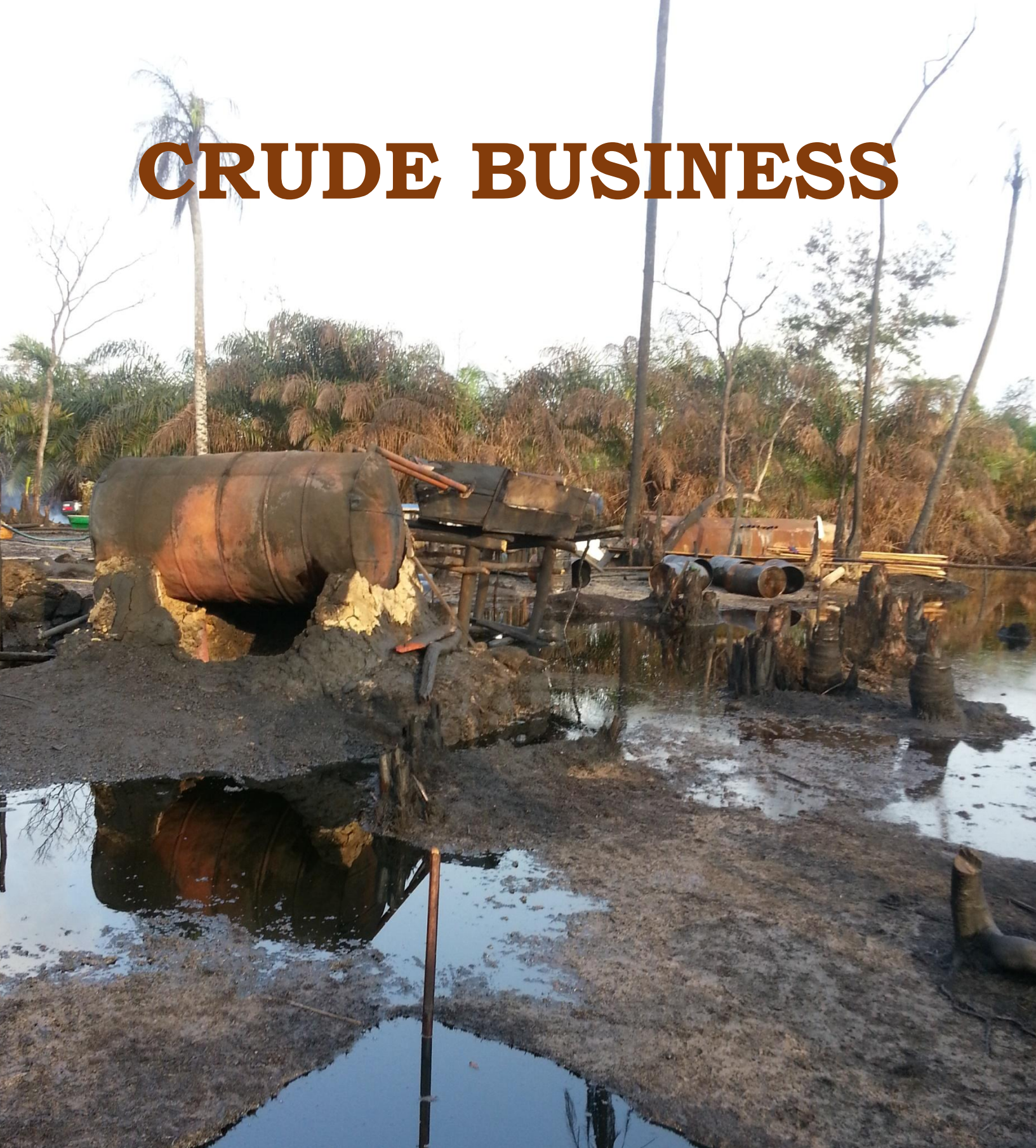


CRUDE BUSINESS



SOCIALACTION
SOCIAL DEVELOPMENT INTEGRATED CENTRE

**OIL THEFT,
COMMUNITIES AND
POVERTY IN NIGERIA**

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Nigeria**



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Contents

Acknowledgements	v
List of Acronyms	vii
Executive Summary.....	1
Recommendations	4
1. Elephant in the Room: Corruption in the Nigerian Petroleum Industry.....	7
1.1. Sharp practices of Oil Companies.....	11
1.2. A Retrograde Triangle: NNPC, Government Bureaucracy, Military Task Force ..	15
1.3. “I don Suffer for this thing: Don’t worry; we’ll sort it out”	20
2. Crude Business: Oil Theft and Illegal Bunkering in Nigeria	21
2.1. The Illegal Bunkering and Oil Theft Process	23
2.2. If there is Demand, there is Supply	25
2.3. When Government Plays Politics with Crime	26
2.4. Oil Communities Stare at the Devil and Deep Blue Sea	28
3. Double Jeopardy: Artisanal Refineries in the Niger Delta.....	30
3.1. Genesis of Artisanal Refining in the Niger Delta	30
3.2. Usual Suspects: Who are the Artisanal Refiners?	33
3.3. The Artisanal Refining Process	35
3.4. Counting the Costs.....	39
4. Reversing the Legacy of Revenue Theft, Illegal Oil bukering and Environmental Pollution	46
4.1. Mitigating Oil Revenue Theft in Nigeria: EITI Principles to the Rescue?	47
4.2. A Military Joint Task Force: Making a Bad Situation Worse?.....	49
4.3. The United Nations Environment Program (UNEP) and the Niger Delta	55
Conclusion	57
Appendix	58

List of Acronyms

BPD	Barrel Per Day
CBN	Central Bank of Nigeria
DPR	Department of Petroleum Resources
EFCC	Economic and Financial Crimes Commission
FGAP	Federal Government Amnesty Programme
ICPC	Independent Corrupt Practices Commission
IMG	Ijaw Monitoring Group
IOC	International Oil Companies
IPDI	Ijaw People's Development Initiative
ISIS	Islamic State of Iraq and Syria
IYC	Ijaw Youth Council
JTF	Joint Task Force
LGA	Local Government Area
MDAs	Ministries, Departments and Agencies
MOSOP	Movement for the Survival of Ogoni People
NCSDC	National Security and Civil Defence Corps
NEITI	Nigeria Extractive Industries Transparency Initiative
NGO	Non-Governmental Organisation
NLNG	Nigerian Liquefied Natural Gas Company
NNPC	Nigerian National Petroleum Corporation
OPEC	Organisation of Petroleum Exporting Countries
OPS	Operation Pulo Shield
PDP	People's Democratic Party
PMS	Premium Motor Spirit
PPMC	Petroleum Products Marketing Company
PPPRA	Petroleum Products Pricing and Regulatory Agency
PPT	Petroleum Profits Tax
SPDC	Shell Petroleum Development Company
SSS	State Security Service
UNEP	United Nations Environment Programme
UNODC	United Nations Office on Drugs and Crime

Executive Summary

Exploitation of crude oil and natural gas in Nigeria is a messy business that results in unprecedented pollution of the environment and mind boggling theft of public revenues by government officials working in concert with unscrupulous executives of national and international oil companies. With government functionaries scrambling to loot oil revenues, public agencies, including those responsible for security, have been severely compromised, leading to the thriving of illicit business in upstream as well as downstream operations of the oil industry.

While oil theft or oil bunkering¹ had always been a challenge to the Nigerian state, it assumed an alarming dimension following the country's transition from military to civil rule in 1999. This was also a period of intensified community protests against environmental pollution and inadequate social infrastructure in the oil and gas bearing Niger Delta region. A few years into civil rule, the underlying conditions for conflict in the region, which had been germinating for decades, seemed to take roots. With loss of livelihoods and impoverishment caused by environmental degradation and corruption, mass unemployment, severe shortages of refined petroleum fuels, human rights abuses and state repression, the condition was set for insurgency in the Niger Delta. 'Militant' groups emerged in the region to displace the civic movements. The insurgents caused massive disruption of oil and gas production. The situation was so fraught that at the meeting of the Group of 8 (G8) most industrialized countries of the world held in 2008, then Nigerian President, Umaru Yar'Adua requested international assistance in tackling the twin menace of insurgency and oil theft. His call happened against the background of popular public impression then that proceeds from stolen or "bunkered" crude oil were being used to fund the insurgency.² However, the Niger Delta insurgency was only a small bit of an expansive network for crude oil theft.

Crude oil theft is carried out on large scale by syndicates connected to the highest official levels in transnational oil companies, government establishments and security agencies. More recently, chronic shortages of consumer fuels such as kerosene, petrol and diesel prompted "artisanal" petroleum refining by mostly unemployed youth. These illegal "bush refineries" depend on stolen crude, and have made the problem of oil theft more visible for communities and damaging to the local environment. The introduction of pollution from artisanal refining of petroleum attempts to blur the picture of historical pollution by major transnational oil corporations and government agencies and the large scale theft by syndicates linked to them.

What we see is that the environment and people in the Niger Delta have been caught in a web of pollution and corruption. Under these conditions, the struggle for survival

¹ The Merriam-Webster online Dictionary defines "bunkering" as the process of filling "a ship's bunker with coal or oil." This suggests that bunkering is ordinarily a legitimate activity. But in Nigeria it is used exclusively to describe the same process of filling a ship's bunker with oil that has been illegitimately obtained.

² Judith Burdin Asuni, "Blood Oil in the Niger Delta" (2009) Special Report 229: United States Institute for Peace.

could further cause people to become enmeshed in the vicious snare of the criminal petroleum complex. In 2008 and 2009, massive oil spillages from Shell's operations polluted the environment around in Bodo, Ogoniland, Rivers State with unknown quantities of crude oil. According to a community chief, "following that massive spill, illegal refining activities were observed all around the areas where the spilled crude could be easily collected for refining using crude methods. It was clear that the spillage destroyed means of livelihood. It was tempting for restive youths to resort to illegal bunkering activities for survival; tempting, as alternative source of livelihood had been disrupted and even subsistent fishing had declined below sustaining levels. The company has disappointed the people! Shell is only good in causing havoc and making a few people rich at the expense of the masses." Another example is the story of a resident of Brass in Bayelsa State who was lamenting about illegal "bush refineries": "the business flourishes because we all depend on its products like my local bread bakery which relies on baking every morning with three cooking stoves filled with the kerosene from the bush refinery". Without these bush refineries, local businesses would not have access to energy.

The exact amount of oil stolen per day in Nigeria's Niger Delta region is unknown. But it has been indicated that the volume of stolen crude in Nigeria could surpass the entire production of a country like Ghana, according to some accounts. It is estimated to be somewhere in the region of 30,000 to 300,000 barrels per day. The approximated aggregate loss to the Nigerian economy from illegal oil bunkering between 2003 and 2008 is claimed to be about US\$100 billion.³ On its part, the Nigeria Extractive Industries Transparency Initiative (NEITI) estimates that about \$11 billion was lost by the Nigerian government between 2009 and 2011 due to the activities of oil thieves.⁴ Such level of theft could not be possible without the deep involvement of senior officials of state and oil companies.

Oil companies and the government claim that over 70% of crude oil spills in the area now results from oil theft and other acts of pipeline vandalism.⁵ Human rights groups with knowledge of the oil industry in the Niger Delta consider those figures as exaggerated.⁶ However, there is evidence that the activities of oil thieves and illegal artisanal refineries do constitute a significant source of oil pollution. There is massive environmental degradation caused by oil spilled from oil theft operations and reckless waste disposal by the artisanal refineries. Ironically, the activities of the military Joint Task Force (JTF) which is mandated by government to eradicate these refineries do themselves cause more pollution than the refinery operators. This is in the way that

³ Xan Rice, "Nigeria: Oil Theft Hits Production Level" *Financial Times* 8 September 2013 available online: <<http://www.ft.com/intl/cms/s/0/efe9a380-13cd-11e3-9289-00144feabdc0.html#axzz3JdEq7du0>>.

⁴ See Noel Onoja, "Nigeria loses \$11bn to Oil Theft, Vandalism – NEITI" *Vanguard*, July 30, 2013 Online: <<http://www.vanguardngr.com/2013/07/nigeria-loses-11bn-to-oil-theft-vandalism-neiti/>>.

⁵ Shell Nigeria, "Oil Spill Data" available online <<http://www.shell.com.ng/environment-society/environment-tpkg/oil-spills.html>>.

⁶ Amnesty International, "Shell's False Claims on Niger Delta Oil Spills Exposed" available online <<http://www.amnesty.org/en/news/shell-s-false-claims-niger-delta-oil-spills-exposed-2013-11-07>>.

the JTF burns and indiscriminately discharges seized equipment and stolen crude oil supplies into the natural environment.

The frequent military raids and destruction of artisanal refineries have not been as effective as would have been expected in deterring the perpetrators. This is because while the military conducts such raids to create an illusion of zeal and determination in doing their security job by day, they have been proven time and again to be enablers and beneficiaries of these illegitimate activities by night. Sending out mixed messages in this manner can only embolden the oil thieves and artisanal refiners.

Beginning from 2012, Social Action carried out extensive research into the activities of oil thieves and operators of illegal oil refineries. This report is the result of that effort. It contains field reports from Rivers, Bayelsa and Delta states on the pattern, actors and consequences of oil theft in the Niger Delta region. In this report, evidence from monitoring activities show that community values and institutions have been severely weakened with the upsurge of local cartels and criminal gangs that work in collusion with some state security officers, including members of the police and armed forces. The need to address the issue of oil theft in Nigeria is made even more urgent by the fact that the same individuals responsible for the crimes prevalent in the oil industry are also implicated in election rigging and the related violence, suggesting serious failings of government. Oil theft is also linked to small arms trafficking and the escalation of criminal activity in the local communities in the Niger Delta.

While we examine the activities of oil thieves linked to artisanal refineries, this report present the cases of illegal refineries as one more manifestation of the historical problem of oil theft in Nigeria (including the theft of public revenues from oil). We show through our investigation and reporting that in terms of naira and dollar, oil theft connected to artisanal refineries is a small part of the corruption mix.

This report shows that oil theft and the artisanal refining that it enables are twin threats to legitimate civic engagement, environmental sustainability, and the physical health and livelihoods of its operators and the peoples living in the Niger Delta communities in which they take place. Crude oil theft in particular is also a devastating threat to the socio-economic well-being of the majority of Nigerians who still live in poverty and destitution. Nigeria as a country still struggles significantly in its efforts to transform its natural resource wealth into meaningful development and improved welfare for its people.

This report show that the entrenchment of a regime of respect for human rights, rule of law and accountability is necessary to build trust and confidence in the local Niger Delta communities. Citizens have to be made aware not only through words, but most importantly through action, that government is looking out for their best interests. Rather than blame these communities for government failures, it is time for the government, civil society and communities to step up actions in confronting the social

and environmental challenges bedeviling the region and nationally. Peoples whose farmlands and fishing rivers have been destroyed have to be offered alternative means of sustaining their daily lives.

Recommendations

Considering the destructive consequences of oil theft and artisanal refining as well as the varied actors that play a role in their sustenance, it is important to adopt an amelioration strategy that recognises the complexities and malignance of the practices. A full-pronged strategy is therefore warranted going forward. Fundamentally, it is upon the government that the primary responsibility for tackling these twin scourges lies. Leadership at the top should mobilize the necessary political will to set effective standards, sound legal framework and ensure that public agencies and citizens are equipped to effectively enforce regulations. Corruption has to be tackled and defeated if the war against oil theft and artisanal refining is to be won.

