



Political Economy of Oil Theft: A Call for Legal Paradigm Shift in Regulation

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ABSTRACT

The quest for the development of indigenous technology in the oil and gas sector of the economy necessitated the emergence of the Nigerian Oil and Gas Industry Content Development Act of 2010. But there appears to be a disconnection between the policy behind the act and the stiff legal regimes against local refining of oil in the creeks. This paper underscores this disconnect between the emerging local technology and economy in the creeks and the legal regulation of same. It employs the doctrinal research methodology and argues that the current policies and legal regimes against oil theft and local refining in the creeks require a shift to fob off the militancy in the creeks of the Niger Delta and accelerate the development of the Nigerian indigenous oil economy.

Keywords: Oil and Gas, Theft, Local Refineries, Niger Delta and Law.

INTRODUCTION

The graphic picture of the political economy of the emergence of oil theft and local illegal refineries painted by Audu Liberty Oseni in *Special Report: Crude refining in Niger Delta communities* is downright compelling.¹ After half a century since the finding of oil, Nigeria is yet to find lasting solution to its oil exploration and local refining due to aging infrastructure, failed turnaround maintenances, leading to importation. Promises of building functional local Greenfield refineries and a memorandum of understanding (MoU) between NNPC and an American-Nigerian Joint Venture to build six modular refineries at the cost of \$4.5 billion have all fallen flat on the ground. In the midst of these challenges, ‘communities’ in the delta have come up to adopt un-conventional technologies in refining crude oil which is sold in the black market. Titi Governor, a self confessed illegal refiner in the creeks, presented the most recent worst case scenario.²

Both the state and the multinationals have cried wolf and branded these configurations as illegal refineries shutting down the plants. The case of the state against the plants is legion: The exercise is criminal and leads to pollution and environmental degradation, loss of revenue; products are unrefined, substandard, and adulterated which leads to health disasters, explosion and vehicular breakdown. By Audu’s special report, government’s effort in checkmating and stemming this ‘healthy or unhealthy development’ (depending on whether it is viewed from the orthodox or critical perspective) led to the bombing and destruction of 4,349 allegedly illegal refineries in diverse operations executed by JTF between: January – December, 2012. Further collateral damages involved destruction or seizure of 36,584 drums of illegally refined products, 638 pumping machines and 326 outboard engines.

¹Audu Liberty Oseni, *Special Report: Crude refining in Niger Delta communities*. www.westafricainsight.org . January, 2013.

²Akpokona Omafuaire, *Case for legislation of illegal refineries: We can make petrol sell Below N97 per liter – Titi Governor*. www.vanguardngr.com. October 26, 2014.

Merits of the Case for Local Refining

The Ijaw People Development Initiative (IPEDI) ³ has argued that rather than destroy the artisanal refineries, allowing them to operate would create job opportunities in the region. The non-state actor counsels the state to provide operational guidelines for local refineries rather than bombing and destroying them because in spite of the branding and bombing, they still exist. As such, the ‘best idea is for such refineries to be licensed to pay appropriate taxes.’ Corroborating the non-state actor, Peter Biakpara, an ex-Commissioner in Delta State ⁴ attacks and debunks the branding of artisanal refineries as illegal positing that they are local expertise and government has to encourage, support and regulate them as they would continue to exist because those that operate them cannot give up as they make a living out of it. Biakpara opines, ‘rather than destroy the refineries, the government should get the operators together, examine how they carry out their activities and see how it can improve on it and make it better.’ Above all, they argue that the giant oil refineries there are in the industrialized world may have started in crude and traditional forms and a major regulatory role as it plays in other sectors as against the choice of fire power in bombing and destroying them and sending the operators out of business ought to be the charge of government. Audu ⁵ and Mittee ⁶

raise the pertinent questions: Going by the need for the state to have local refineries that are driven by its local people should the initiatives of crude refining in the delta communities be met and killed by the government through the military bombings? Are there no ways that government can establish a framework that would enhance the improvement and promotion of local crude oil refining in the delta? Are there ways government can encourage local refining by setting regulation that would guide the activities of local crude oil thieves? At the artisanal level, what is to be done in an informal economy that employs over 450,000 youths of the delta with an average GDP of more than the national average?

