



## **Nigerian oil militancy and rentierism: Transforming the vice of violence to virtue?**

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### **Abstract**

Suppression of revolt and rebellion in the Niger delta region is the most violent part of the history of Nigeria as no other part of the country has lost so much of its peoples' blood than the region in the national question of whether to belong to the country or whether its enormous resources have been of any benefit to its people. Since the finding of oil in the region the conflict of who gets what, how and when has remain touchy. When the military receded and enthroned the fourth republic, the Niger delta people and their states took to the offensive in resource control agitation believing that what the military had kept under rap can now be uncovered and questioned. When all manners of negotiations, appeals, litigations, demonstrations, conferences, symposium, studies, and shows failed, oil militancy took the centre-ground. The militants bugged down the Federal government and extracted an amnesty reprieve while shut-in of over 70 percent of its oil out-put crippled the government. The epoch threw up the dramatis persona of Tompolo, Dokubo, Ateke and Boyloaf. They keyed into the struggle of their people using all well known ideological weapons to demonstrate that the Niger delta was being marginalized by the Federal government acting on behalf of the other major ethnic nationalities. But at the end of two decades of the struggle and representation of their people, it has become worrisome whether what actuated them into the struggle has been realized and whether the end has justified the means. This study which adopts doctrinal method surveys the question whether the treatment of being awarded amnesty and surveillance of pipe contracts has met the threshold of the emancipation of the Niger delta people which was the aim and philosophy of the struggle. Has rents and contracts to militants become the transformational agenda of the Niger delta? This study finds that a few charlatans strutting around the Niger delta have stolen the struggle of their people and colluding with the Federal government, have distorted the trajectory of the struggle. The region has found that those that came were not the ones to come or expected and is thus looking or asking for others.

**Keywords:** Oil, Militancy, Niger Delta, Militants, Contract, Rent

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### **Introduction**

Violent oil militancy in the Niger delta is a relatively recent phenomenon. It is traceable to the beginning of the fourth republic (1990 till date). But the region had been known for one form of commodity militancy or the order in her history. It could have been slave commodity, palm oil or pepper-spice commodity. Rebellion is her second true nature as a crucible of conflict. Peace building experts like Albert (2019) <sup>[15]</sup> have stated that it is a region 'bedeviled by revolutionary violence'. This revolutionary violence may be traceable to Adaka Boro Republic of Niger Delta or Odumegwu Ojukwu Republic of Biafra. When oil militancy took ascendancy during the administration of ex-President Olusegun Obasanjo, the ex-Military general in civilian garb took to panic mode deploying both military and ideological warfare against the phenomenon. He was determined to demonstrate that the federal might was not ready to condone a repeat of the Adaka Boro or Odumegwu Ojukwu experiences.

The carrot method was out of the way. It was the stick that was readily available to the General. After rehabbing Ojukwu from exile, the Federal government took the war to the creeks and called out the militants by their names as oil thieves driven by greed rather than grievance.

There was a high degree to which oil militants were held in suspicion by the state and the multinationals. This has been eloquently expressed by Sutcliffe (2012) <sup>[91]</sup> in the 'greed not grievance' scholarship to the effect that oil militancy is a greed-driven strategy to gain access to oil wealth and rents through clientalist networks; and militant groups involved in oil militancy were nothing more than a vast criminal syndicate operating across the creeks offering social justice rhetoric while following strategies of self-enrichment and self-aggrandizement. Indeed, Asuni (2009) <sup>[20]</sup> rightly saw them as feeding off the genuine grievances of the Niger delta people.

But the militants did not yield an inch even though Sutcliffe's thesis has now been proved beyond reasonable doubts by the current statuses of Ayari Emami, Rita-Lori Ogbobor, Tompolo Government, Tom Ateke, Ben Boyloaf, Asari Dokubo, and Macaiver in 2023. They retorted that it was the Federal government that was the thief. For instance when Human Rights Watch (2005) <sup>[44]</sup> demanded from Tom Ateke (now His Royal Majesty, the Amayanabo of Okochiri Kingdom) why he was engaged in oil theft, he retorted, 'I take that which belongs to me. It is not theft; the oil belongs to our people'. Ebikabowei Victor Ben (Boyloaf) a well acknowledged militant, states: 'I hate to hear the word "oil thieves or oil theft" because the people you want to label as thieves are simply trying to make use of their God-given resource.' In other words, what they were doing was the legitimate 'resource control.' In the article, 'Nigeria is Oil-dependent, not Oil-rich', Boyloaf's thesis has been further amplified by Assisi Asobie (as cited in Olayinka, 2013) <sup>[82]</sup> that the people of the Niger Delta were stealing oil because they realized that stealing was going on at the highest level of government not only of oil but oil money. They regarded oil theft as informal tax; they did not take it as stealing. A more damaging claim from MEND (2017) to the Russian President on the latter's visit to Nigeria was to the effect that: Abuja was a child of rape and the Nigerian President sitting therein (ex-President Yar'Adua) with whom the Russian President was about to sign an oil deal was an illegal Commander-in-Chief; that the region where the wealth with which the Abuja city was built remains mired in poverty and lack; that the people who owned the oil have no stake in the city for which they (the oil militants) were engaged in a war to emancipate; and that the Russian ought to have come to see the pathetic conditions under which the Niger delta people lived in...the type that led the likes of Che Guevara, Fidel Castro and Patrice Lumumba to stage and begin a revolution.

### Statement of the problem

It appears that there has been a huge deficit to have placed much capital on the hope that the oil militants were fighting for the genuine emancipation of the Niger Delta. This is because looking at the turn out of the struggle after nearly three decades and the current live statuses of the likes of Ayari Emami, Rita-Lori, Government Tompolo, Tom Ateke, Ebikabowei Boyloaf, Asari Dokubo, Macaiver, John Togo, Egberu Papa, Farah Dagogo and Chief Dr. Oboko Bello etc the Niger delta people cannot say with gratitude in their words that the oil militants have fought a good fight for them.

It is easier to state that the oil militants have all along fought for themselves, for their selfish interests and self-aggrandizement. The amnesty palliatives and the awards of stupendous surveillance contracts to keep peace in the area cannot be considered as the aim of the genuine struggle of the people. When then does the vice of violence become virtue in the Niger delta freedom fighting? It appears there is more stock-in-store to say as Omirhobo (2023) <sup>[83]</sup> has stated, that the Federal government 'is using our sons and brothers for peanuts to protect the pipelines while it is stealing our collective wealth in the Niger delta at the risk of their lives'. By fashioning out such humongous contracts which are military in context, was the Federal government not abdicating its army's and navy's duties to non-state actors and would that not undermine the security integrity of the Federal Republic of Nigeria?

Now, what went wrong? Why did the revolution not come? A listening to the speeches of the violent oil militants in the fourth republic was captivating to the ear. The Nigerian left had felt that they could leverage on them to bring about the revolutionary change that was needed to oust the ancient regime in Nigeria even though the country was basking in the euphoria of having ousted core military dictatorship. The militants were hugely popular, occupying front pages of local, national and international newspapers that they began to gain strong academic wings in Universities, and even taunted Professor Wole Soyinka (a Nobel laureate) as their Chief Negotiator before the Federal government. They became the delight of international and local investigative journalists. They became folk heroes and much sought after by their people.

They started to recruit large followings and established 'camps' in the mangrove swamp forests of the Niger delta preparatory to the revolution. They started having the consultations (pro-bono) of intellectual Marxists, Senior Advocates of Nigeria like Festus Keyamo and Femi Falana, and budding Nigerian pseudo-revolutionaries like Gani Adams of OPC. They started building palatial mansions, skyscraping towers and camps with heavy arms: Ak47, 48 and 49; dynamites, bombs and battleaxes were constantly in their possession with the Communist Manifesto on their clutching hands and tight fists up in the air. They started reading Walter Rodney, Karl Marx, Nelson Mandela, Robert Mugabe, Chairman Mao and Thomas Sankara. The company of beautiful women, wine and music came without the asking. Their ideological sting was sharpened by the Nigerian left in the likes of Professor D. D. Dara (of the resource control fame) and they also began to enjoy the collusion of non-governmental organizations like Pandef, Mosop, Ipob, Idu, and Opc. From Ogheye to Ebrohimi, Oproza to Kurutie, Gbamaratu to Kalabari they held the sway of spaces. State governments in Ondo, Edo, Delta, Bayelsa, Rivers, Cross River, Imo and Akwa Ibom States began to give them the most listening of ears and they could summon their Governors like James Ibori and DSP Alameisagha to the creeks or State governments could detail State government Secretaries like Omo-Agege (now Deputy Senate President and Delta State Governorship aspirant of All Progressive Congress) to them in the creeks to consult them. They began to spit fire, kidnap for ransom all shades of expatriate staff of Indorama, Shell, Agip, Chevron, Elf, Eni and NNPC limited. They were suddenly recruited into the political machinery and party politics structure of their States and Governors like Ibori, Alameisagha, Odili, Seikibo and Attah. They were

entrusted with the thug-job of election rigging in addition to oil theft, arms running and bunkering in the creeks. They became the militant wing of the State governments in the resource control struggle between them and the Federal government. The Federal government of ex-President Obasanjo fingered the relationships and came down deftly on Ibori, Odili, Alameisagha and Victor Attah. By the turn of the decade they had broken the economic mainstay of the Federal government and brought the government to her knees and into negotiation. The Yar'Adua administration hurriedly declared a specious and devious amnesty for them. So, who gained; the people or the militants?

