bunkering activities in the region. Ensuring that avenues are created for ordinary citizens, particularly the Niger Delta people, to earn a decent living should be pursued by the government in order to reduce the spate of oil being witnessed in the region. Nigeria should learn from countries like the UK and Norway, both major oil exporting countries, with functioning institutions and good governance in place to achieve a relatively stable socio-economic and political atmosphere that has greatly enhanced their development.<sup>220</sup>

The GMoU instrument has been used by SPDC to enhance the implementation of corporate social responsibility. The gains from the use of such instrument should be maximised to ensure that oil producing communities are not left out in their quest for the much needed development.

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<sup>218</sup> Federal Republic of Nigeria, 1990, Ogoni Bill of Rights (BoR) [online]. Ogoni, Movement for the survival of the Ogoni people, at [http://www.mosop.org/ogoni\\_bill\\_of\\_rights.html](http://www.mosop.org/ogoni_bill_of_rights.html)

<sup>219</sup> Olubayo Oluduro, Oil exploration and ecological damage: the compensation policy in Nigeria, *Canadian Journal of Development Studies/Revue canadienne d'études du développement*, 33:2, 164-179 at 176 (2012)

<sup>220</sup> Olubayo Oluduro and Olubisi F. Oluduro, Nigeria: In Search of Sustainable Peace in the Niger Delta through the Amnesty Programme, *Journal of Sustainable Development*, Vol. 5, No. 7, 48-61 at 57 (2012)

### 6.19. Transparency in the Oil Industry

The conflicting figures of how much oil is being stolen in Nigeria lends credence to the belief that the country does not know how much oil is produced daily. The Senate inquiry set up to investigate the issue in March 2008, concluded that “no-one really knows exactly how much oil is pumped out of the ground.”<sup>221</sup> As noted by Bassey, when Nigeria is said to produce between 2.4 million to 2.6 million barrels of crude oil a day, that figure represents the volume of crude oil officially accounted for at the

distribution points,<sup>222</sup> without taking into account the activities that take place between the wells and the distribution points. Increased transparency within the oil industry will help to enhance the proper management of official government revenues, ascertain the extent of how much oil is stolen each day as well as help us understand if industry activities lend themselves to illegal bunkering and also what their role might be in putting an end to the theft.<sup>223</sup>



Illegal bunkering boat navigating a narrow creek

<sup>221</sup> BBC News website, “Nigeria seeks end to ‘blood oil’”, 8 July 2008.

<sup>222</sup> Nnimmo Bassey, ‘Decades of Destruction: Shell in Nigeria’, in Jess Worth (ed.), *Risking Ruin: Shell’s Dangerous Developments in the Tar Sands, Arctic and Nigeria*, Indigenous Environmental Network and Athabasca Chipewyan First Nation Publication, p. 15 at <http://www.ienearth.org/docs/Risking-Ruin-Shell-forweb.pdf>

<sup>223</sup> Stephen Davis, “Robbery Figures for Oil Theft in the Niger Delta”, Legaloil.com Information Paper No. 4, October 2008, p24



SPDC GMoU implementation, Ughelli South LGA, Delta State



A NIDEREF anti-bunkering campaign poster

Need for inter-agency collaboration: The agencies responsible for stemming the tide of crude oil theft must be ready to work together rather than discrediting the activities of each other for the purpose of making themselves relevant to justify their existence.



## 6.20. Advocacy

While criminalizing illegal bunkering, tampering with pipelines and siphoning oil, advocacy work has also been undertaken to create awareness and find solutions among stakeholders. As shown in Davis et al, in June 2004, the Bayelsa State Governor, Dieprie Alamieseigha, convened in Yenegoa a meeting of Ijaw political leaders from Rivers, Bayelsa and Delta states. In attendance at that meeting also was the Governor of Delta State, James Ibori. Concerned by the failure of the Federal Government to effectively tackle the security situation in the Niger Delta and the constitutional obstacle to the establishment of state police, the delegates "resolved to use grassroots resources to tackle the problem of piracy and illegal bunkering."<sup>224</sup> The resolution included agreement by the governments of Bayelsa and Delta states to support communities in tackling criminal activities in the two states. Although some measure of success was recorded in checking piracy, the communities did not generally share the government's enthusiasm about combating bunkering.<sup>225</sup>

With the dramatic escalation of illegal bunkering and the growth of artisanal refining in Rivers State, especially in the Ogoni area from 2008, the Rivers State Governor, Chibuike Rotimi Amaechi, convened a meeting of Ogoni leaders in Government House at the end of February 2010 to address the matter, amongst other issues. A joint committee of the four local government chairmen in the Ogoni area, the security agencies (DPO, JTF Commander, SSS) was set up to liaise with the communities and take whatever steps that were necessary to combat illegal oil bunkering and processing. A period of two weeks up to 15<sup>th</sup> March 2010 was given for the bunkerers to surrender or face dire consequences. The Chairman of Eleme LGA, Oji Ngofa, was appointed Chairman of the Committee. NIDREF provided resource

persons to assist the committee to establish connections with the bunkerers. A town square meeting was held at Bodo in Gokana LGA, the bunkering hub on the TNP.

In the days that followed, more than 800 youth surrendered their bunkering and refining equipment at the Gokana LGA headquarters at Kpor and promised to cooperate with the government.<sup>226</sup> According to the Chairman of Gokana LG, Chief Victor Giadom, the committee had earlier held meetings and enlightenment campaigns in the communities before embarking on enforcing the order. A token arrest of two men in a truck loaded with 10 drums of diesel from Bodo, covered with sand to disguise it, was made.<sup>227</sup> But this was a fleeting success as the youths quickly replaced the surrendered equipment and returned to the creeks.

