

**Oil, Corruption and Conflict in West Africa:
The Failure of Governance and Corporate Social
Responsibility**



By Jodi Rosenstein¹

KAIPTC Monograph, No. 2, October 2005

¹ Jodi Rosenstein is a public information officer at the Kofi Annan Peacekeeping Training Institute in Accra, Ghana.

CONTENTS

	Page
Executive Summary	3
Chapter I: Introduction	4
Background	4
‘Lootable’ versus ‘Unlootable’ Resources	8
Aim and scope	9
Chapter II: The Oil Industry in West Africa	10
Joint Venture Contracts and Production-sharing Contracts	10
Winners and Losers	11
Risks of Conflict	12
The Risk – Worth it?	14
Chapter III: Fiscal, Political and Judicial Corruption	16
The Curse of Sudden State Wealth	17
The Role of the International Financial Community	19
Lack of Transparency	21
Contentious Contracts	25
Exploitation of Indigenous Systems	28
Chapter IV: Criminal Networks	32
Systemic Smuggling	32
Complicity with Organised Crime	34
Mercenary Activity	35
Chapter V: Oil-related Conflicts and ‘False’ Security	36
Citizens Versus the State	37
Lack of Development and Insecurity	38
Chapter VI: Corporate Graft versus ‘Best Practices’	40
Slush Funds	40
Bribery: Cash and ‘Gifts’	41
Community Development Projects	42
International Codes of Conduct	43
Auditors	45
Transnational Law	45
The Interstate Model of Corporate Conflict Prevention	47
Chapter VII: Conclusion	49

EXECUTIVE SUMMARY

Natural resources are a noted cause of intra-state conflict and deserve recognition as such by ECOWAS. Oil, in particular, is linked to frequent civil strife and conflicts induced by slow rates of economic growth, weak and undemocratic governments, rampant corruption and heavy militarization. Many African countries have already suffered the negative consequences of an oil-dependency, including Angola, which endured a brutal civil war that lasted for more than a quarter-century. Twelve ECOWAS countries lie on the oil-rich Gulf of Guinea or have coastlines near areas marked by energy experts as potential “hot” exploration areas. ECOWAS should be aware of the pitfalls from oil production in order to protect member states from the damaging consequences that have befallen other African countries.

Recent new discoveries of oil in West Africa have made the region a high priority for investment by international oil companies (IOCs), especially since governments such as the United States have begun to regard West African oil production as an alternative to reliance on oil exports from the Middle East. West African governments, for their part, welcome the investment from these international conglomerates, hoping to spark development with petrodollars. Studies have shown, however, that petrodollars do little to create forward progress. Despite the fact that Nigeria has generated over \$300 billion in oil rents over the past 25 years, for example, more than 70% of the population lives in poverty.

Much of the oil rent is diverted from its intended use to the coffers of state, local, and corporate officials. The sudden influx of oil wealth into a developing nation encourages rent-seeking behaviour, and graft, political polarisation, and questionable business deals with corporate partners abound. Corporations thus far have done little to ensure transparency in their business dealings with host governments; most are worried that enforcing such regulations would cause future profitable oil contracts to be awarded to their competition.

That being said, the recent push by the international community and advocacy groups to incorporate corporate social responsibility in the extractive sector has focused a lot of attention on the malaise of oil-producing countries, especially their indigenous communities, who endure relocation, pollution, conflict, and the destruction of their livelihoods for the benefit of the IOCs. Advocacy campaigns have highlighted the fact that indigenous people see little benefit from oil production, yet seem to lose the most. Thus, these campaigns call for greater transparency in the sector to ensure petrodollars are used for development projects and do not go ‘missing’ from government coffers.

Many corporations have signed on to such agreements, but only a collective effort by all involved will prevent West Africa from suffering the demonstrated damaging effects of oil production in developing nations. Unless a concerted effort is made to change the nature of the industry, the hope that the abundance of oil in West Africa will foster significant poverty reduction will come to nought.

CHAPTER I

INTRODUCTION

Background

The ECOWAS *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security* recognises natural resources as a source of conflict. While the *Protocol* specifically mentions *shared* resources as a source of *inter-state* warfare, it does not cite *national* resources as a catalyst for *intra-state* conflict.² National resources are nonetheless widely acknowledged as contributors to intra-state conflicts. This correlation creates a need to investigate the role of trans-national corporations in resource-based strife due to the extensive involvement and influence of the extractive industries in ECOWAS countries. This report provides an analysis of the influence of international oil corporations (IOCs) on the economic, political and social framework of oil-dependent countries. This issue is particularly topical because of recent off-shore oil discoveries and the probability that West Africa's frontier countries, such as Senegal, Sierra Leone, and Sao Tome and Principe, in the Joint Development Zone, and other countries such as Guinea-Bissau could also become "hot" exploration areas in the next decade.

West Africa presently ranks among the world's leading regions with respect to offshore crude oil production and development opportunities. Deep water production is just becoming a reality and experts agree there is an abundance of untapped resources. Current West African oil production is 3.4 million barrels per day (bpd). According to gradient projections by PFC Energy, by 2010 there is a 90% chance that West African oil production will exceed 5.4 million bpd; a 50% chance it will reach 6.3 million; and a 10% probability that production will be 7.4 million.³

Admittedly, even at 7.4 million bpd West Africa will provide less than 10% of world oil supply. Yet the strategic significance of an alternative oil supply to the Middle East has placed the Gulf of Guinea countries high on the agendas of oil-dependent nations like the United States.⁴ A 2001 United States task force headed by US Vice-President Dick Cheney predicted that Africa would become the fastest-growing source of oil for the American market.⁵ By 2002, Nigeria was the fifth-largest supplier of oil to the US, ranking behind only Canada, Saudi Arabia, Mexico, and Venezuela. In testimony before the Senate Foreign Relations Committee in July 2003, David L. Goldwyn, former US assistant energy secretary for international affairs, predicted that non-OPEC countries in

² Economic Community of West African States, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security*, December 1999.

³ PFC Energy, "West Africa Petroleum Sector: Oil Forecast and Distribution," December 2003.

⁴ Hearing of the Senate Foreign Relations Committee, "The Gulf of Guinea and US Strategic Energy Policy." *Federal News Service*, 15 July 2004.

⁵ Gal Luft, "Africa Drowns in a Pool of Oil," *LA Times*, 1 July 2003.

the Gulf of Guinea region could provide up to 20 % of US energy needs in the coming years.⁶ The production from these nations would provide much-welcomed competition to OPEC in terms of driving down the price of oil.

Oil companies are all-too happy to take advantage of the new focus on the Gulf of Guinea, even though the instability of the region translates into serious security and investment risks. Their exploration in Africa has generated fierce competition for dividends from the newly-discovered oil beds. A new onslaught of exploration companies and countries has arrived in the Gulf of Guinea, shifting oil-dependent nations' geopolitical and geoeconomical interests in sub-Saharan Africa. Experience has shown that investment in the region is well worth it: habitually two-thirds of exploration wells in Angola strike oil, while half of those in Nigeria do. Compared to the global average of a 15% success rate, West Africa proves to be a very attractive region for investment in this regard.

As a member of OPEC, Nigeria is bound by OPEC quotas and regulations. Thus the petroleum sector and policymakers alike are extremely interested in the offshore reserves recently discovered in non-OPEC countries of the Gulf of Guinea like Equatorial Guinea. In addition to being an alternative to dependence on Middle Eastern oil, West Africa provides proximity to major oil-consumers like the US and thus lower transportation costs. Highly industrialised countries also favour the low sulphur content of West African crude oil which is currently the focus of North Sea production.⁷ The low sulphur content provides high gasoline yield, which is particularly desirable for US refineries that are under strict environmental laws.⁸ West African crude oil would be a key replacement for the declining North Sea production of this type of high-grade oil.

West African governments are more than willing to allow international corporations to explore and exploit the oil findings in their territories. The accepted economic models for developing nations have long been based on development through the extraction of non-renewable resources. As noted by the World Bank, most West African countries depend on the mining sector as their main source of revenue.

While international oil conglomerates are welcomed and encouraged to invest by the host government, the same cannot be said about their reception by the local indigenous population. The role of oil, gas, and the mining sectors in West African nations has become increasingly more controversial. The fact remains that many of the countries in the developing world that possess significant oil and mineral wealth continue to suffer from crushing poverty. Their governments have yet to convert enormous rents into real improvement in the lives of their citizens. In Nigeria, Africa's top oil-producing country, 70% of the population lives in poverty. Despite the fact that Nigeria has generated over \$300 billion USD in oil rents over the past 25 years, the proportion of households living

⁶ Senate Foreign Relations Committee, *op. cit.*

⁷ Sahil Booker and William Minter, "The US and Nigeria: thinking beyond oil." USA Africa Institute, Vol 1, Winter 2003.

⁸ Richard Lowry, "Into Africa . . . and Out of OPEC: New Thinking on Oil," *National Review*, 17 July 2002.

below the UN's \$1 USD per day absolute poverty line grew from 27 per cent in 1980 to 66 per cent in 1996.⁹

Furthermore, mining areas often significantly overlap areas inhabited by indigenous peoples whose livelihoods depend on the land and other natural resources. These communities must shoulder the brunt of mining activities in terms of costs of externalities and yet see little, if any, financial gain. Moreover, these communities are often marginalized in the planning and management process of mining ventures. Media attention to cases of forced relocation of tens of thousands, environmental disasters, and human rights cases in countries such as Nigeria have raised questions about the proper roles and responsibilities of companies in such situations.

The first studies on using extractable resources to alleviate poverty were published from the 1940s to the 1960s. Many economists believed that oil, gas, and mineral exports would bring about high growth rates. In reality, states that depend on oil and mineral wealth are among the most troubled states in the world today, suffering from slow rates of economic growth, weak and undemocratic governments, and frequent civil wars and conflicts.¹⁰ There is a strong correlation between mineral dependence¹¹ and the percentage of the population living in poverty. Likewise, there is a strong negative correlation between mineral dependence and a country's HDI rank.¹² Academic studies have also shown that higher levels of oil and mineral dependence tend to reduce a country's growth rate.¹³ Knowing the rents garnered from the extractive industries make it as far as the government coffers (why would the host government tolerate an international corporation otherwise?), the question then becomes, "Where do they go?"

It is no surprise that oil and other mineral exploitation encourages rent-seeking behaviour. Without proper policies and institutions in place to encourage and enforce transparency and prevent corruption, the large revenue flows become extremely susceptible to mismanagement and corruptive practices. One of the key challenges for developing countries is to build these institutions and systems and establish policies that can properly manage the massive profits from exploitation of their resources.¹⁴

Corruption is not the only cause of the slow rate of economic growth in oil-and-mineral dependent countries. The *World Development Report 2000-2001* notes that when it comes to the question of poverty, the quality of economic growth matters as much as the quantity. Growth can lead to declining income inequality if it is "concentrated in sectors

⁹ Christian Aid, "Fuelling poverty: Oil, war, and corruption," May 2003.

¹⁰ Michael Ross, "Extractive Sectors and the Poor," Oxfam America, October 2001, p. 5.

¹¹ Mineral dependence is the ratio of mineral exports to GDP.

¹² HDI rank is a state's rating in the UNDP's Human Development Index, which ranks states according to a combined measure of income, health, and education; rankings range from 1 (highest level of human development) to 174 (lowest).

¹³ Ross, op. cit., p. 8.

¹⁴ Monika Weber-Fahr, "Treasure or Trouble? Mining in Developing Countries," *Mining and Development*, World Bank Group, 2002.

from which poor people are more likely to derive their income, such as agriculture.”¹⁵ This highlights the need to provide jobs accessible to the poor, who are generally unskilled or semi-skilled. Extractive industries, however, tend to rely on a small number of highly skilled workers who are often expatriates. Furthermore, these expatriates commonly form separate communities that do not frequently engage in the local economy, but rather rely on familiar imports.

Mineral-dependent growth theorists surmise that extractive industries should provide benefits to locals by spurring the development of related, non-extractive industries.¹⁶ Export-oriented industrialization relies mainly on the development of these types of industries, which are referred to in the extractive sector as either “upstream” or “downstream” industries. Upstream industries supply goods to the extractive sector, while downstream industries are refineries and the like that process and add value to the extractive sector.

Unfortunately, the theory does not work in practice. Oil-and-mineral dependent states have difficulty developing the other competitive, “pro-poor” industries needed to diversify their exports. Instead, labour and resources get diverted from the industrial and agricultural industries to increase production and export of the primary commodity. The other sectors suffer from the labour shift, and the lack of highly- or moderately skilled workers affects production and efficiency. This decreases the competitiveness of the other industries on the international market.

In addition, like many other primary commodities, oil can be exported from developing countries to almost anywhere in the world without incurring duties or tariffs. However, once oil is refined or processed into other products, these products are likely to face significant tariffs in order to enter other markets¹⁷. The tariffs discourage investment and serious development of downstream or upstream industries, and thus hinder the economic growth these theorists predict. The goods are not competitive enough on the international market.

As noted, recent quantitative research suggests a strong correlation between resource abundance in a given country and the risk of armed conflict.¹⁸ One intent of this paper is to ascertain if corporate behaviour is a mitigating factor in this phenomenon. To do so, it is worthwhile to distinguish between the different types of resources and their distinctive links to certain types of conflicts.

¹⁵ World Bank, *World Development Report 2000/2001: Attacking Poverty*. New York: World Bank and Oxford University Press, 2001 p. 53.

¹⁶ Owens, Trudy, and Adrian Wood, “Export-Oriented Industrialization Through Primary Processing?” *World Development*, 1997, Vol. 25, Issue 9, p. 1453- 1470.

¹⁷ Christian Aid, *op. cit.*

¹⁸ Paul Collier and Anke Hoeffler, *Greed and Grievance in Civil War*. Policy Research Working Paper no 2355, Washington, DC, The World Bank, 2001.

‘Lootable’ versus ‘Unlootable’ Resources

Michael Ross suggests that different natural resources have different beneficiaries, and therefore impact conflicts in varied ways. Based on his study of fifteen recent conflicts, Ross found that the most distinguishing factor was the mode of exploitation.¹⁹ The mode of exploitation determined the control the state exerted over the rents from the resource, and conversely whether combatants were able to directly control the exploitation as well. Extraction of certain resources requires significant investment in technology and/or in a skilled workforce. Some resources require special transport facilities while others have a low value-to-weight ratio, which makes transportation costly and smuggling more difficult.

Ross separated resources into two categories, *lootable* and *unlootable*. Classifying natural resources into *lootable* and *unlootable* resources helps to determine the circumstances under which a rebel group can profit from natural resources, be it during the conflict or after the peace is restored, and therefore provides insight into the combatants’ motivations. This is particularly helpful knowledge when entering peace negotiations.

Lootable resources such as narcotics and alluvial diamonds can be extracted and transported by unskilled workers, even by a solitary individual working alone. The proceeds are able to go directly to the combatants, and often generate income for local communities as well. *Lootable* resources can render wartime exploitation profitable, thereby prolonging the conflict. The profit accessibility seems to explain why *lootable* resources are associated with non-separatist conflicts.²⁰ *Unlootable* resources such as oil, natural gas, and other deep-shaft minerals, on the other hand, require skilled workers, extensive capital, and security.²¹ *Unlootable* resources seem to be associated with separatist conflicts for several reasons. First of all, the exploitation of *unlootable* resources such as oil requires foreign investment and most likely a partnership between a foreign extractive firm and the host government. The state then may come under a variety of criticisms due to the nature of its relationship with the expatriate firm and/or the firm’s activities. For instance, inequitable revenue sharing by corrupt governments or corporations will aggravate popular grievances. A government that gets rich while its citizens, particularly those who live in the exploitation area, remain poor will likely be denounced by locals and community and international NGOs.

Secondly, the revenues from these resources are not readily available to rebels during conflict. These characteristics make resource exploitation much more possible and profitable during peacetime, after the peace is restored. Combatants motivated by economic grievances are more likely to be interested in controlling the commanding

¹⁹ Michael L. Ross, *Oil, Drugs, and Diamonds: How Do Natural Resources Vary in their Impact on Civil War?* Produced for International Peace Academy project on Economic Agendas in Civil Wars, 5 June 2002.

²⁰ Karen Ballentine and Heiko Nitzschke, “Beyond Greed and Grievance: Policy Lessons from Studies in the Political Economy of Armed Conflict.” IPA Policy Report, October 2003, p. 3-5.