Preclude to the declaration of amnesty however, in 2007, Ise-Oluwa Ige (2007) has reported that the Federal Government had dragged a 28 year old hostage taker, Selekey Victor before the Federal High Court, Abuja for allegedly extorting a sum of N135 million from the Nigerian Agip Oil Company and Bayelsa State government for the purpose of releasing four kidnapped expatriate employees of the oil company. Selekey Victor of 66 Abuloma Road, Port Harcourt, Rivers State and others at large on 7<sup>th</sup> December, 2006 at AGIP Terminal in Brass Local Government Area of Bayelsa State within the jurisdiction of the Federal High Court presided over by Justice Awuri Chikere, with intent to intimidate the Government of Bayelsa State and disrupt exploration activities attacked the Agip Oil Terminal with firearms, kidnapped and held hostage by force of arms F. Farina (Italian), Arosu (Italian), V. Diego (Italian) and A. Imadi (Lebanese) all expatriate employees of Agip Oil Company and demanded and received a total sum of N135 million as ransom money for the release of the said expatriate employees and thereby committed offences contrary to and punishable under Section 15(2) of the Economic and Financial Crimes Commission (EFCC) Act, 2004.

Before the Federal government declared amnesty for oil militants of the Niger delta, they were in unanimity in the freedom-fighting code of the Niger delta to a large extent although critical studies in the area have demonstrated otherwise. They were like a rainbow coalition and like all such coalitions in struggles without a clear-cut political leadership, it was doomed to fail. The oil militants failed because they were actually actuated by greed not grievance and their political backers were equally actuated by selfish political ascendancy than a genuine transformation of the Niger delta. They did not take the benefit of the amnesty as a rallying point for better and stronger political push for the struggle for the liberation of their people and their region. They and their gubernatorial collaborators still thought within the box of a Nigerian system. They were only paying lip service to the revolutionary rhetoric of Che to achieve economic self-aggrandizement. Albert was thus, very categorical that the amnesty declaration granted the oil militants divided them. Till date, they have not recovered from the syndrome and this establishes the reasons for the recent brickbats that have trailed the award of contracts to them for pipeline surveillance particularly Tompolo which shall be critically surveyed in this study.

### **Theoretical framework**

It has been noted that the explanation of crime from economic perspectives is not always sustainable because of the legal philosophy in common law that there is no legal defence to crime on the basis of economic considerations, adversities and constraints. Under Nigerian law therefore, economic

theories of crime are susceptible to disdain and are viewed with circumspect if not contempt. The thesis that mineral resources breed conflict, war and underdevelopment wherever or whenever it is found in the third world is still trenchant only with negligible exceptions. This study submits that economic deprivation theories remain not only relevant in the discourse community of resource curse but intersect with a number of other critical conflict theories like Marxism on oil militancy. They all posit that oil militancy arose from the systematic disregard for the human rights and economic survival of ethnic communities and inequalities in resource control and allocation. This has been reinforced not only by lack of infrastructural and human capital development of the delta region and the negative scorecard of the multinational oil companies in corporate social responsibility and governance but the palpable resentments that these negative influences have had on the ethnic minority communities leading to a surging growth in militant ganglands in the region which consider oil militancy as legitimate economic activities.

### **Greed not grievance theory**

One of the theoretical issues in the discourse on militancy is that the crime is a matter of the activity of youths considered by the state and the industry to be militants driven by greed not grievance. But the youths have also underscored the lack of socio-economic and infrastructural development of the region and the economic exclusion which the state's monopoly-control of oil exposes the indigenous communities. Overtime it comingles with human rights abuse and denial of rights to economic survival and human security. The desire of the indigenous communities to be involved in an economy which they are systematically excluded by the nature of the monopolistic economic relations established by the state and the multinationals throws up not only the theory of resource curse but the theory of militancy. There is hardly debate that oil militancy is an economic crime in the genre of vandalism, sabotage, kidnap, terrorism and bunkering.

Ehrlich Isaac (as cited in Net Industries, 2013) <sup>[70]</sup> has demonstrated that the economic model of crime is a standard model of decision making where individuals choose between illicit and legitimate activities on the basis of the expected utility from criminal activities. This legal philosophy believes that participation in militancy is the 'result of an optimizing individual responding to incentives'. The cost benefit analysis of militancy is that 'among the factors that influence an individual's decision to commit an offence is the economic benefit' vis-à-vis the remoteness of sanction or repercussion. An individual's participation in militancy is explained by the opportunity cost of legitimate activity (for instance surveillance contractor).

It is this framework of exclusion which reinforces the rational choice theory of Cornish and Clarke (2013) <sup>[27]</sup> that believes that crime is a choice based on the weighting of costs, benefits and opportunities, and that the branding of militancy as crime becomes for militants false-branding. It is also from this framework that theorists of inclusion call for locals' involvement in surveillance of pipes. In other words, the factors that influence militancy in the creeks are detection, severity of punishment and preference for participation in the enclave economy. Oil militancy is kindred to regular sector paid job in that it requires time and produces huge income. Additionally, the level of neglect of the region and its human capital give rise to 'poor legitimate labour market



opportunities of potential criminals’, such as low wages and high rates of unemployment, which further increases the availability of youths for militancy (Net Industries, 2013) <sup>[70]</sup>.

### Conflict mineral theories

The never-ending conflict between the indigenous communities involved in militancy on the one hand and the state and the multinationals on the other hand and the debates of differences of opinion on militancy in Niger delta seem to be on all fours with a number of trends in the theories of conflict oil. One of the trends is that oil sustains inhuman activities, practices and abuse of power by the state and multinationals because it is cultivated by using inhuman labour practices that entrench exclusion and monopoly. The illegitimate practices endure because the state is composed of highly corrupt military regime that sees nothing to lose by having tons of oil mined and looted abroad without considering the wellbeing of the region. The conflict oil is the tool used by such rogue regimes to consolidate in power (Conflict minerals..., 2013) <sup>[63]</sup>.

A second trend is anchored on the relationship between the state and multinationals in neo-capitalism and neo-colonialism. Conflict oil is easily appropriated by force and is associated with quicker wars likely to end with victories for the State than other wars (as in the bombing and destruction of over 6,000 illegal refineries in the Niger Delta within a short period or the carrot and stick principle as in the award of N48bn surveillance contract to Tompolo). The prosecutions of those suspected to be involved in oil militancy and corruption in Nigeria are also work over trials readily to lead to detentions, seizure of assets, or award of surveillance contracts. These conflicts, according to studies, are consistent with evidence that the Federal government and multinationals have incentives to work round the clock to bring conflicts to ‘bail’ when natural resources supplies are threatened (Macartan, 2005) <sup>[55]</sup>.

The third trend is in the nature of engagement of militancy by the state without considering the access to the oil resource by indigenous communities. The contractual disposition of the state and the industry to oil militancy exemplifies the degree to which it is unwanted on the national legal stage. The prescription of the contractual solution to reduce the flow of resources to militants seems intuitive to the state. Removing the ability of indigenous communities to develop an alternative economy to the mainstream oil prone economy in order not to be in a position of strength to fund conflict in the Niger delta and thereby reduce it addresses a part of the greed motivated aspect of resource curse (Term Paper, 2012) <sup>[92]</sup>.

### Sub-cultural, relational-vengeance theories

The Niger Delta is seen in ecological terms as the land that flows with milk and honey. The goose that lays the golden egg and where wealth underground is in all measures, out of proportion with the poverty on the surface. But what its people get in return is hunger, joblessness, and economic deprivation in a ‘we and them’ cultural and situational analyses. Although ‘their region’ has contributed to the tune of 90 percent to the revenue of the state, ‘they’ have hardly benefited from it in the words of Nossiter (2010) <sup>[71]</sup>. In this ‘them vs. us’ descriptive analysis, El-Rufai (2013) <sup>[34]</sup> explains that ‘our people have been successfully divided by our elites along ethnic, religious and regional lines’. This chasm has become so deep seethed that it is impossible to have any meaningful discourse without the infiltration of

these ‘evil sub-cultural lens’, as between Tompolo, Dokubo, Ateke and Boyloaf (over Gbaramatu’s 7km and Kalabari’s 83km of the TNTPL). The scariest is that the division has permeated more intensely, the oil militants giving rise to a bleak, divisive and violent posture with the state stoking its fire to remain in control. In an atmosphere of little education, anger, poverty and bigotry, oil militants are indoctrinated by the systemic, corrupt state to believe that receiving and sharing surveillance contract award is the roadmap to success and no longer the emancipation of the region. In human ecological terms, what ‘they’ seem to offer the world in technological terms of ‘their’ interrelationship with the physical environment or in terms of the technology of illegal refining is being bombed and branded by ‘us’ (the state) as illegal (Alozieuwa, 2013 and Ibaba & Okolo, 2013) <sup>[18, 45]</sup>.

### Human needs, frustration-aggression theories

The socio-economic conditions for oil militancy are anchored on the human needs theory of social conflicts. Its central thesis is that all humans have basic needs which they seek to fulfill and failure caused by other individuals or groups (in this case, the Federal government) to meet these needs could lead to oil militancy. The base line is that conflicts by nature are inherent in every society no matter the level of development it has achieved and therefore cannot simply be wished away. Their causes and effects according to Akpobibibo (2001) <sup>[14]</sup>, are always varied. Their histories are more complex than can be readily understood; their solutions are more challenging than can be imagined. But basically they are driven by unfulfilled human needs of the people in terms of sense of justice, rights to inclusion and participation and are collective in character and provoked, as in the delta, by the state.