The main reason why the initiative failed was government's failure to provide any alternative opportunities for the youths and instead decided to treat illegal bunkering as a law-and-order matter. It is instructive that when the issue of community development and the provision of alternative livelihoods were raised at the Government House meeting, Governor Rotimi Amaechi dismissed it, drawing an analogy that hunger cannot be used to justify armed robbery as the law must take its course. It should be noted further that while expressing support for the government's initiative to combat bunkering at the town square meeting, community leaders and some of the youths also expressed concern over the dearth of opportunities and asked how they would survive if they stopped bunkering. In fact, those who spoke and took a position against bunkering were seen as enemies by the youths involved in bunkering.<sup>228</sup>

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<sup>224</sup> Stephen Davis, Dimeari von Kemedi & Mark Drennan, "Illegal Oil Bunkering in the Niger Delta", Niger Peace and Security Working Papers, 2006.

<sup>225</sup> Ibid

<sup>226</sup> Clarice Azuatalam, "813 Bunkerers Surrender in Ogoni", The Nation on Sunday, 14 March 2010.

<sup>227</sup> Ibid.

<sup>228</sup> This author was a participant at the Government House and town square meetings.





*Some youths in Gokana LGA who renounced illegal bunkering in response to Rivers State Government order in March 2010. When the government failed to provide any assistance many of them returned to the creeks to continue the business.*



*Artisanal refining equipment surrendered by youths in Gokana LGA in anticipation of government assistance in March 2010*

NIDEREF's role in the anti-bunkering committee was part of the organization's anti-bunkering advocacy featuring sensitization and research on the issue. The organization has held workshops, conducted surveys and organized meetings with those directly involved in bunkering to seek their views on what can be done to wean them away from bunkering and refining which constitute a great environmental hazard to the community. Not surprisingly, most of those involved, especially the small operators, have indicated that given the high risks, they would like to give up bunkering if they could have alternative opportunities to earn a living.

Another major advocacy push undertaken in 2013 was the community-focused stakeholder conference held to brainstorm on strategic measures for combating oil theft. The conference, which held in Lagos on the 15<sup>th</sup> of August, was organized by the Office of the Special Adviser to the President on Niger Delta. It was attended, amongst others, by the Chief of Naval Staff, Vice-Admiral Dele Joseph Ezeoba; Commander, JTF Operation Pulo Shield, Maj Gen Bata Debiro; Special Adviser to the President on Niger Delta, Hon Kingsley Kuku; DG Nimsa Patrick Ziakede Akpobolokemi, Commandant General, Nigerian Security and Civil Defence Corps, Dr Ade Abolurin, SPDC Corporate Head of Security, Brian Mair; Civil Society leaders; environmentalists; community leaders; academics; and diplomats.

Listing the consequences of oil theft and refining, which include inadequate community participation in the management of the resources of their communities, environmental pollution, dearth of economic activities in these communities, increasing criminality and insecurity of the coastline, the conference issued a ten-point resolution identifying the role of the communities, the oil companies

and security agencies, the international community, and the government, in checking oil theft and pipeline vandalism.

#### 6.21. Military Action

Military action has been the earliest and most consistent initiative to check illegal bunkering, which started becoming an issue during the military era. As in all cases of public law enforcement under the military regime, soldiers were involved in checking bunkering from the beginning. It started with the involvement of military officers in the loading process at the export terminals. Sharp practices such as topping seems to have been prevalent among these mixed military and civilian officials from the early days.

Being the custodians of the security of Nigeria's territorial waters, the Nigerian Navy has been at the centre of efforts to combat illegal oil activities in these waters. The growing problem of pipeline vandalism and oil theft led to its inclusion in the laws from 1975 under the successive military regimes. The Buhari regime, which overthrew the Shagari administration at the end of 1983, took a step further, jailing some people for "contributing to the economic adversity of Nigeria."<sup>229</sup> Reference has already been made to the ship impounded by Capt. Ogunjimi in 1983. The military continued to confront illegal bunkering all through the Babangida and Abacha dictatorships.

Illegal bunkering and the ensuing military action escalated with the upsurge of conflict in several parts of Nigeria that followed the arrival of civilian government in 1999.<sup>230</sup> The proclamation of the Kaiama Declaration in

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<sup>229</sup> Davis et al, p.10.

<sup>230</sup> Ben Naanen, "Confronting the Turbulent State: Social Disorder, Legitimacy and the Struggle for Deregulated Political Space in Post-Military Nigeria" in *Nigeria After Military Rule: Federalism, Resource Allocation and Ethnic Politics* ed. Will Reno. Northwestern University Programme of African Studies, Evanston, Illinois, 2003, PP 33-53.