²¹ *Ibid.*

heights themselves either by ousting the present government or by secession. Niger Delta militant leader Moujahid Dokubo-Asari, for instance, has called for the region's secession as the only way to gain control of the oil wealth the Delta contains.²²

Aim and Scope

This study will focus on *unlootable* resources, specifically oil, since it is through these in particular that international corporations become involved in economic-based strife. The private sector exerts much more control over conflict prevention and resolution in situations dealing with *unlootable* resources because of the need for their financial investment in the industry in order for profits to be incurred. Both the government and the rebel movements are dependent on the continued involvement of the corporations in the industry. Thus, these corporations may find that they wield a lot of leverage in the prevention, continuation, or resolution of conflict. *Lootable* resources, on the other hand, make rebel movements more independent from outside forces since they do not depend on foreign support to continue their fight. This leaves foreign institutions less leverage to influence rebel movements' decisions.

The aim of this monograph is to examine the correlation between corporate behaviour and an increased potential for conflict in oil-producing countries. The study asserts that IOCs can and must change their way of doing business, and that by working cooperatively with the international and advocacy communities, that change will reduce or even eliminate conflicts and other maladies of resource-rich West African countries.

The scope of this study includes oil producers in the Gulf of Guinea, particularly West Africa, but also includes Angola and newcomer Equatorial Guinea. Chapter II gives a general overview of the oil industry in West Africa, including a perspective on why immense oil profits do not turn into a rise in the standard-of-living for a host country's poor, and actually lead to a greater risk of intra-state conflict. Chapter III examines how fiscal, political, and judicial corruption and mismanagement leads to a politically volatile situation. Chapter IV exposes the relationships of governments, militaries, and corporations with organised crime and rebels. Chapter V examines the role of the security in the oil industry. Chapter VI illustrates examples of corporate misbehaviour in Africa's oil industry, and then examines different efforts by the international community and advocacy groups to promote greater transparency and accountability in the use of oil revenues and to hold international oil companies responsible for the negative aspects of oil production. Chapter VII concludes that positive change in the oil industry largely depends on the IOCs adhering to corporate best practices, and refusing to remain complicit to the graft and humanitarian abuse currently prevalent in the extractive sector. The chapter also asserts, however, that for a real and lasting change, states need to accept responsibility for their actions as well.

²² Craig Timberg, "Nigeria's Oil Fuels Anger, Bloodshed," *Washington Post*, 9 December 2004.

CHAPTER II

THE OIL INDUSTRY IN WEST AFRICA

The governments of West Africa will receive an expected mean value of \$183 billion from oil between 2004 and 2010, not taking into account corruption, oil bunkering, and other unforeseen circumstances.²³ The Nigerian government's oil earnings between 2004 and 2010 will likely exceed \$110 billion, while Angola's could reach \$43 billion.

Country	GNI/capita
Nigeria	\$320
Sao Tome & Principe	\$320
Cameroon	\$640
Angola	\$740

Newcomer Equatorial Guinea will earn an estimated \$10 billion in the same six-year period.

In oil-dependent countries, government oil earnings are the single greatest component of GNP. Nigeria's economy, for example, is heavily dependent on oil operations, particularly hydrocarbon extraction.²⁴ Hydrocarbon extraction accounts for 90-95% of export revenues, over 90% of foreign exchange earnings, and nearly 80% of government revenues.²⁵ Despite this immense oil wealth, the gross national income (GNI)²⁶ per capita of mineral-

dependent West African countries is still abominably low. GNI/capita for 2003 in Nigeria and Sao Tome and Principe was \$320, in Cameroon it was \$640, and in Angola it was \$740.²⁷

Joint Venture Contracts and Production-sharing Contracts

There are two major funding arrangements for oil production in West Africa – joint venture (JV) arrangements and production-sharing contract (PSC) arrangements. Under the JV arrangements, the host government (usually represented by its national oil company) and its partners contribute to projects according to their equity holding. All operating costs in the joint venture are financed in this manner by a system of monthly “cash calls”.²⁸ Joint venture funding has caused crises in host countries due to the

²³ PFC West African Energy Prospectus, op. cit.

²⁴ A hydrocarbon is an organic compound that consists of only hydrogen and carbon. Liquid geologically-extracted hydrocarbons are referred to as petroleum or mineral oil, while gaseous geologic hydrocarbons are referred to a natural gas. (Source: <http://encyclopedia.laborlawtalk.com/Hydrocarbon> [Accessed 06 April 2005]).

²⁵ “Nigeria Country Analysis Brief,” *EIA Country Analysis Briefs*. United States Department of Energy, August 2004, <http://www.eia.doe.gov/emeu/cabs/nigeria.html> [Accessed 31 September 2004].

²⁶ GNI per capita (formerly GNP per capita) is the gross national income divided by the midyear population. GNI is the sum of value added by all resident producers plus any product taxes (less subsidies) not included in the valuation of output plus net receipts of primary income (compensation of employees and property income) from abroad. (Source: World Bank national accounts data).

²⁷ *World Development Indicators*, World Bank.

²⁸ Adedolapo Akinrele, “The Nigerian National Petroleum Company at a crossroads: An analysis of the challenges of funding, commercialisation and autonomy,” *Oil, Gas, and Energy Law Intelligence*. Vol I, Issue 2, March 2003.

government's inability to meet funding requirements. In Nigeria, for example, production from JVs accounts for nearly all (about 95%) of its crude oil production. The largest JV is operated by Shell and supplies about 52% of Nigeria's daily production. The state-owned firm, the Nigerian National Petroleum Corporation (NNPC) has a 55% interest in the Shell JV. NNPC also has 60% stakes in JVs with US firms ExxonMobil, ChevronTexaco, and ConocoPhillips; the Italian company Eni S.p.A; and the French oil corporation Total S.A.²⁹ The NNPC has a long history of difficulty making its payments, which results in non-equitable contributions to the JV. As recently as the end of 2002, the NNPC alerted its multi-national corporate partners that the required \$4 billion cash call for 2003 it requested from the federal government would most likely not be approved.

This difficulty makes certain aspects of the production-sharing contract a viable alternative to the JV. Under the terms of PSCs, oil companies fund the operations and the profits are shared according to the agreed terms after the company has recouped its operating costs. PSCs are attractive to host governments because the IOC bears the risk of the operating costs and original expenditure. A PSC results in an enormous amount of foreign investment in the country, yet the host country does not have to worry about meeting cash calls. The foreign companies benefit because they are given a higher profit share and other benefits due to the high risk. The IOCs are able to capture large oil profits early on to amortize their investment quickly.³⁰

While host countries incur larger profits with a JV arrangement than with a PSC arrangement, they also need to be able to meet the maintenance and running costs. Nigeria first entered into a PSC in 1973 with the American oil company Ashland because of cash-flow problems.³¹ In addition, the NNPC initially had an 80% stake in the operations of Shell, but it has lowered its participation to 55%, while its stake in other oil companies remains at 60% as mentioned. Still, the NNPC has been unable to meet its share of the cost obligations in the JV licensing agreements. Therefore, in 1991 Nigeria entered into more PSCs to alleviate the NNPC's funding difficulties, but since PSCs account for so little of total production (about 5%), the NNPC and Nigeria remain in debt.

Winners and Losers

By business necessity, the relationships between international oil companies and host governments are very close. JV and PSC arrangements are designed to make the venture lucrative for both the host country and the corporation. In order to be granted permission to explore and exploit, international corporations may design contracts that ensure the host country maintains sovereignty over its own natural resources and incur the financial benefits. Developing countries, however, have immense need for the profits, and their dependence on the revenue undoubtedly favours the international oil companies (IOCs) in negotiations.

²⁹ *World Development Indicators*, World Bank.

³⁰ Catholic Relief Services, "Bottom of the Barrel: Africa's Oil Boom and the Poor," June 2003, p. 10.

³¹ Lawrence Atsegbua, "The development and acquisition of oil licenses and leases in Nigeria." *OPEC Review: Energy Economics & Related Issues*, March 1999, Vol. 23, Issue 1, p. 55-78.

The relationship is reciprocal. The international oil companies rely on the host governments to confer on them certain considerations that would benefit their joint investment. For example, during the protracted civil war in Angola, the oil sector provided as much as 90% of government revenues.³² By association, therefore, the oil sector played a pivotal role in funding the war economy. Despite the long war, the oil companies managed to effectively be isolated from conflict. Granted, most of Angola's wells were off-shore. Notably, however, the 1998-1999 Economist Intelligence Unit report observed that "the government has ring-fenced the oil sector against the inefficiencies of the rest of the economy and the relations with the oil companies are generally good."³³ Meanwhile, the oil sector at that time employed fewer than 10,000 Angolans.

The problem arises when the relationship between the international corporation and the government exists at the expense of the country's citizens. Local communities endure the brunt of the cost externalities. Oil operations often lead to political and social turmoil and cause irreparable damage to the environment. The local communities suffer these consequences, yet enjoy few of the benefits. Moreover, governments determine the recipients of the community's share of oil revenues, decide priorities and allocate resources. Tensions arise if the government rewards some groups, regions, or individuals more than others.³⁴ Despite the fact that governments claim impartiality, according to Arvind Ganesan of Human Rights Watch, past experience has revealed that, "the government's take is not necessarily the public's take. It may just be the government's take."³⁵

In reality, few get rich and enjoy a luxurious lifestyle - those at the apex of the government or within a close circle. Gabon, for example, used to be the top per capita importer of champagne in the world.³⁶ Today, Nigeria's richest ten per cent controls 40 per cent of the country's wealth and its poorest 20 per cent has a share of just 4.4 per cent.³⁷

Risks of Conflict

Natural resource wealth poses distinct dangers to weak and unstable states. Recent research has shown that countries that are dependent on oil and mineral wealth in particular are much more likely to engage in civil war than those states that are not dependent on the extractive sector or are entirely resource-poor. In fact, the risk of civil war is about 22.5% higher for a country dependent on a primary commodity export such

³² Global Witness, "A Crude Awakening: The Role of the Oil and Banking Industries in Angola's Civil War and the Plunder of State Assets," December 1999.

³³ Economist Intelligence Unit, 1998-1999.

³⁴ Catholic Relief Services, "Bottom of the Barrel: Africa's Oil Boom and the Poor," June 2003, p 11.

³⁵ World Bank, "Making Petroleum Revenue Work for the Poor: Transparency and Good Governance Dominate Discussion on Petroleum Revenue Management," press release, 4 November 2002.

³⁶ Terry Lynn Karl and Ian Gary, "Oil and Development: The Global Record," *PetroPolitics*.

³⁷ UNDP, *Human Development Report 2002: Deepening democracy in a fragmented world*. New York: Oxford University Press, 2002

as oil or minerals than a country with no natural resources.³⁸ Oil and mineral dependent states also tend to be more heavily militarized. According to a report by Oxfam International, in 1997 national governments spent on average 12.5% of their budget on defence. The report showed a direct correlation between increasingly mineral-, especially oil-, dependent countries and additional defence spending. The Central African Republic, which relies on diamonds for over half of its export earnings³⁹, for example, spent 27.7% of its budget on the military, and oil-rich Saudi Arabia spent 35.8%.⁴⁰

Largely militarized countries have been shown to be more prone to conflict and civil war. Research also shows that they tend to be less democratic societies, therefore by nature less transparent and more susceptible to corruption. High levels of political inequality can lead to the design of economic institutions and social arrangements that favour the interests of those with more influence. The results may include preferential property rights, inequality before the law, and undue influence on how the country's economy functions. This provides a profitable opportunity for international oil corporations to entice authorities in order to gain mining rights and/or favourable contracts.

This analysis highlights the potentially destructive role of the trans-national mining corporations in developing societies. It also underscores the fact that civil war is not provoked by solely economic grievances, but more specifically economic disparity. Poorly-run mining operations can provoke a myriad of grievances and add fuel to already-existent separatist sentiments. Examples include the Cabindan liberation movement in Angola⁴¹ and the strife in the Niger Delta. Injustices include environmental damage to traditional agricultural areas and water supplies, inequitable revenue-sharing, expropriation of land, and human rights violations. Without an administration committed to good governance, grievances and needs go unaddressed, thereby creating political and social tension.

According to the *World Development Report 2000-2001*, "The devastation [caused by war] falls disproportionately on the world's poor people." The report explains, "Wars cripple economies by destroying physical, human, and social capital – reducing investment, diverting public spending from productive activities, and driving highly skilled workers to emigrate."⁴² These statements illustrate the disparity between the experience of a nation's poor and those in control of the nation's oil and other mining operations. The economy referred to by the World Bank is almost entirely separate from that which international oil companies work within. War mainly affects traditional

³⁸ Paul Collier and Anne Hoeffler, *Greed and Grievance in Civil War*, Policy Research Working Paper 2355, World Bank, May 2000.

³⁹ US Department of State, "Background Notes: Central African Republic," February 2005, <http://www.state.gov/r/pa/ei/bgn/4007.htm> [Accessed 06 April 2005].

⁴⁰ Oxfam, op. cit., p. 15.

⁴¹ Cabinda, an enclave wedged between the Republic of Congo and the Democratic Republic of Congo (DRC) has just 200,000 inhabitants but massive offshore oil deposits that account for nearly two-thirds of Angola's oil wealth. The Cabinda Enclave Liberation Front (FLEC) claims that Angola illegally annexed the territory to exploit its oil reserves.

⁴² *World Development Report 2000-2001*, op. cit., p. 50.

economic activities such as agriculture, local markets, and local manufacturing. Oil companies operate apart from these sectors – even the majority of highly skilled workers they employ are expatriates. While the poor suffer, international oil companies and national governments continue to garner immense profits.

To be sure, corporations must measure the opportunity cost of engaging in the extractive sector in weak, unstable states. Certainly, it might seem intrinsically more economical to operate in an undeveloped, poor state due to cost differentials such as cheaper labour, licenses, property and raw materials, but the more important question is whether the political instability is more costly in the long run? International oil companies seem to think not: They have pledged \$30 billion to \$40 billion USD in investments in the West African oil sector for this decade alone.⁴³

The Risk – Worth It?

Countries in the midst of democratic and economic reform can be particularly vulnerable to collective action by their people. Rarely, however, are the giant international oil companies greatly affected. When the Nigerian government attempted to raise fuel prices by 54% in June 2003, in a step to liberalise the energy sector, the Nigerian Labour Congress coordinated an economically and socially paralysing 12-day strike.⁴⁴ Although neither local nor white-collar workers came to work, fearing violent reprisals, the oil companies simply made contingency plans.⁴⁵ Royal Dutch/Shell insisted throughout the strike that production was not affected.⁴⁶

This is not to say that oil companies may operate entirely independent of the region's conflicts, or that they are completely unaffected by local attempts to sabotage their operations. Shell was forced to close operations in mid-1990s in Niger Delta due to strife; Shell, TotalFinaElf and ChevronTexaco all closed oil fields in southwest Nigeria due to riots that broke out in the Niger Delta in March of 2003. Nigeria's oil production dropped 40% due to the closings⁴⁷, while the price of oil rose about 13%.⁴⁸ The civil conflict did not, however, deter any of the companies from reopening their lucrative operations. Likewise, Angola's oil industry boomed in the 1990s, despite being decades into one of the continents' longest-running civil wars.⁴⁹

The oil-rich nations of West Africa have been adept at attracting international investment despite such internal instabilities as civil war, corruption, and protests and demonstrations

⁴³ CSIS, "Promoting Transparency in the African Oil Sector: A Report of the CSIS Task Force on Rising U.S. Energy Stakes in Africa," March 2004, p. 8.

⁴⁴ The Shell Petroleum Development Company of Nigeria Limited, "Annual Report 2003: People and the Environment," p. 2.

⁴⁵ "Shell makes contingency plans as Nigerian general strike talks stall," *AFX News*, afx.com, 4 July 2003; "Shell takes steps to maintain Nigerian operations despite strike," *Agence France Presse*, 3 July 2003

⁴⁶ "Strikes, sabotage and a nervous world economy; The oil market," *The Economist*, July 7, 2003.

⁴⁷ "Nigeria: Oil Production Down 40%," *Financial Times Global News Wire*, 31 March 2003.

⁴⁸ "Crude oil falls as war, strife limit exports," *Bloomberg News*, 28 March 2003.