The human needs and the frustration-aggression theories are aspects in the mainstream economic theory of crime. Jointly popularized by Dollard John, Doob Leonard, Miller Neal, O. H. Mowrer, and Sears Robert in their seminal work, *Frustration and Aggression (1939)* (as cited in Dougherty & Pfaltzgrate, 1990 <sup>[31]</sup> and Odudu, 2012) its orientation is psychological and its basic postulation is that aggression is always a consequence of frustration. Accordingly, relative deprivation is a perceived disparity between value expectation and value capabilities and the lack of a need satisfaction (defined as a gap between aspiration and achievement generally) relies on the psychological state of frustration and aggressive attitudes emanating from it.

Obaodu (2012) argues for instance that the frustrated groups in the delta resort to oil militancy as a form of breach of socially accepted norms. They exhibit the deviant behaviour after making vociferous demands and threats on the state and corporations to no avail and ultimately condescend to violent destruction of the pipes. Again, the Nigerian socio-economic indexes with special reference to the Niger delta validate the assumption of the human needs and frustration-aggression theories. The Human Development Index Trend (HDIT) ranks Nigeria 156 out of 186 countries in 2012 (and ten years down the line it has not been better). The root causes are youth unemployment, poverty, low standard of living etc explaining aptly the situation in the delta where militancy is directed towards the state and the multinationals. The frustration arising from the forceful approach of the state and the oil multinationals in bringing the delta communities to submission informs their quest for self-determination and autonomy in resource control or the right to inclusion and

participation in surveillance contracts.

The basis of the exclusion is the state's promulgation of the trinity decrees and the Petroleum Industry Act all aimed at stripping the communities of any rights to land and oil resources.

The corporate organizations in tandem with the capitalist philosophy of profit, nothing more, have not accommodated the communities; rather, they have gained unrestrained access to the lands and the oil resources of the communities due to weak institutions of governance (Ojakorotu, 2009) <sup>[79]</sup>. McMurtry *et al.*, have in their famous Ontario 'Review of the Roots of Youth Violence' postulated that the link between economic conditions and crime has been explored by a wide range of theories. In economic theory of crime, poverty and unemployment are necessary conditions while inequality serves to further exacerbate the situation. Relative deprivation and social exclusion theories are all based on comparative analyses. They focus on the recognition of inequality and subsequent feelings of resentment and frustration arising from the denial of some people, the rights and opportunities that are afforded to others in their society. Furthermore, the availability of oil and gas at competitive prices often find itself in countries of the global south where the capacity and willingness of the state to protect its citizens against the damaging impact of the business are lacking (Dijikema and Gatelier, 2008) <sup>[30]</sup>. In states like Nigeria, according to Hajzler (2013) <sup>[41]</sup>, where there are absence or weak laws that govern methods of oil drilling and shipment, oil companies have persistently threatened the subsistence and livelihood of a vast number of local communities. The Nigerian state has been indicted for being largely irresponsible to these rights violation leaving these communities in the lurch and up to themselves with limited resources to cope before the state-controlled justice administration system (leading to oil militancy in organized large scale). In state-corporate oil complex as revisited by Chomsky (2011) <sup>[24]</sup>, one-continuity from Adam Smith to Karl Marx still remains that the masters of mankind who control the economic levers of the state also tend to have overwhelming influence over state policy and law. And today, the masters of mankind are the multinationals (the seven sisters) and the elementary lesson still remains that state-corporate oil complex 'is indeed a threat to freedom and in fact even survival'. The masters of mankind ensure that law and policy serve their interest however grievous the effect of the law and policy on others both at home and overseas.

### Marxism on oil militancy

Economic deprivation theories intersect with other critical conflict theories like Marxism on oil militancy. Although, Marx and Engel did not systematically address crime, Bonger, (as cited in Maguire *et al.*, 1997, pp. 273 - 274) <sup>[52]</sup> a Marxist criminologist, applied their economic and philosophical views to the issue of crime. And the crimes of oil militancy are no exceptions. What constitutes crime varies from one society to another depending on the existing notions of morality and the economic mode of production. Marxists trace the root of social crimes like oil militancy to capitalism and the inequalities it breeds in relation to access to the means of production and necessities of life. Inequality may lead to violence because it reduces self-esteem and fosters the development of negative self-image which in turn may lead to crime. For oil militants, poverty and conflict are endemic

in the creeks and the condition of poverty and unemployment in the mist of plenty expresses itself in the 'desperate effort to make things happen and to assert control' which results in illegality or self-help.

The point is that a petro-state is one in which oil has a dominant role to play in its national economy and one of the special features of oil income is the ease with which it is harnessed and controlled by the central petro-state which plays god in the global south. Radical and critical criminology of the Marxist persuasion considers that certain types of crime like oil militancy take different characters. Oil militancy can be seen as an attempt to take away or snatch from the rich but corrupt petro-state or the state-corporate oil complex what Hobsbawm (as cited in Conflict Theories, 2009) characterizes as social banditry. This genre of banditry which is a protest-related violence may actually kick-start revolutionary movements in the creeks which may ultimately lead to 'creative destructive' social change (but this has not happened as this study has found).

Marxist legal philosophy endorses as a reaction to the status quo of inequality in the current state-corporate complex, a violent revolutionary overthrow of the state which in itself is treasonable in the present legal configuration of the Nigerian bourgeois petro-state. The activities of oil militants were not far from the pursuit of the economic destabilization of the state and the reaction of the Nigerian state is no less than a realization of the fact that militancy is an enemy far beyond the criminal conceptualization of same. Economic sabotage is a weapon of revolution and war but the militants appear to have abused it and have converted it to contractual relationship.

### Criminal opportunity theory

Criminal opportunity theorists (as cited in Lynch, 2013) <sup>[51]</sup> argue that criminal motivation alone is not sufficient to cause crime. In addition to motivation, the militants in the creeks require the opportunity to pursue the inclination to militancy. Three such critical opportunities have been highlighted by Collington (2013) <sup>[26]</sup>. Firstly, although the delta has been infested by foreign oil companies maximizing production and profit, unemployment rates among the indigenous population has remained high. This has led in part and largely to the formation of militant gangs that run the illegal oil refineries tapping predominantly on the multinationals' main trunk pipelines as an opportunity to earn illicit money and make a living that is fast developing into a full-fledged alternative economy.

Secondly, resentment of the indigenous communities against the state and the multinationals has built up to the hilt. In 2008 for example, the 50 year old Trans Niger Trunk Line (TNTL) was twice burst by the militants within a few months and over 11,000 indigenous people of Bodo community consequently lost their livelihoods. Although the community sued Shell for the catastrophe, Shell, which has a market capitalization of 141 billion pounds, only offered 1,100 pounds per person. An equivalent of two to three years net lost earnings: creating a cauldron of boiling resentment against Shell in the indigenous communities.

Thirdly is the resentment of the indigenous communities against the corrupt state. For instance, the quality control measures adopted by the state in oil trade is un-reassuring such that an ex-Minister of Trade and Investment, Segun Aganga (as cited in Uwotu, 2023), admitted to the Presidency that 24 million barrels of oil worth N252 billion was stolen

between July and September, 2012 and that his signature was 'forged' on the export clearance permit used to export the crude oil from Nigeria. In 2022 a Vessel laden with 650,000 liters of stolen crude oil was mindlessly burnt by state actors without a thought as to a better value for them.

The United Nations Office for Drugs and Crime (as cited in Adeola, 2013) <sup>[6]</sup> estimated in its 2013 report that 150,000 barrels of crude worth \$6bn is stolen yearly in Nigeria and 80 percent of this is exported by syndicates of the illicit trade while the balance of 20 percent is cooked: refined illegally and dangerously in the creeks of the delta by young men producing and selling fuel as a source of income. Invariably, building refineries which has been to the state a nightmare, a magical and impossible assignment, seems to be the pastime of oil thieves in the creeks; the level of sophistication and technology notwithstanding. The thieves have even devised ways and means of building underground refineries to evade discovery and destruction by the Joint Military Task Force (JTF) teams (Ogunlami *et al*, 2013) <sup>[76]</sup>.

When these debilitating opportunities are added to the senseless corrupt disposition of state actors and its national oil company, it is unlikely that the oil militants who run 'shows' in the creeks would hang up, in the light of these inexplicable opportunities created for them to justify their moral grounds for militancy.

In other words, Marxist legal literature argues that militancy can only be understood from the nature of the corrupt, exploitative or extractive economic system that the Nigerian state-corporate complex has created. This Marxist perspective as canvassed by Ayanruoh (2009) believes that oil militancy is grounded on a fundamental disregard for human rights and equalities in resource allocation.

### Social contract theory

The reaction of the ethnic communities which have morphed into violent militant groups and ganglands in the Niger Delta region of Nigeria to State and industry control of land and mineral resources requires a close study. A comparative analysis of the current situation in Nigeria with what obtained in the early days of the European civilization when the challenges of governance and economic crimes were emerging from the womb of the industrial revolution is equally important. If sovereignty resides ultimately with the people and the State governs with the consent of the citizens and the ultimate responsibility of the State and business is the welfare of the citizens, a fundamental breach of the social contract leaves the people with the right not only to abolish the State but to sabotage business in social banditry.