November that year and the abduction and killing of 12 police officers on peace-keeping mission to which the nascent Obasanjo government responded with the brutal sacking of Odi, had set the tone for the violent resistance in the Niger Delta. The resistance, which brought about intensified military activities in the region, was largely funded through bunkering. The architecture of violence and bunkering in the region changed with the 2003 elections in which the PDP under Obasanjo was determined to retain power at all costs. In Rivers State, the two main rival gangs or cult groups, led by Ateke Tom and Dokubo Asari, that were the kingpins of the election violence that ensured the victory of PDP Governor Peter Odili, fell out with each other. They also fell out with Odili for failing to deliver on his promise to them. The cult groups had sustained themselves through bunkering whose proceeds were used to purchase the sophisticated weapons they controlled and for the maintenance of the large army of foot soldiers employed by the warlords.<sup>231</sup>

As an indication of the response of the military to the escalation of illegal bunkering after 1999, the Nigerian Navy had between February 2001 when it commenced operations against illegal bunkering, and November 2004, seized a total of 203 vessels and barges for alleged crude oil theft.<sup>232</sup> These included 15 ships which the Navy claimed to have seized between mid-2003 and March 2004.<sup>233</sup>

In August 2003, the Federal Government did set up a new security task force – Operation Restore Hope – to tackle the violent

amalgam of ethnic conflict and illegal bunkering in the Delta State. The joint force was made up of contingents of the Nigeria Army, Nigeria Navy, Air Force and mobile police. By mid-September when the command of the operation was taken over by Maj. Gen Alexander Ogomudia from Brig. Gen Elias Zamani, military detachments had begun to be deployed to oil facilities in the riverine areas.<sup>234</sup>

Dramatically increasing oil prices from 2005 meant increased illegal bunkering and heightened military activities. In addition to the navy which operates in the waterways, the JTF has since become the government's special organ for internal security and anti-bunkering operations. Since its formation in 2003 to the Amnesty of 2010, the JTF battled both insurgency and oil theft on which the insurgents thrived.<sup>235</sup> At the height of the insurgency crude oil production declined to less than 1 million bpd, largely due to sabotage of oil facilities, theft, and the kidnapping of oil workers. With the proclamation of the Amnesty Programme, security threats such as the Boko Haram insurgency in the Northeast and the conflict in Plateau State continued to preoccupy the JTF in these places. In the Niger Delta the JTF could now devote its energy and resources to illegal bunkering and artisanal refining. On 9 January 2012, the JTF's Operation Pulo Shield was given the responsibility of combating pipeline vandalism and oil theft.<sup>236</sup> Poorly equipped, inadequately trained, and trailed by allegations of corruption, the security and other agencies charged with the responsibility of combating oil theft and artisanal refining have not been able to make much headway in the struggle against these illegal activities.

<sup>231</sup> Ben Naanen, "The Political Economy of Oil and Violence in the Niger Delta", Association of Concerned African Scholars (ACAS) *Bulletin*, #68, 2004, p.7. For more details see Human Rights Watch, *Rivers and Blood: Guns, Oil and Power in Nigeria's Rivers State*. Washington, DC, 2005.

<sup>232</sup> Davis et al, p.13.

<sup>233</sup> *Ibid*, p.

<sup>234</sup> HRW, *The Warri Crisis*, pp 21-22.

<sup>235</sup> For details, see Davis et al, pp. 10-17.

<sup>236</sup> "Media Briefing on the Operations of Joint Task Force (Operation Pulo Shield) in Azuzuama and Anti Oil Theft Operational Activities from the first Quarter of 2013" by Lt Col Onyema Nwachukwu, Media Coordinator, JTF Operation Pulo Shield, 7 May, 2013.

Table 6. Some Navy and JTF Anti-Bunkering Operations, 2001-2013

| Period and Source   | Facility/Asset Seized/Destroyed and Location   | No of Persons Arrested, incl. Location   | Agency responsible | Remarks   |
|---|--|--|--------------------|---|
| Feb 2001 -Oct 2005 (Davis et al, pp. 11 - 14).                | 49 ships, 7 tugboats, 210 barges and other boats (impounded for oil theft.   | 12 Russians, 2 Georgians, 1 Romanian on African Pride; 126 suspects by EFCC 2004/2005. | Nigerian Navy      | Seized vessels incl the Capbreton (Nigerian ownership), MT African Pride, seized in Jul 2004 but resurfaced in UAE in Jul 2005; MT Mahdi, MT Tina, MT Glory, the last 2 subsequently released not carrying illegal crude oil. |
| 2011-2012 (Handover news briefing Maj. Gen Ochoga, Jan 2013). | 18 vessels seized (Bayelsa zone), destroyed (in 2012) –133 barges, 1215 Cotonou boats, 187 tanker trucks, 178 fuel dums, 5 surface thanks, 36,504 drums of refined products, 638 pumping machines, 326 outboard engines. | 1,945 suspects (38 from Ghana, India, Lebanon and other Asian and European nationals). | JTF                | 7,585 anti-bunkering patrols.   |
| Jan-Jun 2013 (Sunday Vanguard 1 Sept 2013, p. 53).            | 24 sea-going vessels, 133 barges seized; 748 illegal refineries, 861 Cotonou boats, 910 surface storage tanks destroyed.   | 608 suspected thieves arrested.  |                    | 594 raids (patrols).  |



## 6.22. International Collaboration

Nigeria has been appealing to the international community, notably the United States, Britain and the European Union, to help in checking stolen oil from Nigeria. In a lecture at St Anthony's College, Oxford University in the United Kingdom, the Petroleum Minister, Diezani Allison-Madueke declared that "both the British and US Governments have been in discussion with us and are keen to join hands with us to fight this menace."<sup>237</sup> In response, the African-Caribbean-Pacific and European Union (ACP-EU) Joint Parliamentary Assembly, which met in Abuja in July 2013,<sup>238</sup> proposed a ban on any shipment of oil from Nigeria not carrying a certificate of origin. The problem is how to develop and implement the certification process.

