

CRUDE OIL THEFT IN THE NIGER DELTA: A CHALLENGE TO OIL COMPANIES AND NIGERIAN GOVERNMENT*

Abstract

Nigeria is the sixth largest producer of crude oil in the world, and oil and gas extraction account for over 90% of Nigeria's foreign exchange earnings. However, a large percentage of the revenue that would have accrued to the Federal Government has been lost to oil theft in the Niger Delta region. This work studied Crude Oil Theft in the Niger Delta: A Challenge to Oil Companies and the Nigerian State. The study revealed that the environmental degradation associated with the Oil industry and the lack of distribution of Oil wealth to the indigenes of the Oil Producing Communities have resulted in oil theft in the Niger Delta region. It also showed that the people living in the Oil Producing Communities who suffer directly from the impact of oil production activities have been divested of the management and control of the enormous resources found in their land. The study showed that despite the existence of laws in Nigeria, regulating the Oil and Gas industry, the activities of Oil Companies operating in Nigeria have caused pollution and damages to the Niger Delta environment. In conclusion, it was observed that the exploitative practices of Oil Companies operating in Nigeria, has deteriorated the Niger Delta environment, and in protest the people living in the area have engaged in crude oil theft and sabotage as a move to fight for economic justice. It is recommended that Nigeria should among other things implement fully the provisions of the Petroleum Industry Act (PIA), and the Nigerian Oil and Gas Industry Content Development Act, in order to curb oil theft in the country.

Keywords: Crude Oil Theft, Niger Delta, Oil Companies, Nigerian Government, Challenge

1. Introduction

Oil production in Nigeria is a huge source of earnings for the state. Oil and natural gas resources are abundant in the Niger Delta region of Nigeria. However, Oil and Gas exploration and production in the Niger Delta have resulted in serious damage to the region. Although there are laws regulating the Oil and Gas Industry in Nigeria, the poor enforcement of the laws and the lack of accountability on the part of the Oil Companies have caused environmental degradation which has increased poverty in the Oil Production Communities. During oil production, much of the natural gas extracted in oil wells in Niger Delta is immediately burned or flared into the air, causing environmental pollution¹ and climate change. There are also periodic Oil spills which cause damages to aquatic life and economic trees. Most Oil Producing Communities are characterized by deforestation, erosion and destroyed farmlands which have become sign post of oil production activities. Evidence abound that the exploration activities of the Oil Companies in the Niger Delta have resulted in poverty, unemployment, diseases, and death among the people living in the area. All these have angered the people of the region. Furthermore, the lack of accountability by both the Government of Nigeria and Oil Companies and the non-implementation of the laws regulating the Oil industry, have often led the people living in the region to agitate for a better standard of living. This was supported by Clark², when he stated, that pollution and environmental damage caused by the Oil Industry, have resulted in violations of the rights to an adequate standard of living, including the right to food and water and the right to gain a living through work, for hundreds of people. The people living in the Niger Delta area agitate for their right to an improved standard of living by taking the laws into their hands, and show their anger either through protest or by siphoning crude oil from the pipeline. This research work will examine crude oil theft in the oil producing communities, x-ray its impact on oil companies, the Federal Government as well as suggest ways of reducing it to the barest minimum.

2. Definition of Terms

This work will attempt to define some concepts that are relevant to this study. This will enable us have a proper grasp of the topic being researched.

Crude Oil Theft

Oil theft is the illegal appropriation of crude or refined oil products from the pipelines of multinational oil companies. It is the illegal siphoning of crude oil from the pipelines by persons who are involved in an organized crime commonly referred to as Oil Bunkering. Today, crude oil theft is carried out in the creeks in the Niger Delta and Nigeria losses about 600,000 barrels of crude oil per day to oil thieves³. Oil theft is carried out by bursting open government oil pipelines and stealing the crude which is then sold to illegal refineries or depots who refine the crude and sell the products to retailers such as filling stations or black markets. Oil theft can also occur during