The answer firstly, is that ‘we cannot arrest our way out of this problem’ as candidly submitted by Randy Seepersad in the Ontario Report on the *Review of the roots of youth violence*.⁷ We cannot bomb our way out of this problem of oil theft and illegal refineries in Nigeria. The Nigerian state has a wide mandate to look at where the violent theft and the illegal refining are coming from and identify ways to address their roots in order to advance a peaceful Niger Delta community. As Asuk⁸ has shown in *Two oils, same phenomenon, historicizing exclusion, poverty and contemporary violence in the Niger Delta*, having lost the ownership rights of their lands and oil resources in a *statutory trinity* and without entitlement to any royalties, the Niger Delta communities could only demand inappropriate compensation for spillages and surface rents from the state and multinationals thereby reducing them from citizens to subjects. The failure of the Nigerian state to respond meaningfully to the communities’ demand for full citizenship rights of participation in documents in the likes of the Ogoni Bill of Rights and the Kaiama Declarations prepared the grounds for the emergence of community grassroots (ethnic-based) social and militia movements wherein the youths constituted themselves into crack troops to secure some form of political, cultural, economic and even legal autonomy from the Nigerian state.

In order to extract legitimate and illegitimate shares of the mainstream oil economy, the youths started to takeover and occupy oil platforms, kidnapping oil workers for ransom that went viral into the society culminating in the Amnesty Deal. After the deal that did not seem to address the level of their economic

³Id

⁴ Peter Biakpara, *No illegal refineries in Niger Delta but local expertise*. www.vanguardngr.com. September 16, 2012.

⁵ Audu Liberty Oseni, Loc. Cit.

⁶ Ahamefula Ogbu, *Nigeria: Oil theft – We are yet to catch the big thieves, says Mittee*. <http://m.allafrica.com/stories>. October 14, 2013.

⁷ Randy Seepersad et al, *Review of the roots of youth violence: Literature Reviews. Vol. 5, Chapter 5: Economic Deprivation 4*. www.justice-studies.com. Retrieved 11 November, 2013.

⁸ Asuk, O.C., *Two oils, same phenomenon, historicizing exclusion, poverty and contemporary violence in the Niger Delta*, African Research Review. Vol. 5(2) No. 19 April, 2011. www.ajol.info/index.php/afreview

deprivation, direct military confrontation with the JTF appeared to have given way to the indirect methodology of oil theft and illegal refining. Oil theft is therefore a survival strategy within the mainstream of resource control, a major source of funds even far beyond what was being realized from hostage taking, keeping and ransoming. It became a highly lucrative business, patronized and protected by highly placed citizens in the society. The stolen oil is sold in dollars and sometimes exchanged for arms and drugs to foreign buyers whose vessels are always and sometimes permanently in the high seas. There is a sense in which communities in the delta are unlikely to give up local refinery operation. The dialectics of the crude oil economy, its birth in resource control agitation resulting in 13 percent and the further agitation for upward review to 25 percent or 17 percent that never came to fruition and the emergence of militancy leading to the 'failed' amnesty deal and now, the theft of oil and its illegal refining, can be rationalized as survival strategies of a 'shadowy Niger Delta economy' within a war economy being operated by the Nigerian state in the Niger Delta. As Biakpara⁹ argues, 'People wake up every day and they see oil around them and they want to survive. It is natural that they would want to use the oil they see for their survival'. The trend is likely to continue as those who engage in the act see it as a huge source of livelihood. For instance, investors in the business make between N2 million and N10 million every week depending on the scope of their business. Those who engage in distribution of the product make more gains particularly at the time of scarcity, since they control the retail using boats and canoes to transport the products from one location to another.¹⁰ For Mittee Ledum,¹¹ some youths out of school on the business earn as much as N500,000 a week or month. To such a youth, the threat of arrest becomes less when he looks at the gains and the options. Some law enforcement agents, research has shown, who are assigned to checkmate and curb such operations are alleged to have joined the communities in the business mainly because of the huge profit involved.¹² In 2005 for instance, high-ranking Navy Commanders were dismissed from service for involvement in oil theft and illegal trading.¹³

Swift Growth in Local Refining

In fact, local refining has grown swiftly over the past 4 years, providing communities with employment opportunities and filling the supply gap of refined fuel in Niger Delta. The informal industrial sector fills an economic vacuum where local communities suffer the impacts of oil extraction but see none of the economic benefits. The failure of the Nigerian state to provide basic public services and security in the delta has resulted in a significant breakdown of social contract. In the face of extraordinary corruption by political elites, communities view artisanal refining as doing what they can and ought to do to survive in the absence of mainstream livelihoods.¹⁴

In a sense too, despite several efforts towards cracking down on the operators of the illegal refineries by the JTF, the number of lorries loading oil from the local refineries continues to increase according to Audu's Special Report to the extent that Colman Obasi,¹⁵ the National President of the *Oil and Gas Service Providers Association of Nigeria* (OGSPAN) admitted that 'from all indications and what is obtainable, the war against illegal refineries cannot be won... In fact, it is far from being won. It has not even started and this is due to the fact that those who engage in the crime are still in charge.' Indeed, as a lucrative criminal industry, oil theft, as a *Wall Street Journal* has shown, has drawn many militants, both old and new, back into the creeks and while the richly remunerated kingpins profess to have hung up on it, the not too well remunerated have continued to pursue prosperity by tapping away at the pipelines,

⁹ Peter Biakpara, Loc. cit.