Shell had in June 2003, reportedly proposed the certification of oil exports based on chemical finger-printing to prevent stolen oil from being sold on the open market. It was further reported that IOCs in Nigeria have developed the technology to trace oil to individual flow stations and even individual wells. Not much has been heard of these initiatives since then. But granted that the development of such fingerprinting and certification process was consummated, it would still require international collaboration to make it work. The challenge facing international collaboration on stolen oil that is comparable to the Kimberly Process on "blood diamond" include:

1. At 145,000 bpd stolen oil from Nigeria represents an insignificant fraction of the 86.1 million bpd of annual global oil consumption.

2. Being so relatively small on global scale, stolen oil does not present credible threat to the world economy and international security.
1. The United States, the major world power with the diplomatic and military clout to enforce such an international protocol, is no longer threatened by instability in the Nigerian oil sector as she has steeply cut down on oil imports from Nigeria. In fact, with shale oil, the US has become a net energy exporter and so will hardly have any strategic or economic justification for expending resources to protect Nigerian oil industry.

One way of securing international support is for Nigeria to be able to prove that oil theft is a trans-national organized crime (TOC). This, however, will be difficult to establish. Another option is to launch an international campaign through NGOs. If it could be demonstrated that oil theft affects poor people in Nigeria or that it is a human rights issue, it might be possible to sign on such organizations as Oxfam and Amnesty International. Making it an environmental issue seems to offer a better prospect for an international campaign. A possible obstacle to an international campaign, however, is the international community's high perception of corruption in Nigeria, and the oil industry represents much of that corruption.

## 6.23. Pipeline Surveillance

Nigerian oil industry is heavily dependent on

<sup>237</sup> "UK, US. to Assist Nigeria on Crude Oil Theft, Says Allison-Madueke", *The Nation*, 20 May, 2013.

<sup>238</sup> Onwuka Nzeshi, "Nigeria: ACP-EU Parliament Seeks Global Ban on Stolen Crude Oil", *Thisday*, 22 July, 2013; "Nigeria: Europe to Ban Stolen Oil From Nigeria", *Vanguard*, 22 July, 2013.

<sup>239</sup> "Reps Review Pipeline Surveillance Contracts", *The Citizen Online*, 18 December, 2013. The motion was moved by Deputy Majority Leader, Hon Leo Ogor, representing Delta State.

<sup>240</sup> "Oil Theft: How Government Ignored Recommendations on Pipeline Surveillance", *Thisday Live*, 25 November 2013.

ground surveillance for the security and integrity of pipelines. Ground surveillance is accepted internationally as a practical and cost effective means of securing pipelines against third party damage. The American Petroleum Institute guideline 1160, *Managing System Integrity for Hazardous Pipelines* states: "Current federal pipeline regulations require regular right of way inspections and maintenance." IOCs in Nigeria, accordingly, adopted surveillance in order to prevent and mitigate illegal interference with the pipelines.

Pipeline surveillance in the Niger Delta came to a controversial limelight when the Wall Street Journal reported in 2012 that the NNPC had awarded huge surveillance contracts worth 39.5 million dollars annually to four former Niger Delta militant leaders as part of the initiative to appease them, end militancy in the region and secure the pipelines against oil theft and vandalism. It has been stated that the largest beneficiary was Government "Tompolo", Ekpumopolo; followed by Asari Dokubo; Victor Ben, alias Boyloaf; and Ateke Tom. A company, Oil Facilities Surveillance Limited (OFSL) was subsequently floated as a vehicle for executing the contract. Asari Dokubo claimed his booty was used in settling his 4,000 foot soldiers to protect the pipelines.

It is not clear to what extent these contractors fulfilled their contract. But there are some reports that OFSL under Tompolo recorded a few successful actions against oil theft and artisanal refining in the creeks of Delta State, his jurisdiction. It is claimed that in the last quarter of 2012, the operatives of OFSL at Escravos, Warri South West Area of Delta State, arrested a vessel, MT Lady Jay, "with 10 members of an organized oil syndicate with headquarters in Apapa, Lagos and three boats with unquantified volume of illegally refined products." Mr Keston

Pondi, the General Manager of OFSL, claimed that "within three months, his operatives burnt over fifty local boats, destroyed many refining camps and arrested many oil thieves." It appears this is all that was achieved with the millions of dollars that was paid to Tompolo. We have not been able to lay hands on any record of what the other former militant leaders did with their share of the largesse. What is obvious is that these contracts did not seem to have any discernible impact on illegal bunkering and refining. Nevertheless, the Federal Government felt embarrassed by the revelation of this scandal and terminated the contracts in September 2012.

There are further claims that pipeline surveillance contracts awarded by certain oil companies "had become a conduit pipe through which millions of naira of tax payers' money was being siphoned for work not done". This allegation made by a member of the House of Representatives against NPDC in respect of OML 26/30, became the basis for a motion by the House in December 2013, mandating its Committees on Petroleum Resources (Upstream and Downstream) to investigate "all other pipeline surveillance contracts in the country."<sup>239</sup> The committees were given one month to submit their reports but it is not certain that this has been achieved at the time of writing this report.

Meanwhile, the IOCs have continued their respective surveillance initiatives as the last line of defence against oil theft and pipeline vandalism. For instance, a confidential report on some of the IOCs surveillance programme examined six main aspects of the programme:

1. Award of surveillance contracts
2. Numbers of surveillance personnel
3. Transportation
4. Equipment

5. Supervision

6. Documentation

The report concluded that the IOCs' surveillance scheme performed below expectation in all these areas. On the surveillance contracts, it stated that these are "usually awarded to the local people and these contracts are seen by the companies as a way of improving relations with the local community" and that performance is sacrificed in the process. Investigations for this study showed that the contracts are given to certain favoured individuals in the communities who treated the contracts more or less as gifts. These people become untouchable even when it is glaring that they are failing in their job. They claim to be the rightful representatives of their respective communities when they are not, and control the access of these communities to the IOCs. Their attitude and actions contribute significantly to the hostility against the companies in the communities.