Having taken into account our findings during field trips and interviews, *Social Action* recommends the following measures as necessary to deal with oil theft and artisanal refineries:

On Oil Theft and Revenue Looting

- ❖ Crimes related to these illicit activities should be fearlessly prosecuted and in a non-discriminatory manner. Culprits should face punishments warranted by their crimes. With adequate and effective policing, recourse to military high-handedness may be avoided. It is therefore important to equip and train the police and other law enforcement agencies on how to combat these crimes.
- ❖ The Nigerian government should take a fresh, reflective look at the NEITI, Ribadu, KPMG and House of Representative ad-hoc Committee reports with a view to holding legally accountable those individuals, including officials of the Ministries, Departments and Agencies (MDAs), found to have violated the law or who received unlawful financial gains from the oil subsidy programme. While culprits should be compelled to refund stolen oil revenues, *Social Action* believes that accountability should not end at that. Rather than deter future crimes, such slap in the wrist only encourages impunity from which neither the Nigerian government nor its peoples gain. All violators of the law should be properly prosecuted.
- ❖ *Social Action* recommends that NEITI, as the watchdog of the Nigerian oil sector, should be adequately funded by the government to enable it to perform its expected responsibilities effectively. In addition to government funding, and as a way of further guaranteeing its independence, NEITI should be allowed to

source some of its funding from international grant-making institutions as well as partner with other organisations pursuing similar mandates so long as such partnerships are supported by the law establishing it.

- ❖ Government should ensure that there are reliable metering systems at oil export terminals.

On Oil Industry Pollution and Illegal Artisanal Oil Refineries

- ❖ It is recommended that JTF troops should desist from sinking and burning containers of crude oil and refined petroleum products seized from illegal oil refineries, as such measures exacerbate environmental pollution. The use of such crude force may not eradicate the activity. Instead, security agencies should work with the Department of Petroleum Resources to determine the safest way to manage petroleum products seized by authorities.
- ❖ Local governments, communities and private investors should be allowed to legally establish and operate modular refineries in the Niger Delta region. When legitimate refiners are enthroned, the incentive to operate outside the law would be removed. This will in turn create jobs to reduce the idleness and unemployment which invariably creates the environment that makes oil theft and artisanal refining to blossom. As the saying goes, an idle hand is usually the devil's workshop.
- ❖ Oil theft and illegal artisanal refineries will not thrive when environmental protection is taken seriously by the appropriate authorities. Therefore, the Nigerian government should see the implementation of the UNEP Report in Ogoniland as a starting point for the clean-up of all oil-polluted communities in the Niger Delta. This is based on an understanding that the UNEP Report only covers the Ogoni environment while it is very well known that many other oil producing communities in the Niger Delta are as polluted as Ogoniland and sometimes even more so. Programmes for cleaning up polluted sites should be developed by appropriate government agencies with the participation of affected communities and civil society groups with working knowledge of the subject.
- ❖ Oil companies operating in Nigeria should use globally acceptable best business practices in compliance with Nigerian laws and regulations. Accidents and collateral damages often result from oil activities. When this happens, the companies involved should promptly institute remedial measures and ensure that the damages to the environment are quickly repaired. When oil spills into the environment as a direct result of their business activities, they should immediately clean it up.

- ❖ It is recommended that the Nigerian federal government should work with community members and local governments to design alternative sources of livelihood for the people living in the areas in the Niger Delta polluted by oil-related activities. Niger Delta youths who were not incorporated into the 2009 Amnesty Programme should have special skills programmes designed for them. Promises made as part of Amnesty Programme should as well be fulfilled while the ex-militants should be fully rehabilitated.
- ❖ There are a number of socio-political factors feeding both discontent and crime in the Nigerian Delta region. A major factor is the nature of existing relationship that government at the various levels has with the communities where oil resources are located. Though Nigeria is constitutionally speaking a federation, in actual practice it is anything but. While in most federal states component federating units exercise sufficient control over resources located in their domains, in Nigeria the reality is clearly different. The problems of crude oil theft, illegal artisanal refineries and environmental pollution cannot be adequately addressed without a new constitutional arrangement that devolves powers to federating units and institutions of local governance.
- ❖ Social Action believes as well that the oil communities bear some responsibility for the state of their living environment. Individual communities have to act with a critical mass of stakeholders to create confidence in their abilities to protect themselves and their environment, and also bring development to their peoples. These communities should be encouraged to learn that their strength is in unity rather than in intrigues and dissension.

1. Elephant in the Room: Corruption in the Nigerian Petroleum Industry

Oil theft and artisanal refining occur within the context of egregious corruption and rule of law weaknesses in Nigeria. Though the country is the largest oil producer in Africa, and holds the eight largest reserves as at 2013 among the member states of the Organisation of Petroleum Exporting Countries (OPEC)⁷, it remains among the world's poorest nations. The country produces an estimated 2.5 million barrels of crude oil per day (bpd). It depends on its oil and gas resources for over 90% of its foreign exchange earnings and about 70% of budgetary revenues. Regrettably, the discovery of oil in commercial quantities has over the years stalled the development of other vital sectors of Nigeria's economy as the country came to rely more and more on revenues from crude oil and natural gas. Thus, Nigeria could be said to be a classic example of a so-called "rentier" state, particularly as politicians just spend funds that they have broken little sweat to have access to.



A local fisherman scoops crude oil in Bonny after a 2014 spill from Shell's operations. For the people of Nigeria, there is little gain from oil. Picture by Alagoa Morris

Crude oil and natural gas extraction is carried out at the expense of the environment and local communities. This cost is borne through the destruction of their farmlands

⁷ See Organization of Petroleum Exporting Countries (OPEC), "Nigeria: Facts and Figures" available online <http://www.opec.org/opec_web/en/about_us/167.htm>.

and rivers and their reduced capacity to engage in farming and fishing. The impact of oil industry activities on the Niger Delta environment has attracted public attention. In fact, it was the campaign to redress the environmental degradation of the region by oil companies that thrust the region into global spotlight especially following the advocacy activities of the Movement for the Survival of Ogoni the People (MOSOP). The MOSOP agitation culminated in the 1995 hanging of the Ogoni environmentalist, Ken Saro Wiwa after a sham criminal trial orchestrated by the then Nigerian federal military government.

In response to 2001 complaint before it by a Nigerian NGO on the environmental destruction of Ogoniland, the African Commission on Human and People's Rights found that despite its obligation to protect persons against interferences in the enjoyment of their rights, the government of Nigeria facilitated the destruction of Ogoniland. In its decision, the Commission also decided that contrary to its Charter obligations and despite various internationally established principles, the Nigerian government gave the green light to private actors, and the oil companies in particular, to devastatingly affect the well-being of the Ogonis. It found also that by any measure of standards, Nigeria's practice fell short of the minimum conduct expected of governments, and therefore, was in violation of article 21 of the African Charter on Human and People's Rights on the rights of peoples to freely dispose of their wealth and natural resources.

But it has not helped these communities that the major oil companies pressured by advocacy and litigation from community activists and other concerned actors disclaim responsibility for destructive activities and instead blame the communities for bringing the environmental degradation upon themselves. These accusations against communities have increased with the incidence of artisanal oil refineries.

However, in addressing artisanal refineries, we need to trace the practice to illegal activities have been enabled and sustained in large part by the overall corrupt tendencies within the political establishment and the oil industry as a whole. There are, for instance, accusations amongst the various stakeholders in the Nigerian oil industry regarding the theft and sale of crude oil at the country's export terminals with the aid of false metering systems. This is generally carried out under the watch of government officials and security operatives. Chatham House reported that, "Nigeria offers a strong enabling environment for the large-scale theft of crude oil. Corruption and fraud are rampant in the country's oil sector."⁸ According to the organisation:

The basic story of how Nigeria's crude goes missing has been told for years. To steal oil, thieves tap into pipelines and other infrastructure in the Niger Delta. They then pump the oil onto waiting barges and boats.

⁸ Christina Katsouris & Aaron Sayne, *Nigeria's Criminal Crude: International Options to Combat Stolen Crude* (London: Chatham House, 2013) available online: <http://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/0913pr_nigeriaoil_es.pdf>.

Some of it is refined locally while larger vessels carry the rest abroad. There are also allegations that oil vanishes from at least some of the country's roughly two dozen export terminals.⁹

This vessel and barges used for oil theft operations were impounded by the JTF. However, prosecution rates have been woeful. Picture by JTF



Oil companies and crooked business

While transnational oil corporations and government officials are enriched by revenue generated from sale of petroleum exports, a majority of the over 160 million estimated to make up Nigeria's population do not benefit from the oil wealth. For example, during a

testimony session before a parliamentary Committee on petroleum products price subsidization in early 2012, Nigeria's Finance Minister Ngozi Okonjo-Iweala stated that transnational oil corporations took 43 percent of all daily revenues realized from the sale of crude oil as their share of oil sales.¹⁰ On its part, the Nigerian government took 57 percent of the daily revenue. The Minister's intervention was aimed at debunking the "wrong" notion that the government took all the revenue realized from crude exportation. These figures cannot be independently verified owing to the lack of transparency in the Nigerian oil industry practices. Apart from their share based on terms of contracts with government, the major oil companies use sharp practices to make extra illicit gain, often acting in concert with unscrupulous government officials whose primary duties should be to ensure that such illegalities are stopped in the first place.

Knowing the precise value of crude oil stolen from Nigeria would enhance efforts towards curbing theft and corruption. However, placing an accurate value on the quantity of crude stolen in Nigeria from upstream operations is made difficult owing to the unwillingness of oil companies to accept the use of accurate measurement parameters to determine the actual quantity of crude oil produced.

⁹ *Ibid.*

¹⁰ Abdul-Rahman Abubakar "Nigeria: Foreign Firms Take 43 Percent of the Country's Oil Revenue" Online <<http://allafrica.com/stories/201201200526.html>>



Bonny shoreline polluted by Shell spill. Picture by Alagoa Morris

At sittings of a panel established by the Nigerian federal government to audit the oil industry, which was headed by erstwhile head of the Economic and Financial Crimes Commission (EFCC), Nuhu Ribadu, Shell declared that its oil losses increased from 10,000 barrels per day (bpd) in late 2009 to over 50,000 bpd by March 2012. In contrast, Chevron declared a reduction in its loss of crude from an estimated 15,000 to 20,000 bpd in 2008-2009, to approximately 1,000 bpd at the time of the panel's sessions.¹¹ However, the Nigerian Senate, the Federal Ministry of Finance as well as the NNPC put the volume of stolen oil in Nigeria to approximately 400,000 barrels per day or a little less than 12 million barrels between 2010 and 2012.¹²

Similar abnormalities obtain with measurement in downstream operations. The Nigerian Extractive Industries Transparency Initiative (NEITI) claims that “the measurement methods used by PPMC [Pipelines and Products Marketing Company, a subsidiary of the NNPC] and DPR [Department of Petroleum Resources, Nigeria's petroleum regulatory agency] have not been in line with international best practice

¹¹ Katsouris & Sayne, above note 8.

¹² Daniel Adugbo, “Oil Theft: Is FG Chasing Shadows?” Daily Trust, 8 October, 2013 available online: <<http://allafrica.com/stories/201310080359.html>>.

and cannot be relied upon; the systems used for recording the movement of refined products through the PPMC pipeline system were outdated paper based and subject to error.”¹³

The same uncertainty surrounding the volume of stolen oil in Nigeria is replicated in assigning a monetary value to stolen oil in Nigeria. While London’s *Financial Times* quotes Nigerian President Goodluck Jonathan as declaring that Nigeria and the oil companies jointly lose US\$1 billion monthly to oil theft,¹⁴ the International Energy Agency estimated Nigeria’s losses in this regard to be in the region of US\$7 billion annually.¹⁵

1.1. Sharp practices of Oil Companies

While it may be suggested that oil companies also suffer revenue losses due to oil theft, their officials are as often implicated as corrupt government personnel in the crimes. Take for example the story told of the Trans Niger Pipeline which is said to transport around 150,000 barrels a day of crude oil from wells across the eastern flank of the Niger Delta through the creeks and impoverished villages of Ogoniland and Ogu-Bolo to the giant oil terminal at Bonny in Rivers State of Nigeria. According to a report, it is probably the most sabotaged pipeline in the world, with “local communities accused by Shell of making over 20 attempts to tap oil from it in one year.”¹⁶ However, officials of Shell have been implicated in oil theft from the same pipeline. Corroboration of this claim comes from an unlikely source. A Catholic Priest, Father Obi who was appointed by Shell as an official observer of a spill investigation in Ogoniland found the oil theft racket so concerning that he threatened to release his own independent report because of what he deemed to be organised crime perpetuated under the banner of official authority. In an interview he granted to *The Guardian* of London, Father Obi narrated his experience thus:

From the moment I got to the scene [the next day] I was suspicious, the scene had been hurriedly deserted. Shell must have known what was going on. The military must have known. Everyone knew there was complicity. I am personally sure that Shell knew that its oil was being stolen. If the managers did not know, then those who they put in charge [of the operation] seemed to know. Why was a massive barge able to hold 10,000 barrels of oil being loaded at 2 am with crude? Why did another catch fire? Why were excavators there? Why were

¹³ Ben Agande & Emman Ovuakporie, “Reps Query N155bn Fuel Subsidy in 2012 Budget Proposal” *Vanguard*, 17 January 2012 available online: <<http://www.vanguardngr.com/2012/01/reps-query-n155bn-fuel-subsidy-in-2012-budget-proposal/>>.

¹⁴ William Wallis, “Nigeria losing \$1bn a Month to Oil Theft” *Financial Times*, 26 June 2012 available online: <<http://www.ft.com/cms/s/0/61fb070e-bf90-11e1-a476-00144feabdc0.html#axzz3lJaxLgLW>>.

¹⁵ Dayo Oketola, “Oil Thieves frustrate Efforts to curb \$7bn Revenue Loss” *The Punch*, 30 June, 2013 available online: <<http://www.punchng.com/business/oil-thieves-frustrate-efforts-to-curb-7bn-revenue-loss/>>.

¹⁶ John Vidal, “£1bn a Month: The spiraling Cost of Oil Theft in Nigeria” *The Guardian* (United Kingdom), 6 October, 2013 available online: <<http://www.theguardian.com/global-development/2013/oct/06/oil-theft-costs-nigeria>>

local observers arrested the next day, their cameras confiscated and memory cards destroyed? Were the thieves being protected by the military? Was the company (Shell) paying workers to clean up oil spilled in the process of theft they themselves were engaged in?¹⁷



Leaking oil spill from a Shell owned pipeline reported by the JTF

Overaged pipelines remain the main source of oil spills in the Niger Delta. Concerning the spill shown in this picture, the JTF reported thus: “The patrol team also reported a leakage close to a signpost marker KP-67 located around Pulokiri/Money Ground (between Adamakiri and Creek 6) general area. An assessment of the spot revealed that a brownish liquid substance was observed jetting out from an opening on the pipe line. The Commanding Officer, 146 Battalion Lt Col Lander Saraso attributed the leakage to corrosion on the pipeline and urged Shell Petroleum Development Company (SPDC) authorities in charge of the Cawthorne Channel 2 to carry out a timely evaluation of the leaking point with a view to effecting immediate repairs on the line to prevent further spill.” See Appendix 1.

The incident that Father Obi and others were investigating arose from an explosion on the Trans Niger oil pipeline as it was being repaired. Apparently as one group of engineers was removing illegal taps on the line, another group was thought to have been installing equipment to allow huge amounts of oil to be siphoned straight into large barges where it would be taken out to sea to waiting tankers bound for Europe

¹⁷ *Ibid.*

and the US.¹⁸ Many of the questions Father Obi raised above agitate both the government and oil industry. However, solutions to them are sadly not closer to being found because of the complexity of the oil theft industry and the reluctance of the political authorities to solve them appropriately.

Even when it is clearer, as in the above scenario, that oil company officials had connived in acts of sabotage, oil companies still tend to cash in on those incidents to declare sabotages on their oil facilities, followed by a declaration of *force majeure*.¹⁹ With that done, they are able to avoid responsibility for the illegalities, leaving the government and the people of the Niger Delta to bear the consequences of the often environmentally debilitating activities.