¹⁰ Audu Liberty Oseni, Loc. Cit.

¹¹ Ahamefula Ogbu, Loc. Cit.

¹² Audu Liberty Oseni, Loc. Cit.

¹³ Odunlami Temitayo, Mohammed Hamisu, Hamza Ibraheem and Edozie Victor, Nigeria: *Top politicians, Generals smile as oil theft cripples Nigeria*. <http://www.m.allafrica.com>. July 1, 2013.

¹⁴ SND Report: Communities not criminals – Illegal oil refining in the Niger Delta. www.stakeholdersdemocracy.org. October 16, 2013.

¹⁵ Audu Liberty Oseni, Loc. Cit.

breaking them open, filling their canisters with crude and refining them through timeworn techniques used by locals to boil palm-tree sap into wine.¹⁶

Complicities and Policy Summersault

The complicity of the multinationals in collusion with the state to stamp out illegal refineries appears more resolute than the appeals being made by non-state actors to condone, accommodate, streamline and regulate the informal sector. Nwakamma¹⁷ in *How to check oil theft, illegal refineries in the Niger Delta* cited Mutiu Sumonu of Shell urging the Joint Military Task force to step up its activities in the fight against oil theft and illegal refineries in delta. In the report, 260 suspects, 8 vessels, 9 barges and 90 boats were apprehended; 452 illegal refining points were destroyed. The report further indicated that JTF had not in any way relented in the task of combating and routing oil theft in the region but admitted to the employment of alternative means of advocacy, enlightenment campaigns and surveillance of oil installations and pipeline networks. Even NEITI (Nigerian Extractive Industries Transparency Initiative) is not left out in the calls for stringent sanctions against the informal sector. In its website, it called on the National Assembly for the promulgation of ‘a specific law with stringent sanctions and penalties against illegal oil bunkering, oil theft, illegal refineries and pipeline vandalism’ characterized as ‘acts of economic sabotage.’¹⁸ Even members of the British House of Commons have suggested the use of surveillance aircraft as a better means of tackling the case.¹⁹

Now, there is no doubt about policy summersaults in Nigeria governance set up. In our history, even when policies and programmes begin to yield positive results, the culture of lack of continuity by succeeding administrations means that policy-making and implementation almost always take one step forward and two steps backwards.²⁰ For instance, the Presidency once impounded Rivers State’s surveillance helicopter and later released same. But there does not seem to be legal summersaults. The position of the law is clearly negative and punitive against oil theft and illegal refining ranging from life imprisonment to death penalty, but the policy options seem to conflict which is normal in a capitalist-mixed economy where there is bound to be major inconsistencies and uncertainties in the development and implementation of laws and policies.

Biakpara²¹ submits that the present circumstances of the situation in the delta of oil theft and illegal refining throws up a challenge of policy and legal re-tinkering. The ex-state actor believes that the situation is auspicious to encourage small scale private refineries that would strengthen local expertise and create jobs and wealth since the nation is piece meal-tinkering with the diversification of the economy. The ideological paradigm of the government of Nigeria controlling the ‘commanding heights’ of the economy therefore ought to have shifted to applying ‘the principle of allowing those whose lands produce oil to benefit from it by being the operators while it (government) plays the role of a regulator’.²² According to Alison-Madueke,²³ the Petroleum Minister, deregulation of the sector is crucial if the nation intend to revamp its existing refineries and fast track the establishment of Greenfield refineries. ‘Investors cannot come in a subsidy backed environment like ours, we need to deregulate for investors to come in. We cannot eat our cake and have it. We have to do the right thing to transform the sector’. But the major vehicles of transformation and growth are not being driven, that is the connection of the oil complex

¹⁶ Drew Hinshaw, *Niger Delta amnesty program fails to end militancy. Niger Delta Politics: dispatches on Security in Nigeria’s Oil Region.* <http://nigerdeltapolitics.word>. September 4, 2012.

¹⁷ Nwakamma Nathan, *How to check oil theft, illegal refineries in the Niger Delta.* <http://thenationonlineng.net>. April 25, 2013.

¹⁸ *Neiti calls for specific law against illegal oil bunkering.* <http://neiti.org.ng/index.php>.