Regarding numbers of personnel, the report stated that in some sections, there were less than 2 persons per kilometre and that "it appeared that insufficient personnel were allocated to carry out surveillance, and it was likely that this had a detrimental effect on the quality and reliability of the surveillance programme."

The report further stated that the contractors relied on paddle canoe for transportation, which is adjudged "inadequate for the task of monitoring pipelines in remote locations in all conditions." In respect of equipment, these consisted of T-shirts, Chinos, jungle boots, Sunflower yellow rain boots, face caps, touch lights, batteries, bags, Angelic yellow rain coats, whistles, water flasks, first aid boxes, and exercise books. These equipment are considered rudimentary as they exclude communication equipment, binoculars or cameras, given that the contractor's role include visual surveillance and prompt reporting of incidents. "The equipment provided to contractors did not represent best practice for a pipeline surveillance programme." Supervision and documentation were similarly found to be lacking.

Regarding the role of technology, while there is no single quick-fix solution, it is recommended that a combination of technological strategies be incorporated into the pipeline integrity system to

▲ *Perhaps the most poignant evidence of the inadequacy of private contractor surveillance is that it has virtually no impact on oil theft and pipeline vandalism. In some cases, the contractors have allegedly either colluded in matters of theft or have directly undertaken the tapping of oil.*

▲ *The conclusion that can be drawn at this point is that the current pipeline surveillance programme and security backbone need a radical review if oil theft and illegal refining must be mitigated. A new model that includes community partnership and ownership has to be constructed. Technology must play its role but without community participation the security of the pipelines will remain a daunting challenge. The human factor is crucial. The best technology and security arrangement can hardly protect a pipeline against the wrath of a disaffected and hostile community. If the local communities are made to see themselves as beneficial partners of the oil companies they will cultivate a sense of ownership.*



help reduce oil theft significantly. So far, SPDC has been lagging in the deployment of technology for pipeline surveillance.

Interviews with surveillance contractors confirmed the issues raised in the confidential report. Some of the contractors also complained of poor remuneration. One contractor, a local youth leader who claimed to control over "2000 boys", said he could only engage a few of his boys at a time for surveillance, rotating them and paying them 10,000 naira (59 dollars) per month so that as many of them as possible could earn some income.

Perhaps the most poignant evidence of the inadequacy of private contractor surveillance is that it has virtually no impact on oil theft and pipeline vandalism. In some cases the contractors have either colluded in matters of theft or have directly undertaken the tapping of oil.

Relying on JTF to provide a security backbone for the pipelines has proved to be another challenge. Although the JTF can readily brandish a list of successful operations against illegal bunkering and refining, that many its operatives are instrumental to oil theft is no longer a secret. Security and pipeline experts at one of the major IOCs, whom we interviewed, admitted that technology was not taken into account when the pipelines were designed, which accounts for the non-application of intrusion-detection system (IDS). They further averred that they have to rely on government security agencies because their own security personnel are not permitted to carry arms. At some point, SPDC apparently considered the deployment of unmanned drones but political obstacles pre-empted the issue. The IOCs also worked with DPR to produce a document on minimum security

standard for pipelines but the document has remained unsigned by the Minister for Petroleum Resources.

There have been other pipeline surveillance proposals. The oil field services giant, Schlumberger had, for instance, proposed in 2010 the use of infrared close circuit television (CCTV) for parameter monitoring as additional surveillance on the pipelines. The company further proposed the installation of a leak detection system to be monitored at a "Command and Response Centre, which would identify threats, detect leaks and intrusions as well as determine the risk level and provide Level 1 response."<sup>140</sup>

The conclusion that can be drawn at this point is that the current pipeline surveillance programmes and security backbone need a radical review if oil theft and illegal refining must be mitigated. The government has to be proactive in the search for answers. The attitude of the government in this regard so far seems to demonstrate a fatal lack of sufficient interest and will. A new model that includes community partnership and ownership has to be constructed. Technology must play its role but without community participation the security of the pipelines will remain a daunting challenge. The human factor is crucial. The best technology and security arrangement can hardly protect the pipelines against the wrath of a disaffected and hostile community. If the local communities are made to see themselves as beneficial partners of the oil companies they will cultivate a sense of ownership, which is one of the most viable means of protection against oil theft and pipeline vandalism. This also strengthens the oil companies' FTO in the these communities occupying the pipelines RoW.



## CONCLUSION

Oil theft (Illegal bunkering) and artisanal refining in the Niger Delta are rooted in socio-economic factors that have been at play in the region and in the nation since the discovery and exploitation of oil from the 1950s. The Niger Delta has been neglected for long both by the state and IOCs. This has made the people to develop an anti-establishmentarian, anti-state and anti-corporate psychology. Illegal bunkering and pipeline vandalization are as much a response by the people to their dire economic circumstances as it is a rebellion against the state and a protest against the IOCs. It represents a form of resistance.