Oil company officials usually capitalize on the greed of Nigerian government officials to spread graft such that they could obtain unfair advantages over their competitors. One of such grand corruption scandals came to light about 2009 when allegations surfaced that the oil servicing company, Halliburton had paid bribes to the tune of \$180 million to secure natural gas contracts worth \$6 billion from the Nigerian Liquefied Natural Gas Company (NLNG). For their part in distributing the bribes a Halliburton staff, Albert Stanley and two accomplices Jeffrey Tesler, a British lawyer, and Wojciech Chodan, a salesman for KBR (British subsidiary of Halliburton) were indicted by the United States Justice Department.

Former United States Vice President, Dick Cheney who was head of Halliburton during periods of the crime, evaded the investigations in the United State into transactions in four continents, spanning over 10 years. The investigations involved five companies in Europe, the United States, Japan and Nigeria, and yielded more than US\$1.7 billion in fines, forfeitures and other sanctions by the United States government under the Foreign Corrupt Practices Act of 1977.²⁰ Similarly, the United States Securities and Exchange Commission prosecuted two former Noble Oil executives on the basis of the same Act for the offense of bribing Nigerian Customs officials to process false paperwork purporting to show the export and re-import of oil rigs, when in fact the rigs were never moved from their location.²¹

A different case developed from a probe by the British government into an allegation that a US\$1.3 billion Nigerian offshore oil bloc deal for OPL 245, involving Royal Dutch Shell and Italy's Eni SPA, had involved the laundering of cash payments to a company linked to Dan Etete, who was Nigeria's Minister of Petroleum from 1995 to 1998,

¹⁸ *Ibid.*

¹⁹ Katsouris & Sayne, above note 8.

²⁰ John Rudolf, "Albert Stanley, Former Halliburton Exec, Sentenced in Bribery Scheme" *Huffington Post*, 24 February, 2012 available online: <http://www.huffingtonpost.com/2012/02/24/albert-stanley-halliburton-kbr-bribery-sentence_n_1299760.html>.

²¹ Richard Cassin, "SEC Case against Noble Execs survives Motion to Dismiss" *The FCPA Blog*, 12 December, 2012 available online: <<http://www.fcpablog.com/blog/2012/12/12/sec-case-against-noble-execs-survives-motion-to-dismiss.html>>.

during the tyrannical rule of General Sani Abacha. Etete was convicted on money-laundering charges by a court in France in 2007.²² In October 2010, the Royal Dutch Shell PLC paid a disgorgement of US\$18.15 million and a US\$30 million criminal fine after being found culpable by the United States Securities and Exchange Commission for conniving with Nigerian government officials to contravene the Foreign Corrupt Practices Act of 1977. In that case, Shell was found guilty of specifically using a customs broker to pay bribes to Nigerian government officials in order to be granted preferential treatment in relation to a project in Nigeria.²³

We could add to this list of sleazy cases that of three officials of another United States oil services company known as Noble Corp. whose activities seemed anything but noble.²⁴ The Securities and Exchange Commission in 2012 charged the company's former chief executive, Mark Jackson, the then director of its Nigerian subsidiary, James Ruehlen, and its former head of internal audit, Thomas O'Rourke for participating in a bribery scheme to obtain permits for oil rigs in Nigeria. O'Rourke neither admitted nor denied the charges but offered to pay a penalty of US\$35,000. Before this case, the same company had paid US\$8 million to resolve related Foreign Corrupt Practices Act civil and criminal charges in 2010.

What this scenario depicts is that while these acts of bribery and money laundering are carried out in Nigeria by officials of oil companies conducting business in the country, the perpetrators are never called to account within Nigeria. The lack of accountability creates and perpetuates an atmosphere of impunity where rather than abate, corruption expands at an alarming rate, sucking the very life out of the country's economy and her development prospects. By enabling, sustaining, perpetuating this level of corruption, the government and oil companies are complicit in increasing the number of Nigerians living in destitution, which according to the World Bank currently stands at 100 million.²⁵ But that said, the ultimate responsibility in this regard is owed by the government which has substantial law enforcement resources at its disposal and which it could mobilize to ensure that corporations that flout the laws are promptly taken to justice.

²² John Daly, "British Police Investigating \$1.3 Billion Shell, ENI Nigerian Oil Corruption" *Oil Price*, 29 July, 2013 available online <<http://oilprice.com/Energy/General/British-Police-Investigating-1.3-Billion-Shell-ENI-Nigerian-Oil-Bloc-Corruptio.html>>.

²³ Samuel Rubinfeld & Joseph Palazzolo "Panalpina Settlements Announced, with \$236.5 Million in Penalties" *The Wall Street Journal*, 4 November, 2010 available online: <<http://royaldutchshellplc.com/2010/11/06/panalpina-settlements-announced-with-236-5-million-in-penalties/>>.

²⁴ Aruna Viswanatha, "U.S. charges former, current Noble Execs over Bribes" *Reuters*, 24 February, 2012 available online: <<http://fr.reuters.com/article/idUKL2E8DOBPF20120224?pageNumber=2&virtualBrandChannel=0>>.

²⁵ Everest Amaefule, "NNPC took Illegal N1.4tn Fuel Subsidy –NEITI" *The Punch*, 1 February, 2013 available online: <<http://www.punchng.com/news/nnpc-took-illegal-n1-4tn-fuel-subsidy-neiti/>>.

1.2. A Retrograde Triangle: NNPC, Government Bureaucracy, Military Task Force

While theft of Nigeria's oil and gas resources begin before remittances are made to government, the leakages continue unabated even with the funds paid to the state. The United Nations Office on Drugs and Crime (UNODC) estimates that close to US\$400 billion has been stolen from Nigeria's treasury by its officials between 1960 and 1999.²⁶ But this is minuscule when compared to Standard Bank's claim that despite there being no official figures their estimate is that Nigeria has made US\$6 trillion in oil revenue over the last 50 years even where 70 percent of Nigerians live below the poverty line.²⁷

In an irony of significant proportion, the Nigerian National Petroleum Corporation (NNPC) which represents the interests of the Nigerian government in the oil sector is often at the centre of various allegations of corruption.²⁸ This has been ongoing for years and the corporation has done very little to dispel claims that it is a theatre of unbridled graft and impunity. In late 2013 for example, the Nigerian House of Representatives ordered an investigation into allegations by a Swiss NGO, Berne Declaration that the NNPC had connived with Swiss oil trading companies to defraud Nigeria of billions of dollars. This shady transaction involved Nigerian crude oil being sold to the Swiss traders at below the going market value.²⁹

In February 2014, during a session of the Committee that the House established to conduct this enquiry, the NEITI also alleged that the NNPC had failed to disclose US\$22.8bn in its alternative funding arrangements with its Joint Venture Partners between 2009 and 2011. Apart from selling Nigerian crude at below market rate, the NNPC was also accused of using foreign exchange rates different from that the Central Bank of Nigeria in its transactions.³⁰ But more than the acts of corruption, it is the weakness of government agencies charged with stamping this vice out of the political and economic system that rankle the most. At a session of the Nigerian Senate where

²⁶ United Nations Office on Drugs and Crime, "Nigeria's Corruption Busters" 20 November, 2005 available online: <<http://www.unodc.org/unodc/en/frontpage/nigerias-corruption-busters.html>>.

²⁷ Louise Greenwood, "Are Africa's commodities an economic blessing?" *British Broadcasting Corporation*, 22 July, 2010 available online: <<http://www.bbc.com/news/business-10710488>>.

²⁸ Joe Brock, "RPT-Nigeria's NNPC hasn't accounted for \$50 Bln in oil sales – Cbank" *Reuters*, 11 December, 2013 available online: <<http://www.reuters.com/article/2013/12/11/nigeria-oil-fraud-idUSL6N0JQ16620131211>>; Bassey Udo, "Missing \$20 Billion: Nigerian Government Approves Forensic Audit of Corrupt NNPC" *Premium Times*, 13 March 2014 available online: <<https://www.premiumtimesng.com/business/156652-missing-20billion-nigerian-government-approves-forensic-audit-corrupt-nnpc.html>>; David Kashi, "Corruption in Nigeria Leaves 76% of Crude Oil Revenue Unaccounted for, says Central Bank Governor" *International Business Times*, 11 December, 2013 available online: <<http://www.ibtimes.com/corruption-nigeria-leaves-76-crude-oil-revenue-unaccounted-says-central-bank-governor-1504848>>.

²⁹ John Ameh "Reps Probe \$6.8bn NNPC, Swissoil Deals" *The Punch*, 13 November, 2013 available online: <[http://newsng.com/story-detail.php?title=Reps-probe-\\$6.8bn-NNPC,-Swiss-oil-deals&story=2944df2906](http://newsng.com/story-detail.php?title=Reps-probe-$6.8bn-NNPC,-Swiss-oil-deals&story=2944df2906)>.

³⁰ John Ameh, "NNPC failed to disclose \$22.8bn JV Deal – NEITI" *The Punch*, 24 February, 2014 available online: <<http://www.punchng.com/business/business-economy/nnpc-failed-to-disclose-22-8bn-jv-deal-neiti/>>.

they had to defend their budget proposals for 2015, both the Independent Corrupt Practices Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC) claimed that they could not probe allegations of corruption at the NNPC because of the sophisticated and complicated nature of the financial records. Both agencies claimed not to possess the complex skills necessary to undertake meaningful evaluation of the corporation's accounts.³¹

Since its establishment in April 1977, there have been abundant incentives for corruption to grow malignant roots in the state owned oil corporation and regulator. The recurring allegations of large scale financial embezzlement and oil theft occurring under the noses of NNPC officials have necessitated calls for remedial measures, including suggestions for the unbundling of the corporation into more manageable subsidiaries.³² It was probably on account of these calls and the result of years of such repeated high profile financial embezzlement in the NNPC that convinced the Nigerian government under Goodluck Jonathan to order a forensic audit of the NNPC accounts from 2007 to 2009 by the accounting firm of KPMG. When the firm published its report in 2011, it detailed NNPC's numerous unethical business practices including the violation of laid down regulations, illegal deductions of funds belonging to the 36 states in Nigeria's federal structure, and failure to account for billions of dollars in revenue that should have gone to the Nigerian federation account.³³

Fuel Scarcity and Subsidy Fraud

But as Nigerians grappled with the figures in the NNPC audit, the government, rather than address the fraud within the oil industry, increased the pump price of petrol from ₦65 per litre to ₦141 per litre on 1 January 2012. It did so by removing the so-called subsidy which the government claimed was being paid to bridge the gap between domestic prices for petroleum products (especially petrol and kerosene) and international market prices. Though Nigeria is a big exporter of crude oil, it lacks effective domestic refining capacity and therefore relies on importation of refined products to meet local needs. One of the major reasons for this lack of capacity, it is not surprising to note, is corruption. While the country has built local refineries, they have not been properly maintained. Funds budgeted for their maintenance almost always end up in the private pockets of foreign and local merchants enabled by corrupt public officials.

³¹ Celestine Okafor, "Why we can't Probe alleged Corruption in NNPC – EFCC, ICPC" *Daily Independent*, 7 November, 2014 available online: <<http://dailyindependentnig.com/2014/02/why-we-cant-probe-alleged-corruption-in-nnpc-efcc-icpc/>>.

³² Ben Agande, "C'ttee recommends unbundling of NNPC, Deregulation" *Vanguard*, 3 November, 2012 available online: <<http://www.vanguardngr.com/2012/11/cttee-recommends-unbundling-of-nnpc-deregulation/>>; Tunde Dodondawa, "NNPC Needs Overhauling" *Legal Oil*, 1 January, 2013 available online: <<http://www.legaloil.com/NewsItem.asp?DocumentIDX=1357582831&Category=news>>.

³³ Musikilu Mojeed, "Monumental Oil Subsidy Fraud and Corruption at the NNPC-The Damning KPMG Report" *Sahara Reporters*, 9 December, 2011 available online: <<http://saharareporters.com/2011/12/09/monumental-oil-subsidy-fraud-and-corruption-nnpc-damning-kpmg-report-premium-times>>.



With Nigerian authorities and major oil marketing companies unable to guarantee stable supply of electricity and consumer fuels, people in parts of the country rely on the informal market for fuel that are sometimes produced by illegal refineries. Pictures by Ed Kashi

Expectedly, once the price increases mentioned above were announced and they took effect, Nigerians, led by the organised labour movement poured into the streets in protest. They demanded that the government reverse the pump price increase. The government succumbed to the pressures even though the reversal was not to the extent that public demanded. But the government also followed up this action with a promise to set up a committee to probe the existence and level of fuel subsidy payments in Nigeria.³⁴ The probe became necessary owing to disagreements over whether or not government was subsidizing the prices of petroleum products as claimed or in reality subsidizing the corruption and sleaze in the industry because of its failure to apply the law to those companies and individuals fomenting these vices. To some Nigerians, selling petroleum products that are produced in the country at international rates was unacceptable especially given that domestic capacity to produce these products and obviate importation had been paralysed by government inefficiency and graft.

These arguments notwithstanding, the foundation for the fuel subsidy investigation, which eventually evolved into several probes, had been laid. One of the probe panels was established by the executive arm of government and was named the Petroleum Revenue Special Task Force. It was headed by Nuhu Ribadu, the former Chairperson of the EFCC). Another investigative panel was an *ad-hoc* Committee established by the Nigerian House of Representatives. It was headed by Farouk Lawan and had a mandate to verify and determine the actual subsidy requirements and monitor the subsidy regime of the government.³⁵

³⁴ *Premium Times* Editorial, "KPMG Report: 20 Nigerians EFCC should Interrogate" 1 February, 2012 available online: <<http://www.premiumtimesng.com/news/3636-kpmg-report-20-nigeriana-efcc-should-interrogate.html>>.

³⁵ *Punch* Editorial Board, "Upholding the Oil Subsidy Report" *The Punch*, 19 June, 2012 available online: <<http://www.punchng.com/editorial/upholding-the-oil-subsidy-report/>> ; Agency Reporter. (2012).

These two probes, in particular, when combined with the KPMG audit, produced almost identical findings, which seemed to corroborate the culpability of the NNPC and its subsidiaries in the stealing of oil revenues. Some of the major findings of these probes are the following, among others:³⁶

- Arbitrary estimation of subsidy claims (paying for no products or paying more for less value). For example while the KPMG report showed poor accounting and record-keeping to cover up the over-deduction of funds in subsidy claims to the tune of ₦28.5 billion, the Ribadu report revealed a monthly loss of up to ₦75 billion from these leakages. As well, the Deputy Comptroller-General of the Nigerian Customs Service, Mr. Julius Ndubuisi Nwankwo declared before the House of Representatives inquiry that a large proportion of the crude oil importation done by the NNPC lacked proper documentation to back up the transactions. Mr. Nwankwo also told the inquiry that the Federal Ministry of Finance wrote to the Customs Service warning against asking for those documents as this could precipitate a crisis. Whenever the Customs Service tried to enforce the rules, they were politely requested to stay their action to not hinder the free flow of petroleum products, especially those imported by the NNPC.
- There were also many instances of over-deduction of funds in subsidy claims as well as arbitrary invoicing often for petroleum products not supplied by marketers. The KPMG audit unraveled brazen cases of arbitrary estimation of subsidy claims and over-deduction of funds from proceeds of domestic crude oil sales. For example, while the Petroleum Products Pricing and Regulatory Agency (PPPRA) approved a subsidy of ₦23.8 billion for September 2009, the actual amount deducted from domestic crude oil sales proceeds for this purpose was ₦25 billion. As well the PPPRA approved a subsidy payment of ₦21.3 billion for November of the same year while NNPC claimed ₦35 billion. When adjusted for the actual amount approved by PPPRA, NNPC should have returned ₦14.9 billion to the Nigeria Federation Account. In reality, it only refunded ₦4.2 billion. The KPMG report also observed that the NNPC claimed to have made subsidy payments of ₦11.8 billion for products that never got anywhere near to the consumers.
- Use of foreign exchange rates far lower than those published by the Central Bank of Nigeria (CBN) in remitting to the Federation Account, thus, cheating the three levels of government (federal, state, and local). There were also unauthorised changes in the vital details of the foreign bank accounts that the NNPC used for the statutory receipt of Nigeria's crude oil and gas sales proceeds. The KPMG report noted an anomaly in which the NNPC invoiced in dollars for domestic crude oil allocations, and was therefore lawfully expected to remit the equivalent naira value to the Federation Account. However, NNPC

³⁶*Premium Times* Editorial, above note 39.

used exchange rates far lower than those published by the CBN in remitting to the Federation Account. By this means, the NNPC cheated the three levels of government in Nigeria (that is, federal, state, and local) in the total sum of ₦85.2 billion from 2007 to 2009.