⁴⁹ Duncan Clarke, "Petroleum Prospects and Political Power" in Jackie Cilliers and Chritian Dietrich, eds, *Angola's War Economy*. Institute for Security Studies, Pretoria, 2000, p. 195.

against foreign oil corporations, but are less adept at benefiting from the investment. International corporations choose to invest in Africa despite the potential for destabilising conflicts because African governments offer certain incentives that make extraction profitable even during turbulent circumstances. African oil-producing nations offer many advantages to international oil companies (IOCs) that other nations do not. For one, foreign oil companies enjoy greater access to and control of the oil in West Africa than in other regions. International companies may have shared ownership of oil resources. Countries such as Saudi Arabia, Kuwait, and Mexico do not allow any foreign ownership of their resources.⁵⁰

Secondly, West African oil-abundant nations court IOCs with investment packages that incorporate lucrative tax incentives, royalties, and other fiscal measures to ensure high returns. In addition, high world oil prices ensure that the oil business will be profitable despite conflict or temporarily paralysing strikes. Furthermore, incidences that disrupt oil extraction tend to drive up oil prices. In September 2004, Nigerian militant leader Moujahid Dokubo-Asari declared war on the Niger Delta's oil companies, interrupting flows for several days. Asari's actions sent world oil prices to over \$50 a barrel. A huge financial loss was therefore not incurred, making disruptions like that worth the risk.⁵¹

Another factor is the prevalence of new, offshore oil field discoveries in West and Central Africa. Offshore locations place the oil companies' activities miles away from the mainland, thereby creating a buffer zone between the IOCs' activities and possible situations in security.⁵²

Current and past strife aggravated by corporations in oil-dependent ECOWAS countries such as Nigeria and Gabon, as well as experiences learned from other African oil-exporting states such as Angola and Cameroon, can be analysed to provide early warning conflict indicators for ECOWAS countries in the "honeymoon" period of their new oil discoveries. Twelve ECOWAS countries lie on the oil-rich Gulf of Guinea or have coastlines near areas marked by energy experts as potential "hot" exploration areas. This places the majority of ECOWAS member states at risk from the damaging consequences of corporate interference that have befallen other African countries. Corporate irreverence to matters that petrodollars exacerbate, such as state wealth, corruption, poverty and inequality, the environment, and security may indicate impending conflict. Analytical attention given specifically to conflict due to corporate influence on oil-dependent states may not only give new or soon-to-be oil-exporting ECOWAS countries advanced warning of the dangers of oil dependency and extraction, they may also provide a framework for conflict prevention.

The following chapter identifies and elaborates on specific indicators of conflict potential arising from fiscal, political and judicial concerns that are linked to the oil sector.

⁵⁰ CSIS, *op. cit.*, p 8

⁵¹ Timberg, *op. cit.*

⁵² *Ibid*; See also Senate Foreign Relations Committee, *op. cit.*, July 2003

CHAPTER III

FISCAL, POLITICAL AND JUDICIAL CORRUPTION

Experts warn that corruption greatly contributes to instability which, in turn, could lead to intrastate conflict and/or threaten oil supply. An unstable oil-exporting country could then either fail to fulfil its production potential or disrupt international markets when violence forces production to shut down. Either scenario affects the country's ability to fully benefit from its oil profits, as revenue would be diverted from projects focused on sustainable development to the security sector.

The difficult context of oil operations in a developing country permeates all facets of society, both public and private. A complex relationship exists between the multinationals, the government and the local communities. The host government must grant the companies the right to exploration and exploitation, and thus has considerable influence on the corporate mind. Likewise, given the dominant role an oil company plays in the host country's economy, the policies and practices of corporations are important factors in government decision-making.

Oil companies therefore maintain close relations with both national figures and local elites in the communities where they operate. While at some level such relations are required in order to maintain normative business relations, in countries where corruption is embedded in the social patch-work these relationships are easily and often exploited. Corruption occurs at all levels of society, from the state and international corporations to the local communities. In developing countries with rampant poverty, corruption, according to former US assistant secretary of energy David Goldwyn, acts as a "substitute for the equitable distribution of income."⁵³ Emmanuel Etomi, Shell's community development manager in Nigeria, admitted in 2004 that it had been difficult to operate with integrity in Nigeria.⁵⁴

IOCs meet a peculiar situation when entering into extraordinarily profitable oil contracts with governments of developing nations. These nations are often plagued by corruption, autocratic governments, lack of industry, lack of infrastructure, and poor judicial and fiscal systems. Yet, these impoverished countries are about to be inundated with petrodollars. Fiscal responsibility is imperative for a state to benefit from oil revenue. Petrodollars, however, have been shown to further encourage rent-seeking behaviour.⁵⁵ Peter Woicke, Managing Director of the World Bank Group and Executive Vice President of the International Finance Corporation (IFC), explains: "Proper management

⁵³ Dudley Althaus, "High Cost of Energy: Nigeria; An African tale of looted oil money, vanished ship; From smugglers to the government, many experts see rampant crude theft," *The Houston Chronicle*, 7 December 2004.

⁵⁴ "Shell admits fuelling corruption," *BBC News*, 11 June 2006, <http://news.bbc.co.uk/go/pr/fr/-/1/hi/3796375.stm> [Accessed 21 March 2005].

⁵⁵ Carlos Leite and Jens Weidmann, "Does Mother Nature Corrupt? Natural Resources, Corruption, and Economic Growth," IMF Working Paper WP/99/85, July 1991.

of petroleum revenues depends on a number of factors, including institutional capacity and more importantly, the quality of governance. Where governance is poor, there is little chance that sound policies will be implemented. Furthermore, in weak institutional environments, petroleum revenues are associated with the further erosion of governance."⁵⁶ Nuhu Ribadu, Nigeria's top anti-corruption official, observed the effect the influx of petrodollars had on the erosion of good governance in Nigeria: "The oil money fuelled the corruption, and the corruption took over our engine of government. It became a way of life."⁵⁷

The foreign oil companies thus face an arguably moral dilemma: Conceivably, these companies should teach oil-dependent nations petroleum revenue management skills. Conversely, it is obviously much more profitable to take advantage of the host governments' lack of fiscal know-how and instead work amidst the shadow state and its systems of corruption. "If countries are poor and unstable, the private sector looks at them as if they were either prey or places to avoid," says Michel Pommier, World Bank coordinator of the Chad/Cameroon project.⁵⁸ One example of this can be seen in the outcomes of negotiations. The IOCs are at a supreme advantage in negotiations when dealing with newcomers to the oil sector. Compare the oil revenue garnered by the newer oil producers such as Equatorial Guinea with that of countries like Nigeria and Gabon⁵⁹, who experienced the first oil boom in 1973 and received advice and know-how from fellow OPEC countries: Nigeria generally retains 50 to 70 percent of its oil revenue, while newcomer Equatorial Guinea earns only 10 to 20 percent from the international oil companies.⁶⁰

Although there have been overtures towards corporate reasonability recently, it is clear that from the signing of the first exploration contracts IOCs have exhibited a pattern of disregard for their social responsibilities. The multinational corporations' irreverence in their dealings with the host countries is directly related to many of the grievances responsible for conflicts in oil-dependent states.

The Curse of Sudden State Wealth

One early-warning indicator of future intra-state conflict is the sudden state wealth the host country sees once the petrodollars begin to flow in. On November 23, 2003, for

⁵⁶ World Bank, "Making Petroleum Revenue Work for the Poor: Transparency and good governance dominate discussion on petroleum revenue management," 4 November 2002. <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20073245%7EmenuPK:34457%7EpagePK:34370%7EpiPK:34424%7EtheSitePK:4607.00.html> [Accessed 05 April 05].

⁵⁷ Dudley Althaus, op. cit.

⁵⁸ Daniel Fisher, "Dangerous Liaisons: Iraq isn't the only place where despots have been sitting atop oil reserves. How does a company like ExxonMobil keep its pipelines filled without getting its hands very dirty?" *Forbes.com*, 28 April 2003, http://www.forbes.com/forbes/2003/0428/084_print.html [Accessed 09 May 2005].

⁵⁹ Gabon officially left OPEC in 1996 citing the organisation's high annual dues. See "Gabon Country Analysis Brief," *EIA Country Analysis Briefs*. United States Department of Energy: November 2004, <http://www.eia.doe.gov/emeu/cabs/gabon.html> [Accessed 04 May 2005].

⁶⁰ CSR, op. cit., p. 25.

example, the tiny island nation of Sao Tome and Principe ran an auction for their first seven exploration blocks. Twenty companies bid a combined \$506 million, leaving Sao Tome, a country of 150,000 inhabitants, to expect an estimated \$200 million in direct payments before the oil even begins to flow.⁶¹ While such a scenario might seem like a developing country's dream, host governments face many challenges when confronted with the sudden influx of petrodollars. The size of oil revenues causes unrequited expectations of wealth and prosperity. A substantial increase in government spending accompanies oil contracts, thereby raising the expectations of the populace for a rise in their standards of living. The problem is that the sudden abundance of petrodollars encourages irresponsible fiscal policies. Governments of poor countries, for instance, face immediate social concerns such as hungry populations and lack of development. With petrodollars available, these governments find it easier to buy food and technology, for example, than to grow it or develop their agricultural or industrial capacity.⁶² Despite the oil boom of the 1970s, by the 1980s Nigerian farmers found themselves worse off than before, and the country, once agriculturally self-sufficient, had become a net importer of food.⁶³

This practice has two negative effects. For one, as aforementioned, it hinders the growth of the industrial and agricultural sectors, which are labour-intensive and provide employment for the masses; and two, it causes oil dependency, which is capital-intensive and provides employment for mostly highly skilled workers and expatriates. In Gabon, for example, an estimated half of the workforce is employed in the agricultural sector, yet agriculture only accounts for seven percent of its GDP.⁶⁴ Secondly, there is often a perception of greater wealth than actually exists. Ultimately, the host government cannot keep up with their new levels of spending, and end up even borrowing against future oil payments.

This economic phenomenon is known as 'Dutch Disease.' Dutch Disease, so-called because the syndrome's effects were first described in the context of natural gas exports from the Netherlands, refers to the problems arising principally from the distortions of the real exchange rate that result from large (relative to the economy) inflows of foreign exchange deriving most commonly from mineral exports. With 'Dutch Disease' the majority of investment is allocated to that extractive sector, resulting in a failure to diversify the economy as described above. Overall, the economy seems to be experiencing rapid growth, but that growth is distorted: it is solely because of the mass concentration of investment in the one sector. The rest of the economy remains stagnate, including the agricultural and industrial sectors, resulting in a failure to broaden the tax base. Meanwhile, 'Dutch Disease' leads to high inflation and debt due to high levels of borrowing that ultimately occur.

⁶¹ John Vidal, "Oil Grab in Africa," *Manchester Guardian Weekly*, 22 October 2004.

⁶² Terry Lynn Karl, *op. cit.*, p. 40.

⁶³ Gail M. Gerhart, Book Review of *Oil and Socioeconomic Crisis in Nigeria: A Regional Perspective to the Nigerian Disease and the Rural Sector*, by Emmanuel U. Nnadozie. *Foreign Affairs*, November/December 1996, p. 170.

⁶⁴ *Ibid*, p. 38.

Tracing Nigeria's first years in the oil industry provides a good lesson in the dangers of 'Dutch Disease' and mineral dependence. The symptoms of the Dutch disease started appearing in the early 1970s during Yakubu Gowon's military regime when crude oil became the mainstay of the economy. Between 1973 and 1975, there was such a massive inflow of oil revenue that Gowon was quoted as saying that Nigeria's problem was "not money but how to spend it".⁶⁵ During this period, Nigeria saw the beginnings of the collapse of the non-oil export sector, massive importation and the rapid growth of the non-tradable goods sector. By the time the Murtala Mohammed military regime took power in 1975, agricultural exports were in severe decline. With no significant increase in oil revenue between 1975 and 1978, the Olusegun Obasanjo regime was forced to borrow from the international financial market in 1978 to pay for the mounting import bills and to shore up government revenue. Nigeria's external debt problem became increasingly exacerbated as its leaders became addicted to external borrowing whenever there was a slight decline in oil revenue or when oil prices or output fail to increase.⁶⁶ As of the year 2002, Nigeria was spending less of a percentage of its GDP on health, education, and the fight against AIDs combined than on paying off foreign debts.⁶⁷

The gap between expectations and the dismal economic performance of oil-exporting countries is politically explosive. The situation is exacerbated by the rampant corruption prevalent in oil-dependent countries. Transparency International's Corruption Perception Index 2004, which ranks countries by perceived corruption, has said that oil-rich Angola, Azerbaijan, Chad, Ecuador, Indonesia, Iran, Iraq, Kazakhstan, Libya, Nigeria, Russia, Sudan, Venezuela and Yemen are considered among the most corrupt nations. The pervasive corruption adds to the coffers of the national and local power structures. It is a fundamental source of conflict; a palpable grievance point between the haves and the have nots.

The Role of the International Finance Community

'Dutch Disease' is promulgated by the international finance community. For one, International Financial Institutions (IFIs), which include Multilateral Development Banks (MDBs), consisting of the World Bank and other regional development banks – as well as Export Credit Agencies (ECAs) and private banks - continue to allow heavily indebted oil-dependent nations to borrow against themselves. Local populations become disgruntled as they see their governments fall further and further into debt to IFIs such as the World Bank Group that purport to help the community. The Nigerian parliament became so incensed at Nigeria's current \$35 billion foreign debt that it passed a law in March 2005 that forbade the government to pay any of its foreign creditors.⁶⁸

⁶⁵ Dr. Emmanuel Ojameruaye, "Managing the Dutch Disease in Nigeria," *Nigeria World*, 11 August 2004.

⁶⁶ Ibid.

⁶⁷ Charles Chukwiima Soludo, "Debt, Poverty and Inequality: Towards An Exit Strategy for Nigeria and Africa," African Institute for Applied Economics (AIAE), May 2001.

⁶⁸ The resolution called on Nigerian President Olusegun Obasanjo "to cease forthwith further external debt payment to any group of foreign creditors." Nigeria's presidency, however, explained that the parliament did not have the authority to order a halt in foreign debt repayments. See Mohammed Bashir, "Parliament demands Nigeria stop repaying foreign debt." *The Associated Press*, 9 March 2005.

Multilateral Development Banks (MDBs) and Export Credit Agencies (ECAs) provide the financing for many of the large-scale infrastructure projects around the world, including those in the oil sectors of developing countries. Considering their role in facilitating finances for these projects, MDBs and ECAs have a critical role in conflict prevention, including curtailing corruption in the extractive sector of the countries they work with. Without the support of an MDB or an ECA, projects in the poor, unstable, developing countries would most likely not go ahead. That gives these organisations a lot of influence with the host governments.⁶⁹ On the other hand, the IFIs' large influence on the well-being of the local population through the projects the agencies agree to finance implies that the IFIs have significant influence on the increase of tension and conflict in host countries as well.

The IFI's involvement in large extractive projects has come under criticism particularly in recent years. In fact, a report on the effects of the extractive industry by the World Bank's independent body, the Operations Evaluation Department (OED), concluded that "the evidence suggests that [financing initiatives in the extractive industry] is likely to lead to bad development outcomes when governance is poor."⁷⁰ Pressure has grown considerably on IFIs due to lack of economic growth in oil-exporting countries despite the extensive economic, social, and ecological repercussions suffered by the people. As a community, the IFIs have recently begun to recognise the so-called "resource curse." The World Bank's World Development Index 2003 goes as far as to point out the causal relationship between poor political and financial institutions and the dismal effects of the extraction sector on a developing country's economy.⁷¹

MDBs and ECAs perform many of the same financial functions. In contrast to multilateral institutions like The World Bank Group, however, ECAs are government or quasi-government operated by most industrialised countries, and therefore aggressively promote their national interests. In addition, an MDB like The World Bank Group insists on social and environmental conditions in their loans, while an ECA is not obligated to (although some, such as those operated by the United States, now do).⁷²

Critics claim, however, that the investor-friendly frameworks the World Bank urges developing countries to adopt cause governments to implement laxer mining laws. The more lenient laws then set softer standards for resettlement and compensation, control and regulation of the private sector, and lead to increased human rights violations.⁷³

⁶⁹ Susan Hawley, "International finance and corruption," in Transparency International's *Global Corruption Report 2005, Special Focus: Corruption in Construction and Post-Conflict Reconstruction*, available at <http://www.globalcorruptionreport.org/download.html> [Accessed 19 March 2005].

⁷⁰ World Bank Group, "Evaluation of the World Bank Group's Activities in the Extractive Industries: Factoring in Governance," Document of the Operational Evaluation Department, 1 September 2004, p. 27. The report reviewed the World Bank's assistance to the extractive industry in six countries (Chile, Ecuador, Ghana, Kazakhstan, Papua New Guinea and Tanzania) from 1993 to 2002.

⁷¹ The World Bank, *World Development Index 2003*, p. 149.

⁷² CSR, op. cit., p. 16.

⁷³ Simone Windfuhr, "Questionable Advice: The World Bank's Influence on Mining Laws in Africa – Human Rights Comments," FIAN-Germany, 2004, p. 5.

The ECAs support more investment worldwide than the total lending of the World Bank, the IMF, and other multilateral institutions combined.⁷⁴ In addition, much of the debt burden of African oil exporters is owed to ECAs, including 71% of Nigeria's debt, 55% of Gabon's, and 20% of Angola's. These agencies could play an important role in curtailing corruption of the host country by insisting on full disclosure and certain social and environmental conditions, much like The World Bank. However, ECAs essentially act as a corporate bank of their home government. Their concerns are the benefits for domestic corporate interests back at home, and not the impact of the project on the host country. Without due scrutiny, lending governments are complicit in whatever scheme or act the money the export credits generate is used for. Domestic corporate interests should not overshadow the danger non-conditional ECA loans can create, such as perpetuating a conflict.