The application of the general principles of the theories of social banditry and social contract to the phenomenon of oil militancy in the Niger Delta region is apt. It has been argued that the crime has arisen from the lack of the development of the region by both the state and the multinationals. That it is an expression of the rights to resource control by indigenous communities after 50 years of state and industry control of same have failed to yield development on the ticket of the United Nation's Resolution 1803 of 1962 guaranteeing national sovereignty over natural resources. It is argued further that it falls within Hobsbawm's social banditry thesis. It argues that militancy is a genre of social resistance and thus, in the context of the delta, oil militancy is an acceptable reaction to state and industry neglect of the region and its communities; and that the basic conditions for the abolition of the state under the social contract thesis have been largely

met by the economic and socio-legal contexts prevailing in the region.

Understanding crime as resistance or survival was once an important element of radical criminology (Lea, 2002) and this continues to be so essentially with regard to this study. Social banditry is a form of crime that arises out of political and socio-economic crisis especially in areas over which the State can exercise only a marginal control; above all, in the cavernous creeks of the Niger Delta and frontier zones in the sea (Bandits..., 2014). By characterization, the legal philosophy of social banditry recognizes four dominant strains which are on all fours with oil militancy. Firstly, there must be the violation of law (militancy) as a more or less explicit form of protest, an 'organized social resistance with the criminal (militants) acting in some sense as a representative or articulator of (the) social grievance'.

Secondly, the violation must enjoy communal support ranging from swift, positive enthusiasm arising from the enormous wealth derivable from it to passive reactions, turning a blind eye to it because of high incidences of corruption in the State and the failure of corporate social responsibilities. Thirdly, there must be the criminalization of custom. Just as much of the 'social crime in 18<sup>th</sup> Century England involved the attempt to reassert traditional land rights in the face of advancing capitalist property relations', illegal oil refineries are 'local expertise' which implicate the ingenuity of an emerging indigenous technology which ought to constitute building blocks for breakthrough but are criminalized and bombed into extinction by the Nigerian petro-state. Lastly, there is the difficulty of identifying the interface between oil militancy as social crime and common criminality at large specially so when it graduates from economic provisions for the community and co-mingle hostage taking for ransom and sabotage (Lea, 2002).

### Conceptual clarification

#### Rentierism

One of the ways to buy peace in a potentially conflict prone relationship is to dole out peanuts to the oppressed or the opponent. Throwing some corn to the chicken is a universal approach towards pacification. To give a mouth-watering contract to a rebel has become a well-recognized capitalist tool to suppress rebellion and revolutionary fervor. If a rebel is settled giving up rebellion and the cause is a question of time. For a petrol-state, one of the first eleven options in the underdevelopment of its people is to allow the potential rebels amongst them or those who are capable of being radicalized among the populace or the group to buy into the national pie. The national cake is so huge that recruiting guards to keep peace on the pipelines is a fair deal for the marginalized people of the Niger delta. The guards are paid peanuts to look over the goose 'two-four-seven'. To call it 'a live contract' is what multinationals have recently coined in order to beautify a slave keeping peace.

They argue that it is better to allow the thief to watch over the loot so that the following morning it can be taken to the bank. 'Live contract' is what the families, the communities and individuals struggle to get in a do-or-die effort in the operational areas. The 'live contracts' include clearing the rights-of-way, recruitment of casual labour, security in supernumerary (sometimes beautifully tagged Agip-police, Shell-police, Chevron-police and Midwestern-oil-police or Seplat-police). It is a top-notch job and a wide range of pretensions come into play. It was what Buhari



administration called ‘an army within the army or a police within the police’ on assumption of office in 2015 and railed bitterly against it only to succumb to it sheepishly at the twilight of its administration in 2023 by awarding the N48 billion surveillance contract to Tomopolo’s Global West Vessels Specialist Ltd. (GWVSL).

Retired Military Generals and top retired Police Officers have not been left out in this critical contract space. All over the country, these ones who have left service and are not tired yet have recourse to the training of security officers for multinational oil companies and the supply of such half-baked duty-men to the oil companies. They sometimes bear arm and sometimes they are girded in full military hard wears in circumstances that are not distinguishable from Nigerian security officers. It has become dangerous to open the tap more and let in a floodgate of security outfits approximating an infringement on the security integrity of the nation. Akeredolu, SAN and Governor of Ondo an oil-producing State (as cited in Omiyale, 2022) <sup>[84]</sup> has critically taken a swipe at the culture of contracting security of critical national assets such as pipeline and oil installation facilities to non-state actors. He believes that the concept leaves a sour taste in the mouth. This point the Governor made in the face of the Federal government’s stiffest opposition to the institution of State police (Amotekun) in Ondo and other States. He did not leave kind words for the Federal government canvassing that the award raised questions as to the sincerity of the Federal government security Advisers calling the award an oddity in dubiety (Ogunyemi, 2022) <sup>[78]</sup>.

Akeredolu states, ‘It is sad that ...government is officially endorsing criminality by providing contracts to people who are already wanted by anti-corruption agencies...The engagement ... reinforces the belief that the whole defence architecture in the country needs an urgent overhaul...’ (Akinkuotu, 2022) <sup>[10]</sup> The views of the Ondo State Governor according to Akinkuotu brings into the centre ground, the corruption fighting index of the Buhari administration which has been criticized by Transparency International. As frankly put by Clowes (2022) <sup>[55]</sup> the Federal government has turned back to its vomit. It has gone back once again to a rebel it had previously labeled a thief, illegal oil refiner and an enemy of the state. Previously declared wanted, never tried but was acquainted. Recruiting and contracting him and his internationally suspected and tried company, to curb riotous and rampant oil theft on the oil pipelines he was used to blowing up.

Looking closely at the views of Akeredolu, Akinkuotu, Clowes and Opinion Nigeria, serious constitutional issues surrounding the contract has been thrown into the fore. Akinsanmi (2022) <sup>[11]</sup> demonstrates that the contract falls short of the provisions of section 217 of the Constitution of the Federal Republic of Nigeria 1999 and section 2 of the Nigerian Armed Forces Act, Laws of the Federation 2004 which domicile with the Navy, the sole authority to deal with maritime issues and the sea. Section 214 of the Constitution of the Federal Republic of Nigeria 1999 and section 33 (b) & (v) of the Nigerian Police Act, Cap. P19, 2020 gives the Nigerian Police the power to enforce law and order in the swamps, waterways, creeks, and the coastlines. He believes that the State had abdicated the constitutional and statutory obligations of the Nigerian Navy and Nigerian Force Marine to non-state actors suggesting that it was the most un-strategic and unprincipled step to take.

### Prebendalism

Arguing that the Federal government was ill-advised and that the contract should be revoked under section 14(2) of the Constitution of the Federal Republic of Nigeria, 1999 Rita-Lori Ogbekor, Igba of Warri (as cited in Akinsami, 2022) submits that it was not within the province of an individual or a company to manage the affairs of the Niger delta, characterizing the award as an invitation to anarchy in the region (Opinion Nigeria, 2022) <sup>[85]</sup>. In fact, the array of points on fact why the award has been challenged and why it has polarized the region is firstly: that it was an award to a non-state actor indicating that the Federal government was clearly renegeing from its constitutional responsibility. Second: that it was selectively awarded to Tompolo in prebendalism by his ally, the Junior Minister of Petroleum, Timipre Silva and thus lacked inclusiveness which the previous governments tried to ensure and balance. Third: that the award was insensitive and capable of engendering chaos and anarchy in the volatile region as it ought to have been spread to others or awarded to communities to engender collective responsibility and ownership instead of an individual and or his company. Four: that the Federal government should cease the use of pipeline contracts as political patronage and settlement.

Although the reasons canvassed against the award of the contract to Tompolo are cogent, it has equally been argued that rather than that the contract be revoked, the Contractor could go about the business of inclusion of the other militants because a revocation could do more damage to peace and confidence building and engender mistrust (Elumoye, 2022) <sup>[35]</sup>. Frontally, the Ijaw Peoples Development Initiative (IPDI) and Ijaw National Congress (INC) which did not make any valuable alternative presentation attacked Rita-Lori as a permanent opponent of the development of the Niger delta claiming that she resides with her businesses in Lagos and Abuja at the expense of her Ebrohimi and Oghey communities of Itsekiri she falsely claims to freedom-fight for. Yet, it was Rita-Lori that called out the Federal and State governments to implement the NNDC Master Plan instead of enriching an individual at the detriment of the people of the Niger delta (Opinion Nigeria, 2022) <sup>[85]</sup>.

Perhaps Asari Dokubo and the members of the Creek Men demonstrated the staunchest opposition to the award. Aside alleging that Tompolo has been previously in the habit of shortchanging other Militants during the era of ex-President Jonathan when he bluntly refused the participation of other oil militants in a \$144m coastal protection contract and executed it alone for two years; Ebikabowei Ben Boyloaf has not been supportive of Dokubo’s opposition. But the strength in the opposition of Dokubo is that he and HRM Tom Ateke of Kalabari which controls 83km of the 90km stretch of the NCTL pipeline (which passes Kula and Ilama to Cawthorne Channel) were sidelined. He fumed that his two legs would not enter Oporoza (or Kurutie) of Gbamaru kingdom to meet Tompolo to key into the award if a contract which covers 90km of which 83km belonged to his sphere of influence did not factor him in. It was uncharitable as he stated, ‘You can’t take for Gbaramatu and also take for Kalabari’ (Unini, 2022) <sup>[95]</sup>.