Combating illegal bunkering requires addressing its socio-economic foundation first of all. Poverty and unemployment have to be confronted forcefully. There have been policy initiatives to improve living conditions in the Niger Delta but such instruments have not yielded the expected productive outcome and so the people remain as poor, angry and alienated as ever. To deal with this dichotomy between policy and outcome, between theory and praxis, a new development paradigm for oil-bearing communities that will mobilize development resources from inefficient state-led channels to non-state channels, but with state participation, is recommended in this study. The oil companies must construct new, equitable and mutually beneficial partnerships with the local communities so that these communities can develop a sense of ownership that will make them protect oil facilities in their domain. Since perceptions, some of which are fundamentally flawed, are partly responsible for the oil communities bias, efforts should also be intensified through positive advocacy to change such established perceptions.

Not all those involved in illegal bunkering are driven by poverty. The people who steal the larger quantity of oil for export are mainly motivated by the imperatives of capital accumulation. To combat international trafficking in illegal oil from Nigeria, the government and IOCs have been calling for international action, but this is not the answer as the expected action may not be forthcoming for reasons stated in this report. The issue is to check the problem at the source, which means, in addition to addressing the economic grievances, there has to be a new, community-based pipeline surveillance initiative in the place of the current private contractor surveillance system. In addition to setting up a judicial mechanism to ensure speedy prosecution of arrested suspects. If these urgent measures are rigorously implemented along with other medium and long-term measures recommended in the study, we believe oil theft in Nigeria will be substantially mitigated.

## APPENDIX 1

Analysis of Health Data Collected from Sites Impacted by Illegal Bunkering and Artisanal  
by Onwunari Georgewill  
Professor of Toxicology

### Discussions

In this report samples were analyzed in the laboratory at POCEMA Ltd, Environmental and Laboratory services outfit with expertise in Organic and Hydrocarbon Analysis and ANAL CONCEPT Ltd also experts in laboratory estimation of Hydrocarbons. All the samples were quantified for 15 components of PAHs (naphthalene, acenaphthene, fluorene, phenanthrene, anthracene, fluoranthene, pyrene, benz[a]anthracene, chrysene, benzo[b]fluoranthene, benzo[k]fluoranthene, benzo[a]pyrene, dibenzo[a,h]anthracene, benzo[g,h,i]perylene, and indeno[1,2,3-cd]pyrene) using Gas Chromatographic Analyzer. Fishes collected for this study reflected those consumed by the local population. Eljarrat and Barcelo, 2003 had reported that on exposure there is a tendency for the PAHs to bio accumulate in these fishes and through the food web to humans and pose a risk of causing adverse health effects on humans

Many individual polycyclic aromatic hydrocarbons (PAH) are genotoxic carcinogens. One of the parent PAH, pyrene, undergoes simple metabolism to 1-hydroxypyrene. 1-Hydroxypyrene and its glucuronide are excreted in urine. Biological monitoring of exposure to PAH is a valid method in predicting harm to humans.

In all the urinary samples analyzed the measured values for Total Hydrocarbon content were consistently higher and was markedly greater in subjects from OGONI than the subjects from the other areas of the study such as CHOBA and BAYELSA. High values of urinary TAH correlates strongly with adverse harmful effects in humans and carcinogenesis(Eljarrat and Barcelo 2003, Jian-Min Yuan et al 2013 ). The present data suggest that TAH in urine may be used to monitor occupational exposure to PAH.

Similarly in all the fishes analyzed the measured values for Total Polycyclic Hydrocarbon(TPH), Polycyclic Aromatic Hydrocarbon(PAH) and BTEX content were consistently higher and was markedly greater in fishes obtained from rivers in OGONI than in the fishes obtained from rivers in CHOBA and BAYELSA. High values of TPH, PAH and BTEX in marine organisms also correlates strongly with adverse harmful effects in humans and carcinogenesis(Eljarrat and Barcelo 2003, Jian-Min Yuan et al 2013 ). The present data suggest that TPH, PAH and BTEX in fishes may be used to monitor occupational exposure to petroleum crude.

Alani Rose et al estimated values of TAH in their studies in fishes obtained from Lagos lagoon and other rivers around Lagos and stated that the fish PAHs from their study was between 71.670 and 264.610ng/g for the assessed biota. Anyakora and Coke 2006 reported Nigeria average of 100ug/Kg. The values obtained in this current report in fishes from rivers in OGONJ, CHOBA and BAYELSA were far above the Lagos and Nigerian averages and were in fact

in mg/kg compared to ng/kg in these other reports. The value in this report also exceeds the PAHs of Potomac of 598ug/kg used as reference by many researchers.

Exposure to PAH from various environmental sources are considered primary risk factor for lung cancer (Jian-Min Yuan et al 2013). Polycyclic aromatic hydrocarbons are a large group of organic compounds included in the European Union and United States Environmental Protection Agency priority list because of their mutagenic and carcinogenic properties (M. J. Ramalhosa et al 2009). Associations between polycyclic aromatic hydrocarbons (PAHs) and colorectal cancer have been reported previously but few studies have characterized PAH exposure using biological measurements. This report evaluated human urinary concentration of Total Hydrocarbon content and values of TPH, PAH and BTEX in fishes in OGONI, CHOBA and BAYELSA.

Polycyclic aromatic hydrocarbons (PAHs) are by-products of incomplete combustion of organic materials. Individuals may be exposed to PAHs through various environmental sources including, ambient air pollution, and consumption of polluted sea foods (M.J. Ramalhosa et al 2009). The International Agency for Research on Cancer has classified PAH exposure as a Group 1 carcinogen ("carcinogenic to humans"). Several case-control studies have reported associations between estimated dietary intake of benzo (a) pyrene a particular PAH compound via polluted sea foods, and risk of colorectal adenoma.