¹⁹ Vanguard, *Nigeria: Oil theft – British Parliamentarians task Nigeria on surveillance.* <http://www.allafrica.com/stories>. December 2, 2013.

²⁰ Nasir Ahmad El-Rufai, *Impunity, injustice and insecurity: What is the role of law?* <http://premiumtimesng.com>. May 23, 2013.

²¹ Peter Biakpara, Loc. Cit.

²² Id.

²³ Alison-Madueke, *Nigerian Content Law has created 30,000 jobs.* The Guardian, Sweet Crude. July 13, 2013.

economy (the petro-state or petro-capitalism) with the traditional economy developed or developing in the creeks. Rather than connect the two which is being advocated in the neo-transformation agenda of the Minister and the Presidency, what appears to be holding sway in practice as against the professed policy of the state is a systematic military disconnect of the traditional economy of the creeks with its outcrops and accretions in the nature of emerging local refining technologies from the petro-state and stamping it out through the legal process and legal philosophy of branding it 'illegal' in order to scupper its development and bomb it to extinction.

Historical Disconnect

As observed in the works of Simeon H.O. Alozieuwa in *Contending theories on Nigeria's security challenge in the era of Boko Haram insurgency*,²⁴ African states, like the typical Nigerian State, remain characterized by a huge disconnect with the society. This disconnect makes African states irrelevant to the citizenry thus eroding their legitimacy and becoming prone to economic dislocation indicative of the stature of a failed state. In a failed state, economically and politically, leaders and their allies work to subvert prevailing democratic and economic norms by coercing legislatures and bureaucracies into subservience, compromising judicial independence, stifling the emergence of indigenous technology and economy and abusing and using national security and defence forces for parochial ends as in the bombing of emerging indigenous economies and technologies as illegal refineries; and promoting pervasive economic stagnation, deteriorated standard of living and flowering of rent-seeking corruption and investment of ill-gotten oil money overseas.

Although Bagaji, Achegbulu, Maji and Yakubu²⁵ in *Explaining the violent conflicts in Nigeria's Niger Delta: Is the rentier state theory and resource – curse thesis relevant?* concluded that the basic assumptions of the rentier state theory and resource curse are applicable in Nigeria since joining the league table in the 1970s, other salient factors come to play in an analysis of the Nigerian violent conflicts in the creeks. As a typical rentier state where a small group (seemingly and supposedly autonomous from society) is involved in the generation of the wealth that keeps the state going, the Nigerian petro-state further exhibits the basic characteristics of the orthodox rentier state theory (as developed by Hussein Mahdavy)²⁶ of linking oil wealth with undemocratic principles and corrupt governance. It does not only in the process, 'buy off' those who do not succumb to misrule but suppresses them with the strongest repressive apparatus affordable to it and pursues a policy where the strengthening of the domestic economy is not reflected in the income of the state and therefore not a precondition for the existence and expansion of the state. Rather than succumb, the Nigerian entire state typically rebuffs pressures and counsel to commit to using its resources in terms of rents and royalties for development projects that can give the local communities alternative job opportunities so that the so-called militants and oil thieves and refiners would not be easily drawn to the lucrative, alternative illegal trade.²⁷

Yet as Roland Dworkin²⁸ makes clear in his legal philosophy, no government is legitimate unless it subscribes to show equal concern for the fate of its citizens over whom it claims dominion and respect fully, the responsibility and the right of the citizens to decide for themselves, how to value their lives. It is in this wise that youth militancy, oil theft and illegal refining stand ideologically opposed to the elders of creek communities, the petro-state and the oil complex. While youth militancy is woven around the

²⁴ Alozieuwa, S.H.O., *Contending theories on Nigeria's security challenge in the era of Boko Haram insurgency*, The Peace and Conflict Review, Vol. 7 No. 1. www.review.ucepeace.org. November 11, 2013.

²⁵ Bagaji Ali S. Yusufu, Acheegbulu Joseph Odoba, Maji Abu and Yakubu Natala, *Explaining the violent conflicts in Nigeria's Niger Delta: Is the rentier state theory and resource – curse thesis relevant?* Canadian Social Science Vol. 7 No.4 (2011) <http://csanada.net/index.ph>. November 16, 2013.

²⁶ Matthew Gray, (2011) *A theory of 'late rentierism' in the Arab states of the Gulf*. Centre for International and Regional Studies. Occasional Paper No.7 <http://www12.georgetown.com>.

²⁷ *Nigeria's oil thieves, plundering the nation into poverty*. <http://internationalaffairscanada.wordpress>.