Foreign governments are also complicit in the use of the cash generated by the ECAs. Often, it seems that domestic corporate interests and financial gain supersede considerations of social responsibility. Greed may even overtake policy. For example, under the United States Reagan Administration, the US Export-Import Bank (EXIM) provided export credits to Angola's oil industry that generated 90% of the MPLA government's revenue. Between 1983 and 1985 alone the EXIM issued almost \$401.1 million in loans and guarantees for offshore oil projects in Angola. Ironically, the Reagan Administration was working tirelessly at the time to topple the MPLA, and was providing assistance to the opposition, UNITA.⁷⁵

Lack of Transparency

Corruption takes place in countless areas of the extractive sector. Although there are numerous opportunities and examples of common systems of outright bribes and pay-offs, not all of the corrupt practices corporations partake in are blatantly illegal. In the interest of their corporate images, IOCs wish to portray themselves positively, and thus go to great lengths to try to appear innocent of corruption yet still placate those rulers who extort them. One commentator on Angola observed, "This is like paying gangsters for a particular service. The rulers of Angola participate in 'legal theft.' Just because the oil revenues are being paid into structures set up by the leaders, which makes them technically legal, does not make them morally defensible."⁷⁶ IOCs may also simply 'look the other way'. A spokesman for Shell-Nigeria recently admitted in an interview with the BBC that "[o]bviously once you put cash into a community it's hard to know where it goes."⁷⁷ Therefore, even if not directly involved in underhanded transactions, international business is guilty of complicity. Again, such transactions by an IOC are not

⁷⁴ The World Bank Group: Oil, Gas, Mining and Chemicals, <http://www.ifc.org/ogc> [Accessed 24 April 2005]; Delio E. Gianturco, *Export Credit Agencies: The Unsung Giants of International Trade and Finance*, Westport, Conn.: Quorum Books, 2001

⁷⁵ Carbonell, Tomas, "Export Credit Agency Activity in Angola 1980-2002," unpublished paper, Environmental Defense, Washington, DC, 2002, in CSR, op. cit., p. 17

⁷⁶ Commentator quoted in Global Witness, "A Crude Awakening: The Role of Oil and Banking Industries in Angola's Civil War and the Plunder of State Assets," May 1999.

⁷⁷ "Shell admits fuelling corruption," *BBC News*, 11 June 2004, <http://news.bbc.co.uk/go/pr/fr/-/1/hi/3796375.stm> [Accessed 21 March 2005].

Dear Sir,

It was with great surprise, and some disbelief, that we found out through the press that your company has been disclosing information about oil-related activities in Angola, some of which have a strict confidential character. According to the media, your company promised to continue to supply further such information in a letter dated 06/02/01 and signed by Mr. Richard Oliver [Sic], thereby seriously violating the conditions of legal contracts signed with Sonangol. As a result, we are making enquiries to confirm the veracity of information that has been published which, if confirmed, is a sufficient reason to apply measures established in Article 40 of the PSA [Production Sharing Agreement] i.e. contract termination. We are aware that some oil companies have recently been under pressure by organised groups that use available means in an orchestrated campaign against some Angolan institutions by calling for 'pseudo-transparency' of legitimate government actions. As the national authority that awards concessions, Sonangol is fully aware that its economic link with your company should not be mixed with other relationships that seriously violate existing contracts in order to attract bogus credibility. Given this situation, we highly recommend that your company scrupulously respects the agreements that it has signed with Sonangol, as well as Angolan legislation relating to confidentiality of information. May we recall that there are specific channels, which should be respected, to release any type of authorised information. Given the seriousness of this situation, if the provision of information by your company is confirmed and we observe moral or material damage thereof, we reserve the right to take appropriate action. The same is valid if you repeat such practices in the future.

Finally, and in the hope of maintaining the good relations

that we have always had with the oil companies that operate in Angola, we strongly discourage all our partners from similar attitudes in the future. In closing, please accept our best wishes,

[Signed]

The President of the Administrative Council

Manuel Vicente

technically illegal, but the practice is not an entirely morally defensible practice either, and certainly not a form of conflict prevention.

A lack of transparency in both government and corporate records aids and is an indicator of corruption, and therefore a preface to conflict when allegations that oil revenues have been misappropriated by the government abound. Fiscal disparity among a population increases

the potential for civil unrest, particularly when wealth among the country's elite is begotten by illegal means at the population's expense. For civil society, the lack of information prevents adequate scrutiny of their government's practices. Oil companies at times make "less-than-transparent" deals with governments and often pay secret bonuses to a myriad of individuals, including members of the government, local officials, traditional leaders, military officials, or even local youths or rebel leaders.⁷⁸ It is very hard to discover the extent of the unscrupulous behaviour and graft for various reasons. For one, many international oil companies must sign confidentiality agreements, making the IOCs very reluctant to make their financial records public for fear of alienating their business partners. BP learned this abrupt lesson in Angola when it declared it would publish information annually on its operations in the country. Through a letter, the state oil company Sociedade Nacional de Combustiveis, known as Sonangol, responded by threatening to terminate its Production-Sharing Agreement with BP. The letter, which the government copied to all other oil companies operating in Angola, warned that Sonangol would invoke Article 40 of their PSA if the data was published. Article 40 refers to Sonangol's right to terminate a contract if the contractor "*discloses confidential information relating to Petroleum Operations without having previously obtained the necessary authorization thereto.*"⁷⁹ The complete letter, as obtained and translated by Global Witness, is provided above.⁸⁰

⁷⁸ The Shell Petroleum Development Company of Nigeria Limited, "Annual Report 2003: People and the Environment," 31 May 2004.

⁷⁹ Angola Model Production Sharing Agreement for Deep Water Blocks; Article 40, February 1992, in Global Witness, "All the President's Men: The devastating story of oil and banking in Angola's privatized war," March 2002, p. 41.

⁸⁰ Global Witness, "All the President's Men: The devastating story of oil and banking in Angola's privatized war," March 2002, p. 41.

Few financial controls exist at national oil companies. This makes it difficult to assess contracts, to know what revenues actually accrue to the host governments from petroleum profits and to judge whether the proportion accruing to the host countries is fair or not. The lack of fiscal accountability makes curtailing corruption very difficult. The severity of this reality may be seen in the recent actions of the government of Mauritania. The government took the unprecedented step of awarding its ministers an incredible six-fold pay increase in an attempt to curtail top level corruption before its first offshore oilfields open in late 2005.⁸¹ As it were, Mauritania underwent a bloodless coup on 3 August 2005 by elements of Mauritania's military establishment who have backing by Islamic movements in the country. One of the stated motives for the coup was then-President Maaouiya Ould Sid Ahmed Taya's close relations with Israel and the United States. Israel wishes to have close relations with Mauritania not only because it wants recognition from the Arab state, but also because it desires Mauritania's newly-discovered oil. Israel was supposed to begin oil imports from Mauritania in 2006.⁸²

The lack of transparency also makes it understandably challenging to hold governments accountable for their revenue management. One aspect of financial corruption entails under-reporting oil revenue. Oil revenues are diverted in large scales into the parallel budgets of the 'shadow state'. As a result, much of the revenue never enters the state treasury. Angola is a particularly prominent example. Economists analysing Angola's oil sector in 2001 claimed that up to \$1.4 billion USD in oil revenue, representing almost one-third of state revenue, was unaccounted for.⁸³ According to the *Economist Intelligence Unit* and highlighted in a report by the Catholic Relief Services, the system of parallel financing in Angola occurs in five main ways. For one, the revenues that Sonangol, the state oil company, receives from taxes, joint ventures and other sources of oil sector revenue are not reported in government accounts. Secondly, the price of oil is underestimated in the state budget, and revenue over this allowance is not declared. Thirdly, government expenditure statements are not accurate. Fourthly, Sonangol takes advantage of the high inflation rate of the local currency. The state oil company waits an inordinate period of time before transferring tax and royalty payments to the Angolan government. By the time the payments are received, government revenue is highly devalued. Finally, Angola uses a complex system of borrowing through oil-back loans where debt is repaid to off-shore accounts. The process is far from transparent and very complex.⁸⁴

IOCs are also far from transparent in their dealings. The US Securities and Exchange Commission (SEC) is currently probing five US oil firms over possible violations in Equatorial Guinea of US laws prohibiting bribes to foreign government officials. The companies allegedly participated in real estate deals and other business ventures with the

⁸¹ IRIN, "Mauritania: Ministers receive 600 percent pay raise," 28 March 2005, http://www.irinnews.org/report.asp?ReportID=46343&SelectRegion=West_Africa&SelectCountry=MAURITANIA [Accessed 04 April 2005].

⁸² BBC News, "Q & A: Mauritania's Power Struggles," 3 August 2005, <http://news.bbc.co.uk/2/hi/africa/4743707.stm> [Accessed 30 September 2005].

⁸³ Global Witness, "All the President's Men," op. cit., p. 33.

⁸⁴ Catholic Relief Services, "Bottom of the Barrel: Africa's Oil Boom and the Poor," June 2003, p. 33.

country's leaders, their relatives, and companies linked to Equatorial Guinea President Teodoro Obiang Nguema Mbasago, as well as less obvious activities such as paying for scholarships for their children.⁸⁵ In another example, Royal Dutch/Shell came under fire from shareholders in spring 2004 and faced investigations in the United States, the United Kingdom, and the Netherlands for misrepresenting its oil reserves. Shell had overstated its reserves by 4.47 billion barrels, or 23% of total reduction.⁸⁶ Nigeria's reserves required one of the biggest readjustments. Confidential company documents implicated Shell in withholding vital information on the extent of the negative re-evaluation of its Nigerian reserves. Documents intimated that Shell officials were afraid of "host country sensitivities,"⁸⁷ particularly since Nigeria was due to renegotiate its production quota with OPEC (OPEC calculates member countries' quotas based on proven reserves.)⁸⁸ In order to strengthen Nigeria's hand in negotiations with OPEC to increase the country's production quota, Shell allegedly under-reported its re-evaluation of Nigerian reserves by 1.5 billion barrels - or 60% of its total reserves in the country.

International oil companies also use corrupt practices to ease their business in the host country, whether it is to garner favour, obtain better contract conditions, expedite a service, guarantee the security of their staff and resources, or partner in a profit-gaining scheme. The IOCs operate with the knowledge that by giving gratification to influential members of the host country's political and civil sectors it is then difficult for those same people to exercise control over IOC operations. The cost of buying political favours is so prevalent, in fact, that it is reported to add significantly to the cost of oil production.⁸⁹

"Angolagate", a scandal involving arms-for-oil deals, illustrates the types of illegal activities and characters IOCs become involved with due to rent-seeking behaviour. The scandal implicated operators across the globe, from Angola to Europe to the US, Israel and Russia. Operators included French businessman Pierre Falcone, his colleague Jean-Christophe Mitterand (the son of the deceased French president Francois Mitterand) and a Russian-born Israeli named Arkady Gaydamak.

Pierre Falcone presides over Falcon Oil, which has a 10-per-cent stake in one of Angola's richest exploration fields. He is also director of Simportex, an Angolan company that

⁸⁵ Justin Blum, "US oil firms entwined in Equatorial Guinea Deals; Riggs Probe Led to SEC Inquiry on Corruption, Profiteering," Washington Post, 7 September 2004.

⁸⁶ U.S. Securities and Exchange Commission, Litigation Release No. 18844, 24 August 2004; Accounting and Auditing Enforcement Release No. 2086, 24 August 2004; *Securities and Exchange Commission v. Royal Dutch Petroleum Company and The "Shell" Transport and Trading Company, p.l.c.*, Civil Action No. H-04-3359, U.S.D.C./Southern District of Texas (Houston Division); *In the Matter of Royal Dutch Petroleum Company and The "Shell" Transport and Trading Company, p.l.c.*, Exchange Act Rel. No. 34-50233 (24 August 2004): "SEC Settles Securities Fraud Case with Royal Dutch Petroleum Company and The 'Shell' Transport and Trading Company, p.l.c. Involving Proved Reserves Overstatement of 4.47 Billion Barrels: Companies Will Pay a \$120 Million Civil Penalty." <http://www.sec.gov/litigation/litreleases/lr18844.htm> [Accessed 30 September 2005].

⁸⁷ Jeff Gerth and Stephen Labaton, "Shell Withheld Reserves Data to Aid Nigeria," *The New York Times*, 19 March 2004.

⁸⁸ African Energy Intelligence, "Black Year for Shell," Indigo Publications: 24 March 2004.

⁸⁹ Human Rights Watch, "The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities," New York, January 1999.

supplies food and uniforms to its armed forces.⁹⁰ Arkady Gaydamak, the notorious Russian-Israeli business figure, currently lives in Moscow for fear of arrest if he travels abroad. He has been accused of money laundering by Israel and of illegal gun-running in southern Africa, corruption, and tax offences by France. In Switzerland and elsewhere, he has been implicated in unlawful oil for foreign debt transactions, many involving the Angolan government.

According to *All the Presidents' Men*⁹¹, a report on Angolagate by Global Witness, Gaydamak funnelled billions of dollars in arms and oil-backed loans to Angola's government in return for lucrative oil contracts with Western oil companies. Falcone and Gaydamak, relying on the special access that Mitterand had to the Angolan government, managed to transfer some \$463 million in arms to Angola. The illegal arms deals prolonged the civil war.⁹²

Contentious Contracts

One of the most pervasive facets of corruption is to be found in the oil industry contracts themselves. The oil industry offers economic opportunities by contracting projects to companies operating in other sectors. Contracts are offered not only for oil operations, but for development projects, infrastructure, and any other construction desired by the expatriate company. These types of contracts are a main source of corruption in the industry. In Nigeria, for example, they are often awarded to associates of state military administrators, other government officials, or traditional leaders. The numerous contracts give the middle management of the oil companies and the contractors the opportunity to pocket a percentage.

Contracts for exploration and exploitation also present ample opportunity for corruption. The Obasanjo government of Nigeria began its rule in 1999 with the promise to combat corruption. The contracts for 16 exploration blocks which had been awarded to corporations under the previous military regime were consequently cancelled by Obasanjo in May 1999 after he took office. Eleven of the blocs had been awarded to local firms with reputed links to senior military officials.⁹³ However, the new round of negotiations quickly came under protest as well. Nigerian indigenous oil companies issued a petition to parliament in March 2000 claiming that the government bid guidelines unfairly and purposely precluded them from bidding on the blocks, which included some of the world's most sought-after exploration fields, in favour of the multinationals.

IOCs hide bribes through adding what are known as "signature bonuses" to contracts with host countries. Signature bonuses are lump sums companies pay foreign

⁹⁰ Tony Allen-Mills, "Angola arms scandal spreads: Bush's VP faces new queries over oil firm dealings," *Calgary Herald*, 31 December 2000.

⁹¹ Global Witness, "All the Presidents' Men, op. cit.

⁹² "Analysis: Angola Oil and Gas," *Platts Energy Economist*, 01 June 2004, Vol. No 272, p. 21.

⁹³ Neil Ford, "Oil: A boon or a curse?" *African Business*, October 2000, p. 26.

governments upon signing a contract licensing them to explore and pump oil from a specified area, or block. According to industry standards, the amount of the bonus depends on the block's prospective wealth. In recent years, the size of signature bonuses has surged in up-and-coming markets like those in the Gulf of Guinea. The \$870 million bonus paid to the Angolan government by BP-Amoco, TotalFinaElf and Exxon for certain deepwater blocks in 1999 set an industry record. These payments rarely appear in corporate annual reports or financial filings. Very few countries require companies to detail their accounts. Only half of the \$870 million signature bonus for the deep-water blocks even appeared on government ledgers.⁹⁴

Private banks become entangled in the illegal activities of the oil industry as facilitators for money transfers, depositories for bribes, and in corrupt financing schemes. State oil companies and host governments often have numerous accounts with off-shore banks famous for stringent bank secrecy laws. Money is kept in foreign banks around the world, making trails of illegal money transfers difficult to trace. Oil corporations take part in 'legal' money laundering. IOCs will transfer assets to private accounts held by government leaders or their families or associates. In some instances, there is evidence that the corporations have a role in securing accounts for individuals as well. Several scandals involving foreign banks have come to light in recent years.

One area where corporations might try to take advantage of the host government is in the Memoranda of Understanding, which are the contracts that stipulate the investment agreements for the exploration, exploitation, and exportation of the oil and the division of its revenues. Secrecy surrounds the Memoranda of Understanding reached between IOCs and host governments. Memoranda of Understanding are also sometimes entered into with host communities of oilfields. Contention over these MoUs, or the lack thereof, has led to raised tensions, protests, and armed conflict resulting in the obstruction of oil flow, structural damage, injury, and even death.⁹⁵ The lack of transparency of information in consultations or negotiations between oil companies and the local community increases the general population's suspicions of corruption and adds to general frustration that their concerns will not be addressed.