Total petroleum hydrocarbon (TPH) is a term used for any mixture of hydrocarbons that are found in crude oil. There are several hundred of these compounds. Crude oil is used to make petroleum products which can contaminate the environment. Crude oil is a naturally occurring flammable liquid, consisting of a complex mixture of hydrocarbons of various molecular weight and other liquid organic compounds that are found in geologic formations beneath the earth's surface. Petroleum is recovered mostly through oil drilling. The petroleum industry is involved in the global processes of exploration, extraction, refining, transporting (often with oil tankers and pipelines) and marketing petroleum products. The industry is usually divided into three major components: Upstream, Midstream and Downstream. (Vassihou Marcus 2009). Oil spills in Nigeria are a common occurrence. It has been estimated that between 9 million to 13 million barrels have been spilled since oil drilling started in 1958. Oil spillage has a major impact on the ecosystems, large tracts of the mangrove forests have been destroyed, and contamination of groundwater and soils produces extermination of crops and aquaculture. Drinking water is also frequently contaminated leading to deleterious effects on humans and a decline in local fishing productions. Crude oil spillage may occur during the processes of tapping or transportation of crude oil through corroded pipes.

Crude oil may pollute the environment via tanker and barge accidents; blow out at offshore drilling rigs, operations of offshore well, washing of crude oil tankers as well as pipeline and storage tank leakages. Crude oil contaminated or polluted water may be used for drinking, bathing and cooking. The contaminated air may be inhaled while the contaminated fishes and other food substances may be eaten by humans. Because there are so many different chemicals in crude oil and in other petroleum products, it is not practical to measure each one separately. However, it is useful to measure the total amount of TPH. Chemicals that occur in TPH include hexane, benzene, toluene, xlenes, naphthalene, and fluorene, other constituents of gasoline, of jet fuels, of mineral oils, and of other petroleum products. TPH may enter the environment through accidents, from industrial releases, or as byproducts

from commercial or private uses. TPH may be released directly into water through spills or leaks. Some TPH fractions will float on the water and form surface films. Other TPH fractions will sink to the bottom sediments. Bacteria and microorganisms in the water may break down some of the TPH fractions. Some TPH fractions will move into the soil where they may stay for a long time.

Everyone in a polluted area is exposed to TPH from many sources. Breathing air at gasoline stations, Drinking water contaminated with TPH. Living in an area near a spill or leak of petroleum products. Touching soil contaminated with TPH. Varanasi *et al.*, 1981 have shown that benzo (a) pyrene (BaP) can be accumulated to potentially hazardous levels in fish and invertebrates and pose serious health risk to humans that consumes such fish(es).

The fishes from rivers in Ogoni were more contaminated with PAHs and was found in the fishes of all ages suggests that fishes are exposed to and accumulate PAHs from the early stage of their lives through different developmental stages up to maturity and that sources of PAHs are present and available to fishes in rivers of Ogoni as a result of oil exploratory and pollution activities

Polycyclic aromatic hydrocarbons (PAHs) are ubiquitous anthropogenic pollutants that can be biologically amplified to high concentrations in food webs. Due to their lipophilicity (lipid-loving), persistence, and high toxicity, these residues are readily accumulated in the tissues of non target living organisms where they may cause detrimental effects. PAHs are toxic, carcinogenic, and mutagenic to all organisms, including humans. The metabolites of PAHs may bind to proteins and DNA, which causes biochemical disruption and cell damage in animals and cancer in human.

BTEX is an acronym that stands for benzene, toluene, ethylbenzene, and xylenes. These compounds are some of the volatile organic compounds (VOCs) found in petroleum derivatives such as petrol (gasoline). Toluene, ethylbenzene, and xylenes have harmful effects on the central nervous system. BTEX compounds are notorious due to the contamination of soil and groundwater with these compounds. Contamination typically occurs near petroleum and natural gas production sites, petrol stations, and other areas with underground storage tanks (USTs) or above-ground storage tanks (ASTs), containing gasoline or other petroleum-related products.

The amount of 'Total BTEX', the sum of the concentrations of each of the constituents of BTEX, is sometimes used to aid in assessing the relative risk or seriousness at contaminated locations and the need of remediation of such sites. Naphthalene may also be included in Total BTEX analysis yielding results referred to as BTEXN. In the same way, styrene is sometimes added, making it BTEXS. In this report BTEX was estimated to determine the risk factor of fishes in rivers in Ogoni as potentially harmful to humans. This report therefore describes and evaluates chemical and biological data such as urinary Total hydrocarbon content in humans and TPH, PAH and BTEX in fishes from rivers in Ogoni as compared to Choba and Bayelsa.

It is penitent to state in this report that Long et al in 1995 in their work on effects of chemicals on humans has postulated that the range in concentration over which toxic effects are rarely observed is termed Minimal effects range while Possible effects range refers to the range in concentrations over which toxic effects are occasionally observed. The values of the measured parameters in this report falls in the range of Probable effects range in which toxic effects are frequently or always observed.