*By Nancy AMADI-HARRY, PhD, Lecturer, Faculty of Law, Rivers State University. Tel: 08160445664; and

*Ethelbert Obiorah EZEH, PhD, Lecturer, Faculty of Law, Madonna University, Okija, Anambra State. Tel: 08037173527

¹ S R Pearson, *Petroleum and Nigerian Economy* (Stanford University Press 1970)

² E K Clark, 'No justice, No peace in Niger Delta'. *News Watch Magazine* (Lagos, 4th August 2008)⁸

³ Anthony Osas Okungbowa, 'Crude Oil Theft: Whither Nigeria'. < <https://www.thisdaylive.com> > accessed 30th September, 2022

the transportation of the crude oil produced to the oil shipping terminals for export. Nigeria has lost a huge chunk of her revenue to oil theft and efforts are being made by the government to curb this menace.

Illegal Oil Refinery

These are large tanks generally located in forests and bushes, where the crude oil siphoned from oil companies pipelines are redirected into and boiled at high temperature to turn into different petroleum products. These illegal refineries are less sophisticated when compared to the legal oil refineries, and involve dangerous processes which spark huge explosion and pollution. Illegal oil refineries or depots are common in the Niger Delta, with new ones springing up regularly. These refineries are major contributors to air pollution especially the black soot in Port Harcourt, which impacts the health and livelihood of the people in the city.

Oil Producing Communities

These are the communities where oil production is carried out. They are those communities where oil is discovered and from where it is exploited⁴. They are also referred to as Host Communities. Host Communities include all communities where any form of extractive industry activity takes place, where an extractive industry has its facilities, and communities that will directly suffer impacts of the extractive industry whether or not there is an activity going on there or not⁵. The Petroleum Industry Act⁶, defines a host community as any community situated in or appurtenant to the area of operation of a settlor, and any other community as a settlor may determine. The Host Communities are in the Niger Delta Area of Nigeria. The area is made up mainly of the mangrove ecosystems, which is mostly marine.⁷ The proceeds from the Oil is used to develop other parts of the country, while these communities are left with the toxins from processing crude oil. The Oil Producing Communities are characterized by lack of good road infrastructure, lack of electricity, health care and portable water.

Niger Delta

The Niger Delta is located in South-South, and some parts of South-Eastern Nigeria⁸. It covers a land area of about 70,000/2m, and has a population of approximately 10 to 15 million people⁹. There are several distinct languages, traditions and culture in the Niger Delta¹⁰. The predominant economic activities of the Niger Delta include; farming and fishing. However, oil production activities in the region has degraded the environment. This is compounded by the activities of individuals who engage in oil theft. Crude oil theft and pipeline vandalization result in oil spill which has serious implications for the health and livelihood of the people living in the region.

Oil Producing Companies

These are companies that carry out oil production in Nigeria. They are mainly multinational corporations, which consist of industrial conglomerate listed in the 'fortune 500', with subsidiaries in six or more states¹¹. They are a cluster of corporations of different national origins, brought together by links of common ownership under a common management policy, and a firm with equally operational subsidiaries in many other states (ibid)¹².

2. Causes of Crude Oil Theft

Pollution in the Oil Producing Communities

The Niger Delta environment has suffered for decades from oil spillage which occurs both in onshore and offshore areas. Oil spills involve the release of dangerous hydro carbons into the soil and water which affect vast stretches of land and water ways, polluting not only crops but marine life¹³. Oil spill on land destroys crops and damage the quality and productivity of the soil that communities use for farming. Oil spill in water damages fisheries and makes it unsuitable for drinking and other domestic purposes. Some of the causes of oil spill include corrosion of pipelines and tankers, poor maintenance of infrastructure, spills during processing at refineries, pipeline vandalization and crude oil theft. The largest contributor to the oil spill is corrosion of pipes and crude oil theft.

