

## RESTORATIVE JUSTICE INTERVENTION IN THE REPRESSION OF CRIME IN OIL AND GAS PRODUCTION IN NIGERIA<sup>1</sup>

### **Abstract**

*The oil and gas sector has assumed a tremendous prominence in the history of contemporary Nigerian economy. However, crime, corruption and quasi-criminal conducts have consistently played an obstructive role in the full realisation of the desired efficiency and capacity in the industry. The emerging economic reality in the sector indicates a decline in productivity owing to other neglects and crimes perpetrated by some past government, employees, indigenes and industry operators. These often manifest in economic fraud, denial of basic economic and social needs, oil bunkering, pipeline vandalism, tax evasion, and the likes. To ensure consolidation and sustenance of capacity growth there is need to access the cause of the present decline in the sector. The onus is on both the government and the citizens to get up steam and fight the criminal tide in the sector using the best approach. This paper examines the dynamics of crime repression and restorative justice intervention strategy in the oil and gas sector for efficiency and desired capacity in the industry. The paper first demonstrates the need for adequate crime control in the sector. Then the paper discusses repression of crimes in the oil and gas sector and the human right question. Finally, the paper concludes by underlining strategies for crime prevention in the sector and the approach of restorative justice intervention in oil and gas related crimes.*

**Keywords:** *Repression of Crime, Restorative Justice Intervention, Economics of Oil and Gas Production, Human Rights, Nigeria*

### **1. Introduction**

In 1956, Nigeria witnessed the first commercial production of oil and since then oil and gas became the main strategic economic resource for Nigeria. Since that discovery, oil and gas form a greater percentage of the country's export earnings and invariably yield about 86 per cent of the Federal Government revenue. Consequently, Oil activities and production attracted investors into the country. For Federal government such source of economic prosperity and greatness for the country should not be tampered with. For unemployed youths, politically marginalized villagers and social neglects alike it is a natural means of survival irrespective of any involving illegalities. In recent times both the Executive arm of government, law makers, leaders of the society, law enforcement agents and a good majority of stakeholders mistakenly perceived repression as a control measure for such oil related crimes as bunkering, vandalism and the like. Perhaps, repression is deemed an adequate means to boost the economic production of oil and gas in the rich oil and gas sector. It is on record that there was a repressive attack on Odi people by the then Obasanjo administration<sup>2</sup>. One would think that oil bunkering, pipe line vandalism and the likes will be a thing of the past after such deadly repressive attack but unfortunately the reverse is the case. Yet behind the scene of the bunkers and vandal lies the major players though the petroleum industry in Nigeria is the largest on the African continent. As of 2014, Nigeria's petroleum industry contributes about 14% to its economy<sup>3</sup>. Therefore, despite the enormous size, weight and importance of the petroleum sector, it has recently become in fact a small part of the country's overall diversified economy. It is therefore obvious that rather than repression of

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<sup>2</sup>The 1999 Odi Massacre. See: The Guardian Newspaper, Monday July 28, 2008, p. 3.

<sup>3</sup>A closer look at Nigeria's GDP rebasing' [http/ www cnbc Africa](http://www.cnbc.com/news/west-africa) . cnbc Africa. 12 February 2015. Retrieved 9th August, 2015.

crime there is need to get up steam and fight the criminal tide in the sector to maximize the benefit of such an industry for economic growth and societal development.

## **2. Conceptual Analysis**

### **Crime**

A crime is a social harm that the law makes punishable; the breach of a legal duty treated as the subject-matter of a criminal proceeding.<sup>4</sup> There is the understanding that the conception of crime, as distinguished from that of wrong or tort and from that of sin, involves the idea of injury to the State or collective community. The Criminal Code which is operative in the Southern part of Nigeria did not define a crime so to say but the Code states that an act or omission which renders the person doing the act or making the omission liable to punishment under the Code or under any Act, or Law, is called an offence<sup>5</sup>. It is an act or omission punishable by the state<sup>6</sup>. Elsewhere a crime has been defined as a violation of a law in which there is injury to the public or a member of the public and a term in jail or prison and/or a fine as possible penalties<sup>7</sup>. It is also a harmful act or omission against the public which the State wishes to prevent and which, upon conviction, is punishable by fine, imprisonment, and/or death. No conduct constitutes a crime unless it is declared criminal in the law of the country. Some crimes such as theft or criminal damage may also be civil wrongs (torts) for which the victim(s) may claim damages in compensation.<sup>8</sup> In all the definitions Crime is perceived as an act or omission which has something to do with the public, state or community. It is a violation of a criminal law.