- The reports showed a near total lack of transparency and accountability in the procedures for managing and reporting Nigeria's crude oil and gas revenues. This left a scenario in which there were discrepancies and inconsistencies in the functions of fundamental parties responsible for the assessment, collection, and reporting of the various revenue streams. In this regard, the Ribadu report disclosed that \$183 million (about ₦28.73 billion) paid by oil companies as signature bonuses for seven discretionary oil licenses allocated to them by successive Ministers of Petroleum Resources starting from the year 2008 to the time of the investigations could not be accounted for and had remained missing.
- Non-attention to cost-effective procedures, including abandoning its own storage facilities and instead leasing those facilities from third parties at very high and totally avoidable costs. To give an example, a former Executive Secretary of the Petroleum Products Pricing and Regulatory Agency (PPPRA), Mr. Reginald Stanley declared before the House of Representatives Ad-hoc Committee inquiry that while Nigeria's domestic gasoline consumption requirement was 35 million litres per day, the Government of Nigeria through the NNPC paid for 59 million litres per day. This left an excess daily volume of 24 million litres. Mr. Stanley told the Committee that the PPPRA could not account for this excess volume given the absence of storage tanks with the installed capacity in Nigeria to accommodate the about 8.76 billion litres that accumulated from this over-importation. However, the Chairman of the House probe, Mr. Lawan Farouk claimed that this excess could have been smuggled out of Nigeria without the proceeds ever being channeled to the Federation account.

The lack of coordination and transparency involving the work of government agencies is part of the conscious scheme by officials to perpetrate fraud. In the case of the subsidy scheme, the House of Representatives' Committee announced the following finding:

And contrary to the official figure of subsidy payment of ₦1.3 Trillion, the committee noted that 'the Accountant General of the Federation put a figure of ₦1.6 Trillion, the CBN ₦1.7 Trillion, while the Committee established subsidy payment of ₦2, 587.087 Trillion as at 31st December, 2011 amounting to more than 900 per cent over the appropriated sum of ₦245 Billion.³⁷

³⁷ Agande & Ovuakporie, above note 18.

1.3. “I don Suffer for this thing: Don’t worry; we’ll sort it out”

These probes, or at least some of them, were also not very far removed from the corrupt context in which they were conducted. The House of Representatives ad-hoc Committee process in particular exposed the complex mix of intrigues associated with legislative oversight and the struggle to end or reduce corruption in the affairs of government agencies. It transpired that in a typical case of the hunter ending up the hunted, the House Committee that was ostensibly established to investigate alleged acts of corruption in the Nigerian oil industry became itself mired in its stench. Not only was there a claim that bribe was given to its members in the course of the Committee’s work, the claim had the ingredients of credibility and substantiality, complete with an alleged video showing bribe being offered and being received.³⁸

As it transpired, Femi Otedola, a top executive of one of the companies being investigated by the Committee alleged that the members had requested a US\$3 Million bribe and actually received a down payment of US\$500,000 (some reports said US\$620,000)³⁹ through the probe Committee chairman, Farouk Lawan. The bribe was intended to make the Committee exclude from the probe process the company whose Executive paid the bribe. Mr. Lawan did not deny receiving the money but claimed he did so in order to expose blackmail and that he had informed the Committee and anti-corruption agency, EFCC about it. But the Committee’s deputy Chairman claimed not to have received any such report. He also said he was not given any of the bribe money.⁴⁰ In the video, a person who looked very much like Femi Otedola of Zenon Oil could be seen telling another looking as well like Lawan how he had suffered in the entire oil subsidy mess. Lawan could also be heard saying that they (House Committee members) will sort it out.

³⁸ See “Leaked Video of Farouk Lawan collecting \$3m Bribe from Femi Otedola” available online: <<https://www.youtube.com/watch?v=RcWaLwOEXUQ>>.

³⁹ See “\$3 Million Bribery Scandal: Reps Remove Farouk Lawan, Emenalo” Vanguard 15 June 2012, available online: <<http://www.vanguardngr.com/2012/06/3m-bribery-scandal-reps-removes-lawan-emenalo/>>.

⁴⁰ See “Nigerian Farouk Lawan Charged over \$3 Million Fuel Scam ‘Bribe’” British Broadcasting Corporation, 1 February 2013 available online: <<http://www.bbc.com/news/world-africa-21294154>>.

2. Crude Business: Oil Theft and Illegal Bunkering in Nigeria

As one of the ways through which the stealing of Nigeria's petroleum resources is carried out, Illegal oil bunkering has become a feature of the Nigerian oil industry. Illegal bunkering involves the extraction, lifting or siphoning of crude oil without a valid licence issued by the Nigerian federal government. Such a license is required to engage in legitimate crude oil trade in the country. In this part of the report, we are providing a close-up insight on the actors and procedures of illegal oil bunkering. This will offer the context needed to understand the phenomenon and the boom in artisanal refining that has arisen from it.

In most cases illegal crude oil bunkering is done by tapping directly into oil-bearing pipelines at a site removed from production facilities, and stealing crude oil or other products such as natural gas condensates. The stolen crude oil is then sold illegally in the international market. As would be seen in the part of this report dealing with artisanal refining, stolen oil could also be refined illegally in the local environment where the illegal bunkering took place. Needless to say, illegal oil theft in this manner has contributed largely to the environmental pollution prevalent in some communities in the Niger Delta region of Nigeria due to the oil spillage which occurs in the process of siphoning the oil, and during the refining process.

The crime of illegal oil bunkering in Nigeria predates artisanal refining by decades. The latter is a more recent phenomenon apparently precipitated in parts by the huge local demand for refined petroleum products and the sporadic scarcity of the same across the country. Illegal oil bunkering in Nigeria, on the other hand, while not as old as the commencement of commercial crude oil production in the country, can be traced as far back as the 1970s during military rule, according to popular accounts.

The theft of crude oil has been carried out over the years by local criminals, sophisticated top brass of the Nigerian military, especially those of the army and navy. These individuals worked with international criminal groups.⁴¹ In spite of the clear stringent penalties stipulated in the laws for engaging in illegal oil bunkering, this illicit trade still blossomed across the Niger Delta region. The persistence of the criminal practice owes to a constellation of factors. In the first place, there is extreme laxity in the enforcement of relevant laws against culprits. This is due in part to the unequal and often discriminatory nature of law enforcement where the rich and major political players (as well as military top brass) are often excluded from legal sanctions. Invariably, most of those who engage in illegal oil theft are connected to these big political players and therefore generally shielded from punishment for their crimes.

⁴¹Chika Amanze-Nwachukwu, "Chief of Naval Staff: Major Oil Theft Occurs at Terminals" *This Day Live*, 16 August 2013 available online: <<http://www.thisdaylive.com/articles/chief-of-naval-staff-major-oil-theft-occurs-at-terminals/156441/>>.

Some community members in oil producing areas also engage in the act which they see as taking what belongs to them.⁴² They allege government indifference to the loss of their livelihoods resulting from environmental pollution of farmlands and rivers caused by the oil prospecting and production activities of the oil companies.⁴³

Nigeria's *Thisday* newspaper reported in 2013 that the bulk of crude oil theft takes place at the terminals operated by international oil companies (IOCs), where lifters cart away crude oil in excess of their allocations. This story was corroborated by Nigeria's Chief of Naval Staff who maintained that this level of theft is beyond the Nigerian Navy because they had no access to the metres being used at the export terminals.⁴⁴ The president of the Ijaw People's Development Initiative, IPDI, Warri, Comrade Austin Ozobo corroborated the stories of collusion between cartels in oil companies and military personnel to steal crude oil. He further claimed that:

Military men see the business as a money-making venture. They lobby to be posted to the Niger-Delta area because they know whoever serves in the creeks of the region must buy expensive cars and build big houses. Oil cartels lobby military men in oil installations to enable them load raw crude from points and to refine. Sometimes, they pay between ₦100,000 and ₦200,000 for loading per boat and local refinery operators settle military men in their operational areas with between one and two million naira per week. Most of the military men, government officials and oil company workers have big vessels, Cotonou boats, barges, local refinery ports and illegal points allocated to individuals to steal oil and make huge amounts of money. "The military men are selective in their operations. They only go after people who refuse to settle them."⁴⁵

Also, the Nigerian military while being implicated in condoning oil theft for lucre, as in the above and previous assertions, deflects these criticisms by relentlessly accusing oil companies engaging in massive oil theft. It is therefore in this context that General Tukur Yusuf Buratai, Commander of the 2nd Brigade, Nigeria Army Brigade Headquarters in Port-Harcourt corroborates the earlier claim credited to the former Chief of Naval Staff that the bulk of crude oil stolen in Nigeria happens at the export terminals.⁴⁶ Buratai made an even more astonishing claim. According to him, not only are the major stakeholders in the oil industry neck-deep in the theft of oil in the Niger

⁴² See Oboreh Snapps & Donald Hamilton, "Youth Restiveness and Industrial Disruption in the Niger Delta" (2011) 18 *American Review of Political Economy* 18; Jeremiah O Arowosegbe, "Violence and National Development in Nigeria: The Political Economy of Youth Restiveness in the Niger Delta" (2009) 36 *Review of African Political Economy* 575.

⁴³ PB Eregha & IR Irughe, "Oil-induced Environmental Degradation in the Nigeria's Niger Delta: The Multiplier Effects" (2009) 11 *Journal of Sustainable Development in Africa* 160.

⁴⁴ See Amanze-Nwachukwu above note 41.

⁴⁵ Amaize, Oyadongha & Onoyume, above note 45.

⁴⁶ Amanze-Nwachukwu, above note 41.

Delta, the military command he headed discovered over 56 illegal bunkering sites belonging to an oil company, in which the NNPC was a major shareholder.⁴⁷ “Unfortunately as I talk to you, I have not been told that even one of the people involved has been picked” Buratai added. He then wondered, “Where will you get the solution to oil bunkering?”

2.1. The Illegal Bunkering and Oil Theft Process

While many in Nigeria and elsewhere are aware of what is commonly referred to as illegal oil bunkering, not many have any knowledge at all as to how this criminal activity is actually carried out. But in general terms, there are three main ways through which crude oil is illegally stolen. These are “topping up”, tapping and well-head malpractices. But by far the most prevalent is topping up, which costs the country billions of dollars in lost revenue on a yearly basis.⁴⁸

2.1.1. “Topping Up”

This has been described as the largest scale and most economically damaging of all the ways through which oil theft is carried out.⁴⁹ This is the process by which international oil tankers legitimately connected to Nigeria’s export terminals take both legitimate deliveries and a large volume of illegal oil at the same time. As understood, this illegality cannot possibly happen without the facilitation of senior management and staff of the NNPC and major transnational corporations that operate the export terminals. Equally instructive is the fact that the export terminals are devoid of formal metering systems that can be tracked by law enforcement agents. That is why even the Nigerian government may not know exactly how much crude oil and natural gas is produced or exported through the terminals, apart from the figures supplied by the companies themselves.

2.1.2. Tapping

This involves puncturing oil pipelines and illegally tapping and pumping the product into barges and freight canoes (otherwise known as “Cotonou Boats”). It is also through tapping that operators of illegal artisanal refineries secure crude oil for their business. Skilled welders simply tap from the established oil companies at the point of transporting the crude from one point to another via pipelines and flow lines. The installation of pipes is done with great dexterity and mostly at night. Welders involved in such operations are often previously employees to contractors for the oil companies who become formally unemployed.

⁴⁷See “NNPC, IOCs not doing enough to Curb Oil Theft – JTF” Vanguard, 29 May 2012 available online: <<http://www.sweetcrudereports.com/2012/05/29/nnpc-iocs-not-doing-enough-to-curb-oil-theft-jtf/>>.

⁴⁸ Daniel Aduabo, “Nigeria: Oil Theft - Is FG Chasing Shadows?” *Daily Trust*, 8 October 2013 available online: <<http://allafrica.com/stories/201310080359.html>>.

⁴⁹ See Segun Osuntokun & Nick Jones, “Nigeria Oil Theft: The Crude Cost” Expert Legal Insights, 31 January 2014 available online: <<http://www.blplaw.com/expert-legal-insights/articles/nigeria-oil-theft-the-crude-cost/>>.

After tapping, the crude oil is then pumped to distributors, riding in Cotonou Boats, who are responsible for transporting the stolen crude from the point of tapping, through the creeks. Thereafter, the distributors supply a small quantity to illegal artisanal refining camps scattered around the creeks of the Niger Delta. Not surprisingly, the bulk of the stolen crude, which sometimes could be up to 75 percent is then transported to oil tankers waiting off the coast for international markets.⁵⁰

2.1.3. Compromised Oil Wellheads

Apart from tapping oil from exposed pipelines, oil thieves can also do so by breaking into wellheads, installing their own pumps and using hoses to load oil on to barges traveling through the Niger Delta region. From there, the oil is transferred to small tankers stationed at the Atlantic coast. Once there is enough oil in the tankers, they are transferred, usually under the cover of darkness, on to international class “mother ships” waiting further offshore, which can then carry the stolen crude oil to refineries or storage outside Nigeria.⁵¹ For technical clarification, the wellhead is the topmost point of a gas or oil well. It provides pressure sealing as well as room for casing and tubing related to the well, including permanent and temporary equipment introduced into the well. When a wellbore is completed, a pump can be attached to the wellhead or it may be fitted with a device known as a Christmas tree. The Christmas tree holds valves which are used to control pressure inside the wellbore and to regulate the flow of fluids from the well. This device can also be used as a point of entry to inject things into the well.⁵²



Wellhead

⁵⁰ *Ibid.*

⁵¹ See Joe Brock, “Nigeria’s stolen Oil is sold and Laundered Abroad: Report” *Reuters* 19 September 2013 available online: <<http://www.reuters.com/article/2013/09/19/us-nigeria-oil-theft-idUSBRE98I13P20130919>>.

⁵² See “What is a Wellhead?” available online: <<http://www.wisegeek.com/what-is-a-wellhead.htm>>.

2.2. If there is Demand, there is Supply

One of the major reasons for theft of crude oil persists both in Nigeria or elsewhere is the fact of a ready market for the product.⁵³ In the case of Nigeria, some estimates suggest that between 75-90 per cent of crude oil stolen from either the export terminals or through illegal pipeline taps are exported abroad as a result of the significantly high cost of a barrel of oil in the international market and the high quality of the Bonny light produced in the Niger-Delta. The export rationale for crude oil theft has been corroborated by a Chatham House Report:⁵⁴

One industry consultant with some knowledge of the trade commented: ‘Oil theft has been a feature of the industry in Nigeria for many years, but the sharp increase since the early 2000s coincides not only with the restoration of civilian rule but perhaps more significantly with a huge increase in oil prices, vastly increasing the potential profits and attraction of bunkering. Oil theft on this scale would not work if oil prices were \$20–25 a barrel.’ According to available data from NNPC and some IOCs, stealing of oil onshore dipped when oil prices fell sharply in mid-2008.