⁴ I Ejirefe, 'Community Relations and Development of Oil Producing Rural Communities of the Niger Delta Nigeria. *International Journal of Social Sciences, Humanities and Education* [2017] (1)(4) 2

⁵ L Atsegbua, *Oil and Gas Law in Nigeria; theory and Practice* (4th ed Four Pillars Publishers, Benin, 2021)

⁶ Section 235(3) of the Petroleum Industry Act, 2021

⁷ B Manby, 'The price of Oil: Corporate Responsibility and Human Rights Violation in Nigeria Oil Producing Communities'. *Human Rights Watch* (Brussel, 10th January, 1999) 13

⁸ A Ogbuigwe, 'offended legal issues in the Niger Delta Struggle: A Collection of Essays' edition *Anpez Centre for Environment and Development* [2002](2)

⁹ C A Omaka, *Nigerian Conservative Law and International Environmental Treaties* (Princeton & Associates Publishing Company Limited Lagos 2018).

¹⁰ U E Udoko, 'Environmental Degradation in the Niger Delta'. *Nigerian Environmental Law Review* [2007] 18

¹¹ I Nnadi, 'Multinational Corporations and their Host Countries: Impacts and Conflicts'. *A Critique Journal of Commercial and Contemporary Law* [2011](1)5

¹² Ibid

¹³ L S Pyagbara, 'The Adverse Impact of Oil Pollution on the Environment and Wellbeing of Local Indigenous Community'. *United Nations Article* [2007]8

Gas flaring also has harmful effects on the health of the people living in the region. In Nigeria, oil companies flare gas because it is costly to separate commercially viable associated gas from oil. Gas flaring releases toxic components into the atmosphere and contributes to climate change. When gas is flared it releases nitrogen dioxides, Sulphur dioxide and other volatile compounds like methane and benzene. Humans exposed to such substances can suffer from a myriad of respiratory problems such as asthma, breathing difficulties and pain as well as chronic bronchitis. Although there are laws regulating the oil industry, the government is not willing to enforce these laws and hold the oil companies accountable for their actions. The sufferings and hardship caused by the deterioration of the environment angers the people living in the region.

Poverty and Lack of Development in the Region

The Niger Delta region is characterized by widespread poverty with about 70% of the population living below poverty line¹⁴. Most people living in Oil Producing Communities are subsistence farmers and fishermen. Oil spills kill fish, destroys marine life and economic trees, and this has led to a surge in unemployment and poverty level. The Niger Delta region is grossly under developed and most communities do not have access to basic amenities. In most communities there is lack of access to clean water, poor electricity, poor healthcare and ill-equipped schools which has resulted in social unrest, conflict and instability. The under development is so severe that the youths of the region are the hardest hit by the lack of development. The deterioration of the infrastructure in the region is so much that while the host communities live in shacks, oil workers, who may just be separated by a fence from the community live in affluence and still buy from the same market. This does not go down well with the people of the region.

Human Rights Violation and Marginalization of the People of the Region

Another factor that has contributed to oil theft in the region is the violation of the human rights of the people. During peaceful demonstrations against the activities of the Oil companies by host communities, there are human right abuses by security forces at the behest of the oil companies. Protest over environmental pollution and economic marginalization by indigenes of the host communities have often resulted in arrests, harassment and killing of men, women and youths. The marginalization and violation of the rights of the people in the region, forced them to react against the government by vandalizing pipelines and crude oil theft.

The Desire for Resource Control

The major factor responsible for the oil theft is the desire of the people in the region to have control over the mineral resources in their land. Nigerian Government exploit oil bearing communities by using the resources derived from their region to develop other parts of the country, while those who bear the brunt of oil exploration and its problems continue to live below poverty line which has angered the people in the region. This is further aggravated by the fact that the Niger Delta communities are excluded from the control and management of petroleum resources in their region. For example, section 44(3) of the Constitution¹⁵, vests the entire property in and control of all minerals, mineral oils and natural gas, in, under, or upon any land in Nigeria or upon the territorial waters and the exclusive economic zone of Nigeria in the government of Nigeria. Similarly, section 1(1) of the Petroleum Act¹⁶, also vests the entire ownership and control of all petroleum in the state. In the same vein, the Petroleum Industry Act¹⁷, vest the entire property and control of all mineral resources in the state in the Federal Government. A combination of these laws vests the ownership of Oil and Gas in Nigeria in the Federal Government and excludes the Oil Producing Communities from participating in the management of resources found in their land. The ownership of the Federal Government over mineral resources was further stated in the case of *AG Federation v AG Abia State & 36 ors*¹⁸. The effect is that the people in the oil bearing communities have been completely divested of their entitlements to their land and the oil produced from it, and in a desperate attempt to enforce their rights to the resources located within their land, have resorted to vandalization of pipelines and oil theft.