### **Repression**

This is the act of using force to control a group of people and restrict their freedom<sup>9</sup>. This is mainly exercised by the government. It is also an act of controlling strong emotions and desires and not allowing them to be expressed so that they no longer seem to exist. In Spain there was the ‘Francoist Repression’ otherwise called ‘white Terror’. It was the series of acts of politically motivated violence, rape and other crimes committed by the Nationalist movement during the Spanish Civil War from 17<sup>th</sup> July 1936 to 1<sup>st</sup> April 1939 and during the Francisco Franco dictatorship.<sup>10</sup> In Sudan, oil development has caused an escalation in the country’s over 17 years civil war and an increase of abuses associated with the war<sup>11</sup>. As a result of oil exploration drilling and pipe line construction government air and ground attacks on civilians increased significantly and became part of a strategy to clear the oil field of populations perceived to pose a threat to security of oil field operators. Also civilians were caught in the midst of fighting for control of the oil fields by groups aligned with the government and armed

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<sup>4</sup> B.A. Garner: *Black’s Law Dictionary*, 7<sup>th</sup> ed. (USA: West Group, 1999) P.377.

<sup>5</sup> The Criminal Code Schedule to the Criminal Code Act. Cap. C38 *Laws of the Federation of Nigeria (LFN) 2004*, applicable to Southern Nigeria, (to be herein referred to as the C. C) s.2.

<sup>6</sup> The Penal Code Cap. 89 *Laws of Northern Nigeria* 1963, applicable to Northern Nigeria (to be herein referred to as the P. C) s.2. see also A.O. Obilade: *The Nigerian Legal System* (Ibadan: Spectrum Law Publishing, 1999) p. 5.

<sup>7</sup> G.N. Hill & K.T. Hill: ‘Crime’ in *General English Dictionary/Thesaurus, Encyclopedia*. Retrieved 9th August, 2015.

<sup>8</sup> *Business Dictionary*: <http://www.businessdictionary.com/definition/crime>. Retrieved 8/8/2015.

<sup>9</sup> A.S. Hornby: *Oxford Advanced Learner’s Dictionary of Current English*, 7<sup>th</sup> ed. (New York: Oxford University Press, 2005) p. 1241.

<sup>10</sup> 1<sup>st</sup> October 1936- 20<sup>th</sup> November, 1975. See also B. Antony: *The Battle for Spain. The Spanish Civil War 1936-1939*: Weidenfield and Nicholson (2006) 89-94 <http://Wikipedia.org> retrieved 12/8/2015.

<sup>11</sup> L. Franco: April, 1999 Report as the UN’s Special Rapporteur for Sudan. Also in 2000 J. Harker, leader of a Canadian fact- finding mission visited Sudan in December 1999 made the same report.

opposition factions. It claimed many lives indeed<sup>12</sup>. In most countries of the world repression is often used by government as the fastest means of combating crime even when government and its agents are contributory to the cause(s) of the crime in question.

### 3. Nigerian Government and Repression in the Oil and Gas Sector

The Petroleum Profits Tax Act 1959 (PPTA), was one of the pioneer legislations enacted by the government for the oil and gas industry. It empowered the government to impose tax on the profits of companies that were involved in petroleum operations.<sup>13</sup> According to history, the Nigerian oil industry was nationalized in May 1971 by the Nigerian Federal government under the control of General Yakubu Gowon with the creation of the Nigerian National Oil Corporation via a decree<sup>14</sup>. The promulgation of Decree No 18 of 1971, which established the Nigerian National Oil Corporation (NNOC), was the first bold move by the government to set up a state-run oil company to compete with the International Oil Companies (IOCs). The new legislation by General Yakubu Gowon's government empowered the NNOC to engage in oil exploration and 'in all other activities associated with the petroleum industry.' The rationale behind the enactment of Decree 18 was to enable the NNOC develop capacity and capability to compete for hydrocarbon resources with other multinational firms Operating in the country<sup>15</sup>. However, on April 1, 1977, the NNPC was established by the promulgation of Decree No. 33.