Critics of the major oil companies often point to Memoranda of Understanding as methods of manipulation by the IOCs. In addition to stipulating a guaranteed profit per barrel if certain conditions are met, MoUs are rife with elaborate mechanisms that ensure the multinationals yield huge dividends. In many cases, these MoUs were signed decades ago when the oil company enjoyed a close relationship with a corrupt military dictator. In Nigeria, for example, Shell and other oil companies signed a Memorandum of Understanding in 1985 with the military government of General Ibrahim Babangida shortly after he seized power in a coup. The agreement still holds today, and Shell currently operates a JVA between the national petroleum company (NNPC), the French oil company Elf, and Agip of Italy.

⁹⁴ Phillip van Niekerk and Laura Peterson, "Greasing the Skids of Corruption," The Center for Public Integrity, 4 November 2002.

⁹⁵ Vanguard, "Nigeria; Youths End Siege to Shell's Flow Station," 24 April 2004.

Under this MoU, the national petroleum company, the NNPC, owns 55-60% of oil production through joint venture contracts, and the international oil companies share the rest. While all parties share the operation costs, according to the MoU Shell prepares the annual budget and work programs. Shell has been accused of abusing this power to turn a profit by building returns into their costs. Other IOCs have been accused of the same practice. Production costs have been a source of contention and suspicion between IOCs. In February 2004, the newly-elected Nigerian Senate attempted to block \$1.6 billion allocated to Shell and two other companies for production expenses from being transferred until adequate documentation on their expenditures could be produced. In turn, this effort was blocked by President Obasanjo and the NPCC.

Recently, however, Nigeria has begun to develop offshore oil wells, and these MoUs are the “production-sharing contracts” (PSCs) in which the government is not a formal partner and therefore not responsible for operating costs. As previously noted, Nigeria first went into a PSC in the 1960s when it was strapped for cash and in debt. Today, Nigeria has the largest external debt on the continent. Its debt fluctuates between \$35 billion and \$37 billion, depending on the strength of the US dollar.⁹⁶

Contracts are often also a source of contention with the local community. One of the most prevalent grievances among indigenous populations is the inequitable resource revenue-sharing by corporations with locals. This extends from the lack of a resource-sharing scheme to the lack of investment into the local community for sustainable development. Interestingly, this inequality might actually be in the ruling party’s interests. Firstly, it keeps the local population poor and disenfranchised. The less empowered, educated, and wealthy the community is, the less threat to the authoritarian rule that often controls oil-dependent countries. Secondly, corporations all have profit targets and shareholders to answer to: Those receiving pay-offs would know the more that those profits are reinvested back into the community; the less ‘extra’ is available for them.

Corruption and the lack of full disclosure in the oil sector also cause grievances in the local communities and, in turn, an increase in the potential for an outbreak in conflict. For example, the removal in 2004 of fuel subsidies by the Nigerian government resulted in a hike in oil prices, labour union demonstrations, long lines at petrol stations and a resurgence of the black market. Inhabitants became angered as lay- and expert observers alike contended in the nation’s media that the amount of money lost via corruption would be sufficient to maintain oil subsidies and therefore keep the price of petroleum affordable to the average Nigerian. In some countries, a law that distinctly decrees that the land and its resources belong to the country’s people, not the government, is the cause of tension, as inhabitants feel they should be accruing more benefits. Angola Law No. 13/78 of 26 August 1978, for example, states that “all deposits of liquid and gaseous hydrocarbons which exist underground or on the continental shelf within the national territory, up to the limit of the jurisdictional waters of the People’s Republic of Angola, or within any territory domain over which Angola exercises sovereignty, as established

⁹⁶ IMF, “How Nigeria Incurred Huge Debts,” *This Day*, 13 March 2005.

by international conventions, *belong to the Angolan People*, in the form of State property.”⁹⁷

Often, laws made to capture the petrodollars for their intended use for sustainable development are simply not obeyed. In Gabon, for example, a 1998 law created the Fund for Generations. The Fund intended to capture 10 percent of budgeted oil revenues as well as 50 percent of any extra revenue for future use. However, no deposits were ever made.⁹⁸

In general, a corrupt judicial system perpetuates the cycle of corruption. Reports have shown that judicial systems, characterized by long delays and poorly paid staff, have imposed major expenses on some companies operating in oil-exporting countries. Bribery is rampant since court decisions are often arbitrary and subject to corruption. Local and foreign investors alike have found courts too complicated and costly to resolve their contract or property rights disputes.⁹⁹

The Exploitation of Indigenous Systems

Property rights in particular are a source of contention between expatriate oil companies and the local community. Less than 10% of Africa’s land is formally owned, and barely one African in ten lives in a house with a title deed.¹⁰⁰ In West Africa and elsewhere, the assets of the majority of the population are not registered in government registrars, and property ownership operates in the extralegal world. Instead, property rights are based on informal contracts, or “customary law,” most likely the say-so of the local village chief. This makes it difficult for indigenous land owners to accrue proper compensation for land that is affected by oil industry activities. Herando de Soto, a Peruvian economist, refers to this conundrum as “dead capital”: The inability of Africans to exploit their land for maximum economic benefit. He estimates that the total value of African’s informally owned houses, farmland, and the like in 1997 was roughly \$1 trillion USD.¹⁰¹ Yet, without secure property rights and formal financial appraisals of their assets, indigenous populations stand on weak legal ground in contract negotiations, compensations battles, and court disputes.

The lack of a scrupulous court system further aggravates grievances between the private and public sectors as the court is not seen to be impartial. Both sides know that certain judges can be bought. Therefore, rather than mitigating a dispute, a court ruling may further aggravate the conflict.

The lack of secure property rights also denotes the lack of zoning laws and registered boundaries. This creates a potential for conflict, as neighbors are not only placed in

⁹⁷ Angolan Law No 13/78, Article I. Promulgated 26 August 1978. Emphasis added.

⁹⁸ CSR, *op. cit.*, p. 30.

⁹⁹ NTE Foreign Trade Barriers Report – Cote D’Ivoire, April 4, 2005; NTE Foreign Trade Barriers Report – Cameroon, April 4, 2005; NTE Foreign Trade Barriers Report – Nigeria, 4 April 2005.

¹⁰⁰ *The Economist*, “Breathing life into dead capital,” 17 January 2004.

¹⁰¹ *Ibid.*

competition for greater profits from contracting ‘their’ land to the IOCs, but are sometimes in contention with one another when some object to the industry’s presence in their community at all. Furthermore, a dispute may arise over who actually has the right to sell the land for exploration or extraction when an expatriate firm negotiates for property rights: The indigenous population, which has traditional and often official ownership of the land; versus the government, which often claims that it has the rights to the minerals of those lands as a resource belonging to the entire state. In order to start exploration and production in rural areas, it is therefore customary to make statutory and bonus payments to the community that owns the land, waterways and fishing grounds where extraction activities take place. This practice is meant to placate the communities and compensate them for the affected portion of land. However, the community does not have a right to the enormous rents or royalties garnered from the exploitation of oil. The rents accrue directly to the state.

This does little to mitigate conflict, as oil often is located in a particular region of the country, such as in the Niger Delta in Nigeria. The community sees their sacrifice to be greatly disproportionate to their compensation vis-à-vis the rest of the state.¹⁰² In addition, the government may take measures to supersede traditional claims. Based on Nigeria’s Land Use Act of 1978, for example, the government may revoke ownership of land for the “overriding public interest,” which includes mineral and oil extraction and related activities.¹⁰³

Oil operations destroy the environment which indigenous people rely on for their livelihood. Oil operations may seriously affect communities’ food and water supplies. More than 4,000 oil spills have been recorded in the Niger Delta alone during the past five decades, staining farmlands and poisoning waterways.¹⁰⁴ Oil companies and communities continually contest such issues when oil spills and oil fires destroy the environment. In many instances, the oil companies claim that the incident was the result of sabotage rather than the result of the erosion or break-down of equipment. The oil spills ruin the host communities’ potable water supply as well as destroying crops and killing the local fish population. The toxic chemicals released by flares cause extensive air pollution. However, the material benefits gained from compensation claims transform oil spills from an environmental to a political issue.

With some extraction contracts, the government shares the production costs with the IOC, and therefore is likely to collaborate with the IOC’s decision in a compensation case. This is significant because of the laws that determine whether or not the affected community may claim compensation for damages. According to Nigerian law, for example, a community is not eligible for compensation by the government if the cause of

¹⁰² Kaniye S.A. Ebeku, “Oil and the Niger Delta People: The injustice of the Land Use Act.” The Centre for Energy, Petroleum, and Mineral Law and Policy, 2000.

¹⁰³ Ibid.

¹⁰⁴ Dudley Althaus, “Niger Delta’s oil curse: As US dependence on the country’s petroleum exports grows, the West African nation’s corrupt officials get rich while the poor seethe,” *The Houston Chronicle*, 5 December 2004.

an oil spill or similar environment disaster is determined to be sabotage.¹⁰⁵ Rather than be left to an independent, external auditor or investigation committee, the determination is made by the government.

Even if compensation is granted, communities are at a severe disadvantage in the compensation negotiations. Negotiations are often held without government representation, with solely representatives from the oil companies and the community. Without the state there to protect its citizens, the oil company may easily exploit the affected. Even if the state is present, it still has an incentive to skew the negotiations in favour of the IOC, such as when it is in a joint-venture contract with the company.

In many instances indigenous communities are (technically) constitutionally protected against environmental damage and in their general dealings with expatriate oil companies, but the regulations are not enforced. The private sector finds few incentives to follow a constitution that protects citizens if it is not enforced or the regulators can be bought. As a result, the community feels taken advantage of and tensions between the corporation and the locals rise. In August 2004, however, the Nigerian Senate filed a compensation claim for \$1.5 billion USD against the Shell Petroleum Development Corporation to be paid to communities of the southern Ijaw Bayelsa state affected by oil pollution. The claim is to cover health problems, economic hardship, and avoidable deaths as a direct or indirect result of oil spillages in the Niger Delta by the SPDC. The resolution followed a similar one passed by the Nigerian House of Representatives, and covers events dating back to 1956.¹⁰⁶

Designation as a host community promises significant benefits, including compensation, community development funds and promises of labour and security contracts. The oil companies negotiate with those they believe to head the community, most likely the principal traditional leaders and chiefs. These practices have fueled inter-communal conflict as traditional leadership positions became more lucrative and the tribal elders more powerful through the large sums of money funneled to them. The funds are supposed to be shared with and used to benefit the community, but the large amounts of money have encouraged rent-seeking behaviour.¹⁰⁷

As the traditional leadership grows richer and more powerful, the competition to occupy their positions intensifies. In Nigeria, beginning in the mid 1990's, prominent local leaders competing to assume top chieftaincy positions recruited youth leaders and provided the youths with money and weapons to support the often violent struggles to control village chieftaincies. According to interviews conducted by Human Rights Watch, such violent clashes occurred in several villages near Port Hartcourt, including the villages of Buguma, Tombia, and Okrika. Moujahid Dokubo Asari, who is from

¹⁰⁵ Okechukwu Ibeanu, "Oiling the Friction: Environment Conflict Management in the Niger Delta, Nigeria," *Environmental Change & Security Project Report*, Issue 6, Summer 2000.

¹⁰⁶ *Africa Research Bulletin*, "Continental Developments: Co-operation and Trade- Nigeria – Switzerland – Abacha Funds Transfer," Blackwell Publishers Ltd., 16 August 2004.

¹⁰⁷ Human Rights Watch, "Rivers and Blood: Guns, Oil and Power in Nigeria's River State: A Human Rights Watch Briefing Paper," February 2005, p. 6.

Buguma, and Ateke Tom, who is from Okrika, are currently rival leaders of armed groups demanding more control of oil resources in River State, and both played a prominent role in the early struggles.¹⁰⁸ ChevronTexaco admitted through a statement released to Nigerian newspapers in spring 2005 that its practice of designating certain villages as host communities had in the past inadvertently led or added to the causes of ethnic violence in the Niger Delta in the past.¹⁰⁹ Last year, Buguma suffered a three-month occupation by private militia accused of rapes and random killings. The unrest and continued tension is at least partly over royalties that are said to be paid to traditional ruler King Theophilus Princewill by Shell, the major oil producer in the area. Four rival militias in the area, with one calling itself "the Germans," and another "the Italians," have fought over who should be king and thus receive royalties. In recent years, local groups have grown more powerful and thus more resentful towards village chiefs. In some areas, youth groups who did not benefit from the munificence handed out, have increasingly accused local chiefs of working with both oil companies and the government to oppress, exploit, and neglect them.

Shell spokesman Simon Buerk has been quoted as saying that the company has never paid royalties to local rulers in Nigeria, but that "homage payments" are allowed.¹¹⁰ According to Shell's 2004 *Annual People and the Environment Report*, homage payments, also known as "wedging fees" are based on a sliding scale from \$500 to \$1,000, depending on the seniority of the traditional ruler, and are distributed during courtesy calls and other such meetings with local rulers. The report stated it spent \$100,000 on such payments last year in Nigeria.¹¹¹

¹⁰⁸ HRW, op. cit., p. 7

¹⁰⁹ *Energy Compass*, "Divisive," Energy Intelligence Group, 6 May 2005.

¹¹⁰ Daniel Balint-Kurti, "African Oil Comes With Big Downside," *The Associated Press*, 28 August 2005.

¹¹¹ The Shell Petroleum Development Company of Nigeria Limited, *People and the Environment Annual Report 2004*, p. 28.

CHAPTER IV

CRIMINAL NETWORKS

Rent-seeking behaviour can also extend to more serious bids for control of an oil-rich country's commanding heights. Numerous investigations over the years have unveiled multinational corporations entangled in webs of criminal operation extending much deeper than economic dishonesty and corruption. Multinational corporations directly involved with the international oil industry such as IOCs, banks, and credit agencies have been implicated and in some cases indicted in a variety of scandals, including illegal oil smuggling, oil-for-arms deals, and coups. National governments and top-ranking officials, private mercenary firms, and influential businessmen have also been the centre of accusations. Multinational corporations' ties to organised crime often relate to their business transactions in or with an oil-exporting country. Benefits accrued from organised crime are obviously very persuasive – IOCs have even been implicated in direct or indirect business relations with the same armed rebel groups that are sabotaging their operations.¹¹²

Systemic Smuggling

Oil industry officials estimate that up to 100,000 barrels of crude oil production per day are siphoned off by organised gangs - around 10 to 15% of Nigeria's daily output of 2.2 million barrels. The proceeds fund the cycle of armed conflicts in the Niger Delta.¹¹³ The Shell Petroleum Development Company (SPDC), Royal Dutch/Shell's conglomerate in Nigeria, claims that out of the roughly one million b/d it produces, it loses over 70,000 barrels per day to oil bunkering, for an estimated total of 9 million barrels per year. This is a drastic increase from the 3 million stolen barrels recorded by Shell in 2002.¹¹⁴ SPDC is not the only IOC targeted in the Niger Delta. Elf Petroleum Nigeria Limited, a subsidiary of Total Upstream Companies in Nigeria, ChevronTexaco Nigeria Limited and Nigeria Agip Oil Company are all victims of this scheme.

Oil bunkering, which is referred to by oil executives as 'rustling,' began with amateurs wrenching open pipelines to extract oil to sell on the local market. It has since developed into a vast criminal enterprise with ties to foreign banks, governments and rebel groups. Oil bunkering has become very sophisticated in recent years, requiring very advanced equipment and organisation.¹¹⁵ Culprits are siphoning so much oil that oil tankers are now used to transport it. The oil has been reported to end up in near-by Côte d'Ivoire, Benin, and Gabon, but also as far away as Germany.

¹¹² *Energy Compass*, "Nigeria: Majors mull new survival strategies," Energy Intelligence Group, 22 April 2005.

¹¹³ Hector Igbikiowubo, "FG Procures 15 Patrol Boats From U.S. to Combat Oil Theft," *Vanguard*, 4 January 2005.

¹¹⁴ Shell Annual Report 2004, op. cit., p. 3

¹¹⁵ Rory Carroll, "Smugglers use tankers to steal Nigerian oil," *The Guardian*, 24 October 2003.

In the Niger Delta, the recent violence is primarily the result of a struggle between two rival armed groups - the Niger Delta People's Volunteer Force (NDPVF), led by Asari, and the Niger Delta Vigilante (NDV), led by Tom - for control over illegal oil revenues from oil bunkering and for control over oil bunkering routes.¹¹⁶ The proceeds from the oil bunkering go to funding the armed factions. Officials from the IOCs have gone as far as attributing the frequent friction between the companies and its host communities over pollution and environmental degradation to the activities of the vandals.¹¹⁷ Others, however, counter that senior political and military figures from Nigeria's former and current ruling elites are the culprits, engaging and arming youths to achieve their ends.