Illegal Mining of Solid Minerals in the North

The inability of government to exercise total control over the mining of solid minerals in the North, contributes to oil theft in the Niger Delta. In spite of the significant progress made in recent times by the Federal Government to enhance the development of solid minerals in the country, it has not been able to stop private individuals from mining and selling solid minerals like gold, tin ore, Bauxite etc in the North. Most of these defaulters have not been successfully prosecuted. This has been sending wrong signals to the people of the Niger delta, hence their continuous indulgence in oil theft.

¹⁴ Niger Delta Budget Monitoring Group, 'The Niger Delta' < <https://www.nigerdeltabudget.org> > accessed 6th June 2022

¹⁵ Section 44(3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

¹⁶ Section 1(1) of the Petroleum Act 1969

¹⁷ Section 1 of the Petroleum Industry Act 2021

¹⁸ [2002] 6 NWLR(pt. 764) 542

The Connivance of Military Personnel and Some Government Officials

Oil theft in Nigeria is carried out by non-state actors, in connivance with some persons within the government and security personnel. Tompolo, a former warlord, who had recently been engaged by the Nigerian Government to stem crude oil theft in the Niger Delta had exposed security officials as being parties to the crime. He further uncovered sixteen hidden tapping points on the Trans Forcados/Ramos pipeline to the government¹⁹. The military officers and Joint task Force members who are involved in illegal oil trade serve as armed escorts for the stolen petroleum products during large scale operations and they gather the intelligence necessary for avoiding government probes in the region. This perhaps explains why big ocean liners used to lift stolen crude oil move freely within the territorial waters without detection by the security agencies. Recently, the military destroyed a ship used to convey stolen crude in an apparent attempt to conceal those behind the theft. Even the Nigerian Navy who is responsible for seizing transportation vessels suspected of carrying stolen crude have been accused of facilitating the disappearance of captured vessels and the reappropriated sale of seized products to foreign markets²⁰. Crude oil theft is an organized and sophisticated crime and requires highly planned operation which succeeds with the cooperation of the military and corrupt government officials. These security personnel are emboldened by the government's inability to prosecute those involved in the crime and continue to engage in oil theft which has dire economic consequences for the government and the oil companies.

3. Impact of Oil Theft in the Niger Delta

Loss of Lives and Revenue to Federal Government

Crude oil theft involves dangerous processes which usually sparks of explosions and leads to the death of people living in the oil producing areas. For example, in April, 2022, more than 100 people, including men, women, and children were killed in an explosion at an illegal oil refinery in Abaezi, Egbema forest of Imo State. Similarly, in October, 2022, twenty five people died at an illegal refinery in Rivers State²¹. For decades, there have been numerous incidents of explosions caused by illegal refineries in Nigeria which has endangered the lives of the people living in these communities. Furthermore, most of the oil produced in Nigeria is lost through oil theft which significantly affects the inflow of resources into the Federation and thus economic development. In 2022, Nigeria recorded a massive decline in the volume of crude oil exported, and out of the 2.6million bpd given by OPEC, Nigeria could only produce 1.2million bpd due to oil theft. For example, in June, 2022, Nigeria's produced only 1.238 million barrels per day. In July, it dropped to 1.083 million bpd, and in August, it dropped to 972,394 bpd which is the lowest production in the last twenty years²². The problem is so severe that NNPC Ltd, did not contribute to the Federation account for more than four months in 2022. This is particularly bad for the Nigerian economy, especially as oil price is at its peak and other countries are benefiting from the oil windfall. In the same vein, revenue from gas export and feed stock sales to the Nigeria Liquefied Natural Gas Limited, NLNG, is also negatively affected. For example, in the first quarter of 2022, NLNG, hit \$243.57 million, surpassing receipts from crude oil export by 259.4% within the same period²³. However, this revenue is threatened by massive insecurity and pipeline vandalism. This is because NLNG feed gas mix comprises associated and non-associated natural gas sources, most of which are sourced from onshore/swamp areas. Since pipeline vandalism is concentrated in shallow offshore/swamp areas, it significantly results in feed gas supply disruptions to NLNG plant. Currently, as a result of vandalism and disruptions of upstream petroleum operations, the NLNG plant is operating at about 65% utilization capacity instead of 95-98% availability and reliability.