This decree merged the Ministry of Petroleum Resources and the NNOC to form the NNPC. It was charged with the overall control of the oil industry. The new decree also saddled the NNPC with all the functions that were performed by the NNOC including, 'exploitation, production, transportation, processing of oil, refining, and marketing of crude oil and its refined derivatives.' By the provisions of Decree 33, the regulatory arm of the new NNPC was known as the Petroleum Inspectorate, which has today metamorphosed into a separate entity known as the Department of Petroleum Resources (DPR), the apex regulator of the oil and gas industry<sup>16</sup>.

However, it was during the years of Gowon and his successors, Murtala Mohamed and Olusegun Obasanjo known officially as the Heads of the Federal Military Government of Nigeria, who ruled amidst the oil boom of the 1970s that the political economy of petroleum in Nigeria truly became characterized by endemic patronage and corruption by the political elites, which plagues the nation to this day.<sup>17</sup> The heavy patronage based on tribal affiliation fuelled ethnic unrest and violence in most states in Nigeria, but particularly in the Niger Delta States, where the stakes for control of the immense oil resources are very high. The oil wealth was monopolized and used to reward political supporters. The unequal, inefficient distribution of these financial favours resulted in concentration of wealth and power in the hands of a small minority<sup>18</sup>. Nevertheless, it was well arranged that the Federal Government will have strong control of the oil sector. In 1972 the government declared that all property not currently owned by a foreign entity is legally the property of the government. With this government gained jurisdiction of the sale and allocation of concessions to foreign investment. The military regime

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<sup>12</sup> G.Kenny: 'Corporate Immunity for Oiling Repression? Talisman in Sudan'. ICCAF Human Right Brief on Sudan, 2000.

<sup>13</sup>A. Ejiofor: 'The Move to Reposition NNPC': This Day Life; [http. www. This daylife.com](http://www.thisdaylife.com) retrieved 16<sup>th</sup> August, 2015.

<sup>14</sup> Decree No 18 of 1971, which established the Nigerian National Oil Corporation (NNOC), was the first bold move by the government to set up a state-run oil company to compete with the IOCs.

<sup>15</sup> A. Ejiofor: *op.cit.*

<sup>16</sup> Ibid.

<sup>17</sup> 'Petroleum Industry in Nigeria': <http://www.transparency.org/cpi2014/results> . Retrieved 8/8/2015.

<sup>18</sup> K. Ahmad: *Nigeria: The Political Economy of Oil*. ISBN 0-19-730014-6 . Retrieved 9/8/2015.

then oversaw the implementation of a number of other important milestones related to oil. The Federal Government in 1978 created the Land Use Act which unfortunately gave the government massive ownership and control of lands. The 1979 Constitution further declared that all minerals, oil, natural gas and natural resources found within the bounds of Nigeria to be legal property of the Nigerian Federal Government<sup>19</sup>. The government further merged and restructured the NNOC and the Ministry of Petroleum to form the Nigerian National Petroleum Corporation already referred to.

In 1979 power left the military and in attempt to practice democracy Alhaji Shehu Shagari emerged as the president. History has it that at this time, Niger Delta as an oil producing state that accounts for 80 percent of the Federal Government revenue received very little compensation. They began to demand for adequate reimbursement. In 1983 Muhammed Buhari declared himself Head of the Supreme Military Council of Nigeria and condemned the civilian government's blatant corruption. He instituted programs supposedly designed to eliminate the disease of corruption.

In 1985 General Ibrahim Babangida took over power. He alleged that his predecessors were corrupt violators of human rights and promised to rectify the situation, committing to a return to democracy by 1990. Nigerian was hugely in debt yet Nigeria was then earning over 101 billion US dollar generated from oil money. These funds were siphoned into private bank accounts and the state sponsored pet projects maintained by the succession of Nigerian governmental elites, yet the oil producing areas remained underdeveloped with no effort to improve the welfare of its population. This regime was accused of 'mismanaging' the oil windfall from the Gulf War price jump, which accounted for about \$12.5 billion in revenues. Another alleges that the federal government siphoned off about \$12.2 billion between 1988 and 1994 into private accounts or expenditures, 'clandestinely undertaken while the country was openly reeling with a crushing external debt.'<sup>20</sup> After the annulment of the June 12 election the Nigerian people took to the streets in large numbers to protest the election's annulment. As civil unrest continued, Babangida was forced to cede power to the caretaker government of Ernest Shonika. In 1993, various ethnic groups including those in the Niger Delta began demanding for compensation for years of ecological damage as well as control over their land's oil resources<sup>21</sup>. Peaceful activist organizations emerged in the area. One of the most popular of these organizations was the Movement for the Survival of the Ogoni People<sup>22</sup>. These group of people united on the basis of ethnicity protested that Ogoni people were slowly being annihilated as the arable terrain of their homeland 'the Ogoniland' was degraded by pollution from oil production by Chevron and primarily by shell. There was conflict in the area due to tension between the foreign oil company, the Nigerian government and a number of Niger-Delta ethnic groups who felt they were being exploited<sup>23</sup>. In the mist of the protest the Nigerian military moved into the region called Ogoniland in force. They razed 30 villages, arrested hundreds of protestors, and killed an estimated 2,000 people<sup>24</sup>. One of the protestors they arrested was Ken Saro-wiwa. Saro-wiwa and his eight other colleagues paid the ugly price for crying out loud for their right to compensation<sup>25</sup>.