The money garnered from stealing oil is a strong incentive for individuals to take extraordinary risks. Oil bunkering is very dangerous, and deadly explosions induced by pipeline vandalism occur frequently. Communities bristle with the knowledge that these tragedies could be prevented if the members of the community were not so poor that they are enticed to partake in this deadly operation. Some communities have gone so far as to hire their own guards for the pipelines, but it seems that this does little besides provide night guardsmen the perfect opportunity to bunker oil themselves.¹¹⁸

Curtailling smugglers has proved to be difficult. Effective counter-measures have been plagued by mismanagement and hampered by poor equipment. In addition, armed groups reportedly attack personnel on patrol.¹¹⁹ Nigeria has the strongest military force in West Africa, and there have been calls for it to play a greater role in naval patrols off the Gulf of Guinea. In January 2005, the Nigerian government disclosed that it had procured fifteen new patrol boats from the United States in addition to the four it received in 2004. A major hindrance to anti-smuggling operations, however, is that the navy itself is beset with corruption. In fact, the largest seizure of stolen crude oil, over 11,000 barrels, has led to the court martial of three senior Nigerian naval officers.

In an effort to curb the incidence of crude oil theft, the Nigerian government has attempted to address the problems of oil-producing communities. Although the government increased the derivation paid to oil-producing states by 13% and established the Niger Delta Commission, the incidence of crude oil theft has not abated.

Stealing West African petroleum products is not confined to oil bunkering in the Gulf of Guinea. Smuggling occurs by land transportation across borders due to arbitrage opportunities reflecting pricing discrepancies between petrol markets or the depreciation of an exchange rate. Investigations in Ghana in 2003 revealed that petrol was being smuggled out through border towns in the Western Region into Côte d'Ivoire at an alarming rate. Private and commercial drivers alike would simply drive across the border, fill their tanks, drive back, empty them, and then repeat the process. Ghana's

¹¹⁶ Human Rights Watch, "Rivers and Blood: Guns, Oil and Power in Nigeria's Rivers State: A Human Rights Watch Briefing Paper," February 2005.

¹¹⁷ Tari Benebo in Tashikalmah Hallah, "Shell Laments Illegal Oil Bunkering," *Daily Trust*, 19 June 2003.

¹¹⁸ Eugene Agha, "How Illegal Oil Bunkerers Ply Their Trade," *This Day*, 18 March 2005.

¹¹⁹ Onwuka Nzeshi, "Navy Nab 8 for Illegal Oil Bunkering," *This Day*, 11 November 2002.

government attempted to discourage the smuggling by raising the price of petrol to be on par with that of Côte d'Ivoire. The depreciation of the cedi against the CFA Franc, however, rendered the measure useless, and Ghana's petrol remained far cheaper.¹²⁰

Smuggling operations may be carried out on a relatively small scale, like that in Ghana and Côte d'Ivoire, or as huge, intricate transcontinental operations. The court martial of senior Nigerian naval officers dealt with their involvement in the disappearance of the Russian-operated tanker, *MT African Pride*, which had been seized and was in the custody of the Nigerian navy for its involvement in oil smuggling. The investigation into the nefarious activities of bunkering ships fingered banks in Nigeria and Switzerland for collaborating to fund the operation.¹²¹ Legislative hearings on the case led to allegations of document-tampering, collusion and graft.¹²²

Complicity with organised crime

Involvement in money laundering and other illegal financial schemes implicates multinational oil companies in ties with organised crime. Resource exploitation attracts unsavoury characters looking to make 'a quick buck' by any means necessary. IOCs and governments use members of organised crime syndicates, gun-runners, and corrupt businessmen to facilitate illegal transfers to host governments. The transfers might be arms-for-oil schemes, signature bonuses, or personal gratification.

Investigations have shown that IOCs and governments alike have strong ties to notorious 'businessmen' who are wanted in several countries. The IOCs and foreign governments are willing to take the risk of associating with such characters because oil rents are prodigious; they are willing to go to great lengths to secure contracts. Organised crime syndicates, arms dealers, and the like have the dubious connections necessary to arrange the types of deals needed to sway the favour of the host government or placate the leaders of a host community. They take advantage of their know-how to extract large payments for their services, and will most likely also siphon money off of the schemes themselves. Both arms trafficking and oil are very lucrative for those who skim off the top.

Multinational corporate involvement in war-profiteering also extends to local armed rebel groups. As illustrated, rebels may finance themselves through oil bunkering, much like rebel factions in the Liberia, Sierra Leone, and the Democratic Republic of Congo finance themselves by looting and selling off lootable natural resources. The profits lead to the heavy militarization of areas like the Niger Delta where warring factions are very actively involved in oil bunkering. The proliferation of arms exacerbates the security situation, and expatriate companies are placed in the position where they feel they must act. IOCs in the Niger Delta admit to giving money to local rebel groups to ensure the

¹²⁰ BBC Monitoring International Reports, "Ghana: Smugglers adopt refined tactics over stealing petroleum products." 8 June 2003.

¹²¹ Panafrican News Agency (PANA) Daily Newswire, "Nigerian, Swiss Banks Surface in Crude Oil Theft," 26 November 2004.

¹²² Dudley Althaus, "High Cost of Energy: Nigeria; An African tale of looted oil money, vanished ship; From smugglers to the government, many experts see rampant crude theft," *The Houston Chronicle*, 7 December 2004.

security and safety of their employees and facilities.¹²³ Essentially, the multinational corporations are indirectly funding the sabotage of their own facilities in hopes that their bribes outweigh the draw of bunkering profits.

Mercenary Activity

Oil wealth attracts opportunists, and with an oil discovery entrepreneurs, political gambits, and investors of all sorts will swarm upon a previously globally 'insignificant' nation. Mercenary groups such as Executive Outcomes (EO), which was initially based in South Africa, were such opportunists, and have a history of meddling in African oil affairs. In the 1990s, for example, EO was paid by the Angolan state oil company, Sonangol, to assist the Angolan army in regaining control of the Soyo oilfields from UNITA rebels. Mercenaries also took part in the bloodless military coup bid that began 16 July 2003 in Sao Tome. The government of Equatorial Guinea also blame mercenaries for what they claim was a coup attempt in March 2004, when over 95 men, including South Africans and Germans, were arrested in a plot to kill President Teodoro Obiang Nguema and install exiled Equatorial Guinean Severo Moto who had been living in Spain. The incident triggered international intrigue due to the alleged involvement of Sir Mark Thatcher, son of former British Prime Minister Margaret Thatcher, and former British SAS officer Simon Mann, founder of Executive Outcomes. The Equatorial Guinean government also claimed that the Spanish, British and US governments knew about the plot in advance.¹²⁴

In Sao Tome, mercenaries still pose a threat to stability as many who remained in the country are dissatisfied with the government's progress on oil exploration. Originally, Sao Tomeans regarded the coup as perhaps an impetus for change: Coup participants handed back power [in a deal brokered by Nigeria] to the elected president, Fradique de Menezes, on the condition of change. In 2003, Sao Tome relied on foreign aid for more than 80 % of its budget, and the state was virtually bankrupt.¹²⁵ Inhabitants had hoped to see oil revenues by the beginning of 2004, but the government is now realizing that oil will not flow until 2011, and according to the terms and conditions of their MoUs with the IOCs, Sao Tome will make only 20% of their 40% share between 2011 and 2017.¹²⁶ Furthermore, the government has only one out of nine offshore oil blocs contracted (to ChevronTexaco) for exploitation in collaboration with Nigeria. Meanwhile, the army that took part in the coup remained unsatisfied, and fear furthermore that an upcoming restructuring programme will benefit the police and presidential guard at their expense. The former mercenaries who took part in the coup expressed similar sentiments. These economic and political factors created a potentially volatile situation.¹²⁷

¹²³ Shell Annual Report, 2004, op. cit.

¹²⁴ BBC News, "Spain accused in Malabo coup plot," 16 June 2004; BBC News, "African Mercenary Plot Thickens," 10 March 2004.

¹²⁵ John Vidal, "Oil Grab in Africa," *Manchester Guardian Weekly*, 22 October 2004.

¹²⁶ Ibid.

¹²⁷ Alexandra Lesieur, "A year after the coup in Sao Tome, economy gets worse despite talks," *Agence France Presse*, 16 July 2004.

CHAPTER V

OIL-RELATED CONFLICTS AND 'FALSE' SECURITY

Certain state actors may benefit from prolonging intrastate resource-based conflict, such as those corrupt officials who are involved in oil bunkering or who enlist the armed factions to influence the outcome of an election. Weapons may also be supplied to fighters by sponsors, including members of the state government, political parties or individuals. According to interviews conducted by Human Rights Watch, in the run up to the 2003 election prominent local politicians supported Nigerian militia leaders Moujahid Dokubo-Asari and Ateke Tom. These sources allege that since 2001, the former Secretary to the State Government and current Federal Transport Minister, Abiye Sekibo, provided logistical support and political protection to Tom to use violent means to influence the 2003 state and federal elections. In exchange, Tom was free to carry out his bunkering activities without interference.¹²⁸

Corporations, meanwhile, also apportion cash payments to youths and other armed groups.¹²⁹ The IOCs' first priority remains the safety and security of their personnel, their dependents, facilities, flow stations, pipelines and other infrastructure, and thus they appease local youth groups with cash payments for such illegitimate reasons as access to the company's own facilities.¹³⁰

The government and the international oil corporations may also use conflict as a public relations opportunity of sorts. The Nigerian police, which has been accused by non-governmental organisations like Human Rights Watch of corruption, collaborating with oil rustlers, and even standing by while citizens have come under attack by rebel groups, take great pains to 'parade' those arrested for oil bunkering through the streets.¹³¹

Oil firms are likely to work in remote and economically underdeveloped regions where state presence may be weak. The host community might depend on the IOC to provide social services. This position alone gives the corporation a big edge when negotiating property rights, compensation responsibilities and other elements of a Memorandum of Understanding. The grievances of the community over the presence of the extraction operation, its effect on their livelihood and the uneven terms of contracts signed with the expatriate company would give strength to armed groups in the area. Corporations, however, publicise how rebel attacks, protests, taking of hostages, *et cetera*, impede their ability to provide the basic social services needed by the community in order to ostracise the rebel movement in spite of the other community grievances.

¹²⁸ Human Rights Watch, "Rivers and Blood: Guns, Oil and Power in Nigeria's Rivers State." Human Rights Watch Briefing Paper, February 2005.

¹²⁹ *Energy Compass*, "Nigeria: Majors mull new survival strategies," Energy Intelligence Group, 22 April 2005.

¹³⁰ The Shell Petroleum Development Company of Nigeria Limited, "Annual Report 2003: People and the Environment," 31 May 2004, p. 16.

¹³¹ HRW, *op. cit.*, p. 17

A government can try similar tactics to make loot-seeking rebels unpopular by transparently using revenue from the oil exports to fund effective delivery of basic social services. Populations will be more hostile to rebels if money is seen funding primary education and rural health services rather than going off to a Swiss bank. After all, a rebel movement will not be successful if its leader cannot feed off of a disgruntled local population - particularly young, unemployed men. Paul Collier, who has written extensively on the political science catch-phrase ‘greed versus grievance,’ explains: “Grievance is to a rebel organisation what image is to business.”¹³²

Citizens Versus the State

Intrastate conflict in oil-exporting countries places awkward strains on the security sector relationship between the government administration, the oil companies, and the host communities. In the case where locals and rebel groups clash with the expatriate company, the government finds itself in a conundrum: It is financially bound and burdened to the IOC and needs the IOC to continue to operate in the host country, especially where it is in a joint-venture contract; yet as the sovereign government it has an obvious obligation and desire to protect the rights and well-being of its citizens.

Multinational corporations enjoy considerable control over state law enforcement, and in many instances enjoy direct access to the national army and police in the case of an emergency despite such association officially being illegal. To local citizens, it looks as though their state apparatus, which should be for their own protection, swoops in and joins the battle, so to speak, on the side of the expatriates. These arrangements implicate IOCs in wider military operations and human rights violations. Current corporate social responsibility thinking indicates that the private sector is responsible for the human rights violations taken even by state apparatuses on their behalf. In addition, in order to ensure the protection of their personnel, facilities, and infrastructure many oil firms hire private military companies (PMCs) for their security and to prevent sabotage.

The status of security forces can become very complex. In Nigeria, IOCs hire their own security outfits comprising of “supernumerary police,” or “spy police” as they are known colloquially. The spy police are sanctioned by the 1943 Nigerian Police Act which established the Nigerian Police Force. The spy police are recruited and trained by the Nigerian police force, but their salaries, uniforms, and other remunerations are paid for by the oil company.¹³³ The system seems to be set up in a manner where the guards and the state are forced to have dual allegiances. Within this framework, what are essentially government employees are carrying out the will of the expatriate company in regions that are rife with tension with the local community.

¹³² Paul Collier, *Economic Causes of Civil Conflict and Their Implications for Policy*. World Bank, 15 June 2000.

¹³³ Bola Shittu And Ibrahim Yahaya, “Agip, Spy Policemen in Renewed Battle over Status,” *This Day*, 29 November 2004.

Governments set up separate task forces outside the normal chain of command to supply security to the oil sector. Documents showing that officers in charge of these outfits requested or intended to request payment from IOCs for services rendered have been filed in court proceedings alleging corruption and even torture and wrongful death.¹³⁴ In one recent court case, an invoice surfaced that seems to prove that in 1999 Chevron paid 23 Nigerian soldiers \$109.25 a day for allegedly attacking two villages and killing 4 people after village representatives went to a Chevron oil rig to supposedly talk about how oil operations were hurting their fishing. Although the Nigerian government is responsible for soldier's salaries, Chevron claims the payment, how ever linked to the incident it may appear, was part of regular "per diem" fees they pay soldiers for taking a "hardship" post when protecting the company's facilities.¹³⁵

Lack of Development and Insecurity

One of the biggest grievances leading to tension in society is inequality. Disparity in a society is an early-warning indicator of future conflict, especially if the variance in living standards or opportunities is due to oppression or corruption. Both Tom and Asari, the two main warlords of the Niger Delta, were able to recruit from a large pool of disgruntled, unemployed youth, many of whom were university graduates and frustrated with their extreme poverty.¹³⁶

Research shows that poverty reduction depends greatly on addressing income inequality. The *World Development Report 2000-2001* emphasizes that if a state aims to reduce poverty, it needs to focus on reducing income inequality. It notes that "when initial inequality is low, economic growth reduces poverty nearly twice as much as when inequality is high."¹³⁷

Rebel groups and host communities thus resent the lack of reinvestment of oil revenue into sustainable development. Ironically, in the past, such volatile situations have caused IOCs and host governments alike to allocate oil revenues for armaments and security instead of sustainable development. Despite the on-going violence and complaints in the delta region, SPDC actually budgeted less for population-pleasing community development projects in 2004 than previous years due to augmenting the allocation for security.¹³⁸ The costly violent and incessant conflicts have oil companies now rethinking their approaches to community development and conflict resolution. ChevronTexaco, the IOC that was the worst hit during ethnic violence in the Niger Delta in 2003 that killed more than 100 people, released a statement in May 2005 admitting that the aid it gives to oil-producing communities is "inadequate, expensive and divisive." The firm, which is still 30% short of its capacity before the 2003 strife, is said to be working on a new

¹³⁴ *Wiwa v. Royal Dutch Petroleum Co.*, 96 Civ. 8386(KMW), UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, 2002 U.S. Dist. LEXIS 3293, February 22, 2002, Decided, 28 February 2002, Filed.

¹³⁵ David R. Baker, "Chevron paid Nigerian troops after alleged killings; Villagers in lawsuit say 4 people died -- oil company questions if attacks took place," *The San Francisco Chronicle*, 4 August 2005.

¹³⁶ HRW, *op. cit.*, p. 7.

¹³⁷ *World Development Report 2000-2001*, *op. cit.*, p. 55.

¹³⁸ Shell Annual Report 2004, *op. cit.*

'global memorandum of understanding' focusing on a more equitable approach to sustainable development.¹³⁹ Royal Dutch/Shell likewise pledged in 2004 to try a new approach for handing out community aid, admitting that the non-transparent methods the company had employed in the past had exacerbated conflict in Nigeria.¹⁴⁰

Corporate behaviour causes local animosity, and IOCs are often the subject of protests and sabotage. According to a consultant report by Shell, more than 1000 people die every year due to violence arising from oil-related ethnic and political disputes in the Niger Delta alone.¹⁴¹ In addition, IOC infrastructure and facilities are also targeted. Incidences of sabotage include the unearthing of pipelines and the destruction of facilities. Hostages have also been taken, such as the almost one hundred hostages taken in April 2003 as part of a strike on rigs drilling on behalf of TotalFinElf and Royal/Dutch Shell in Nigeria.¹⁴² In addition, locals routinely hold organised protests. In 1993, Shell was forced out of the Ogoni region of Nigeria following a popular revolt under the auspices of the lobby group Movement for the Survival of the Ogoni People (Mosop), led by the late popular figure Ken Saro-Wiwa. Oil became the focus of an international boycott when Saro-Wiwa led thousands of Nigerians to protest the oil industry's impact on Nigeria's environment and culture. The late dictator Sani Abacha had Saro-Wiwa and seven other activists hanged for their temerity. Abacha, meanwhile, is accused of stealing some \$3 billion in state revenue during the five years he ruled Nigeria, money which that country's current government is now trying to extricate from Swiss banks.