Relocation of Oil Companies and Investment Flight

Crude oil theft and pipeline vandalization have forced many companies operating in the Niger Delta to relocate to deep offshore, shut down production or sell off their assets. For example, shell, Chevron, Mobil and other multinationals are divesting their land and shallow offshore assets because they no longer see potentials in them. The same applies for marginal fields operators. This is largely due to the fact that there is huge difference between what is produced at the wellhead and the output at terminals. New investors are discouraged from the region, as they have to consider the low crude that arrive the terminals, the cost of cleaning and remedying the environment and the security challenges which serves as disincentive to operators. The effect is that there is loss of investment and confidence in the Nigerian Oil industry.

¹⁹ n 4

²⁰ Ibid

²¹ Gideon Fakomogbon, 'Nigeria's Illegal Oil Refineries: What to Know About How They are Harming People and Planet' <<https://www.globalcitizen.org>> accessed 31st December 2022

²² Dakuku Peterside, 'The Mystery of Nigerian Crude Oil Theft' <<https://www.premiumtimes.com> accessed 30th September,2022

²³ Ibid

Increase in the Level of Pollution and Unemployment

Although pollution is one of the reasons for oil theft, crude oil theft in the region has actually increased the level of pollution in the Niger Delta and this has worsened the economic situation in the country. According to the National Oil Spill Detection and Response Agency (NOSDRA), between 2015 and 2021, Nigeria recorded a total of 4,486 cases of oil spills amounting to 242,193 barrels of oil²⁴, and in 2021 alone, oil companies reported 388 incidents of oil spill, resulting in 23, 956 barrels of oil. Also, between January to March, 2022, Nigeria flared 73 billion SCF of gas²⁵. Oil theft in the Niger Delta region is also a major contributor to the oil spill in the environment which has not only destroyed the bio diversity of the region but has also resulted in an astronomical rise in poverty. Furthermore, there is an increase in unemployment in the country. This is because most companies with high percentage of workers have stopped operations. This development has increased the unemployment rate in the state, and the youths are the most affected, as thousands of youths in the country have become jobless due to closure of businesses²⁶. This aggravating unemployment situation has increased the crime rate which has created more problems for the country.

4. Conclusion and Recommendations

The Oil Producing Communities are stakeholders in the Nigerian Petroleum industry, and must participate in the operations in their communities. Their participation in the operations of the oil company within their communities will help to reduce oil theft in these communities. Government on its part should stand up to its responsibility, and ensure that the provisions of Petroleum Industry Act, 2021, and Nigerian Oil and Gas Industry Content Development Act, 2010 are fully implemented. Government should stop the repressive role it has hitherto played in the region and play the role of a moderator between the Oil Companies and the Oil Producing Communities. The Oil Companies should ensure that their operations are environmentally friendly and where their operations have caused damage to the environment, they should take prompt and adequate steps to restore the environment. They should also carry out their corporate social responsibilities in their host communities in other to maintain peace and stability in the Oil Producing Communities. The following measures may be helpful:

Implementation of the Provisions of the Petroleum Industry Act

To curb oil theft in the Oil Producing Communities, it is recommended that there must be full implementation of the provisions of the Petroleum Industry Act (PIA) 2021. The PIA, in an attempt to achieve sustainable development in the petroleum industry in Nigeria, have made laudable provisions aimed at addressing the problems in the host communities. This is in recognition of the fact that Oil Producing Communities in Nigeria are stakeholders of the Petroleum industry, and must participate in the operations of Oil and Gas development in their communities.