²⁸ Nasir Ahmad El-Rufai, *Impunity, injustice and insecurity: What is the role of Law?* <http://premiumtimesng.com>. May 23, 2013.

development of the principles and gains of ‘resource control’ the Nigerian petro-state rolls out its tanks and arsenals into the creeks to combat the sabotage, new face of terrorism and emerging challenge to its vice-like grip on the oil resources and money. There is no doubt that a development of the creek technology of ‘theft and refining’ is a historical challenge to the prevailing economic arrangement of the Nigerian petro-state which is an ailment between the state and the oil company on the one hand against the traditional technological development and breakthrough in militancy in the creeks on the other hand. In other words, the current oil war appears clearly to be the war against the suppression of the emergence of an indigenous technology and economy; and thus a breakaway from the petro-state.

Amidst the overwhelming symptoms of state failure in Nigeria as Alozieuwa²⁹ canvasses, such economic sabotages on a daily basis like oil theft and illegal refining go beyond ordinary criminality to mirror citizens’ sense of repulsion and exclusion from and lack of ownership of the common patrimony. The greatest solid wicket upon which there is a commonality of interest even with the northern religious militancy is that oil thieves and refiners ‘believe that the premise on which they act is justifiable and that the Nigerian state is unfair to them, if not an outright enemy’.³⁰

On this ideological perspective of technology transfer and or integration of the formal and informal sectors, the crises of illegal refineries and oil theft is connected to the uneven attention being given to physical and financial capital accumulation in Nigeria against the overall neglect of indigenous training in education for human capital formation which is the driving force that harnesses all the other factors of production. The situation is absurd if not criminal that oil accounts for 97 percent of all exports and 1 percent of the population is employed in the sector with the rest 99 percent in the unemployed indigenous sector. In fact, the dominant complaint is that the level of indigenous employment, technology transfer and sharing is far too low leaving the reserve of human capital largely underdeveloped. Thus, the indigenous communities of the Niger Delta complain of economic exclusion that despite the dominant presence of the economic activities of the multinationals on their terrain none of their natives are hired on a permanent basis and not enough casuals are used.³¹

Chris Hajzler³² argues that emphasis on capital accumulation through foreign direct investment implies more than simply importing machinery and technology from abroad, it assumes that the Nigerian state has developed the capacity to transform these factors into productive national labour force. Therefore, the state needs to work to improve indigenous technical skills alongside the growing use of modern processes as the question is not just whether the use of new technologies by the national and multinational oil companies increases productivity and competitiveness of local industry; it is paramount to examine who benefits from the increased profitability where access to advanced modes of production is strictly limited to foreign multinationals. In other words, the protection of production technology by the multinationals is not a trivial matter because advanced technical skills are treated as capital and the transfer of technical knowledge to indigenous population is interpreted as a potential threat to a multinational’s competitiveness and monopolistic advantage.

More critically, others in the likes of Bode Onimode³³ have argued that even the imposition of foreign direct investment and foreign technologies for production of oil have hindered Nigeria’s technological growth because the cheap import substitutes render traditional techniques obsolete. This ‘obsoletization’ and illegalization of artisanal refineries puts the indigenous people out of contemplation and work and also brings inferiority complex and stigmatization for the native labour force involved in it rather show casing same for improvement.

²⁹ *Nigeria’s oil thieves, plunging the nation into poverty.* <http://internationalaffairscanada.wordpress>

³⁰ Uzodike, U.O. and Maiangwa, B. *Boko Haram terrorism in Nigeria: Casual factors and central problematic.* *African Renaissance*, 9 (1), 2012. Cited in Alozieuwa, Id.

³¹ Chris Hajzler, *Nigeria oil economy: Development or dependence.* www.arts.vsask.ca/economics/skjournal/sej-3rd/. November 11, 2013.

³² Id.

³³ Bode Onimode, Cited, Id.

CONCLUSION

Significant progress has been in the oil and gas sector since the implementation of the local content policy and law particularly in the area of participation of indigenous oil companies. But much is still left to be done to critically connect the oil and gas economy with the indigenous technology and economy of the Niger Delta by allowing the participation of artisanal refiners in the creeks. The legal regimes in force are so stiff that they do not brook the existence of local technology and refining labeling them illegal and meeting them with penalties of the highest magnitude known to law. A continuation of such legal regimes may not only drive the emerging technology beneath it underground but may also discourage its improvement and advancement. The situation would leave the economy dependent on foreign technology.

RECOMMENDATION

There is the urgent need to whittle down the rules of engagement in the creeks against artisanal refineries with a view to understudy the prevailing technology behind them and promote legal regimes that will regulate instead of kill the emerging technology.

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