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<sup>19</sup> Okonta & Douglas: *where Vultures Feast: petroleum Industry in Nigeria*, [www.wikipedia.com](http://www.wikipedia.com) ;retrieved 7/8/15,

<sup>20</sup> Okonta & Douglas *op.cit*.

<sup>21</sup> Ibid.

<sup>22</sup> MOSOP.

<sup>23</sup> Minority groups like the Ogoni and the Ijaw people.

<sup>24</sup> S.Junger, 'Blood Oil. Vanity Fair.com', 2007. Retrieved 8/5/2014. from <http://www.vanityfair.com/politics/features/2007/02/junger200702>

<sup>25</sup> Ken Saro-Wiwa was a Nigerian TV producer, writer and social activist. In 1990 he founded the Movement for the Survival of the Ogoni People (MOSOP). Ken wrote and spoke out about the rampant corruption in the Nigerian government and he condemned Shell and British Petroleum. He was arrested by the Nigerian Government and

In 1999, the administration of former president Obasanjo, allegedly launched a repressive attack on Odi People in Bayelsa State and ordered the mass killing of these people, restive for being exploited by government without compensation. Similar event before the Odi massacre had reportedly happened in Zaki Ibiam in Benue State. Similarly the Niger Delta Joint Task Force expedition was launched in full force in search of the members of the Movement for the Emancipation of Niger Delta ( the MEND), and others. Ethnic unrest continued throughout the 90s and persisted as of 2006 despite the transition to democracy.

One of the greatest threats facing the people of Niger Delta has been their own government. The Nigerian government has total control over property rights and they have the authority to seize any property for use by the oil companies. All monies accruing from the oil goes to the government of Nigeria. As a result of the enormous amounts of sweet light crude that comes out of the delta every day Nigeria has the second largest GDP in Sub-Saharan Africa. Nigerians have on many occasions engaged in protests against oil-related corruption and environmental concerns, but they are frequently met with harsh suppression by government forces. Thus in February 2005, there was a protest at Chevrons Escravos oil terminal in which soldiers opened fire on the protestors. One man was killed and 30 others were injured. The soldiers claimed that the protestors were armed, though one of the protestors denied it.<sup>26</sup> The people of the Niger-delta states live in extreme poverty even in the face of great material wealth found in the waters by their homes.

#### **4. Repression of Crimes in Oil and Gas Production in Nigeria and the Human Right Question**

Crime and criminality in the Nigerian oil and gas sector is as old as the sector itself. Oil bunkering, pipe line vandalism, tax evasion, siphoning of oil money to foreign banks are notorious crimes associated with the sector. Nonetheless, the task of protecting the environment including the oil and gas sector is a joint responsibility of the Federal government, State government, Local government and the citizens as a whole. While the Federal government lays down broad policies and guidelines for the protection of the environment, the state and the local governments ensure the implementation of those policies and guidelines by enacting local laws to protect the citizens from environmental degradation and pollution. The citizens in turn, with a sense of patriotism and protection from the government ensure that these laws are not violated either by themselves or by someone else. The 1999 Constitution of the Federal Republic of Nigeria as amended<sup>27</sup> provides that ‘the state shall direct its policy towards ensuring (i) the promotion of a planned and balanced economic development’. The same Constitution further provides that ‘the state shall protect and improve the environment and safeguard the water, air, and land, forest and wild life of Nigeria’. In the main, section 33(i) of the same 1999 Constitution as amended provides that: ‘ every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria’.