If there was no market for stolen crude oil internationally, the illicit trade would have difficulty sustaining itself on local artisanal refining alone. Besides, illegal exportation is also more attractive and preferred because it dispenses with the dirty and highly volatile process of artisanal refining. By some accounts, the local trade is less efficient as primitive refining technology yields smaller amounts of lower-quality products and creates more waste and spills than export theft. In addition, there is visible lack of artisanal refineries within the Niger-Delta with enough capacity to absorb the large volume of stolen crude as well as the fact that market does not exist domestically for large quantity of unrefined crude. There is also a noticeable reluctance on the part of standard private refineries within the shores of Nigeria to buy the stolen crude. Invariably, there is a lot of focus on the international dimension because the reward from illegal export obviously exceeds what could be derived from selling domestically.

It would seem that the international market is less concerned about how the crude being traded is obtained than that it could be cheaper to buy stolen products compared to those that pass legitimately through the market. For example, Islamic Caliphate militants otherwise known as ISIS operating in Iraq and Syria are able to realize about One million British pounds per day by selling stolen crude in the international market.⁵⁵ And it is unlikely that some of the Western states already

⁵³ See Ben Naanen & Patrick Tolani, *Private Gain, Public Disaster: Social Context of Illegal Oil Bunkering and Artisanal Refining in the Niger Delta* (Port Harcourt: Niger Delta and Environmental Relief Foundation, 2014) at 52.

⁵⁴ Katsouris & Aaron, above note 8.

⁵⁵ See Maria Khan, “Iraq Crisis: ISIS sells stolen Crude Oil Raising £1 million per Day” *International Business Times* 23 August 2014 available online: <<http://www.ibtimes.co.uk/iraq-crisis-isis-sells-stolen-crude-oil-raising-over-1-million-per-day-1462389>>

ranged against the group also buy from them the crude oil they are aware is stolen to fund the Caliphate's militancy. This provides sufficient indication of the cold calculations that makes combating crude oil theft a challenge of epic proportions.

Until there is a disincentive to oil theft at least from the standpoint of a lack of market for stolen crude, there most probably would not be an end to the menace. For this reason, there have been calls for an international regulatory regime much in the fashion of the "Kimberly Process" instituted for plundered gold.⁵⁶ Through this process, also known as finger printing, it is argued, would help to identify the unique characteristics and composition of crude oil from a particular source. If applied, this process will be sensitive enough to identify not only oil emanating from Nigeria but also the specific oils fields and wells from which they are derived. A former managing director of SPDC, Ron van den Berg, told journalists in 2003 that certification of Nigeria's crude through fingerprinting would enable the government to block the market for stolen crude, thereby serving as a disincentive to smuggling syndicates. If the origins of a cargo of oil are identified, the argument goes, it will be possible to determine if it is legal or stolen.⁵⁷

2.3. When Government Plays Politics with Crime

There is little doubt that the discontent in the Nigerian Delta is fuelled in part by these socio-economic realities. The amount of resources taken out of the region upon which hang Nigeria's budgetary fortunes has not been balanced by any clear agenda to improve the well-being of the oil communities. While there are sporadic, ad hoc efforts to address these issues, the lack of consistency and inter-agency collaboration makes those efforts often almost irrelevant. The idleness of many in Niger Delta communities and their frustration as a result could lead some into the morbid embrace of artisanal refining barons and illicit oil bunkering moguls who not only employ them, but also sometimes contribute to 'community development' efforts through the provision of water boreholes, sponsoring sports and recreational activities etc. However, these projects are generally substandard and fated to abandonment within the shortest possible time-frame. The big shots in the artisanal refining business also inject both social and economic life into ghostly host communities by patronising drinking parlours and other activities that may make the neglected people of host communities appear comfortable amid the attendant devastation of artisanal refining and illicit oil bunkering.

Evidence from our investigations show that the local barons of illegal artisanal refineries are very connected with the communal as well as state government

⁵⁶ See Karen Woody, "Diamonds on the Souls of her Shoes: The Kimberly Process and the Morality Exception to WTO Restrictions" (2006-2007) 22 Connecticut Journal of International Law 335; See also Abubakar A. Nuhu-Koko, "Stolen Crude Oil versus Conflict (Blood) Diamonds: The Case of Comparing Apples and Oranges?" available online: <<http://www.gamji.com/article8000/NEWS8120.htm>>.

⁵⁷ See Asuni, above note 2.

leaderships. In Bayelsa and Delta States, some of them are leading officials of local branches of the ruling People's Democratic Party (PDP) with close ties to powerful politicians. Others are elected leaders of community youth bodies that have become powerful organs of communal leadership. Most of them are known by community members as being linked with armed gangs that sometimes work directly for them, as well as for politicians during electioneering contests.

We thus see that members of the host oil communities who should lead efforts of limit these ills actually actively participate in both illegal bunkering and artisanal oil refining. Some actually regard both as just reparation for the decades of theft of their oil by the government and greedy oil companies. The fact that the law cannot be effectively enforced against perpetrators only attracts newer converts by the day. They are also encouraged by the experience of armed insurgents in the region who did enough to attract government attention so much so that many were granted amnesty from legal accountability and rehabilitated through skills training. Others have given up insurgency to become security consultants to both government and oil companies. These developments have come at very heavy costs to stability in the region.

The non-inclusion of some 'repentant' militants into the Federal Government Amnesty Programme constitutes a huge threat for renewed violence in the Niger-Delta. The limited budget of rehabilitating well over 20,000 ex-militants under the government scheme meant that the excluded are roaming the region in anger. As well, the inability of the government to anticipate this development when the amnesty programme was established on June 25, 2009 is emblematic of its ineptitude in dealing with such vexed issues through a comprehensive policy framework.

This by no means is a malaise peculiar to the oil industry sector. Inept and unstructured policy and weak legal enforcement procedures leading to social ills are in themselves persistent Nigerian challenges. For example, just like in the oil sector, illegal mining markets have been reported for non-petroleum minerals found in Mabu, Kebbi state and on the Mambilla Plateau in northern Nigeria. At the border between Nigeria and Cameroon, illegal mining activities are frequently patronised by local operators and their foreign counterparts. The extent of what is experienced in those places may not be entirely divorced from poor regulatory frameworks, low level of social development, and pervasive unemployment. Like the scenario in the Niger Delta, these illegal activities contribute to health dangers, environmental degradation and huge revenue losses to the country.

2.4. Oil Communities Stare at the Devil and Deep Blue Sea

Given how widespread both illegal bunkering and artisanal refining are in the oil communities of Nigeria's Niger Delta, it might look counterintuitive to ask if these communities are doing anything on their parts to minimize them. The impression given by stories of the level of crime that goes on in these communities is that all their members are participants in the illicit activities. But this is not the case. Members of these communities do make efforts to curb illegal oil bunkering and artisanal refining to reduce their adverse effects on the environment. However, their efforts have been fraught with challenges. Criminal cases reported by communities to law enforcement agents often suffer prosecutorial collapse. Prosecutors are usually as corrupt as others in the law enforcement chain and therefore unable to effectively conduct prosecutions. A retired federal civil servant from the Akuku Toru LGA in Rivers State, Mr. Tariah, corroborated this point:

“The most worrisome part of the sad experience is the threat of insecurity facing local people. On the one hand, the operators of the illegal activities kept threatening the local people with armed attack. On the other hand, they issue threats of setting the spilled crude on fire which may result in burning down human habited areas and also cause further economic destruction to remaining sources of livelihood. Besides, the possible collaboration between security men and oil thieves makes it difficult for locals to risk reporting illegal activities to the authorities. The operators could not pass the security check points with their products without being detected, and yet they are in business. Things are so bad the local people now see themselves in a situation where they are helpless.”

Besides, there are personal integrity and security consequences for any effort to conduct firm and meaningful prosecutions. Armed gangs operating artisanal refining camps become threats to prosecutors and witnesses who may not be adequately protected by state law enforcement agents. Sponsors/backers of artisanal refining easily bribe prosecutors to get suspects released without charge or trial. Security agents collaborate with oil thieves and artisanal refiners to harass law abiding members of these communities. When prosecutions are reluctantly commenced, the process hardly gets the full support of oil companies whose cooperation through evidence may be needed to effectively conduct the prosecution process. This lack of cooperation from oil companies is often for selfish reasons as they habitually use the activities of artisanal refiners and oil thieves to mask their activities and shroud them in secrecy. As earlier stated, the real intention is to hide the actual volume of oil lifted and resources realized from their sales.



Oil bearing communities that have borne the decades of pollution by major oil companies and government failures.

3. Double Jeopardy: Artisanal Refineries in the Niger Delta

Artisanal refining is a small-scale or subsistent distillation of crude petroleum over a specific range of boiling points, to produce useable products such as kerosene, fuel and diesel. It involves mostly traditional knowledge skills with little reliance on high end technology. Artisanal refining is referred to in the Ogoni areas of Rivers State as “Kpoo Fire”. It is called “bush refinery” in Bayelsa State. The practice relies on illegal bunkering for supply of crude petroleum, its primary raw material. In recent years, artisanal refining has become widespread in several parts of Nigeria’s oil-rich Niger Delta region.

There is likely enough blame to go round regarding who is/are responsible for this practice. Indigenes of the oil producing communities lay the blame squarely on oil companies and their corrupt officials. The companies in turn point accusing fingers at the local communities. What is clearer though is who the direct victims of this activity are – the local communities. While these communities already suffer from legitimate oil extraction activities, the relatively crude technology utilized for artisanal refining exacerbates the environmental pollution in the region.

The response given to our questions during research by an Ogoni refiner indicates the level to which officials of oil companies may be implicated in this illegal trade. Asked how they got the crude that they refined, he responded that it was the responsibility of their more technically gifted men to “connect valves to crude oil pipes and then go there to load oil when pressure is indicated.” Asked whether they could actually connect a valve on the pipes when there is internal pressure, the interviewee responded in the negative. The next question from our researcher was: “How do your men know when there is no internal pressure to be able to connect the valves?” This interviewee’s eye-opening response was that “There is a particular light they usually observe in Bonny. When that light is on, it means there is pressure in the pipe and when it’s off, they go and connect the valve. They knew this from the information given to them by the oil company workers. They’ve their information.”⁵⁸

3.1. Genesis of Artisanal Refining in the Niger Delta

The communities where we conducted research for this report give different dates that the phenomenon of artisanal refineries reached their areas. It is reported to have started in the Nembe creeks of Bayelsa between 2006 and 2007. In Ogoniland in Rivers State, local people trace the origin of the business to around 2009. It would seem that the abundance of crude oil spilled by major oil companies provided ready

⁵⁸ All these from our interview in Ogoni. Transcripts on file with *Social Action*.

raw material in some of the areas of the Niger Delta. According to a community leader, Chief Pii of Bodo in Ogoniland,

“Around 2008/2009, a massive oil spill occurred around Bodo city. The spill was as a result of rupture following equipment failure in Shell’s Bomu-Bodo-Bonny TNP (Trans-Niger Pipeline). This facility was laid as far back as 1958/59 when Shell constructed its pipeline. To date, no replacement has been carried out, contrary to regulatory requirements... Shell has admitted responsibility for its occurrence. Following that massive spill, illegal refining activities were observed all around the areas where the spilled crude could be easily collected for refining using crude methods. It was clear that the spillage destroyed means of livelihood. It was tempting for restive youths to resort to illegal bunkering activities for survival; tempting, as alternative source of livelihood had been disrupted and even subsistent fishing had declined below sustaining levels. The company has disappointed the people! Shell is only good in causing havoc and making a few people rich at the expense of the masses.”

The actual origin of the technology for artisanal refining in the Niger Delta region is at best hazy. One claim is that the Biafran side of the Nigeria Civil War that lasted from 1967 to 1970 innovated the technology for small scale refining when its refined petroleum needs could not be met because of the blockade placed on the rebellious region by the federal forces. As the popular saying goes, the necessity existing for refined products in this war environment gave birth to the invention of this crude but relatively successful petroleum refining ingenuity. This technology did not die with the unsuccessful Biafran secession bid. Instead it has been introduced and imbibed by the present generation of artisanal refiners across the oil producing areas in Nigeria’s Niger Delta region.

A second claim links the technology to the illicit relationship between oil workers and idle young men in the Niger Delta who are out to make a quick living or illicit profit. Proponents of this theory believe that unknown oil engineers offered the technology to these locals out of sympathy in order to provide them with a means of livelihood following the collapse of farming and fishing vocations in the wake of oil-induced environmental devastation. Others insist, however, that rather than an act of benevolence, it is in reality a mutually beneficial collaboration between greedy oil workers and self-seeking local youth.

Another theory claims that the practice was started by makers of local alcoholic beverage (local gin), which is made from distilling palm wine. This local distillation technology was successfully used to refine petroleum products at a time of dire

scarcity of petrol, diesel and kerosene in Nigeria.⁵⁹The ingenuity of the palm-wine tapper was apparently sparked by the imperative of demand and supply where needed refined petroleum products were in high demand but with limited supply from legitimate sources.

Yet others claim that the oil companies themselves introduced the technology in order to be able to obfuscate information regarding the real volume of oil being lifted in the Niger Delta region. Yet another account suggests that Niger Delta militants started artisanal refining during the period of their militancy because, much like they Biafrans during the Nigerian Civil War, they were in dire need of constant refined petroleum products for their speed boats after their supplies were cut off by the government in the heat of the Niger Delta militancy. Subsequently, it was embraced by well-heeled and poor folks alike, even as petroleum products routinely became scarce in the official market place. This situation is then compounded by poverty and lack of access to petroleum products in the challenging and difficult terrain of the Niger Delta. The Ijaw Monitoring Group (IMG) has confirmed this narrative in a 2010 report, in which they stated that:⁶⁰

The people of the Niger Delta engaged in this illegal refining did not set out originally to refine crude oil. They started with bursting pipelines to siphon petrol and diesel and condensate. When that line of activity was getting really dangerous and many people were being incinerated at the point of siphoning and also being arrested by security agents, they set off on this more private line...Security agents in the Niger Delta did not realise this line of activity early. The military Joint Task Force (JTF) initially concentrated in going after militants. The task force was baffled how militants in the mangrove forest were getting fuel to run their speedboats and generators. The illegal refiners were mostly responsible for supplying militants their fuel needs even though the petrol and diesel wreak havoc on the engines. Soon enough, at the height of the war in the creeks between the JTF and the militants, the former chanced on a thriving illegal refinery in Delta State. It was destroyed. But as the task force discovered more illegal refineries and confiscated the implements and sometimes made arrests, more of such centres sprang up in mostly Delta, Rivers and Bayelsa states.

These theories of the origins of the bush refineries notwithstanding, more salience is often placed on the notion of existential exigency and the pressure that this puts on artisanal refiners to make a living any which way possible. Artisanal refineries respond to the perennial scarcity of petrol, diesel and kerosene in Nigeria which are used for fuelling vehicles, providing electricity in homes and business and for domestic

⁵⁹ Heather Murdock, "In Niger Delta, Black-Market Oil Booms" *Voice of America*, 28 June 2012 available online: <http://www.voanews.com/content/nigeria_bunkering_niger_delta_oil_market/1337346.html>.

⁶⁰ Ijaw Monitoring Group, "Dangerous Crude Oil Refinery Craze in the Product-starved Niger Delta" available online: <<http://www.ijawmonitor.org/news.php?ct=4&article=319>>.

cooking. The necessity for these products can be understood against the background of inadequate electricity supply from the national grid and sub-national systems. In parts of Niger Delta where regular consumer petroleum products cannot be easily obtained, products from bush refineries have become indispensable. According to a resident of Brass, Bayelsa State, “the business flourishes because we all depend on its products like my local bread bakery which relies on baking every morning with three cooking stoves filled with the kerosene from the local refinery”. Established marketers of petroleum product are also known to patronize artisanal refined PMS which they mix with products from other sources in their underground reservoirs in filling (gas) stations and dispense to unsuspecting members of the public. Besides, products from artisanal refineries are also by industrialists who depend on electric generating plants to keep their businesses running in the absence of constant electricity supply in Nigeria.