Section 103(1) of the Act²⁷, provides for Environmental Remediation Fund, as a condition for the grant of a license or lease. Prior to the approval of the environmental management plans by the Commission or Authority, a licensee or lessee shall pay a prescribed financial contribution to an environmental remediation fund established by the Commission or Authority for the rehabilitation or management of negative environmental impacts with respect to the license or lease. This section provides a legal mechanism for stakeholders to pool funds for restoration of the environment. The establishment of a fund dedicated to environmental restoration will provide some guarantee to the host communities that damages caused to their environment will be addressed, hence, reduce the tension and oil theft in the region. Furthermore, Section 235 (1)²⁸ creates the host communities development trust. This section provides that, the settlor shall incorporate a trust for the benefit of the host communities for which the settlor is responsible. This provision is aimed at ensuring that the host communities get social and economic benefits from petroleum operations. As well as ensuring that there is peaceful relationship between Oil companies and host communities.

Full Implementation of Nigerian Oil and Gas Industry Content Development Act 2010

In order to stem oil theft in Nigeria, it is recommended that the provisions of Nigerian Oil and Gas Industry Content Development Act, 2010, should be fully implemented. The Local Content Act was enacted to encourage indigenous participation in the oil industry and to ensure that Nigerians derive maximum benefits from the petroleum industry. The law provides that Nigerian independent contractors should be given first consideration in the award of oil blocks and oil field licenses²⁹. It also encourages human capital development by providing for

²⁴ U P Adiela, Oil Exploration and Production in Nigeria: from Bottom to Top and Beyond (Being a Lecture Presented at the 83rd Inaugural lecture of the Rivers State University Port Harcourt 2022).

²⁵ Ibid

²⁶ A Nancy, Curbing Conflicts in Oil producing Communities in Nigeria, A dissertation submitted to the School of Post Graduate Studies, Imo State University 2014

²⁷ Petroleum Industry Act, 2021

²⁸ Ibid

²⁹ Section 3(1) Nigerian Oil And Gas Industry Content Development Act, 2010

training and employment of Nigerians in the Oil and Gas sector³⁰. It is also strongly advocated that to reduce the oil bunkering, the provisions of Section 28 and 35 should be fully implemented. Section 28³¹ mandates operators to maintain a reasonable number of personnel from areas within its operations. Operators are equally mandated to employ only Nigerians in their junior and intermediate cadre³². Engaging the services of locals in the oil industry will certainly help to reduce the incidence of oil theft in Nigeria.

Corporate Social Responsibility (CSR)

It is recommended that the Oil Companies should be alive to their corporate social responsibilities. They should assist the host communities where they are operating in order to reduce the tension in those areas. Most Indigenes of the host communities have often complained that they are not given employment opportunities in the oil industry. As part of corporate social responsibility, oil companies should be made to receive a certain percentage of employable personnel from the community where they operate. The provision of employment and economic empowerment to the people in the host communities will not only douse the tension, but will give the people in the communities a sense of belonging, and create a harmonious relationship between the Oil Producing Communities and the Oil Companies. The Oil Companies should also provide basic facilities and services such as schools and health centres to improve the welfare of the people. They should also train the youths to acquire skills that would enable them work in the Oil industry and other sectors. This will help to gain the confidence of the people and give them a stake in the Oil operations in their region. In summary, oil companies should embark on infrastructural development, human capital development as well as encourage indigenous contractors in the region.

³⁰ Section 10(1)(b) ibid

³¹ Section 28 Ibid

³² Section 35 ibid