By virtue of the provisions of section 33(i) of the 1999 Constitution every one without discrimination has the right to life. Invariably therefore this right to life means right to everything legal that promotes

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imprisoned for 17 months. Then in a show trial Ken and eight others were condemned to death. He and the others were hung in 1995 and he was buried in an unmarked common grave.

<sup>26</sup>Amnesty International (2006). ‘Nigeria: Oil, Poverty and Violence’. from <http://web.amnesty.org/library/index/ENGAFR440172006?open&of=ENG-NGA>. Retrieved 10/8/2015.

<sup>27</sup>Section 16(i).

life including clean environment and decent standard of living. Some local and international authors<sup>28</sup> also have similar view about the legal provision for the right to life.

It is part of Nigerian law that a licensee of oil mining lease is precluded from exercising its mining lease where, inter alia the land is a sacred forest. It is equally a criminal offence to pollute the water or land. To be precise the Harmful Waste (Special Criminal Provision etc) Decree 1988 otherwise known as Decree No.42 prohibits activities relating to the purchase, sale, importation, transit, transportation, deposit, storage of harmful waste<sup>29</sup>. Section 7 of the same Decree provides that: ‘Where a crime under this Decree has been committed by a body corporate and it is proved that it was committed with the consent or connivance of or is attributable to any neglect on the part of- a) A director, manager, secretary or other similar officer of the body corporate; or b) Any other person purporting to act in the capacity of a director, manager, secretary or other similar officer, he as well as the body corporate shall be guilty of the crime and shall be liable to be proceeded against and punished accordingly. The Criminal Code Act<sup>30</sup> applicable in the Southern part of Nigeria similarly provides: ‘any person who corrupts or fouls the water of any spring, stream, well tank, reservoir, or place, so as to render it less fit for the purpose for which it is ordinarily used is guilty of a misdemeanor and is liable to imprisonment for six months: Section 247 of the same Criminal Code further provides: ‘Any person who:

- (a) Vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on businesses in the neighbourhood, or passing along the public way; or
- (b) Does any act which is, and which he knows or has reason to believe to be likely to spread the infection of any disease dangerous to life, whether human or animal, is guilty of a misdemeanor, and is liable to imprisonment for six months.

The Penal Code operative in the North has similar provisions for fouling water of public well or reservoir<sup>31</sup>. In the oil sector so to say, there are provisions regulating the activities of the Companies so as not to destroy the environment.<sup>32</sup> Section 11(5) of the Pipe Line Act<sup>33</sup> provides that the holder of a licence shall pay compensation-

- (a) To any person whose land or interest in land(whether or not it is land in respect of which the licence has been granted is injuriously affected by the exercise of the right conferred by the licence, for any such injurious affection not otherwise made good; and
- (b) To any person suffering damage by reason of any neglect on the part of the holder or his agents, servants or workmen to protect, maintain or repair any work, structure or thing executed under the licence, for any such damage not otherwise made good; and

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<sup>28</sup> The Parkistanian case of *Shella Zia VS. Water and Power Development Authority (WAPDA)* PLD 1994 SC A16; see also: A.O.Okokpon: *The 1999 Constitution of Nigeria and the Protection of the Right of Citizens to a clean Environment*. In L.Atsegbua: *Selected Essays on Petroleum and Environmental Laws*, Faculty of Law, University of Benin, (Benin: Era Computer Services, 2000)p.31.

<sup>29</sup> Section 1.

<sup>30</sup> Section 245. Other related provisions are Ss.453 CC. Under section 440 CC, any act which causes injury to the property of another and which is done without his consent, is unlawful, unless it is authorized or justified or excused by law.

<sup>31</sup> S. 191 P.C.

<sup>32</sup>The Petroleum Act 1969, the Mineral Oil (Safety) Regulations1963, Petroleum Regulations 1967, Petroleum Drilling and Production Regulation 1969 and Petroleum Refining Regulations 1974.

<sup>33</sup> Cap. 07 Laws of Federation of Nigeria, 2004.

- (c) To any person suffering (other than on account of his own default or on account of the malicious act of a third person) as a consequence of any breakage of or leakage from the pipeline or an ancillary installation, for any such damage not otherwise made good, and if the amounts of such compensation is not agreed between any such person and the holder, it shall be fixed by a court in accordance with part iv of this Act.