With the end of insurgency and the commencement of the Amnesty Programme, artisanal refineries continued as source of income for a few demobilized insurgents and idle Niger Delta youths. The raw material needed for the illicit business was close by and in abundant supply. There was the opportunity for these demobilized insurgents and idlers to obtain reparation for several decades of neglect by the Government of Nigeria and predatory transnational oil corporations. Operators could start business with a modest sum of about ₦100, 000 or so needed to establish an artisanal refinery. That way, it was easy to be inserted in the business and thereafter to train others and unleash the vicious cycle of refiners that has continued unabated till date.⁶¹

3.2. Usual Suspects: Who are the Artisanal Refiners?

We stated earlier in this report that the artisanal refiners are comprised mostly of demobilized Niger Delta insurgents and idlers in the Niger Delta region. But that tells only a part of the story as there are other sources of employees for these refineries. There is widespread poverty and destitution in the Delta region that could be linked directly to the adverse impacts of the big oil business in the area. Unemployment is at a very high level. There is therefore a ready availability of fresh unemployed university graduates to staff the illegal industry especially if the industry is likely to offer more income incentives than other more legitimate vocations.

In some cases even students are involved in the business as well. An interviewee who spoke to our researcher in Ogoni, Rivers state said he was still a student at the University of Port Harcourt when he joined the business because in his words, “I was a self-sponsored student and there was no other legitimate business I could do. I see

⁶¹ *ibid.*

this as an opportunity to push myself through the university.”⁶² This refiner also told our researcher that he had been in the business for five years and has grown from ordinary hand to facilitator and financier. What this means, as he told us, is that: “I don’t go to the field all the time but do a kind of partnership with those who go to the field. I can provide some ideas, basic materials as well as cash needed for the business. They (refiners) give me return at the end of the day. It’s not even that the money I provide is my own. I go out to source and borrow the money and give them.”⁶³



While some ovens are small, others could be more elaborate

This individual told our researchers that he was still at school when he went to Bodo and Dere to learn the business. He said people came from Delta state to teach them the tricks of the business. As to his own introduction, the interviewee said after the Condensate oil business in the Soku area of Ogoni ended, a friend had told him there was a new game in town – the artisanal refining practice. The about ₦120, 000 needed to start the business after he graduated was a colossal sum to raise in those days, he said. But “with my exposure to people, I was able to raise the money and gave to the

⁶² Interview conducted November 2013 in Ogoni, Rivers state. Transcript on file with *Social Action*.

⁶³ *Ibid.*

field boys and our business started. This money was used to buy all necessary materials like the tank in which the crude is boiled, etc.”⁶⁴

Also worthy of note is the fact that participation in the artisanal refining industry is not totally gendered. Both men and women are involved in the business. However, the participation of women is restricted in a lot of ways. Our field research shows, for example, that women do not particularly participate in the primary (extraction of crude) and secondary (refining) processes. This is considered far too demanding and hazardous for them. However, they are heavily involved in tertiary (or what in the business is referred to as post-production) activities. This includes buying and selling of the refined products. Some women are also known to provide physical and emotional support for their husbands or boyfriends by staying with them overnight in their refining camps. They not only cook for them but also provide them company during the refining process.

Information gathered from our field research in the Mbiama axis of Rivers and Bayelsa show that while received knowledge may have it that only indigenes of these areas and other parts of the Niger Delta are involved in the artisanal refinery business, this is not borne out by reality on the ground. Camp owners, financiers and labourers come from different parts of Nigeria and the West Africa region. Our researchers saw young men from northern Nigeria working as labourers in some of the refining camps in Bayelsa State. These, ‘Hause boys’, who may have themselves escaped from impoverishment caused by desertification in their home communities, constitute up to 70% of the workforce in some of the camps, according to some interviewees. Camp owners also collaborate with foreign partners especially to obtain heavy and expensive equipment like sea vessels and barges. Our researchers were told that a moderate refinery employs between 8 and 12 operators and could generate as much as ₦25 million in revenues every month. An interviewee told the researchers that “the proceeds generated are shared among members of camps. For many of the youths, the venture has since become a means of livelihood. Managers of the business drive exotic cars and have built gigantic buildings with proceeds from the business either as refiners, operators or as middlemen.”⁶⁵

3.3. The Artisanal Refining Process

In the course of this project, Social Action deployed researchers who undertook field trips and interviewed a variety of stakeholders in the areas within the Niger Delta region that artisanal refining was being conducted. The locations visited were in Ogoniland, Akuku-Toru, Degema and the Orashi River Basin in Rivers State. In Bayelsa, researchers visited the Brass/Nembe axis. A team also visited the Escravos area of Delta state. Part of the brief of the researchers was to find out the procedure

⁶⁴ *Ibid.*

⁶⁵ Interview conducted in the Mbiama/Bayelsa areas. Transcript on file with *Social Action*.

for artisanal refining and the technology involved. This portion of the report is based on the field reports from the researchers.

A number of equipments are necessary for the successful conduct of the artisanal refining process, the most important of which is what the refiners call the oven. This, in reality, is a metal tank, which comes in various sizes and dimensions of the conventional metal barrel which is called drum in local parlance. It could be a 10 in 1 which is a barrel of 2000 litres capacity or the conventional 200 litre barrel multiplied by 10. It could also be a 30 in 1, a 60 in 1 or the maximum of 100 in 1. For example, 10 in 1 means an oven of 2000 litres capacity, that is, 200 litres conventional drum times 10. Ovens usually have two openings at the top where gas is vented and crude oil is pumped in directly from a well-head or from crude oil storage pits or a 'Cotonou boat'. As indicated earlier, the Cotonou Boat is big wooden boat powered by a gasoline or diesel engine filled with crude oil stolen from a well-head and conveyed to the artisanal refinery. In some cases, desperate operators have converted fishing trawlers into oil barges which they deploy for the business.



Vessel laden with petroleum products

An oven is usually placed or elevated from the ground and has a pit dug underneath where crude oil or its residue is dispensed to help in igniting a fire. Some dry wood are added and thereafter ignited to produce the fire needed to heat up the crude oil content inside the oven. The pit underneath the oven is intermittently replenished with oil and dry wood. Oil from well-heads that are located in areas far removed from the

proximity of the artisanal refineries is conveyed with the aid of Cotonou Boats to ovens. They are then left for between two to three days such that the gas content can evaporate. What is left after the gas had evaporated is then pumped from the Cotonou boats into the oven.



Oven



Crude oil storage pit

Detergent is poured into the oven that is already filled with crude oil in order to suppress gas fumes. There is also a cooler which is a wooden or metal box also elevated from the ground and having several metal pipes connecting it to the oven. It is sporadically replenished with water which the refiners also call the coolant and is pumped directly from a nearby river or stream. This water provides a cooling effect to the oil migrating from the oven to the cooler through the earlier described metal pipes that link the cooler to the oven. Beside the cooler is what the refiners call a receiver which is a metal container that receives the refined product. It is also connected to the cooler with metal pipes. The actual position of the cooler is actually between the oven and the receiver.

After about 2-3 hours when the heat underneath the oven would have reached the highest temperature, that is, up to 200 degrees centigrade, petrol (Premium Motor Spirit or gasoline) starts trickling out from the metal pipes connecting the cooler and the receiver. For example, if the oven is a 20 in 1 capacity, that is, 200 litres capacity, it would produce approximately 1 barrel or drum (200 litres) of PMS which trickles



The production process

out from the cooler into the receiver. At between 200 and 250 degrees centigrade, up to 1 barrel or drum (200 litres) of kerosene will also start flowing from the cooler into the receiver. The flow of the kerosene is accompanied by gas which is vented through a line of approximately 30 metres vertical pipes.

At some artisanal refineries, a considerable opening is left atop the oven from which the gas is emitted. A huge fan powered by a generator is also placed close to this opening to direct the gas away from the oven to avoid potential fire-outbreak that could arise were the emitted gas ever to interact with the fire from oven. However, the construction of vertical pipes on top of the ovens is generally considered to be safer and less cumbersome. At around 300 degrees centigrade, a mixture of diesel and kerosene will gush out of the cooler into the receiver. The emission of gas from the oven will subside after approximately 3 drums of the mixture of diesel and kerosene has surged out of the receiver. Once the emission of gas has receded, the fire underneath the oven is diminished.

Lastly, at about 350 degrees centigrade or more, diesel will flow steadily from the cooler into the receiver. And as soon as diesel starts flowing, the fire underneath the oven is increased again the risk of a fire outbreak from gas emission having been drastically reduced. Accordingly, refined products are fetched manually or drained out with machines from the receiver into empty drums or Cotonou boats. These are then sold to buyers who visit the refineries on schedules. The terminal end of this process



Finished product

occurs when smoke starts emitting from the oven indicating that there are no more refined products left in it. The fire underneath the oven is then finally extinguished using water from hoses connected to the nearby stream or river.

The space at the side of the oven with a connecting pipe and channeled to a waste-

pit is then opened for the residue to flow to the said waste-pit. This residue could then be re-used to ignite and fuel the heating fire underneath the oven in future refining cycles. The refining process usually commences at about 8.00 pm and ends around

3.00 am. A 20 in 1 capacity oven (that is some 2000 litres) usually yields between 18-19 barrels or drums of refined products. This means that only about one or two drums of oil is lost in the refining process. But then these one or two drums are not entirely lost as they are part of the residue that could be used in future as fuel for igniting and sustaining the refining fire. The 20 in 1 capacity oven could effectively be manned by two to three personnel who are paid ₦2,000 for each drum of refined products. These are then sold to dealers at a rate of ₦12,000 per drum and conveyed by the buyers in large barges to Lagos and other parts of the country.



Waste pit

3.4. Counting the Costs

From what has been shown so far, the artisanal refining process is hazardous and unsafe. It poses a huge threat to the living environment, the health of the operators and the safety of the people living in and around the environment where it is conducted.

3.4.1. Environmental Impact

One of the reasons that the artisanal refining industry is considered a challenge to socio-economic development in the Niger Delta region is because of its destructive environmental consequences. Already heavily polluted as a result of the recklessness of major oil companies operating in the area, artisanal refineries, which are totally unregulated, have exacerbated pollution with their crude technology. Therefore regarding the environmental impact of artisanal refining, it often takes the form of oil spills caused by ruptured pipelines or the manifolds from which crude oil is stolen. The points of rupture in these lines and manifolds are often not clamped promptly leading to leakages. In addition, crude oil also occasionally spills into the rivers when locally made boats convey it the Niger Delta waterways.

Almost all those that we interviewed for this report underscored the devastating contribution that artisanal refining is making to the environmental mess that is the

Niger Delta region of Nigeria. Natural vegetation has been overrun by carbon emitting activities which make the air tough to breathe. A respondent in Ogoniland told our researcher by how much the environment is suffering the most from these artisanal refining activities. He said that the refining site also called the dump was once a thick, green forest. But today, the activities of artisanal refiners has led to the cutting down of trees. Besides, the respondent added, rivers are also polluted by the activities of artisanal refiners as the waste product is often emptied inside, killing aquatic life and rendering the water unusable.



Boats and equipment of illegal refineries are burnt routinely by the JTF (above), sometimes leaving dangerous wreckage (below).

Given that the preferred refining method by operators involves distilling by heating over open fires fed by crude tipped into pits in the ground, much of the oil burns away. Some are allowed to seep into the ground. The waste generated from this process is stored in open pits as well. This invariably increases the risk of contamination of the environment and with possible negative impacts on the underground aquifer. This crude process results in far too much waste that is difficult to manage given the lack of knowledge in the artisanal refining industry. In majority of the cases, these wastes are channeled into the living environment and are allowed to migrate through rivers, creeks and rivulets. Besides, during the refining process, the air around the operation usually turns dark with thick fumes. Carbon-based gases are consistently discharged into the atmosphere during the boiling process with all the consequences that this has for global warming and the phenomenon of climate change.

Some of the air pollution arising from the activities of illegal oil refiners in the Niger Delta region could be attributed also to the activities of the military taskforce. When military personnel seize equipment utilized for artisanal refining, there does not seem to be a standard, safe and environmentally friendly method for disposing of them. Rather, they are indiscriminately burnt in the open, often in close proximity to homes and businesses. Our researchers found this practice to be very prevalent in such communities as Bodo town in the Gokana LGA in Rivers State as well towns near the Bonny River and its creeks. This area is of specific interest not only because it empties into the ocean but also for the fact that it is in close proximity to the location from which stolen crude are shipped abroad.

3.4.2. Acid Rain

The occurrence of acid rain for example, is often a direct result of poisonous gases being flared into the atmosphere during oil production. For so long, this environmental hazard has been taking a serious toll on the socio-economic wellbeing of the people of the Niger-Delta region. Acid rain pollutes sources of drinking water. It stunts the growth of crops and kills both aquatic and terrestrial animals. Acid rain corrodes roofs of residential and other buildings alike. As a phenomenon, it has long been known to constitute a serious threat to the livelihoods of the people of host oil communities who are predominantly fishing, farming and trades-people.

Nigeria is reputed to be second only to Russia in the global ranking of countries for the emission of greenhouse gases, as a result of gas flaring.⁶⁶ This record is obviously in relation to flaring carried out by the big multinational oil companies operating in the country.

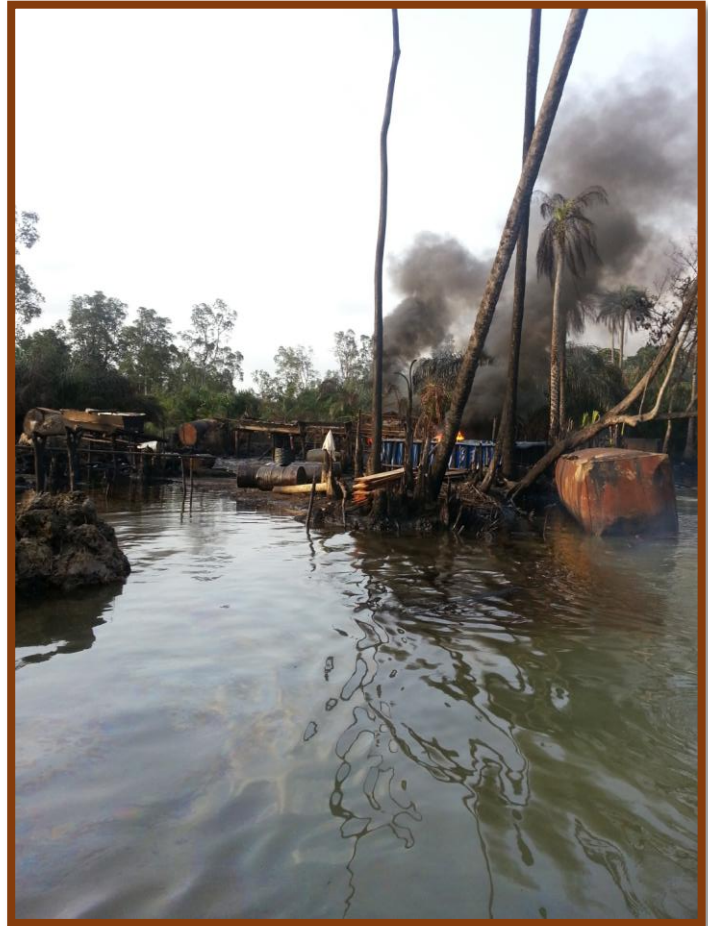
⁶⁶ Monica Mark, "Nigeria's Penalty for Gas flaring will not curb Emissions, say Campaigners" The Guardian, 31 May 2012 available online: <<http://www.theguardian.com/environment/2012/may/31/nigeria-penalty-gas-flaring>>.