Dokubo appeared to have quickly put an organization calling itself Creek Men together to further drum up his views as the spokesperson of the group had stated (to The Eagle Online, 2022) as follows: ‘I am a man, he (Tompolo) is a man. They did not consult me, they said someone should come and guard my community so that pipelines will pass. Shell has done me.

Chevron has done me. Now it is my own Ijaw man that wants to do me. It will not happen. If they know all of us are men in the creeks, they will call all of us and discuss with us.' The claims of the Creek Men demonstrate how divisive the reasoning of oil militants can be and their impression about the Niger delta. They show the kernel of cult-thinking and turf control and war the pride-land has turned out to be. They do not accommodate that the Federal government has the eminent domain to award the surveillance of the pipelines in Ijaw Kalabari to a man in Ijaw Gbaramatu. They make the bitter point that it would be inconceivable to have 83km out of 90km of the pipe in Ijaw Kalabari and the contracts for it falls on the laps of an Ijaw Gbaramatu man. It is blue murder. Rita-Lori (as cited in Opinion Nigeria) was more trenchant about this when she stated, 'You cannot go to another man's land to take what he labored to plant.'

The literature has suggested that the reasons why Tompolo has been chosen are because he appears less temperamental, more civil and businesslike, corporate in outlook and pro-western capitalism. He has mastered over time, even though without formal education, the philosophy of corporate governance and inter-personal skills and relationships. He is more disciplined and collected in presentation and likelier to keep his own side of a bargain. He is more predictable and better connected with officialdom. He is likelier to play in a team than a winner-take-all disposition of a typical militant. His international exposure and business connections and history have not shown any lapses but upward mobility. Elumoye (2022) <sup>[35]</sup> for instance, opines that the job (which was being shared previously between Ayiri Emami (Delta State) Boyloaf and Macaiver (Bayelsa State) Farah, Dokubo Asari and Ateke (Rivers State) was given to Tompolo alone because of his familiarity with the zone, his experience from previous engagements with the previous presidency under Dr. Ebele Jonathan which stood him out in 2014 - 2015 making NIMASA to scale up in revenue generation and the fact that he knows the creek and its politics and polities in and out in pseudo- security and police engagement.

You and the Law (2022) also came out stoutly to state that there was nothing wrong in exploring corporate governance in private public partnership (PPP) in which the army and the navy would participate as they are not going to fold up their hands and watch only Global West Vessels Specialist Ltd to perform apart from the creation of job for the teeming youths in the region. Further, the PPP contract was to shore up NIMASA revenue based on 50 percent to NIMASA and 50 percent to be shared between the Federal government and Global West Vessels Specialist Ltd in the ration of 60 percent to the Federal government and 40 percent to Global West Vessels Specialist Ltd (Opinion Nigeria, 2022) <sup>[85]</sup>. It was furthermore volunteered that late Capt. Hosa Okunbo was doing a similar job in Rivers State till date.

But the strongest support of Tompolo in rentierism comes from the Federal government itself. Desperate to revive its economy, the Federal government states, 'We are not dealing with Tompolo but with a company which he may have interest in.' Nigeria needs a 'proper pipeline monitoring which Nigerian security agencies cannot handle' (Akinkuotu, 2022) <sup>[10]</sup>. Believing that the award would ensure 'end-to-end' surveillance, the Federal government explains that it was not the first time that such a deal was being thrown on the laps of oil militants. A contract to the tune of \$103.4m had existed between

NIMASA and Global West Vessels Specialist Ltd. That the Federal Executive Council had also brokered a \$9m pipe protection contract with Asari Dokubo, Farah Dagogo and Egberi Papa of Peoples' Liberation Front. Another deal of \$3.8m pipe protection with Akete, Victor Ben Boyloaf to stave off attacks on offshore facilities has also been cited.

### Following Due Process

Renowned Authors like Ewepu (2022) in the oil sector have also demonstrated that due process was followed in the award as about five companies were considered before the deal eventually fell on the laps of Tompolo's Tantita Security Service Nig. Ltd (or Global West Vessels Specialist Ltd). Majeed (2022) also believes that the deal has exposed several illegal connections into major pipelines and by the last count, 58 had been uncovered in Delta and Bayelsa States. They also argue that a deal of N4b monthly is not too much money because when all expenses are factored into it and all the relevant stakeholders must have pinched out their cuts and commissions nobody will save beyond 100,000 monthly according to Dr. Akwa (as cited in Ewepu).

But as canvassed in Unini (2022) <sup>[95]</sup> the award is a call to duty. It is work, work, and work. Oil militants ought not to think within the framework of the past when once such contracts fell on their laps, they would sit at home and spend Federal government money for free and still turn around to sabotage her. In the beginning of the 1900s what was in vogue, was cash for compensation and cash for ghost working. The oil militant sits at home to receive money for no work done. Sometimes, his chance to work is sold to an actual worker who splits the wage in the ratio of 60 percent to the actual worker and 40 percent to the militant who then roams about the space in search for leisure and foment of trouble. Within this framework, multinational oil companies have been indicted in some research findings for giving cash and frivolous contracts to oil militants and warlords in the delta to keep the peace. Shell and Chevron had as far back as 2003 and onwards funded armed oil militant groups paying as much as \$300 dollars per militant per month as protection money to keep and hold peace in the Warri axis and even developed a contractual relationship for which Chevron and Tompolo's MEND dealt on hiring of houseboats to keep a relationship to stave off attacks from the militants. Such contracts without clear motive and purpose where found to have gone on to inflame violence in Warri in 2003 when over 1,000 died annually in the axis in circumstances incidental to oil crisis and militancy (Arts Activism Education Research, 2012). Recent findings by Global Rights (as cited in Akinsanmi, 2022) <sup>[11]</sup> have further shown that 5,708 lives have been lost in the delta region in eight months in 2022 in connection with oil crisis and war.

Kuku argues that some pipeline protection contractors empowered by oil companies participate in the crime. Mittee Ledum asks: What about the contracting system? When these pipes are cut, who gets the contract? Does it not have some relationship with the cutting because the more the pipes are cut, the more contracts you can get? In any economic crime, you look at the motive and who benefits out of it. Therefore the companies should look inwards at their contracting systems, procurement process, the status of their vendors and security contractors; x-ray them, review their processes and deal with the issue of theft.



## Literature review

### Social contract debate in oil militancy

For the Niger Delta region, the battle cry seems to be: 'No development, no oil exploration'. The idea of social contract is one of the foundations upon which the modern political and indeed the legal system are anchored. This is the belief that the state only exists to serve the will of the people, and the people are the source of all political and legal powers enjoyed by the state, and the people can choose to give or withhold the power (Kelly, 2013). Consent of the governed has therefore re-emerged as the leading doctrine of political and legal legitimacy. The legal philosophy of consent and contractarianism predated the American Revolution and largely inflamed it. Hobbes (as cited in Elegido, 1994, p. 172 and Goldie & Wokler, 2006) <sup>[33, 39]</sup> in the 'Leviathan' argued that the right of all sovereigns is derived originally from the consent of everyone of those that are to be governed and John Locke (as cited in Elegido, 1994, p. 172 and Freeman, 1996, pp. 102 -103) <sup>[33, 37]</sup> in the second of his 'Two Treatises of Government' argued that 'voluntary agreement gives... political power to governors.'

To Paz-Fuchs (2011, p. 5) <sup>[86]</sup> social contract refers to the understandings and conventions within a society that help to explain and justify its legal, political and economic structures. In Hobbes', Locke's and Rousseau's times, it was originally used to justify the obligation to obey the law or, more generally, the acceptance of the decisions of government as authoritative. But in recent modern times when it has re-emerged in the theories of Rawls (1971) <sup>[87]</sup>, it takes the state as given and is then employed as a mechanism for identifying proper social institutions, policies and laws that reflect justice as the basic virtue in society. Common to both the ancient and modern theoretical perspectives, is the important function of clothing governance with legitimacy. In other words, the principal aim of contractarians is to establish the theoretical and institutional underpinnings that characterize the reciprocal rights and obligations amongst citizens and between the citizens and the state in the modern liberal society.

Comprehensively, Rusling (2013) <sup>[90]</sup> in "Introduction to the Social Contract Theory" defines it as a sort of hypothetical or actual agreement between society and state by which citizens abide by government's rules and regulations in the hope that others do same; subsequently leading to more secure and comfortable life. Individuals unite into a society by a process of mutual consent and state authority and legitimacy derive from the consent of the governed. It is an individual's rational self-interest to voluntarily give up his natural freedom in order to obtain the benefit of political and economic order that is the hallmark of social contract theory (Theories of Social Contract..., 2013). Contractarians typically posit that individuals have consented, either explicitly or implicitly or tacitly, to surrender some of their freedoms and submit to the authority of the state in exchange for protection of their remaining rights. But when do citizens have a right to rebel, to withdraw from the contract?