In the case of *Alogama & Ors v SPDC*<sup>34</sup> the court in its holding confirmed the provisions of section 11 of the Pipeline Act. The Federal High Court has exclusive jurisdiction to adjudicate on civil causes and matters arising from mines and minerals including oil fields, mining geological survey and natural gas<sup>35</sup>. It is worrisome that despite the above enumerated provisions the human rights of dwellers are daily violated by industry operators, government and their agents. Dwelling houses, drinking water, natural inhabitants and life are being continuously destroyed and polluted on daily bases in the process of oil exploitation and gas production. On the other hand pipe lines are continuously vandalized and bunkering is almost a daily game. Industry operators, government and its agents in the sector sacrifice the rights of the poor indigenes of the oil producing areas, impoverish them and enrich themselves and their generations. Yet in the mist of these anomalies the best option so far utilized to curb crime in the sector is repressive method which often times shield the reality. Victims of oil pollution and the likes are not considered. Pipe lines Licensees are most indifferent to the plights of the suffering community. Government and the leadership of the Niger Delta States immerse themselves in corruption. Any protest from indigenes, villagers/natives of these oil producing areas against these illegal acts is addressed with a repressive attack by the government.

The human right question remains whether the Niger Deltans especially the Ogonis, Odis and Ijaws have right to life, clean environment and freedom of expression? Of course the answer is in the affirmative. Being Nigerian citizens the law also provides for their rights and protection. The deadly effect of oil pollution in these areas is so enormous to attract government and operators care and sympathy but often times the reverse is the case. Apart from crops, marine lives also suffer from the toxicity of oil pollution. This is because most of the oil pollution spread to the tidal rivers and of course the streams. It grossly contaminates aquatic homes of some fishes and seafood. Chances of survival of these aquatics lives therefore become remote. A committed government true to its duties and responsibilities towards its citizens will seek to better develop the source(s) of its country's income and fortify its frontiers to boost the country's economy. Unfortunately the Ogonis, Ijaws, the Odis in fact the Niger Deltans have a different experience.

It is a fact that whether in the oil and gas sector or any other sector of the economy repression is a mere façade to effective crime control and check. In the face of the diversified crimes that have bedeviled the sector, repression is a least measure to bring sanity in the sector for a more buoyant economy that is best for development. Lurching repressive attack on the villager for crying out loud for their right is not only a gross violation of their right to freedom of expression but an attempt to veil executive fraud and shield corporate crimes perpetrated by relevant industry operators in the oil and gas sector. To bring sanity to the sector, fraudulent clean ups by past government and their officials, corporate crimes by companies and their operators and victim oriented crimes<sup>36</sup> involving the community and/or villagers must be checked. In that wise, crimes in the oil and gas sector have to be tackled and controlled from

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<sup>34</sup> (2013) LPELR 21394 (CA); *Oronto Douglas v Shell Petroleum Development Co. Ltd & 4ors.*(1998) LPELR-6457 (CA).

<sup>35</sup> *NNPC & Anor. v Orhiowale* (supra).

<sup>36</sup> Oil bunkering, Pipe Line Vandalism and the likes.

and at the places where they exist. There is no doubt that the environmental devastating effect of oil and its production is some of the time contributory to the restiveness in the oil producing areas in the state.

### **5. Strategies for Crime Prevention in the Oil and Gas Sector**

It has been noted that crime in the oil and gas sector is diversified involving oil operators on one side, government which has failed to provide adequate surveillance, monitoring and superintendence over the activities of oil companies, officials who engage in fraudulent clean ups and the community who perpetrate bunkering and vandalism as a way out of exploitation. While government and society accuse youths and villagers of oil bunkering and pipe line vandalism, the society accuses oil companies of spills, oil pollution and blow- outs and the villagers in turn accuse government of negligence and exploitation. Because of the weight of the oil companies on the economy of the country often times they blackmail the government into acts of violent oppression to the detriment of the environment and its inhabitants.<sup>37</sup> Similarly, the mild and tolerant attitude of government towards these companies irrespective of oil exploitation, spills, blow-outs and pollution if juxtaposed with the aggressive attitude of the same government toward the victims of exploitation who in turn resort to pipe line vandalism and the likes raises some doubts in the mind of any right thinking citizen of the country. Both the local communities and indeed majority of the members of the society allege that there is conspiracy between the oil operators and the Federal Government of Nigeria to exploit, repress and do away with the villagers<sup>38</sup> from whose farm lands and locality oil is being extracted. It is regrettable and painfully so, that prosecution of crimes in the oil and gas sector is one sided, geared only toward pipe line vandals. It is suggested that as long as stake holder in the oil and gas production are not made responsible for their crimes, crime will continue to roam the streets of oil and gas production industries in Nigeria. There is need for restorative justice intervention as a strategy for crime prevention in the economics of oil and gas production in Nigeria. The process of restorative justice will bring about Offender- Victim Oriented Prevention, Community Oriented prevention and Community Justice which will serve as strong measures of crime control in the oil and gas sector. By so doing people are therefore made responsible for their actions and crimes.