Gas Flaring by Shell (above) and Total (below)

Bush refinery and associated pollution

With over fifty years of gas flaring, the already polluted atmosphere of the Niger Delta area will be worsened by the unregulated activities of ubiquitous artisanal refineries flourishing across the length and breadth of the region. Until the military task force reluctantly raided the operational camps of artisanal refiners at Mbiama, Akie-Oniso, Akinima and Okarki environments in this region in 2011, a thick fog of dark fumes took over the atmosphere, forming dark clouds especially in the areas where artisanal refining was being undertaken. Refiners simply move elsewhere with the same record of air pollution. Ordinary people inhaled this murky and dangerous air. It would not require expert medical knowledge to imagine the serious health implications that would result from this.



3.4.3. Health and Safety Concerns

The crude nature of the technology used for this activity heightens the likelihood that it is prone to both physical and environmental accidents that could have devastating repercussions. Precautionary measures are in most cases difficult to articulate and safety standards are totally lacking. Our researchers found that fire burns and in extreme cases death is the most pronounced risk of this business. For example, when asked if there had been physical injuries or deaths from the artisanal refining process, one of the interviewees hissed, then said “A lot, a lot of deaths and injuries.” Continuing, he stated that:

That is why some of us that have been fortunate to be educated talk with them [refiners] to invest the money they have saved so far and stop the business as the risk involved is high. A lot of people have been burnt to death, many still living with high degree of injuries, etc. I know many of them. Some people were burnt by the “Kpoo Fire” beyond recognition. Others died on the way to hospital while being taken there for treatment. All these happened at the first stages of the business between 2009 and 2010 because, as a new business, they lacked a lot of experience and they were doing the business both day and night.



Youth burnt in 'Kpoo Fire' accident

That time there was no fear of the security as it is today. But now, it's only by night that they do it due to security problems and helicopter surveillance. That time when they were doing it day and night there was a kind of competition among them as

the number drums you're about to produce determines how much you'll get. So, as a result, after a particular round of cooking, you will make sure you extinguish the fire by pouring enough water. But due to the rush to quickly start another cooking, they fail to note that there is still some live charcoal and when they're pouring new crude into the cooking drum, some oil drops on the live charcoal, catches fire, explodes and they're caught in the flames such that they can't escape it, thus, burning them. Such thing also happens when they want to load (steal) the crude at the pipeline. This happens as a result of the boat engine especially the faulty one they use since they can't afford the good ones. So, after loading the crude in their boat, they would remove the cover of the marine engine as they try to start it after pushing it into the deep water. In the process, there is usually a spark; the boat catches fire and explodes, thus killing all those on board. ⁶⁷

In November, 2013, the leadership of the Ijaw Youth Council (IYC), under President Udengs Eradiri, raised an alarm that a strange eye disease will soon render many Niger Delta youths visually impaired. According to the IYC, the strange eye disease was discovered following tests conducted on some youths who were sent to South Africa for vocational training under the Federal Government's Amnesty Programme. The unknown eye disease has been linked to the youths' engagement in illegal refining of crude oil and bunkering activities.

Summary from Monitoring of Degema LGA in Rivers State

- Community residents witnessed awful experiences related to illegal crude oil refining.
- Related water pollution in the creeks and rivers is high; nothing of this nature was seen before; some local residents relocated, migrating out of the area as a result of enormous water pollution and resultant hardship.
- People have to resort to dugout wells for water supply; this is not safe for the health of the people. For domestic purposes, the well water cannot be guaranteed in terms of safe quality.
- Families that can afford it are buying table water in sachets and bottles; this has largely replaced rain water and water from the creeks for domestic needs.
- Women have abandoned their traditional occupations; fishing has dwindled to its lowest ebb since known history in the area; common sea food sources have been destroyed by pollution.
- Women, the aged and poor families are the most affected part of the population.
- Traditional occupations (now) badly affected, once provided for the bulk of employment for women.
- Many are left in a state of uncertainty as to how they can change to new occupations that may offer safety and guarantee sustainable livelihood for families that were accustomed to traditional living since time immemorial.

⁶⁷ Transcript of interview on file with *Social Action*.

4. Reversing the Legacy of Revenue Theft, Illegal Oil Bunkering and Environmental Pollution

Could stealing of public revenues from petroleum resources, illicit crude oil bunkering and bush refineries in Nigeria be stopped or at least reasonably curbed? Many factors are implicated in arriving at a solution to this huge question. For one, there needs to be clear and strong political will and leadership to address the crisis from the top. The current situation is that the large scale fraud involving budget revenues and theft in the NNPC and other government agencies are covered by the Presidency of the Federal Republic of Nigeria, which often benefits from such criminality. Oil companies will not act to limit malfeasance except the government is ready to act in protection of the national interest.

Apart from ordinary legal procedures established in the books to hold illegal oil thieves and artisanal refiners to legal account, there are also legislations targeting particular aspects of economic crimes. The EFCC under an amendment to its enabling law passed in 2004 is mandated to investigate and prosecute matters such as “Advance Fee Fraud money laundering, embezzlement, tax evasion or fraud, illegal oil bunkering, illegal arms dealing, illegal mining, counterfeiting, illegal charge and transfers, future market fraud, bank fraud, foreign exchange malpractices, computer credit card fraud, all cybercrimes, contract scam and terrorism.”

Under this expanded mandate, the Commission is required to collaborate with key society and industry stakeholders to curb artisanal mining and illegal crude oil bunkering all of which come under the rubric of economic sabotage. However, duplicity and lack of efficient coordination in the enforcement functions among state agencies makes effective collaboration difficult to attain. Legal bottlenecks also ensure that arrested suspects, especially those connected to powerful sponsors operating behind the scenes, usually escape legal accountability.

With respect to the smaller scale crude oil theft for artisanal refineries, there are strong social and economic reasons that incentivize the practices. There is incessant scarcity of gasoline and other refined petroleum products not only in the Niger Delta but Nigeria as a whole. This is often blamed on the collapse of Nigeria’s government owned oil refineries and the resulting reduction in the legitimate refining capacity. It is therefore trite that artisanal refiners cannot be put out of business so long as there is a ready market for their products. It follows simple market place logic. If there is demand, the tendency is for supply to thrive.

As such, one of the more effective ways to reduce oil theft and artisanal refining is to revive legitimate domestic refining capacity. And while not possessing a magic wand to

end all artisanal refining, it could improve on availability and de-incentivize the illicit sources of refined products.⁶⁸ Were these refineries to become operational, they would benefit from a daily allocation of 445,000 barrels of crude oil. While fears may exist that in an atmosphere of corruption, this could be another source of artisanal crude domestically or could become a part of allocations illegally sold in the international market, such fears could be allayed by a more intense law enforcement regime.

4.1. Mitigating Oil Revenue Theft in Nigeria: EITI Principles to the Rescue?

Interestingly, it is against this background of corruption and lack of transparency in Nigeria's oil sector that the Nigerian Extractive Industries Transparency Initiative (NEITI) was established. NEITI is the Nigerian cell of a global initiative whose objective is to assure due process and transparency in payments by extractive industry companies to governments and government-linked entities. This international initiative describes itself as "a global coalition of governments, companies and civil society working together to improve openness and accountable management of revenues from natural resources."⁶⁹ It espouses several principles in relation to the activities of extractive industries and the domestic legal and political regimes that are hosts to those industries. Among these principles are the "belief that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts."⁷⁰ The initiative also affirms "that management of natural resource wealth for the benefit of a country's citizens is in the domain of sovereign governments to be exercised in the interests of their national development."⁷¹

EITI is premised on the belief that "public understanding of government revenues and expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development."⁷² The principles also underline the importance of transparency by governments and companies in the extractive industries and the need to enhance public financial management and accountability.⁷³ According to information from the organization, as of 2014 the EITI has a total of 31 compliant countries, 17 candidate countries and 35 countries that have produced EITI reports.

⁶⁸ *Ibid.*

⁶⁹ What is EITI? Available online: <<https://eiti.org/eiti>>.

⁷⁰ See the EITI International Secretariat, *The EITI Standard* (Oslo: EITI, 2013) at 9 available online: <https://eiti.org/files/English_EITI%20STANDARD_11July_0.pdf>.

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

The international EITI inspired, as elsewhere, the establishment of the Nigerian arm, the Nigeria Extractive Industries Transparency Initiative (NEITI), which was inaugurated in 2004 by then Nigerian President, Olusegun Obasanjo.⁷⁴ NEITI's membership comprises government officials, representatives of extractive companies as well as civil society. In 2007 NEITI's legal status was formalized when the Nigerian federal legislature promulgated the Nigeria Extractive Industries Transparency Initiative, (NEITI) Act into law.⁷⁵ In so doing, Nigeria became the first country to make a law backing the EITI process. Under section 2 of the Act, NEITI is charged with several objectives. Among the most significant of these aims is that which mandates it "to ensure due process and transparency in the payments made by all extractive industry companies to the Federal Government and statutory recipients."⁷⁶ The body also has responsibility to eliminate all forms of corrupt practices in the determination, payments, receipts and posting of revenue accruing to the Federal Government from extractive industry companies.⁷⁷

With the emergence of NEITI, some of the methods used by oil companies to defraud the Nigeria treasury are becoming crystalized. NEITI's audit reports reveal how oil companies embark on shady deals including under-assessment, under-payment of levies, taxes, bonuses, royalties, among others. These sharp practices caused public budget and revenue losses running into several billion dollars. As of June 2013, NEITI had recovered the sum of \$2 billion in unremitted taxes from unnamed indicted oil companies. It was unclear why the names of the companies indicted were not made public. There were however strong speculation that the companies concerned were most likely to be major transnational oil corporations⁷⁸ that were perhaps being shielded from negative publicity, consumer and other stakeholder backlash as well as a crisis of public confidence that they could suffer.⁷⁹

There was also the case of alleged under-reporting of the quantity of production that happened between 2009 and 2011. It involved several non-major oil companies, including Septa Energy, Neconde Energy, Emerald Energy Resources and Energia Limited. According to NEITI, the said under-reporting resulted in the under-assessment of Petroleum Profits Tax (PPT) payable to the Federal Government then

⁷⁴ See online: <<http://www.neiti.org.ng/>>; See also Nicholas Shaxson, *Nigeria's Extractive Industries Transparency Initiative: Just a Glorious Audit?* (London: Chatham House, 2009).

⁷⁵ Available online: <http://www.right2info.org/resources/publications/laws-1/NEITI_Act.pdf>.

⁷⁶ Section 2(a).

⁷⁷ Section 2(c).

⁷⁸ Ben Agande, "NEITI Uncovers \$9.8bn Unpaid Taxes from Oil Coys, Others" *Vanguard*, 11 June, 2013 available online: <<http://www.vanguardngr.com/2013/06/neiti-uncovers-9-8bn-unpaid-taxes-from-oil-coys-others/>>.

⁷⁹ Amnesty International "Shell's False Claims on Niger-Delta Oil Spills Exposed" 7 November, 2013 available online: <<http://www.amnesty.org/en/news/shell-s-false-claims-niger-delta-oil-spills-exposed-2013-11-07>>.

said to be in the region of US\$2.65 billion.⁸⁰ Although, some of the concerned non-major oil companies refused to cooperate with NEITI and in fact threatened a court action against it, NEITI was still able to recover US\$442 million from them.

However, it does appear that these ethical objectives of the NEITI do not sit well with the Nigerian political establishment. While NEITI is highly rated and feted by the EITI global body, the Nigerian government is said to be crippling the agency by underfunding its activities. NEITI officials claim that between 2011 and 2013, the agency's budget was cut by as much as 50 percent, making it impossible for it to even support some of its statutory audits for the 2013 budgeting year.⁸¹ Despite these claims, NEITI is still criticized in some quarters for being more reactive than proactive in the timing and quality of its reports. It often recovers only a minimal fraction of what is stolen. According to the critics, this is not good enough. They assert further that the initiative cannot decry cuts to its budget when it only slaps the wrists of wrong-doers instead of imposing the stiffest penalties and recovering the maximum amounts possible as a way to deter further unethical behaviour.⁸²

4.2. A Military Joint Task Force: Making a Bad Situation Worse?

The main response of the government in addressing illegal oil bunkering and artisanal refineries is the military Joint Task Force (JTF). The presence of Nigerian soldiers on the streets and creeks of the Niger Delta region, however, dates back to the era of military rule in the early 1990s, as part of government's programme for dealing with community protests against pollution and state neglect, as well as to contain inter-communal conflicts. Different JTF commands operated in Bayelsa, Delta and Rivers States which were implicated in different incidents of mass murder of community members, including peaceful protesters in Umuechem, Ogoniland, Elele (Rivers State), Opia and Ikenyan (Delta) and Yenagoa, Odi, Kaiama (Bayelsa) between 1990 and 1999. The emergence of armed insurgency in the Niger Delta at the turn of the century resulted in increase of JTF military formations in all states of the Niger Delta area, which engaged in occasional combats with the insurgents. Since then, the armed insurgency ended in the Niger Delta following the truce between the Nigerian government and insurgents and the launching of the Amnesty Programme for ex-Niger Delta militants in 2009. Under the terms of the armistice, members of the militia groups renounced violence and returned their arms in exchange for rehabilitation by

⁸⁰ Everest Amaefule, "NNPC took illegal N1.4tn fuel subsidy –NEITI" *The Punch*, 1 February, 2013 available online: <<http://www.punchng.com/news/nnpc-took-illegal-n1-4tn-fuel-subsidy-neiti/>>.

⁸¹ *The Punch* Editorial Board, "Crippling NEITI through Underfunding" *The Punch*, 26 June, 2013, available online: <<http://www.punchng.com/editorial/crippling-neiti-through-underfunding/>>.

⁸² George Agba, "Nigeria: Oil Theft - Jonathan Seeks EITI's Support" *Leadership*, 15 October, 2013 available online: <<http://allafrica.com/stories/201310150121.html>>.

the government. The rehabilitation involved cash payments and other monetary incentives as well as training in life-altering skills – up to post-graduate education.

With the Amnesty, the military authorities renewed the mandate of the JTF in the Niger Delta and re-christened it “Operation Pulo Shield’ (OPS) with headquarters in Yenagoa, Bayelsa State. The word “Pulo” translates to ‘oil’ in Izon dialect of the Ijaw language and its inclusion in the new description of the military operation apparently underscores a more narrowly tailored mandate to protect oil installations and tackle crude oil theft, illegal oil bunkering and explosion in the numbers of artisanal refineries in the Niger Delta.

JTF sectors in the Niger Delta include the following:

- Sector One of the JTF base at 4 Brigade, Nigerian Army, Benin, Edo State
- Sector Two JTF base at 2 (Army) Brigade, Port Harcourt, Rivers State
- Sector Three JTF base at 13 (Army) Brigade, Uyo, Akwa-Ibom State
- Sector Four JTF base at 14 Brigade, Nigerian Army Ohafia, Abia State
- Sector Five JTF base at 34 (Army) Brigade, Obinze, Owerri, Imo State.

Troops of the JTF are drawn from the Army, Navy, Air force, Police, National Security and Civil Defence Corps (NCSDC) and the State Security Service (SSS). The JTF is headed by an overall Commander at the rank of a Major-General with other superior officers in charge of specific components of the organization. The JTF is particularly concerned with ensuring the security of the area and discouraging oil theft, illegal refining and tempering with pipelines. However, they are sometimes accused of compromising with the ‘bush boys’ and aiding the crimes they are charged to stop, an allegation that they often deny.