### Right to militancy

Generally, there is no right to rebel or challenge the state except for self-preservation or self-defence purposes. A man has no duty to obey a sovereign that does not have the power to protect him, or that does not keep the peace. The most radical conceptualizations of the theories and doctrines of social contract were developed by Jean Jacques Rousseau (as

cited in Freeman, pp. 141 – 144) in "The Social Contract" where he postulated that inasmuch as the state arises on the basis of the social contract, the citizens have a right to dissolve the contract in the event of the abuses of the terms of the contract by the regime. In the "Two Treatises of Government", John Locke (as cited in Freeman, pp. 102 - 1030) equally declared that under natural law, all people have the right to life, liberty and estate and the people could instigate a revolution against the government when it acts against the interest of the people to replace the government with one that serves their interest. The right to rebellion is more importantly, the duty of the people of a nation variously stated throughout history to overthrow a government that acts against their common interests.

The Magna Carta of 1215 and the Golden Bull of 1222 against the kings of England and Hungary respectively were the first constitutional charters of the renunciation of the limitless powers of the state. They were attempts at establishing the right of rebellion especially when the state acts contrary to the law or against the general will of the people or, is an embodiment of corruption as in the case of the Nigerian petro-state. Thomas Aquinas (as cited in Elegido, 1994, p. 364) <sup>[33]</sup> wrote of the right to resist tyrannical rule in the "Summa Theologiae." The 1776 American Declaration of Independence stated the basic teaching that the people were endowed by their creator with certain inalienable rights including economic survival and could alter or abolish any government destructive of those rights. The various states of the United States of America go farther from the mainstream right of rebellion. For instance, Articles 1 and 2 of the Constitutions of the United States of Tennessee and North Carolina provide that government ought to be instituted for the common benefit, protection and security of the people; and that the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish and destructive to the good and happiness of mankind (Right of Revolution...2013).

The right to rebellion and disobedience is both a natural and a positive law right. Under common law, Blackstone (1765 – 1769) called it the law of redress against public oppression. The law of redress, according to Blackstone, arose from a contract between the people and the king (state) to preserve the public welfare. The paradigm of the contract was rested on a traditional model of government based on the existence of a hypothetical bargain struck in the mists of antiquity between a king and a people whereby the people were protected by the king in return for the allegiance of the people to the king. And as Hamilton (1775) <sup>[42]</sup> noted, government exercised powers to protect the absolute rights of the people and government forfeited those powers and the people could reclaim those powers if the government breached the constitutional contract.

### Conditions and evidence of militancy

Before the application of the right to militancy under the social contract theory to this study the various conditions enunciated by scholars and philosophers would be highlighted briefly. Apart from the views of Morton White (as cited in Right to Revolution..., 2013) that the notion that the people have a duty to rebel is extremely important to stress for it shows that they believe that they have a natural law command to shake off oppression and absolute despotism, it is firstly 'the rights of a whole people' as one of the parties to the original constitutional contract and not an

individual's right. It is the 'last-ditch effort of an oppressed people'. Thus according to Maier (1972) <sup>[53]</sup> it is clearly understood to be a collective right under English legal and political theory although some explanations of the right of revolution leave open the possibility of its exercise as an individual right.

Secondly, the state must have shown itself to be inadequate making change most conducive to public welfare. There must have been perversion of the ends of government endangering public liberty and all other means of redress must have been to no avail. There must have been a long train of abuses and usurpations, pursuing invariably a design to reduce the people to oppression under an absolute despotism: a government which has unlimited powers over its people dictating their mode of economic survival and exchange. Its powers are not subject to constitutional checks and there is no constitution whatsoever. If there had been a constitution, it would have been largely suspended and desecrated. Or the constitution and the laws of the land would have hijacked the means of livelihood of the people such that only the government determines the economic direction of the state living the people in the fringes of society without a say as to how they should run their lives socio-economically.

Again, the legal system would have become so moribund that it predated the current social awareness of the people and there are pervading, conscious efforts of the government to maintain the legal system that has been overtaken, outstripped by socio-economic development to the extent that the people have no recourse to their laws when commercial disputes are called to question but rather prefer to settle them through recourse to violence, extra-judicial measures and largely informal methodologies. The political will of the state must have become usurped by corporate capital sometimes entirely at the whims and caprices of foreign interests which are essentially interested in exporting raw materials to feed colonial interests and industrial societies where values are added and products are returned refined and made to face no domestic competition but a conspicuous consumption market.

Now, the condition for the exercise of the right of redress would have been such that the military is called in by the state and the multinationals to intervene in the domestic economic and security affairs of the people and their communities. The police would have been subdued and conquered by the people and their communities which in fact must have created and built their own militias and vigilantes. The territorial integrity of the state would have no longer been within the purview of the military, the state would have conceded that to a superior 'world uncle' but it begins to cow its population into line, rail-loading the population into what it should do economically and abstain from what it should not do economically; in other words, aspects of societal life such as the economy, etc would have become regulated by the state. There would have multiplied all over 'the lay of the land', ganglands where the practice of militancy would have increased dramatically since the 1990s. The syndicates involved would have become better organized and used their oil theft profits to build illegal territories, armies and install illegal refineries or rogue economies and purchased more sophisticated weapons to call the bluff of the Nigerian petro-state against such economies. Many of the weapons would have been recycled from other conflict zones in the sub-region or from 'springs' elsewhere in West-Africa or the Maghreb sub-region or imported into the state through the

porous southern Bights of Benin and Biafra. Reports by the Guardian (as cited in Odittah, (2013) <sup>[74]</sup> have already shown that poorly delineated and policed maritime boundaries between Nigeria and its neighbours account for the increase in militancy and oil theft at the periphery of international waters and that foreigners and local thieves use these vulnerable routes to ferry out several thousands of barrels of crude oil.

Furthermore, the condition for the exercise of the right and duty of redress would be the presence of lack of political will to vigorously pursue those involved in oil militancy and inability of the security forces to effectively police the local waterways where the barges transporting the stolen oil are hidden and the international waters where the sea crafts ply. Across the ganglands, impunity would have become the order of the day and prosecution of individuals and oil corporate entities responsible for serious environmental offences and human rights abuses cannot take place creating a devastating vicious cycle of increasing conflict and violence. Notions of the rule of law and the law of property are turned inside out and defences created by the criminal justice system including the bonafide claim of right are taken undue advantage of.

#### **State's reaction to militancy**

On the other spectrum, the bombing of well over 6,000 private refineries in the delta as at 2013 on the basis that they are illegal to the extent that they cannot account for how they came by the crude that they refine apart from by way of the hacks on the pipes is in the extreme. It is an invasion of the rights of the whole community and even of the individual. It endangers public liberty and private initiative and undermines the defence of claim of right provided for under section 23 of the Criminal Code of the Southern States of Nigeria and the presumption of innocence until the contrary is shown provided for under the 1999 Constitution of the Federal Republic of Nigeria. The theory of military intervention in the socio-economic life of a whole people even when it is led in impunity and criminality, violence and militancy justifies the right of rebellion, redress and revolution in the delta especially when it is only the fries (small scale thieves) that are being brought to book while the big fishes are being left off the hook.

Military intervention in civil life is a mortal blow to the right to human security of the indigenous peoples of the delta and a denial of the right to protection from sudden and hurtful disruptions in patterns of daily life. In many cases, it had led to the invasion and sack of many ethnic communities including Odi, Opia, Umuechem, Odioma and Uwheru under several muddy guises. In these and several other militarization exercises in the delta, soft issues of the peoples' exercise of choice, access to opportunities, security from poverty, diseases, famine, illiteracy and unemployment were effectively suppressed and the state-centric notion of security for the multinationals to plunder the wealth of the people was firmly entrenched according to Ojakorotu (2009) <sup>[79]</sup>.

The claim by the 2021 Petroleum Industry Act, the 1978 Land Use Act, and the 1999 Constitution of the Federal Republic that all land in Nigeria and all mineral resources in the land belong to a corrupt government which shares same to the curse of the people denying them the basic amenities of life is prone to engender crises. The claim that all compensation for land would be based on the value of the crops on the land instead of the value of the land itself at the time of acquisition, and the political will that hands over land to foreign

corporations for crude oil exploration without a consideration for the indigenous economic mode of production and reproduction of life creates fertile soil for rebellion. It negates the research finding of Agwu (2013, pp. 33 - 46) <sup>[7]</sup> that sustainable development and improved welfare of oil producing communities is to a large extent dependent on community participation. And as concluded by Ugbomeh & Atubi (2010), in their research, the only way to stop the Niger Delta crisis is to stop systemic corruption by handing over ownership and control of the oil wealth from the Nigerian state to the owners of the oil bearing lands. This is because, according to Akpobibido (2001), the less a people benefit from a system, the less interest they have in the survival of the system.

To show that the conditions outlined above for the exercise of the right to rebellion and war exist in the delta, Ibaba and Okolo (2013) <sup>[45]</sup> in their seminal work have not only outlined the four phases through which the crisis in delta have gone, they have also outlined the five causes of the crisis which invariably have also led to militancy in the delta. These include: alienation and disempowerment, militarization of democracy, human rights violation, failure of corporate social responsibility, corruption and accountability failures in governance, and ethnic based political domination. In the 1980s the struggle and the strategy was in the form of legal actions in courts of law by the delta communities against the multinational oil companies for compensation. When litigation proved of no avail, the struggle graduated into peaceful demonstration and occupation of flow stations to access adequate compensation and amenities and the response of the multinationals was the invitation of the state to provide military cover that largely culminated in the bombardment of whole communities leading to loss of lives and properties.