¹³⁹ *Energy Compass*, "Divisive," Energy Intelligence Group, 6 May 2005.

¹⁴⁰ *Ibid.*

¹⁴¹ Tom Ashby, "Nigerian Oil Delta Rebels Say 'War' Starts Oct 1," *Reuters*, 27 Sep 2004.

¹⁴² BBC News, "Fears for Nigerian Hostages," 29 April 2003.

<http://news.bbc.co.uk/1/hi/world/africa/2983577.stm> [Accessed 16 May 2005].

CHAPTER VI

CORPORATE GRAFT VERSUS 'BEST' PRACTICES

The oil sector can, at times, seem to be a contradiction unto itself. While IOCs are bereft with scandal and controversy, these same companies actively develop programmes to benefit the host communities, ensure transparency, and better the image of the oil industry. The paradox can be staggering and confusing. The following two sections demonstrate how all the elements discussed in this paper compile into a confounding, intricate web of institutional and individual malice and corruption. It is easy to see how such scandals contribute to regional tension and underscore resource-based conflict. The subsequent sections illustrate how the international impetus for corporate social responsibility has, to some extent, modified IOC behaviour.

'Slush Funds'

Andre Tarallo, a former executive with the French state-owned oil giant, Elf Aquitaine¹⁴³, testified in July 2001 before French prosecutors that Elf Aquitaine had shaved pennies off every barrel of African oil since the 1970s to maintain secret slush funds in Liechtenstein and Switzerland for payouts to African leaders.¹⁴⁴ The beneficiaries included heads of state from Gabon, Congo-Brazzaville, Cameroon, Nigeria and Angola. Tarallo, former Elf President Loik Le Floch-Prigent, and Le Floch-Prigent's deputy, Alfred Sirven, were later found guilty of personally profiting from billions of francs in an Elf slush-fund which was set up to buy influence around the world in the early 1990s. Just one of numerous examples of how the money was laundered and used illegally was revealed during the trial testimony by Tarallo, who stated that Gabon President Omar Bongo used secret payments from Elf to insure himself against a fall from power. During the embezzlement trial in 2003, Andre Tarallo admitted: "President Bongo was asking himself at the time if he would hold on to power. He feared he might be purely and simply forced to leave the country . . . That was how the idea came to set up a kind of savings account in case of a mishap. And so the decision was taken by President Bongo to ask me to create as discreetly as possible accounts which I was to manage but which were his property."¹⁴⁵ The bank accounts were set up in Geneva through Elf subsidiaries Rivunion and Elf Trading.¹⁴⁶

For his part, Tarallo used the accounts to buy himself a villa on the Mediterranean island of Corsica and an apartment in Paris. Le Floch-Prigent also used company cash to buy luxury properties and received authorisation by French President Francois Mitterand to

¹⁴³ Elf Aquitaine merged with TotalFina to form TotalFinaElf in 2000.

¹⁴⁴ Julio Godoy, "Politics-France: Oil Firm Accused of Bribing African Officials," IPS-Inter Press Service, 22 November 2001.

¹⁴⁵ Andre Tarallo in "Gabon's Bongo Set up secret accounts: Elf's 'Mr Africa,'" *Agence France Presse*, 9 April 2003.

¹⁴⁶ Julio Godoy, "Politics-France: Oil Firm Accused of Bribing African Officials," IPS-Inter Press Service, 22 November 2001.

use Elf assets to fund a \$5.7 million USD divorce settlement. In addition, a court in Switzerland convicted three, two Swiss and one Greek national, for money laundering and forgery for helping stash millions in Swiss francs. In all, over 30 people were convicted in related trials.¹⁴⁷

Bribery: Cash and ‘Gifts’

Halliburton, a US company that is the world’s second largest oilfield services provider, faces investigation in the United States, France and Nigeria over its activities in West Africa. The investigation by French authorities into the alleged corrupt activities of Elf Aquitaine triggered off an investigation into Halliburton’s role in a Nigeria liquefied natural gas (LNG) project in the 1990s. The probe looked into who may have benefited from nearly \$200 million USD in commissions allegedly handed out from 1990 to 2002. Investigators alleged that the TSKJ consortium,¹⁴⁸ which is led by Halliburton's Kellogg Brown & Root unit, incorporated a subsidiary company called LNG services in Madeira, Portugal, through which illegal payments were allegedly made to companies and persons linked to the LNG project. The payouts included about \$150 million USD traced to accounts at the private banks UPB Geneva and HSBC Monaco, among others, held by Gibraltar-based consulting firm Tristar. Halliburton has gone so far as to admit that an internal probe has revealed that members of the TSKJ consortium may have considered paying bribes to obtain the contract.¹⁴⁹

This is not the only time Halliburton has admitted to wrong-doing in its deals in West Africa. In May 2003, Halliburton disclosed in a US federal filing that it paid a Nigerian tax official \$2.4 million USD in bribes to get favourable tax treatment. The incident went under review by the US Security and Exchange Commission, which will determine if Halliburton violated the US Foreign Corrupt Practices Act. The law, established in 1977 in the aftermath of Gulf Oil admitting in 1973 to paying over \$10 million USD in bribes to US and foreign politicians over several years, prohibits American companies from making bribes to win business abroad.¹⁵⁰ As a result of the incident, Halliburton fired several mid-management employees while continuing to stress none of its senior officers were involved.¹⁵¹

The financial stakes for an international oil company are enormous. ExxonMobil, for example, earned \$9.5 billion after taxes from extracting fossil fuels last year, four times what it netted from refining and chemicals.¹⁵² Oil companies go to great lengths to procure new fields because if the corporation loses its extraction business, it would be

¹⁴⁷ Pat Milton, “Swiss court convicts three in French oil corruption case,” *The America’s Intelligence Wire*, 8 October 2004.

¹⁴⁸ The TSKJ consortium, led by KBR, also includes Technip SA of France, a unit of Italy's ENI SpA and JGC Corp. of Japan.

¹⁴⁹ Johnathan Stempel, “Halliburton says Officials Spoke of Nigeria Bribes,” *Reuters*, 2 September 2004.

¹⁵⁰ Simon Romero, “Halliburton aims to deflect spotlight over bribe reports,” *The New York Times*, 14 June 2004.

¹⁵¹ Pierre-Antoine Souhard, “French judge looking into alleged corruption at consortium that includes Halliburton subsidiary,” *Associated Press Worldstream*, 10 October 2003.

¹⁵² Fisher, op. cit.

reduced to the slim profits earned from refining and the like. This is why oil companies are willing to court despotic rulers and unsavoury characters in these small, developing countries. In order to obtain the rights to the billion-barrel Doba field in southern Chad, ExxonMobil and its partners spent almost three decades courting the government of Chadian President Idriss Deby. Gifts for the \$3.5 billion USD project included six restored locomotives, a dozen bridges, 77,000 mosquito nets and a \$25 million USD payment to the government and president. President Deby reportedly spent \$4.5 million of that to buy arms for a war against northern rebels.¹⁵³ ExxonMobil, through its silence, becomes complicit in this arms deal.

Community Development Projects

One of the initiatives by the multinational oil companies to improve relations with the host community has been the implementation of community development projects. These projects include building schools, improving the communities' infrastructure and other elements of sustainable development. Some view community development projects very suspiciously. Community leaders have expressed that they believe the projects are not initiated to help the community, but rather as a pay-off to access land for extraction. In addition, the prevailing perception is that the projects serve as a mechanism for covert kickbacks to the privileged.¹⁵⁴

International oil companies have few incentives to funnel money back into sustainable development. From a fiscal standpoint, it is not necessary. However, the frequent protests in oil-producing regions result in numerous disruptions of oil operations. Thus, IOCs seek to placate host communities so that oil operations run as smoothly as possible. With the recent push for corporate social responsibility initiatives, however, companies have begun to understand that participating in community development programmes not only improves their relations with the indigenous populations, but improves the companies' image back home with consumers as well.

There are numerous examples of community development projects maintained by the IOCs, from the umbrella Shell Community Development Initiative set up by Royal Dutch/Shell in the Niger Delta, to ChevronTexaco's Rev. Leon H. Sullivan's International Foundation for Education and Self-Help, which provides basic job-training skills to locals in Nigeria and Angola. Throughout West Africa, multinational corporations have executed a number of community-based projects, such as the construction of schools, medical clinics and other community buildings, bringing potable water to the community, setting up scholarships for community students, and providing screening for hepatitis, HIV, and other infectious diseases. There is also growing acceptance of the concept of private/public partnerships to aid sustainable development. In November 2002, Chevron, the United Nations Development Program (UNDP), and the Government of Angola agreed to develop a framework to support small business growth

¹⁵³ Ibid.

¹⁵⁴ Global Witness, "All the Presidents' Men," op. cit., p. 44.

in Angola through a program that both the UNDP and ChevronTexaco would contribute to.¹⁵⁵

International Codes of Conduct

Codes of conduct promoting corporate social responsibility arose in response to reports detailing environmental, human rights, and labour abuses by foreign investors. Chevron, Shell, Texaco, U.S. company Occidental Petroleum and Norway's Statoil are all signatories to the Global Sullivan Codes, by which companies commit to “not offer, pay or accept bribes,” and to “[w]ork with governments and communities in which we do business to improve the quality of life in those communities – their educational, cultural, economic and social well-being – and seek to provide training and opportunities for workers from disadvantaged backgrounds.” This is based on the 1977 Sullivan Code which stood to regulate the practices of American business in South Africa. Due to the voluntary nature of this early code and others, however, the codes have been nearly impossible to enforce.

The potential for oil wealth to fund development in addition to the number of recent high profile scandals and court cases involving IOCs has encouraged many NGOs and other transparency advocates to lobby for more severe measures of reform specific to the extractive industry. The “Publish What You Pay” campaign is a coalition of 280 NGOs world-wide that calls for mandatory extractive industry transparency.¹⁵⁶ While the extractive industry recognises the need for greater transparency, the industry claims that mandatory transparency violates contract sanctity and state sovereignty.¹⁵⁷

One success of pressure from the NGO community is governmental recognition of the social and economic cost of extractive industries such as oil. The G8 first recognised the problem at the June 2003 Evian Summit with a statement on “Fighting Corruption and Improving Transparency.”¹⁵⁸ This led to the UK-led Extractive Industry Transparency Initiative (EITI).¹⁵⁹ At the EITI inaugural conference in London in June 2003, a consensus was reached among participating IOCs, national governments, and the Publish What You Pay coalition to “work together voluntarily to develop a framework to promote transparency of payments and revenues.”¹⁶⁰ Participants signed a “Statement of

¹⁵⁵ Ayesha Dias, “Oil and Human Rights: Environmental and Human Rights Impact of the ONG Industry,” *Oil, Gas and Energy Law Intelligence*, Volume I, Issue 2, March 2003.

¹⁵⁶ Publish What You Pay is a coalition of 280 NGOs worldwide and calls for the mandatory disclosure of the payments made by oil, gas and mining companies’ to all governments for the extraction of natural resources. It was founded by Global Witness, CAFOD, Oxfam, Save the Children UK, Transparency International UK and George Soros, Chairman of the Open Society Institute.
<http://www.publishwhatyoupay.org/english/>.

¹⁵⁷ Joseph Anthony Schumacher "Introducing Transparency into the Oil Industry. The Quest for EITI," *Global Jurist Advances*: 2004, Vol. 4, No. 3, Article 2. <http://www.bepress.com/gj/advances/vol4/iss3/art2>.

¹⁵⁸ Ibid.

¹⁵⁹ The EITI aims to ensure that the revenues from extractive industries contribute to sustainable development and poverty reduction. The initiative is headed by the UK Department for International Development (DFID). <http://www.eitransparency.org/>.

¹⁶⁰ Schumacher, op. cit., quoting “Extractive Industries Transparency Initiative, Statement of Principles and Agreed Actions, London Conference 2003.”

Principals and Agreed Actions” that called for certain pilot countries to use EITI principles as reporting guidelines.¹⁶¹ Azerbaijan, the Republic of Congo, Ghana, the Kyrgyz Republic, Nigeria, Peru, Sao Tomé e Príncipe, Timor Leste and Trinidad and Tobago were commended at the EITI London conference in March 2005 for making progress in this area.¹⁶²

Other corporate social responsibility initiatives aimed at the extractive industry include the US-UK Voluntary Principles on Human Rights and Security that aims to set a base for a global standard for the extractive industry and the UN Global Compact initiative on private sector activities in conflict zones.

Thus far, however, corporate social responsibility measures have continued to be voluntary. Programmes such as the US-UK Voluntary Principles on Human Rights and Security, the UN Global Compact and the Extractive Industry Transparency Initiative have required, in essence, no more than the signature of a top executive on a piece of paper. The initiatives have met mixed success. These agreements do not have the participation of the entire sector, nor even all the major players. Nor is there any enforcement mechanism in place, therefore there is little incentive for full compliance by those oil corporations that do sign. Some oil executives have admitted that the decision to adopt the Principles may have more to do with their public relations strategy than the companies’ good intentions.¹⁶³

The campaigns have garnered much attention from the major media outlets, thus bringing transparency to the forefront of oil industry corporate image retention initiatives. Corporate image retention might prove to be the impetus for changing the corrupt practices of the oil industry. The companies are very aware of the damage negative publicity brings to their reputation and their business in their home countries, and how that ultimately affects their profits - not only through the consumer’s product choice, but also in the desirability of their companies’ stock.

By no means, however, are oil companies eager to undertake initiatives that will ultimately decrease their profit margins. Industry executives generally echo the same sentiment across the board: They worry about competitors.¹⁶⁴ Oil companies do not want to partake in initiatives if their competitors do not, since that would give their competitors a clear advantage. In response to questions by the International Consortium of Investigative Journalists on whether his company followed a code of ethics, Ho Wang Kim, the Angola officer at Energy Africa, responded, "Let us be realistic. No oil

¹⁶¹ Joseph Anthony Schumacher "Introducing Transparency into the Oil Industry. The Quest for EITI," *Global Jurist Advances*: 2004, Vol. 4: No. 3, Article 2. <http://www.bepress.com/gj/advances/vol4/iss3/art2>.

¹⁶² "EITI London Conference 2005, 17 March – Statement of outcomes," available at: <http://www.eitransparency.org/docs/statementmarch172005.pdf> [Accessed 29 August 2005].

¹⁶³ International Peace Academy, "Options for Promoting Corporate Responsibility in Conflict Zones: Perspectives from the Private Sector." New York, IPA Meeting Report, 5 April 2002.

¹⁶⁴ *Ibid.*

company seeking ventures in Africa practices a noble and transparent code of ethics and principles [in order] to have a competitive edge over its competitors."¹⁶⁵

Some lobbyists have called for sanctions against oil-exporting countries with bad human rights records and/or the oil companies that do business with them. Oil companies insist their job is to pump oil and not get involved in the politics of the host countries. At an energy industry conference in 1996, present US Vice President Dick Cheney, then chairman of Halliburton Co., remarked that sanctions were the greatest threat to Halliburton and other American oil-related companies trying to expand overseas. According to Cheney: "We seem to be sanction-happy ... The problem is that the good Lord didn't see fit to always put oil and gas resources where there are democratic governments."¹⁶⁶ His remarks clearly indicate the reluctance of oil industry corporations to place corporate social responsibility over profits.

Auditors

One method of curtailing corruption allowed by the lack of financial transparency in the oil sector is to conduct regular and extensive audits. Even if an oil company has undergone audits, however, corruptive practices often mar the accountability of the process. For example in NNPC undergoes yearly audits, but final responsibility for maintaining the quality of the external audit is unclear.¹⁶⁷ In the case of Gabon, though the state has been pumping oil since the 1970s, an audit of its state oil industry institutions has never been conducted. In fact, the IOCs in Gabon only went through their first audit in March 2002.

Auditing came to the forefront of corruption investigations when Royal Dutch/Shell was forced to reclassify a whopping one-fifth of its "proved" reserves. Although the results of the final investigations showed clearly that the top management of Shell were aware of the inflated numbers, the revelations lead to questions from directors at Shell and general investors alike as to why Shell's auditing firms failed to point out that Shell's reserving guidelines did not comply with the United States' Securities and Exchange Commission (SEC) rules.¹⁶⁸ The auditors, which include PriceWaterhouseCoopers and KPMG, are quick to point out that although the final results for the group are signed off on; the auditor's role is limited to factoring information provided by company managers into the annual report and accounts.¹⁶⁹ Yet, the amount auditors were paid for their services (PwC and KPMG shared \$25 million in auditing fees, plus an extra \$35 million in extra, unspecified 'non-audit' services in 2002¹⁷⁰) raised more than a few investor eyebrows.