All over the Niger Delta, the JTF has created road blocks and security checking points. Its officials have also established units at the creeks where illegal bunkering believed to thrive. People interviewed in Gokana, Rivers State said the JTF plays more than just the specific role of preventing the Kpoo Fire business in the area. Interviewees noted the Janus-faced nature of the JTF’s relationship with the locals. They believed that on the one hand the JTF was there to provide security and remove Kpoo Fire operations. But they stated that the JTF on the other hand actively connives in and supports the business by providing security for its practitioners at a fee. According to interviewees, the JTF comes after them only when they failed to pay expected share of profits from artisanal refining business. As well, whenever a new Military Commander is posted to the area, the illegal refining business is momentarily halted. But once the

new Commander familiarizes himself with area and the people, they quickly return to business as usual.⁸³ One of the interviewees further said:

The JTF usually come but we do settle them. We do give them like ₦30, 000 or ₦40, 000 per week. But if they catch something in your hand, the money will increase to ₦50, 000 and ₦100, 000 and so on depending on what they catch in your hand. On normal settlement, all of us doing the business usually contribute the money and give them but when they catch something in your hand, you pay alone. Again, when they change commander, the officers will sit up and be tough to deal with for sometimes. But after we contribute big money to settle the Commander through the officers, they'll allow us to continue our business.⁸⁴

The testimony of people involved with artisanal refineries corroborates other accounts. According to a report published September 2014, some members of the Nigerian security forces in the Niger Delta “have outright been accused of ‘turning the other way’” in the face of major illegal activities, including oil thievery. Others have even been suspected of working alongside the very criminals they are charged with detaining.”⁸⁵ The report continues:

More recently, the JTF boasted of having recovered vast quantities of stolen oil, an exercise it conducted after orchestrating raids against alleged “pirates” in the Niger Delta. Despite these successes, questions remains as to whether Operation Pulo Shield, or the JTF for that matter, has actually been effective. For their part, authorities argue that the Operation has led to the destruction of “854 illegal refineries” between January – March 2014, alone. These accomplishments also follow the reported success stories of Operation Pulo Shield in 2013, when JTF members claimed to have demolished a total of 1,951 illegal oil refineries and arrested 1,857 individuals in connection with oil theft and general acts of maritime crime in the Niger Delta. Why then, given the size of these arrest figures, does oil theft, piracy and other acts of criminal activity, continue to rise? The significant numbers publicised by authorities may suggest that either the success rate has been grossly overstated, or that criminal acts, such as oil and vessel theft, are simply resumed in an almost hydra-like manner by individuals who have been freed from incarceration, or by those who have not yet been arrested. However, a more likely – and controversial – scenario is that some members of the JTF simply refuse to destroy the South’s

⁸³ See transcript of interview conducted in Ogoni land in 2014 on file with *Social Action*. Interviewees have not be identified for their own safety. Some of the words in the interviews have been altered to make them more intelligible but without changing the meanings of what was said.

⁸⁴ *Ibid.*

⁸⁵ Cassie Blombaum, “Nigeria: Security and Corruption” *Maritime Security Review*, 23 September, 2014 available online: <<http://www.marsecreview.com/2014/09/nigeria-security-and-corruption/>>.

criminal outlets, as doing so would lead to a considerable loss of ‘pocket money.’⁸⁶



JTF raiding an illegal ‘bush’ refinery

The popular impression in the communities of the Niger Delta area is that the JTF galvanises into action once in a while to create and sustain the illusion of its own effectiveness often by destroying illegal refineries and arresting uncooperative operators for their inability and/or unwillingness to pay stipulated bribes. At other times the task force relies on helicopter surveillance reports produced by oil companies and top government and military officials where target artisanal refineries are isolated and marked for destruction.⁸⁷ In such cases, no matter the amount of money paid to JTF personnel, the pinpointed artisanal refineries are inevitably destroyed if only to nourish the perception that it is indeed fulfilling its public role.

JTF and Pollution

On 24 January 2014 thick smoke covered the already threatened skies of Bodo town which also lies within the Ogoni area. Our researchers rushed to the place to identify the source of the smoke. On reaching there, they discovered that the JTF men were in town to burn equipment (mainly boats) and products recovered from artisanal refiners. An indigene of the area conversant with the practice told our researchers that such

⁸⁶ *Ibid.*

⁸⁷ See Chika Amanze-Nwachukwu, “Shell: Current Oil Theft Unprecedented” *This Day Live*, 3 November 2011 available online: <<http://www.thisdaylive.com/articles/shell-current-oil-theft-unprecedented/101924/>>.

burnings had become a routine occurrence, especially whenever a new Commander for the JTF is posted to the area. As mentioned earlier in this report, the JTF is as much a part of the corruption in the Nigerian oil industry as any other government agency. Their Commanders are periodically removed from the area especially when it is suspected that they are becoming too familiar with the oil criminals whose activities they should be discouraging. Each new Commander posted to the area often burns some of the equipment used in the illicit business to create an impression that they are doing their work.



JTF routinely burns boats and equipment of alleged sea pirates and operators of illegal refineries

Burning of artisanal refineries and associated equipment and supplies is a regular practice by the JTF who openly acknowledge such in their press releases. Whenever the JTF determines to deal with any bush refinery operation, all crude oil laden containers at the site are destroyed by burning. In the process, crude oil is massively spilled into the environment. Apart from Bodo, our researchers were also able during field work to identify a particular spot near the Aleto Bridge which is in close proximity to the Eleme Petrochemical Company where the JTF brings all confiscated tankers to set them on fire. There are visible marks on the ground at this location to prove the practice which has continued despite complaints from various quarters about its negative impact on the living environment. In other parts of the Niger Delta, boats laden with crude oil or refined products are burnt or the products are emptied into the waterways with adverse impact on the wetlands.



Different Bush refineries after destruction by the JTF

Those interviewed in the Escravos areas of Delta State told us that operators of artisanal refineries often immediately re-establish the refineries sometimes at the same locations demolished by the military task force. At other times, military officials tip off the operators not to re-establish within the same locality that a refinery had been destroyed but to move to a different location. However, following recent outcries by the oil companies regarding how oil theft drastically reduces their production capacities, the JTF has intensified campaigns against artisanal refineries. Yet some military officials with whom the operators are in good relationship could advise them (operators) to take a break, close down the refineries for a while until the attention of the government and oil companies cools off. As well, notwithstanding allegations of bribery and connivance that trails the activities of the JTF, the security outfit is known to have recorded some successes in its co-ordinated raids on artisanal refineries. Troops are known to have executed raids, impounded vessels and boats, destroyed containers and apprehended operators.

4.3. The United Nations Environment Program (UNEP) and the Niger Delta

As discussed above, over fifty years of oil and gas exploitation activities by major transnational oil companies resulted in massive pollution of land, air and wetlands. This led to mass protests in communities such as Ogoni. Following international concern regarding the environmental situation in Ogoniland, in 2007 the Nigerian government invited the United Nations Environmental Programme (UNEP) to conduct an independent assessment of the environment and public health impacts of oil contamination in that part of the Niger Delta, and to recommend options for remediation.

The Ogoni are but one of many ethnic nationalities that make up Nigeria's Niger Delta region. So the question might be asked why they were singled out from tens of other ethnic groups in the region for the UNEP report. But this question would become passé once it is realized that have agitated more than other ethnic nationalities in the Niger Delta, and suffered the consequences of resistance. The Ogoni under the Movement for the Survival of the Ogoni People (MOSOP) are possibly the most organized and socially conscious of all the groups in the Niger Delta region. Their leaders have been killed by government for their activism and this has shined bright international light on their plight as a people in Nigeria.⁸⁸ It is doubtless the internationalization of their struggles within Nigeria that drew the attention of the United Nations and the carrying out of the UNEP assessment.

UNEP discovered that the pollution of the Niger Delta is worse than previously imagined with major oil companies and government as the main culprits. UNEP investigators also found out about "terrible impacts of artisanal refining to the local environment. Vegetation is visibly affected by the resulting pollution; crude saturates the mangroves and oil disturbs the surface water."⁸⁹ UNEP made far reaching recommendations for immediate, midterm and longer term measures that the government and oil companies must take to halt pollution and protect human lives and livelihoods.

It was up to the Nigerian government to decide what to do with UNEP report, which in its recommendations directly confronted the problem of artisanal refining. One of the UNEP recommendations was to the effect that "a campaign in Ogoniland to end illegal oil related activities should be jointly conducted by the government, oil companies and local authorities. It should include an awareness component highlighting the

⁸⁸ See Ernest Chinwo, "MOSOP: Jonathan Presiding over Liquidation of Ogoni Nationality" *This Day Live* 11 November 2013 available online: <<http://www.thisdaylive.com/articles/mosop-jonathan-presiding-over-liquidation-of-ogoni-nationality/163981/>>.

⁸⁹ United Nations Environmental Programme, "Environmental Assessment of Ogoniland" available online: <http://postconflict.unep.ch/publications/OEA/01_fwd_es_ch01_UNEP_OEA.pdf>.

disproportionate environmental footprint of artisanal refining (borne by all sections of the community) and spell out training, employment and livelihood incentives that will encourage people away from participating in this illegal activity.”⁹⁰

The Nigerian government, through the Minister of Petroleum Resources set up a Hydrocarbon Pollution Restoration Project (HYPREP) to coordinate the cleanup of Ogoniland. But HYPREP as a government agency was not backed by legislation nor provided with the required funding.

Over a two year period, Social Action has monitored government’s response to UNEP’s recommendations and discovered that there is little political will on the part of the federal government to act. In a report, *Still Polluted: Monitoring Government and Shell’s Response to UNEP’s Environmental Assessment of Ogoniland*,⁹¹ which was released in 2014, Social Action revealed that neither HYPREP nor the government have done anything worthwhile to restore the Ogoni environment Three years after the UNEP report was released, no clean up has commenced in Ogoniland. Even emergency measures such as the provision of alternative sources of drinking water have not been taken seriously by the government. Ogoni community members, like residents of most communities in the Niger Delta, continue to drink from badly contaminated water wells and bathe in badly polluted streams.

⁹⁰ *Ibid.*

⁹¹ See Social Action, “Still Polluted: Monitoring Government and Shell’s Response to UNEP’s Environmental Assessment of Ogoniland”, 2014. Available online: http://saction.org/books/Still_Polluted_2014.pdf

Conclusion

This report significantly settles the debate regarding the factors responsible for oil theft and artisanal refining in the Niger Delta region. The entire political and social infrastructure of oil production in Nigeria's Niger Delta aids and abets corruption, crude oil theft and artisanal crude oil refining in the region. The first of these factors is lax law enforcement and weak regulatory framework which incentivizes corruption and large-scale resource theft. Criminal activities thrive when their perpetrators realize that they are unlikely to face legal retribution for their actions.

There is also the political dimension when politicians mobilize idle young men to act as thugs in their quest for political offices. It is empirically established that most of the elements that end up either as insurgents or artisanal refiners had at one time or another collaborated with politicians as their militants and enforcers. When these young men are then dumped after the politician had used them to secure the political office in question, they lash out and channel their anger into a variety of illegitimate activities of which oil theft and artisanal refining are just two.

Still, the crude technology employed by the operators, in addition to the activities of those who indulge in breaking open pipelines to siphon away oil, have subjected the environment to relentless pollution. This development has had devastating effects on farm and fish yields. Local communities have also been attacked by the combined forces of blame trading indulged by the oil companies and the Federal Government who jointly label them as culprits when in fact they are victims trapped helplessly between oil thieves, artisanal refiners and cynical oil companies and their partners in government.

Ownership and control of petroleum resources is vested in the Federal Government by the 1999 Constitution, as well as control of security mechanisms and the legitimate instruments of law enforcement that could be deployed against oil thieves. Management and control of operating facilities of the petroleum industry are in the hands of the companies. Left in the lurch are local communities who find themselves at the mercy of a complex of actors out to take advantage of their vulnerability. Thus, blaming the communities for vandalism and theft of crude oil is the height of injustice against already traumatized victims, more so as joint venture oil industry profits are shared without factoring in community interest.

The report concludes that the entrenchment of a regime of respect for human rights, rule of law, accountability, good governance and improvement of corporate practices are required to build confidence in citizens, establish trust and sustain patriotism across various layers of society including communities at the grassroots. In other words, protection of, rather than blame of communities; and sustainable livelihoods rather than endless rights violations targeted at grassroots populations is what is required to tackle the menace of illegal artisanal refining.

Appendix 1



JTF FOIL ATTEMPT TO ESTABLISH ILLEGAL REFINERY IN SAMKIRI..... STAMP OUT 48 ILLEGAL REFINERY SITES IN DELTA, BEYELSA AND RIVERS STATES

Amphibious Patrol troops of 146 Battalion of Sector 2 of the JTF Operation Pulo Shield deployed at Adamakiri have put paid to an attempt by some unscrupulous persons to establish an illegal crude refining camp at Samkiri in Bonny Local Government Area of Rivers State. Acting on intelligence report, the patrol team carried out a cordon and search operation at the community where it uncovered eleven plastic drums containing crude oil floating on the water at Samkiri Creek. Investigations revealed that the product was suspected to have been stolen when the Adamakiri tie-in manifold was leaking. Items including hoses of various dimensions, a welding gas cylinder with installed pressure gauge, 3 pumping machines and 10 empty drums were recovered from the community. The leadership of the community has been urged by the JTF to caution the community youths to desist from illegal activities in the area and engage in lawful activities. The patrol team also reported a leakage close to a signpost marker KP-67 located around Pulokiri/Money Ground (between Adamakiri and Creek 6) general area. An assessment of the spot revealed that a brownish liquid substance was observed jetting out from an opening on the pipe line. The Commanding Officer, 146 Battalion Lt Col Lander Saraso attributed the leakage to corrosion on the pipeline and urged Shell Petroleum Development Company (SPDC) authorities in charge of the Cawthorne Channel 2 to carry out a timely evaluation of the leaking point with a view to effecting immediate repairs on the line to prevent further spill.

In Bayelsa State, troops of 343 Regiment and 5 Battalion of Sector 2 of the JTF deployed to patrol the water ways of Osiegbene Creek in Ekeremor, Brass and Southern Ijaw Local Government Areas have stamped out 42 illegal oil distillery camps and scuttled 25 open wooden boats (Cotonu boats), used by oil thieves along Osiegbene, Yeregbene, Otui Lagosgbene and Oyeregbene communities in the aforementioned local Government Areas.

In a separate operation, troops of 3 and 19 Battalions covering the Sector 1 Area of responsibility of the Joint Task Force Operation Pulo Shield have clamped down 6 illegal refinery sites in Ajudaigbo, Agedegben and Madagbo, Escravos in Warri South West Local Government Area of Delta state. During the clamp down operation, the troops recovered and scuttled 15 open wooden boats , 33 large tanks, 127 plastic drums and 16 pumping machines used for their illicit trade; 44 dug out pits used by oil thieves to store stolen crude oil were also sealed up. Additionally, the troops intercepted and impounded a 33,000 litre capacity tanker truck loading adulterated petroleum product from an illegal loading point at Obejiughoton in Delta state.

During the operation that lasted from 10-23 August 2013, five suspects were arrested for oil theft related offences and currently undergoing preliminary investigations before being handed over to the relevant prosecuting security agencies.

23 August 2013

ONYEMA NWACHUKWU

Lieutenant Colonel

Media Coordinator

JTF OPERATION PULO SHIELD

SOCIAL DEVELOPMENT INTEGRATED CENTRE (SOCIAL ACTION) is a Nigerian organization that collaborates with community groups and other segments of civil society to promote platforms with the aim of encouraging change towards better democratic practices, people oriented policy, improved livelihoods and human rights. Social Action works through education, mobilization and by supporting communities and activists to promote citizens' participation in addressing policy and practices in the sectors of energy, mining, trade and the environment.