### **6. The Approach of Restorative Justice Intervention in Oil and Gas Related crimes**

Restorative justice intervention in oil and gas related crimes is a reaction in response to criminal offences in the economics of oil and gas or an option for doing justice after the occurrence of an offence in the oil and gas sector. Restorative justice will not only bring about crime reduction, offender rehabilitation and deterrence(individual and general) but it will also process gains in the form of victim satisfaction, offender satisfaction, community satisfaction, cost effectiveness, securing justice and enriching freedom and democracy. Restorative justice intervention involves mediation and conferencing to meet victims. However, in restorative justice intervention, offenders<sup>39</sup> must be willing to acknowledge their responsibility for the harm to the victim and their desire to make genuine forms of reparation or apology. It will undoubtedly open up significant possibilities for reducing victimization and its harmful effect in ways that are neglected by traditional systems of prosecution<sup>40</sup>. This is more

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<sup>37</sup>P. Watt:s one time managing Director one wrote in the days of late General Abacha ‘we must emphasize that SPDC produces more than 50 per cent of Nigeria’s oil which has consequential major impact on the country’s economy. To ensure a continuation of operations at the present level requires the provision of maximum

<sup>38</sup> The Yorla Oil Field in Ogoni and the oil spills and blow-outs, and the Odi massacre are available evidence.

<sup>39</sup> Whether oil operators, the government and its official or the villagers depending who committed the offence in question.

<sup>40</sup> H. Strange & L. Sherman. ‘*Restorative Justice to Reduce Victimization*’ (2006).

fruitful where there is a focus on learning from the experience of victimization and considering how to reduce the victim's vulnerability to future crime. Where this involves a face-to-face encounter between victim and offender it enables victims to address concerns or questions they may have by meeting the offender so that they can better understand why the offence occurred and assess the likelihood of its reoccurrence. Just as the best time to encourage a household of the merit of domestic security measure is after burglary so it is that the most compelling time to persuade a person regarding the veracity of crime prevention is immediately after they have become the victim of a crime.<sup>41</sup> Nigeria is not an exception. This is because as a country it has severally fallen victim to repression and oil and gas related crimes.

### **Offender-Victim Oriented Prevention**

Offender in this sense could be the operator who is engaged in exploitation causing pollution, spills, and blow-outs or the villagers who engages in bunkering and vandalism. It could still be the government that has failed in its duty to the citizens and engages in repressive attacks of ethnic cleansing of a town 'the supposed' vandals. It could still be officials who engage in fraudulent clean-ups and evasion. Whoever the offender may be there is need for accountability and personal responsibility for actions/crimes. By holding individuals to account for and confronting the consequences of their offending behavior, the human harm and suffering caused are rendered more real and salient for the offender. To be held to account in such direct ways especially hearing the testimony and account of victims undermine the various techniques of neutralization that the above mentioned offenders often deploy to justify their crimes<sup>42</sup>. By so doing it will be difficult for oil operators for example to deny responsibility, harm or injury done to the villager who suffer the effect of oil pollution and/or deny the victim. It will be also be difficult for pipe line vandals to deny the negative effect of their acts of vandalism. In this way each category of offenders will understand the harm caused by his/her offense. This may bring genuine remorse and a willingness to repair the harm done.<sup>43</sup> This is far more effective than the traditional legal criminal justice proceeding which may encourage technique of neutralization. Again, where the operators are made to take up insurance bonds against environmental pollution, spills and blow-up, or to pay heavy fines for exceeding operational limits they will automatically be more careful and courteous in the future.

It may serve a good deterrence to bring government officials who siphon oil wealth and fly in the air to visit the hinterlands of the impoverished oil producing towns whose comforts are daily sacrificed to enrich the ruling cabals in the country. Let the president and the operators in the oil industry visit them, travel by their roads spend days with them, dine with them and drink their water in order to understand and feel their plights.