¹⁶⁵ Phillip van Niekerk and Laura Peterson, "Making a Killing: Greasing the Skids of Corruption," The Centre for Public Integrity, 4 November 2002.

¹⁶⁶ Ibid.

¹⁶⁷ CSR, op.cit., p. 26.

¹⁶⁸ "Sick and tired about lying," *The Economist*, 24 April 2004, Vol. 371, Issue 8372, p. 63.

¹⁶⁹ Paul Rogerson, "Auditors distance themselves from Shell reserves debacle, KPMG and PwC confident of escaping investor action," *The Herald* (Glasgow), 20 March 2004.

¹⁷⁰ Ibid.

Transnational Law

Multinational corporations involved in the oil industry also have an incentive to clean up their act due to recent court decisions finding IOCs, private banks, and other related firms guilty of being complicit in illegal dealings overseas. In recent years, activists have seen transnational legislation as a vehicle for bringing class action lawsuits against Western corporations partnering with foreign states. On behalf of either host communities or individuals, activists seek to win punitive damages for egregious human rights violations committed in the host country. The impetus for these cases is an obscure, 216-year-old US law known as the Alien Tort Claims Act, which grants non-US citizens access to US courts in cases involving international law infractions. Prosecutors argue that by operating with a foreign government that commits abuses against its people and not intervening, Western corporations and banks stand to be complicit in the human rights violations.¹⁷¹ About two dozen cases have been filed against major multinational corporations such as Royal Dutch/Shell, ChevronTexaco, and ExxonMobil on such charges.¹⁷² Examples include international banks aiding and abetting perpetrators by secreting their wealth or an IOC knowingly partnering with a government and their brutal security forces to provide security.

Business groups have long lobbied hard for the repeal of the Alien Tort Claims Act, and the administration of US President George W. Bush has intervened several times to ask courts to dismiss such cases.¹⁷³ Most often, cases are thrown out of US courts due to procedural matters such as *forum non conveniens*, which allows judges to dismiss cases if they think the case belongs in a different jurisdiction, or if the judge believes the case would negatively impact US foreign policy.¹⁷⁴ However, a landmark case in which oil giant Unocal agreed in spring of 2005 to pay a significant monetary settlement to Burmese villagers has set a strong legal precedent. The long-running lawsuit alleged that in its joint venture with the Burmese government, Unocal is responsible for the acts of torture, murder, rape and enslavement committed by government soldiers against Burmese villagers while they provided security for Unocal to build a gas pipeline.¹⁷⁵

The effects of the settlement could be far-ranging. In an article in *The Nation*, Elliot Schrage, a former senior vice president of global affairs at the Gap and a senior fellow at the Council on Foreign Relations, commented "It puts companies on notice that their relationships with foreign governments, and in particular with foreign militaries, can become the subject of judicial review in the United States."¹⁷⁶

Other legislation that has affected corporate behaviour overseas is the 1977 U.S. Foreign Corrupt Practices Act (FCPA), which outlawed payments to foreign officials for the purpose of obtaining or keeping business by US companies. The law was enacted after

¹⁷¹ John Harker, "Intervention Is Served: The US Federal Alien Torts Claims Act and the Irony of Ironies." *Cambridge Review of International Affairs*, April 2003, Vol. 16 Issue 1, p. 155.

¹⁷² Daphne Eviatar, "A Big Win for Human Rights." *The Nation*, 9 May 2005, Vol. 280 Issue 18, p. 20-22.

¹⁷³ Ibid.

¹⁷⁴ Harker, op. cit.

¹⁷⁵ Daphne Eviatar, "Profits at Gunpoint." *The Nation*, June 30, 2003, Vol. 276 Issue 25, p. 16-20.

¹⁷⁶ Daphne Eviatar, 9 May 2005, op. cit.

an US Securities and Exchange Commission (SEC) investigation led to over 400 companies admitting to making questionable illegal payments in other countries. The FCPA then provided the motivation, and the model, for the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, giving a global reach to the enforcement of such practices. As of September 2005, 36 member and non-member countries had ratified the Convention.¹⁷⁷

The SEC has operated under the auspices of the FCPA to investigate many IOCs operating in Africa. After a U.S. Senate report released in July 2004 revealed the dubious activities of companies operating in Equatorial Guinea, SEC began investigations of the three companies with the largest presence in the country, Exxon Mobil, Amerada Hess and Marathon Oil, as well as smaller operations.¹⁷⁸ The Senate report, which described arrangements between Riggs Bank of Washington, DC, the government of Equatorial Guinea, and the oil firms operating there, said the companies' actions raised "concerns related to corruption and profiteering."¹⁷⁹

The Interstate Model of Corporate Conflict Prevention

Corporations have enjoyed a certain amount of success in mitigating potentially explosive interstate border disputes in the ECOWAS sub-region when oil reserves are suspected to exist in the disputed territory.

Corporations are in a unique position to use their influence to mitigate conflicts over disputed territory, and the tactics used in these situations could perhaps be transferred for use with intrastate rent-seeking parties. In border disputes, the countries involved will most likely be rent-seeking and eager to benefit from the possible discovery of oil reserves. Countries act in the same manner as rent-seekers within state lines. Corporations can provide the impetus to negotiate a compromise in both cases: IOCs represent a neutral third party that would administrate the area while profits would accrue to both governments. Corporations present the possibility for a win-win situation. One example of a successfully mitigated border dispute relates to the territory in contention between the governments of Sao Tome and Principe and Nigeria. The two governments have agreed to exploit petroleum reserves jointly in a once-disputed offshore region. The Joint Development Zone (JDZ) is overseen by a joint commission, the Joint Development Authority. The Environment Remediation Holding Corporation (now ERHC Energy, Inc.) has signed Memorandas of Understandings (MoUs) with Sao Tome and Principe and the JDA settling all outside disputes. Thus, third parties mollified the apprehension and tension of Sao Tome and Principe and Nigeria by taking away the possibility that one of the countries would try to cheat the other out of some of its oil revenue.¹⁸⁰

¹⁷⁷ OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Ratification Status <http://www.oecd.org/dataoecd/59/13/1898632.pdf> [Accessed 27 September 2005].

¹⁷⁸ David Ivanovich, "Corrupt influence by Big Oil alleged," *Houston Chronicle*, 15 July 2004.

¹⁷⁹ Justin Blum, *op. cit.*

¹⁸⁰ EHCR Energy, Inc., <http://www.erhc.com/> [Accessed 29 April 2005].

In contrast, in October 2002 the International Court of Justice (ICJ) awarded the disputed Bakassi peninsula to Cameroon. Both Cameroon and Nigeria had claimed the Bakassi peninsula, a 1,000-square-kilometer area located in the Gulf of Guinea that is believed to contain significant reserves of oil. The territory was due to be ceded to Cameroon by September 15, 2004. Both Nigeria and Cameroon began to pull back troops from the disputed areas, but popular opposition to the handover to Cameroon among Nigerians on the Bakassi peninsula is strong, according to local leaders.¹⁸¹ The ICJ's ruling did not provide the stability that the corporate agreement between Sao Tome and Principe and Nigeria provided. The Court's ruling accrued all benefits of Bakassi to Cameroon, leaving Nigerians displaced and feeling cheated and bitter – two sentiments that can lead to conflict. Although the ICJ is often looked at by the international community as one of the fairest methods for mitigating disputes, in this case corporate negotiations might have obtained a more peaceful outcome.

Other border disputes have arisen or have recently intensified due to the discovery of oil reserves. Gabon and Equatorial Guinea both claim sovereignty over the islet of Mbagne (Mbanie), which gained strategic importance with the discovery of oil in the 1990s in Equatorial Guinea's territorial waters. In March 2003, Equatorial Guinea suddenly denounced the presence of the Gabonese troops that had been stationed there as "illegal occupation."¹⁸² At a summit in July 2004, Equatorial Guinean President Teodoro Obiang Nguema Mbasogo and Gabonese President Omar Bongo pledged before UN Secretary-General Kofi Annan to hold negotiations on a joint development zone and strike a deal over territorial waters around Mbagne so that potential reserves could be exploited. While both parties seem to be amenable and working towards a JDZ agreement, less than a month later Equatorial Guinea's foreign minister announced that his country planned to send soldiers to the island until the dispute was settled. No troops were sent, but tensions still fester and no deal has been reached.¹⁸³

¹⁸¹ EIA Country Analysis Brief: Nigeria, op. cit.

¹⁸² Pierre Ausseil, "Gabon 'astonished' by Equatorial Guinea's illegal occupation charge," *Agence France Presse*, 15 March 2003, op. cit.

¹⁸³ Antoine Lawson, "Gabon and Equatorial Guinea to end row," 25 January 2005. http://www.iol.co.za/index.php?set_id=1&click_id=68&art_id=qw110640510099B215 [Accessed 05 March 2005].

CHAPTER VII

CONCLUSION

Oil profits are a potentially a positive component of development and poverty reduction strategies. Yet pervasive corruption, oil-related conflict, and the destabilizing nature of oil production has rendered oil producing countries often worse off than those without this strategic natural resource. Militias, local protests and security force responses, together with oil bunkering and other criminal activity continue to threaten the stability of oil-producing nations.

ECOWAS countries are bound by the *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security*. However, those countries that produce oil, or for whom oil exploration and production is new territory, will find a great challenge in navigating the complexities of the extractive sector while keeping with the general Principles laid out in the Article 2 of the *Protocol*.¹⁸⁴ While the *Protocol* specifically mentions *shared* resources as a source of *inter-state* warfare, it does not cite *national* resources as a catalyst for *intra-state* conflict. However, in the 2001 supplementary protocol on *Democracy and Good Governance*, member states further undertake to "... fight corruption and manage their national resources in a transparent manner, ensuring that they are equitably distributed. In this regard, Member States and the Executive Secretariat undertake to establish appropriate mechanisms to address issues of corruption within the Member States at the Community level."¹⁸⁵

Despite these 'on-paper' commitments, there are clearly limits to what ECOWAS, as a sub-regional economic community, can do towards establishing and enforcing standards of accountability. Although both the 1999 *Protocol* and subsequent supplementary protocol on *Democracy and Good Governance* lay out objectives for transparency and combating corruption, ECOWAS can only be as strong as the collective will and individual capacities of its member states. However, the greatest challenges lie in the Community's most powerful and richest member state – the region's number one oil

¹⁸⁴ Article 2: Principles [of the *Protocol*] states: Member States reaffirm their commitment to the principles contained in the Charters of the United Nations Organisation (UNO) and the Organisation of African Unity (OAU) and to the Universal Declaration of Human Rights, as well as to the African Charter on Human and People's Rights, particularly the following fundamental principles: a) that economic and social development and the security of peoples and States are inextricably linked; b) promotion and reinforcement of the free movement of persons, the right of residence and establishment which contribute to the reinforcement of good neighbourliness; c) promotion and consolidation of a democratic government as well as democratic institutions in each Member State; d) protection of fundamental human rights and freedoms and the rules of international humanitarian laws; e) equality of sovereign States; f) territorial integrity and political independence of Member States. (Economic Community of West African States, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security*, December 1999).

¹⁸⁵ Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, ECOWAS Secretary, Dakar, December 2001.

producer, Nigeria. As Africa's top oil producer and most populous state, Nigeria is central to the debate about strategies for the effective, transparent use of oil revenues to fund development. Nigeria's government has, to its credit, made efforts to create a comprehensive anti-corruption strategy, which would include elements such as a proposed five-year retrospective audit of its oil industry,¹⁸⁶ and last year Nigeria was one of four African countries to sign up for the EITI. Progress has been slow, however. Despite President Obasanjo's 1999 and 2003 campaign promises to end pervasive corruption, not one senior government official has been convicted on corruption-related charges, although some have been fired or have resigned. Some of these officials have even used a constitutional clause which makes elected officials immune to corruption charges as part of their defence.¹⁸⁷

If there are limits to what individual member states and the ECOWAS Secretariat can accomplish, does a major part of the solution lie in modifying corporate behaviour? Further, can corporate behaviour mitigate internal conflicts in resource-rich countries?

The answer to these questions is "yes" – corporations can not only provide the impetus for change in the oil sector, but have the positive leverage with their partner governments to enforce compliance. Corporations should comply with initiatives like the EITI, US-UK Voluntary Principles, and the UN Global Compact and, more importantly, stand by these principles when interacting with host countries – as BP did with the government of Angola. Once measured change occurs in the IOCs, changes will also have to be made by host governments and their security forces.

There are many challenges facing those IOCs that seek to act in accordance with corporate social responsibility (CSR) principles. Mainly, IOCs cannot succumb to the lure of corruption, or allow their contracting partners to do so. As mentioned, IOCs are keenly aware that complying with such principles put their company at a competitive disadvantage to other companies that ignore CSR. For CSR to be effective, principles and guidelines must therefore be adopted industry-wide, with adequate provision made for viable monitoring and enforcement measures.

Such a compact would be difficult to achieve, and would require extensive cooperation between the countries that host the IOCs, the host communities, and the UN. The key to success lies in enforcement, which is where the current UN Global Compact fails. The challenge of ensuring compliance by the IOCs lies in the fact that they do not stand to gain much economic benefit from a real commitment to CSR and conflict prevention. It has already been shown that despite war, the forced closing of oil rigs due to protests, and other disruptive factors, overall IOC production has not really been affected. The impetus for compliance would therefore have to come from increasing attention to the debate 'back home' on human rights and whether or not corporations should have a 'social license to operate' among indigenous communities and in conflict zones.

¹⁸⁶ Dino Mahtani, "Hopes pinned on offshore development," *Financial Times*, 26 April 2005

¹⁸⁷ BBC News, "Nigerians wary of corruption crackdown," 2 May 2005
<http://news.bbc.co.uk/1/hi/world/africa/4497915.stm> [Accessed 17 October 2005]

Many of the major oil companies are already very aware of the corporate image battle being waged at home, and they are also aware that current trends in transnational law could result in countless, and potentially enormous payouts if the IOCs continue to look the other way to human rights violations committed by partnering governments.

From an ECOWAS perspective, it should be apparent that tension in host countries will be present as long as the indigenous people continue to resent the negative influence that oil companies have on their standard of living; observe the pollution of their land, air, and water; witness the lifestyles and actions of rich and corrupt officials; and suffer attacks or acts of oppression by security forces. IOCs can take many steps to mitigate these factors. For example, they can insist on transparency in their dealings with the government; add clauses to their agreements with security forces detailing regulations on the use of force and specifying that individuals and commanders must have clean human rights records; enforce the compliance of company personnel with corporate social responsibility guidelines; and conduct training on CSR for all personnel.

These objectives are not achievable if ECOWAS works alone and in isolation from other key stakeholders. Rather, ECOWAS should become active in global initiatives to ensure compliance from its member countries as well as the IOCs. With twelve ECOWAS countries lying in potentially oil-rich areas, ECOWAS must be vigilant to the fact that the majority of its member states are at risk of experiencing the types of intra-state conflict and civil strife that have plagued other oil-producing states. The issue of oil production and corporate and state responsibility clearly belongs on the ECOWAS conflict prevention agenda.

The relevant elements of the Conflict Prevention Mechanism, including the Executive Secretariat, should strive to achieve a balance between the aims and interests of NGOs, the international community, governments, indigenous communities, the IOCs and private sector contractors. This is admittedly easier said than done, but for West Africans to benefit economically from extractive activities on their soil there must be a collective responsibility for that outcome, to be addressed as a regional priority, if future conflicts are to be avoided.



The Kofi Annan International Peacekeeping Training Centre is a Ghanaian-led institution, which is supported by the international community through the provision of staff and specifically focussed financial assistance. It operates on behalf of the Economic Community of West African States (ECOWAS) to provide Operational Level training for personnel involved in global, regional and sub-regional Peace Support Operations. The Centre offers regional and international participants the opportunity to examine specific peace operations issues at the operational level and to update and share their knowledge of the latest practices through training courses, conferences, and presentation and publishing of research findings.

© 2005, Kofi Annan International Peacekeeping Training Centre

Copyright in this paper as a whole is vested in the Kofi Annan International Peacekeeping Training Centre, and no part may be reproduced in whole or in part without the express permission, in writing, of both the author and the KAIPTC.

The opinions expressed in this publication do not necessarily reflect those of the Kofi Annan Centre, its Apex Management Board, or donors. Authors contribute to KAIPTC publications in their individual capacity.

First published by the Kofi Annan International Peacekeeping Training Centre, PMB CT 210, Cantonments, Accra, Ghana