With military invitation the youths galvanized into militants and militias groups and began militant occupation, shutting down and bombardment of flow stations leading to kidnapping of both foreign and national oil company workers. When the stage of militant occupation proved effective, the governments of the southern states became drawn into the fray with the agitation for resource control and higher percentage in the derivation formula. Not yet satisfied, militancy entered into the phase of completely overwhelming the Nigerian petro-state into the amnesty deal. Now, the amnesty partially failed and the struggle graduated into oil theft and illegal refining, a development of a rogue economy.

### **Now, why Tompolo?**

The role of militants in the crisis of the Niger delta is phenomenal. They have come to compound than to help resolve it. They have also been the in forefront of articulating measures that could be of use in taming the crucible of violence and conflict in the region. They have been active in all manners of interactive sessions, public lectures and symposia organized in order to proffer solution to the crisis even as they are about two thirds of the crisis. This is because if the pipes are not breached, there would be spill only to the barest minimum. Oil theft can hardly occur unless the pipes are breached. In 2018 alone, 1,894 breaks were discovered and recorded leading to a loss of N27.55bn which increased to N851.84bn in 2019 and lowering down to N159bn in 2020. In 2021 output began to drop from 1.6bpd to 1.4bpd in 2022. In 2013 for instance, Tompolo (as cited in Adeoye) claimed that the only way to curb oil theft was by involving locals in

the monitoring of the pipeline facilities. In another report, he stated that the identity of those responsible for crude oil theft can only be unraveled through a high-powered investigation. This is because it is a business for the rich. The government can check illegal crude oil activities by renewing the surveillance of oil facilities contract in Delta, Bayelsa and Rivers States, as well as expand the job to other oil bearing States. In other words, the oil militants must be factored into the security arrangement of the pipes before the Federal government can go to sleep or have peace. Otherwise, it cannot be rest assured. The Federal government was also not too sure of its security. Its army, navy, police, civil defence corps have been roundly indicted by all sheds of opinion, research, and inquiries.

As Orjinmo (2022) asserted, much of the crude was pilfered from precisely those locations and check points that were manned by the military and the police of the Federal Republic of Nigeria. Tompolo's complicity is not also difficult to demonstrate. Orjinmo showed that the pipes which were discovered and exposed as those through which millions of barrels of crude had been stolen where in Delta State and in the actual neighbourhoods of which Tompolo had his sway and influence; and it is argued that it was most unlikely that anyone else could have installed and operated on those discovered and exposed pipelines without the oil militant's knowledge and mandate for decades. It was further submitted that a secret pact had long ago been struck by both Tompolo and the Federal government security officers for each to cover one another's tracks.

The situation is quite beguiling that a Senate Committee that investigated oil theft recently came up without apportioning blames. Senator Albert Akpan (as cited in Aborishade, 2022) <sup>[13, 1]</sup> believes that doing otherwise would not stop oil theft and militancy neither would capital punishment do as it is a cartel connected all over the world that could cripple economies. Clare Short of Extractive Industries Transparency International (as cited in Ailemen, 2013) <sup>[9]</sup> reached a similar conclusion in 2017 when she volunteered that 'our experience has shown that you cannot place the blames at the doorsteps of a single body' everyone has to be brought to the solution table instead of victimization methodologies.

Close watchers and researchers in the field of oil and gas are thus not bewildered by the double standards of both the Federal government and Tomoplo. What motivation and satisfaction are there in N4bn monthly or N48bn yearly contract for surveillance of pipelines that should oust the struggle for the emancipation of the people of the Niger delta? Do the grouses of the various co-militants not show that they were never actuated by the highest deal of the emancipation of their people? Do the support and defence which have been thrown in to shore up the credibility of the award not demonstrate and prove that there is nothing other than selfish economic motive in the struggle for the emancipation of the people of the delta? Perhaps it is the self-emancipation that the oil militants had all along preached to the ignorance of their followers and the unsuspecting people of the region. For a man who had all a long been in the creeks blowing up pipes in the guise of freedom-fighting to now turn around to become the protector of the pipes for the same owners he had once called illegal Commander-in-Chief, leaves much sour grapes on the trail.

For Editorial Guardian therefore, the award may be convenient to the Federal government but it adds no value to



the esteem of a regime that came to power riding on the crest of the desire to fight corruption to a standstill and a promised refusal to reward criminality with trophies. Dolling out mint cash to the oil militants under the Buhari administration also became impossible because of its anti-corruption stance. But in the face of a structural violence in the creeks, the Federal government could not continue to marshal out soldiers into the region (Elumoye, 2022) <sup>[35]</sup>. And many of the oil militants and their foot-soldiers became wiser and learnt the lesson to resist the temptation of confronting the military head on. It became more lucrative for them to join the illegal trade surreptitiously by cutting the vital export pipelines than to get involved in ideological battles and military warfare (Mbachu, 2022) <sup>[56]</sup>.

### **Prelude to the award**

In May, 2011 Global West Vessels Specialist Ltd a contracting firm to NIMASA had been contracted to receive the sum of N49.7m per month to provide five Patrol Vessels for NIMASA. In November, 2011 Global West Vessels Specialist Ltd was given a ten year contract worth N16b to provide a platform for tracking ships and cargoes in the Nigerian maritime zone. In February, 2012 it was discovered that CAS-Global had a contract to purchase six missile torpedo boats for GBP2.7m (for Tompolo) after Global West Vessels Specialist Ltd and NIMASA representatives visited the Ships. Earlier in 2008 Norwegian Navy had began a sale of seven Vessels to GWVSL and specifically, in selling the seven vessels to Tompolo's GWVSL, Norway and United Kingdom officials undermined the fact that Tompolo was being empowered and could turn around to use them to challenge the Federal government as in the days before the amnesty (World Peace Foundation, 2022) <sup>[99]</sup>.

International observers had had the thinking and the fears that the Niger delta would relapse back into volatility, instability and anarchy if the Buhari administration won the general elections of 2015 against ex-President Jonathan (Reuters Staff, 2016). This was because the Buhari administration which was running on the mantra to fight corruption in the oil sector may not be ready to accommodate the oil militants and the unscrupulous contracts awarded to them to keep the peace like its predecessor. Jonathan had quickly conceded victory to Buhari after the election paving way for resounding peace in the region. But soon thereafter, the Buhari administration began to look into the books and the economic essentials in the Niger delta and the role of oil militants and the relationships they had with the previous administration in matters relating to corruption.

In a typical gadfly approach, Buhari (2015) <sup>[23]</sup> on being briefed on corruption in the sector stated, 'we are looking for evidences of shipping some of our crude, their destinations and where and which accounts they were paid and which country. When we get as much as we can get as soon as possible, we will approach those countries to freeze those accounts and go to court, prosecute those people and let the accounts be taken to Nigeria'. On looking into NIMASA the Federal government in 2016 revoked the surveillance contracts which the Jonathan administration had given the oil militants to hold the peace and rewarded it to Davies Akanya the All Progressive Congress (APC) party Chairman in Rivers State. It was believed that the contracts were not properly given out previously and that the contractors were not qualified for pipeline security arguing that the State will not tolerate 'an army within the army or a police within the

police' (Nwabughogwu, 2015) <sup>[72]</sup>.

Tompolo was thereafter declared wanted for diversion of N34bn and N11.9bn belonging to NIMASA and the killing of eleven soldiers. Eight houses of his and bank accounts were seized as he went underground after a Federal government raid on him in Warri led to the death of his father in 2016. His ally, Asari Dokubo, had similarly gone to prison for treasonable felony earlier (Asuni, 2009) <sup>[20]</sup>. The revocation, the warrant of arrest and the declaration that he was wanted by the EFCC in 2020 before Justice Buba Ibrahim of the Federal High Court, Lagos according to Gaffey (2016) <sup>[38]</sup> was Buhari's attempt at recovering billions of dollars suspected to have been lost to corruption in the oil sector on assumption to office. Later the President was to confess that corruption had the capacity of fighting back. Perhaps it may be argued that the return and re-award of the contract to the rebellious oil militant is a reaffirmation of the confession.

However the act was received with shock in the international community as it was interpreted to be a negative signal for a volatile region littered with adverse militant groups with uncontrollable appetite for rupturing oil pipes and that had been enmeshed in conflicts (Oladipo, 2022) <sup>[81]</sup>. The oil militants cried blue murder. They had argued that they were best suited for the job being locals who were familiar with the wet and forest terrain. The leader of MEND was originally thought to be Henry Okah. He was in detention in Nigeria before the amnesty declaration and the declaration was partly actuated towards his release but other circumstances led to his deportation to South Africa in relation to other criminal activities in respect of gunmen raid on an oil rig off Nigerian coast leading to the kidnap of two Americans, two Frenchmen, two Indonesians and a Canadian. He was jailed for 24 years by Judge Nels Claassen who sentenced him to serve at the Ebongweni Correctional Center Kokstad, South Africa. This threw up Government Ekpemupolo alias Tompolo as the de facto leader of MEND.

### **Tackling militancy through locals**

For Alohan (2013) <sup>[17]</sup> several attempts have been made by the state to tackle the challenge of oil theft but to no avail. The collaboration between NNPC and other international agencies, maritime operation committee of the Army, Airforce, Navy, Customs, Police, SSS and the judiciary has not done much good of confronting the open secret that Nigeria, according to the Economic Magazine of August 4, 2012, is the world's capital of oil theft (Igwe, 2013) <sup>[46]</sup>. Even the juicy pipeline protection contract which the Wall Street Journal (as cited in Adeniyi, 2013) <sup>[4]</sup> claimed was awarded to Mujaheed Asari Dokubo (\$9m), Ebikabowei Boyloaf (\$3.8m), Ateke Tom (\$3.8m), and Tompolo Ekpemupolo (\$22.9m), all ex-militants, equally ended up as yet another drain on the pipelines.