Georgewill and Nwankwoala 2009, in their research efforts on crude oil toxicity also reported the finding that Benzene, a seemingly unarmful chemical in crude oil, undergoes lethal synthesis to a potent carcinogen Benzene Arene oxide in living systems, thus the finding of high values of TPH, PAH and BTEX portends a serious danger to the humans exposed. Cumulative toxic effects which result from chronic exposure to low concentration of substances in the environment over a period of time and delayed toxic effects which are observed in future generation of humans chronically exposed to these substances now occupy the front burner in modern toxicology discourse. The biotransformation of an unarmful substance to a very active and lethal substance is defined as lethal synthesis (Neff 1997, Klassen 1990). Benzene is not known to be genotoxic; that is, a cancer causing agent. However, the putative metabolite of benzene, Benzene Arene oxide is indeed genotoxic. It caused leukaemia and the threshold value was set at 1ppm (Synder et al 1977, Major 1922). Other metabolites of aromatic hydrocarbons such as benzo(a)Pyrene, 3-methyl cholanthrene, benzathracene, dibenz(a)anthracene and toluene were carcinogenic. Aniline derivatives are also carcinogenic (Jerina et al 1977).

These findings in this current report indicates that chronic exposure of Nigerian crude oil to humans and marine organism as a result of repeated and constant crude oil spillage which were left uncleaned for a long period of time resulted in high values of TPH, PAH and BTEX in fishes obtained from rivers in Ogoni with the attendant harmful health effects on the inhabitants of Ogoni as further revealed in the high urinary Total hydrocarbon content of the Ogoni subjects.

Further studies by Georgewill et al 2010 on the effects of chronic exposure of rats to crude oil revealed edematous lungs, tubular necrosis and interstitial hemorrhage in kidneys, cardiac muscle congestion and testicular atrophy in the rats. This present report showing high values of the measured parameters in Ogoni exposes the human inhabitants to possible lungs, kidneys, heart and testicular damages. The elevated urinary total hydrocarbon content in the Ogoni subjects is a positive deleterious finding.

It has been sufficiently demonstrated that the constituents of crude oil and by-products of its metabolites and pollution are carcinogenic (Weisburger and Williams 1980). John, W. B et al 1996 further corroborated the earlier assertion of Weisburger and Williams when he demonstrated the genotoxic effects of petroleum crude oil following chronic exposure to men. Kalf G. F. et al also demonstrated the genotoxic effect of Benzene Arene oxide, a putative metabolite of Benzene a component of crude oil. Darenbach et al 1980, Rinkevich and Lova 1979, Rossi and Anderson 1977, Hawkes and Stear 1982, had all in their various works reported the delayed toxic effects of crude oil, stating postulates such as impairment of gonadal development by crude oil leading to increased incidence of developmental abnormalities. Prof. Briggs 1992 in his inaugural lecture at the University of Port Harcourt stated thus: Since more than 50% of Nigeria's oil and gas exploratory activities currently take place in Port Harcourt and its environs with a resultant high pollution effect, and considering the opulent contribution these exploratory activities make to Nigeria's economy, I recommend that a Cancer institute with an Affiliated Cancer Hospital be established in Port Harcourt by the Federal Government to initiate and co-ordinate all aspects of work on cancer in the country.

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## APPENDIX 2

### Measures for Maintaining Pipeline Integrity

- Manual surveillance
- Electronic Leak Detection System
- Acoustic Sensing Instrumentation
- The use of *Drones* to monitor pipelines.
- Giant inflatable devices (BLIMPS and Unmanned Aerial Vehicles (UAVs))
- Radar Monitoring System
- Light Detection and Ranging (LIDAR) monitoring system to detect the presence of hydro-carbons near pipelines
- Remote Optical Sensors to check Third Party Interdiction
- Satellite Surveillance

### Glossary

\**Kpofire*: Local term for artisanal refining in eastern Niger Delta.



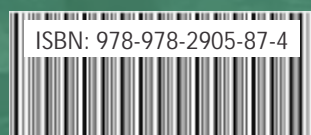
## About the Authors

Ben Naanen, who had his Ph.D from Dalhousie University in Canada, is Professor of Economic History at the University of Port Harcourt and a Trustee of Niger Delta Environment and Relief Foundation (NIDEREF). He has held research fellowships and consultancies at institutions on both sides of the Atlantic, including the School of Oriental and African Studies, University of London; South-South Exchange Programme for Research on the History of Development (SEPHIS) International Institute of Social History, Amsterdam, the Netherlands; Northwestern University, Evanston, ILL., USA; World Resources Institute, Washington, DC; and United Nations Research Institute for Social Development (UNRISD), Geneva, Switzerland. His recent publications on the Niger Delta include the contribution on "The Nigerian State, Multinational Oil Corporations, and the Indigenous Communities of the Niger Delta" in the volume on *The Politics of Resource Extraction* edited by Suzana Sawyer and Edmund Terence Gomez, Palgrave Macmillan and UNRISD, 2012. Naanen is a member of the Governing Council of Nigeria Institute of International Affairs.

Patrick Tolani is the Chief Executive of Oxford, United Kingdom-based Redeemers Relief Agency International (RAIN). With Masters degrees in Law, Industrial Relations, and Public Administration from Nigerian universities, and a postgraduate diploma in Cross Sector Partnership from Cambridge University, he has more than two decades of experience working across different sectors in Nigeria and abroad. Tolani is a former Principal Advisor on Trade and Commerce in the Directorate for Commerce, Ministry of Development, Timor Leste, under UNDP Capacity Building support programme. He was called to the Nigerian bar in 1991.

Niger Delta Environment and Relief Foundation (NIDEREF) is a Nigerian-registered development, advocacy, and research organization working on good governance, environmental sustainability, natural resources management and conflict prevention in the Niger Delta. NIDEREF is based in Port Harcourt, Nigeria.

Redeemers Relief Agency International (RAIN) is a charitable organization founded in the United Kingdom in 2009. Working with partners in a number of African countries, RAIN focuses on issues of poverty, humanitarian assistance and livelihood.



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