### **Community Oriented Prevention and Community Restorative Justice**

Most contemporary criminal justice systems focus on law violation, the need to hold offenders accountable, punish them and keep them offenders in the interest of the state. Since crime is viewed as offence against the state, the state essentially owns the conflict and determines how to respond to it so much so that actual crime victims are quite subsidiary to the process and rather have no legal standing in the proceedings except to serve as witnesses where need be. To this extent the resulting criminal justice system is almost entirely offender driven. Restorative justice however is fundamentally different from the traditional system in that it rather focuses on the harmful effect of offenders' action and actively involves victims and offenders in the

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<sup>41</sup> Forrester, *et al*: *The Kirkholt Burglary Project: Phase II CPU Paper* (London: 1990).

<sup>42</sup> G.M. Sykes, and D. Matza, ; 'Technics of Neutralization: A Theory of Delinquency',: *American Sociological Review*, 1957

<sup>43</sup> Harris *et al*; 'Emotional Dynamics in Restorative Conferences: Theoretical Criminology', 2004. P.8

process of reparation and rehabilitation. It is a well known principle of law that justice is not a one way traffic. There is justice for the offender, for the victim and for the state<sup>44</sup>. It will make a lot of difference where oil operators who are responsible for pollution on daily bases are brought close to experience or see the plights of the communities and persons who are unfortunate victims of their acts- pollution, gas flaring and spillage. It will also serve a good purpose to bring victims of fire outbreak due to pipe line vandalism close to the youth and villagers in order to bring them closer to the negative effect of such actions in case they are prospecting themselves for vandalism. When this awareness is created in the community, they are rather made responsible for their safety and security.

It is believed that significant participation of the community in the security of oil and gas production can open up processes that may guide professionals into proper investigation. In most crimes the community is perceived as a secondary victim except in some instances where the community is directly affected. Obviously, changing behaviour may be better tackled at the level of social norms in the community rather than through individual motivation. At community level people put heads together guided by their local rules and regulation to provide clues about the prevalent social norms, they supply evidence of such social norms and perhaps solutions and validate their actions in tackling the anomalies. Diligent Community involvement can help breakdown or discourage criminal tendencies yet to be executed. More so, community involvement may act as a safeguard against the excesses in criminal justice administration<sup>45</sup>. It can also be a reliable means of crime prevention in the society. Community will always met out sanctions for offenders in their local and traditional ways. In the main members of the community will be influenced by the fact that there is a credible threat of punishment for wrong doers. Thus the probability of punishment rather than the severity of punishment will deter prospective offenders.<sup>46</sup>

## **7. Conclusion and Recommendations**

Repression of crime has never been the best approach to fight crime and or corruption. In the cause of every repression the innocent always falls victim while the guilty is left unpunished. At most the innocent is punished together with the guilty in violation of the fundamental human right norms. Such act contradicts the spirit of the law and opposes criminal justice. To bring sanity to the oil and gas sector oil related crimes and corruption must be dealt with where they exist holistically. Thus every offender caught in the web has to face the wrath of the law and why repression method has failed recourse has to be made to the approach of restorative justice intervention. In the light of the above discussion, this study recommends as follows: There is need for government to understand that indigenes of the oil producing states/towns have right to life, healthy environment and freedom of expression. In the effort to fight to bring sanity to the oil and gas sector the human rights of the suspects must be respected. Government should ensure that the impoverished oil producing areas are adequately developed to enjoy basic amenities for a healthy living. That the approach of restorative justice intervention in oil and gas related crimes be adopted rather than crime repression. To bring sanity to the sector, fraudulent clean ups by past government and their officials, corporate crimes by companies and their operators and victim oriented crimes involving the community and/or villagers must be checked. Crimes in the oil and gas sector have to be tackled and controlled from and at the places where they exist. A presidential visit to the hinterland of the oil producing areas may awaken the government to their duties. Finally, offenders in the oil and gas sector are to be made responsible for their acts.

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<sup>44</sup> Per Oputa JSC (as he then was) *in Bello v A.G.Oyo State* (1985) 5 NWLR 828.

<sup>45</sup> N. Christie: 'Restorative Justice: Five Dangers Ahead (2008) [www. Restorative justice/crime prevention. Pdf](http://www.Restorativejustice/crimeprevention.Pdf) retrieved 28/7/2015.

<sup>46</sup> R. Paternoster: 'The Deterrent Effect of the Perceived Certainty and Severity of Punishment' Vol. 4 *Justice Quarterly*, (1987) p 173-217.