It has been established that the heightened attacks on the pipelines coincided with the ongoing negotiation between the Federal Government and some of the ex-militants for the renewal of the pipelines surveillance contracts amidst pressure from other militants to be factored into the deal. In fact, the revocation of the oil pipeline protection contracts which were awarded to former agitators is one of the factors responsible for the rise of oil bunkering in the Niger delta in that it has forced the natives to resort to other jobs in a bid to survive and the next phase of the crisis may be worse than the previous one if the state fails to implement the terms of the

amnesty to the letter. This has led ex-Governor Oshiomhole of Edo State to express the concern that no nation should live with this kind of situation in which the state surrenders its national assets to thieves.

The concept of individual contracting instead of communally based contract has also been attacked by Mittee Ledum (as cited in Ahamefula, 2013) <sup>[8]</sup>. He argues that instead of giving the contracts to guard pipelines to an individual, the community should be given so that the youths of the community would be employed even on shift basis. Oil experts have equally assailed the ex-militants as incompetent and that the manner in which the contracts were handed over to the ex-militants under the table rather than above the table sends the wrong signals to the international community over the state's commitment to the principles of the Extractive Industry Transparency Initiative of which the state has given an affirmative action (Alohan, & Tsan, 2013; and Alohan, 2013) <sup>[17]</sup>.

However, the Jonathan Presidency came up stoutly through Kingsley Kuku, formerly Presidential Adviser on Amnesty, in defence of the award of the contracts insisting that the choice of ex-militants such as Tompolo, Ateke, Boyloaf and Dokubo was to ensure the success of the jobs as only the natives of the Niger delta were well placed and positioned to assist security agencies in combating oil theft and tampering with the oil facilities. It was a provision of the amnesty deal, the state argued, that an appreciable means of livelihood for the ex-militants was needed to encourage them to prevail on their supporters to keep the peace (Daniel, 2013) <sup>[28]</sup>. This golden argument has not changed since the Yar'Adua's administration. It was recently re-echoed by Abuh (2022) <sup>[2]</sup> when he stated that if the local people are mandated to gather information and support security forces in the fight against oil theft, it would go a long way and it does not necessarily imply that the Federal government is abdicating its sacred constitutional responsibilities. When local companies from the terrain are given the opportunity, they would know where to go as majority of the military security of the Federal government in the Niger delta are from the north and are largely incapacitated by environmental acquaintance factor.

The Senate of the Federation has become the latest bastion of support to send a delegation upon the award to the previous fugitive of the law. Deputy President, Omo-Agege, Governor Okowa of Delta State and Pandef led by Edwin Clark, have all thrown in their support for the award covering Akwa Ibom, Bayelsa, Cross River, Delta, Edo and Rivers State (Ogunyemi, 2022 & Odunsi, 2022) <sup>[78, 77]</sup>. Senator Albert Akpan (as cited in Odor, 2022 & Aborishade, 2022) <sup>[1, 13]</sup> buttressed the point that there was nothing absolutely wrong to engage the non-state actor provided the desired result was achieved as the end justifies the means, oil theft being the mitigating factor against the sector and all efforts at bringing it to bail had proved abortive (Akpan, 2022) <sup>[13]</sup>. However, the greatest take away from the support of the Senate is the instruction to all security agencies and the contractors to discontinue the 'bombing of things'. Any seized product, vessel or receptacle shall henceforth be converted to state property and use.

### Blowing up of things

It is not only that the 'blowing up of things' is causing more pollution and collateral damage as contended by some stakeholders, the debate is rife that the multinational oil companies are behind the military in stifling the growth of an

indigenous industrial technology. The Editorial Guardian (2012) submits that makeshift refining implicates the ingenuity of the average Nigerian. That ingenuity exists in several areas of our national life and is often killed at its embryonic stage. In countries where foresight is brought to bear on the development process, such ingenuity constitutes the building blocks of technological breakthroughs. Instead of simply criminalizing these outfits to the rebound of the major business interests of the multinationals, the Guardian further argues, government ought to have found ways to help them structure and achieve transformation. Besides, they ought to be licensed and structured into efficient production units underlined by quality control. The existence of illegal refineries ought to be seen as a manifestation not necessarily of criminal intent, but of survival initiatives that ought not to be suppressed. Rather, such initiatives ought to be harnessed within the ambits of the law as necessity is the mother of invention. Two reactions to the editorial views of the Guardian were positive and apt:

'I think these men are heroes who refine oil illegally. What they need is funds to refine on a bigger scale and in safer way. No mention was made of the quality of their products and how to improve on them. Release them and equip them.' 'Please help these ... improve their business and stop harassing them. Help them with capital and technological empowerment to do their business. I salute their creativity, they just need help and support from the government that is just stealing their money'.

To Akinyemi (2015) <sup>[22]</sup>, 'here are Nigerians who obviously understand the rudimentary process of producing refined PMS (Prime Motor Spirit) and instead of encouraging them, we punish them.' To the Guardian, solving the problem of unemployment entails creating opportunities and encouraging independent initiatives of the people. There is no doubt that illegal refineries provide employment for some people in the area ironically reputed for its poverty rather than opulence and this, despite decades of oil exploitation. Therefore, a creative transformation of the makeshift refineries could provide further employment for the people and redirect their energies from social vices to productive initiatives.

The paper which laments that it is shameful that the deficit in the industry occupies the front burner of national discourse not for reasons of celebrating major strides but for wrong reasons of continuing incompetence and sleaze has the support of Akinyemi. He canvasses that bombing and smashing refineries have been the standard solution to the problem of illegal refineries, but the problem is that it is not the solution. 'We should stop burning and destroying as a policy...and regard building up our own domestic technology as a priority and start pursuing policies towards that end'. The defunct Biafra Republic refined petrol during the civil war over four decades ago yet in 21<sup>st</sup> century the Federal Republic of Nigeria has not come of age either in local technology for the running of the industry or in the ability to sustain the imported technology upon which the industry is dependent. It is shameful, according to Ayoyinka Jegede (as cited in Umemedimo, 2015) that Nigeria cannot operate its own refineries or refine oil locally, 'We produce the oil, sell it to a foreign country that would ...refine it and send the product to us. There is no greater shame than that in the international community'. A government commissioned report found that oil theft and illegal refining of oil have become widespread to the extent of stifling traditional life of oil producing

communities turning them into ganglands; and according to Kuku (as cited in Duru, 2013) <sup>[32]</sup>, many vulnerable and impressionable young people now aspire to join this growing but extremely dangerous and certainly illegal and immoral business. In fact unemployment among the people of Niger delta is so high that it leads in part to the formation of militias and gangs that run illegal oil refineries found predominantly around the multinational company's main pipelines in such a way that illegal extraction of oil is the only option open to earn a living (Counting the cost..., 2013).

### Conclusion

Economic perspectives in the explanation of militancy are unpopular in that any defence to economic crime on the basis of economic pressure or survival is unlikely to attract the recognition or the sympathy of a Nigerian court. Therefore economic explanation of oil militancy remains theoretically and practically academic. Yet, it is convincing and adequate but the extent to which they can be advanced, adopted and reinforced in a Nigerian court of law in defence of oil militancy remain bleak. State policies such as award of surveillance contracts actuated towards the economic liberalization of the hydrocarbon sector to encourage inclusion and participation of the deprived indigenous communities are also not as forthcoming as they ought to be. These have largely left the communities and militants at the vagaries of illegalities and uncertainties in their economic activities in an attempt to pursue economic survival in the creeks, predisposing them to militancy.

The fact that oil militancy has assumed a national dimension is no longer debatable. The damage which has resulted is equally enormous on all the stakeholders. It appears equally clear that the military option of suppressing the activities of the militants have not helped matters. While it may seem abnormal to allow militancy fester to the detriment of the state and the industry, legal control by award of surveillance contract may seem a better approach as that will yield a win-win situation. The military posture of the State has failed to send the right signal to international and private interests in the region.

There is therefore wisdom in simply not to ask for short term ideas about how to deploy more law enforcement resources to suppress the violent militancy in the creeks. In fact, attempt is made in this study to rebut the role of violence in the resolution of the problem of oil militancy and question the extremely popular thesis of the legitimacy of the use of violence in conflict resolution as unacceptable. It tries a take-off from the premise that the Nigerian State cannot arrest or bomb its way out of the problem of oil militancy and mandates itself to look back at the roots where the violent militancy is coming from and identify ways of addressing the causes instead of the effects.

Whether the award of surveillance contract to Tompolo is the right step in the right direction remains to be seen but it is not coterminous with the struggle for the emancipation of the Niger delta people.

### Recommendation

- Relatively cheaper surveillance equipment can be used to track the pipes while engagement of the locals should be intensified.
- Unmanned aerial devices can be used while manual surveillance of the pipes should compliment same.
- Remotely controlled aircraft can also be used in addition

security patrols.

- Freeing federal control of resources will go a long way in reducing militancy.
- The struggle for the emancipation of the people of the Niger delta should be a work in progress.
- Militancy is should not take the shine off the legitimate struggle of the peoples of Nigeria.

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