



The Economics Of Crime: Nigerian Perspectives In Oil Theft

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ABSTRACT

Explanation of crime from economic perspectives in Nigerian legal parlance is not always welcomed and encouraged because of the dominant legal philosophy in the common law criminal justice system that there is no legal defence to crime on the basis of economic considerations, adversities and constraints. For the Nigerian legal practitioner therefore, economic theories of crime are susceptible to disdain and are viewed with circumspect if not contempt. Viewed mainly as a socio-economic crime, this paper attempts to advance the various legal theories on the literature of economics of crime template applicable to the explanation of the phenomenon of oil theft and illegal refineries in the Niger Delta region of Nigeria. It employs the doctrinal research method relying mainly on secondary materials in data collection, presentation and analysis. In the course of the presentation, the paper views the major critical trends in the resource curse thesis globally and submits that economic deprivation theories remain not only potent and dominant in the discourse community of resource curse but intersect with a number of other critical conflict theories like Marxism on oil crime. They all posit that oil theft and illegal refining are predicated on a fundamental and systematic disregard for the human rights and economic survival of the ethnic communities of the Niger Delta and inequalities in resource allocation and control. This has been reinforced not only by lack of infrastructural and human capital development of the region and the negative scorecard of the multinational oil companies in corporate social responsibility and governance but the palpable resentments that these negative influences have had on the ethnic minority communities leading to a surging growth in militant ganglands in the region which consider oil theft and illegal refineries as legitimate economic activities. It is thus recommended that one of the ways out of the scourge is economic participation and inclusion of the ethnic minority communities in the enclave industry through wider liberalization of the sector.

Keywords: oil theft, illegal refineries, criminal justice system

INTRODUCTION

A theoretical issue involved in the debate of oil theft and illegal refineries is that the crime is a matter of the activity of young (males) in the delta considered by the state and the industry to be militants driven by greed rather than grievance. The militants on the other hand have exposed the underbelly of the lack of socio-economic and infrastructural development of the region and the economic exclusion which the state's monopoly of control of the industry exposes the traditional and indigenous population to sometimes becoming coterminous with human rights abuse or denial of rights to economic survival, initiative and human security. The desire of the indigenous people therefore to be involved in an economy which they are systematically excluded from by the nature of the monopolistic economic relations established by the state and the multinationals throws up not only the theory of resource curse but the theory of causation of the crime of oil theft and illegal refineries. There is little doubt and debate that oil theft and illegal refineries are economic crimes in the neighbourhood of oil vandalism, oil and gas sabotage, oil company workers kidnapping, new face of oil terrorism and illegal oil bunkering.

Participation and exclusion thesis

The thesis has gained established ground in legal philosophy of economic crime by the works of legal theorists of the likes of Ehrlich Isaac that the economic model of crime is a standard model of decision making where individuals choose between illegal and legal activities on the basis of the expected utility from the criminal activities.¹ This legal philosophical persuasion assumes that participation in criminal activities is the ‘result of an optimizing individual responding to incentives’. In other words, the cost benefit analysis of crime is focused to the effect that ‘among the factors that influence an individual’s decision to commit an offence is the economic benefit’ vis-à-vis the remoteness of sanction and sentencing or repercussion. An individual’s participation in the crime of oil theft and illegal refining is explained by the opportunity cost of legal activity (for instance earnings from legitimate work of inclusion in the industry).²

It is this perspective of exclusion which reinforces the rational choice theory of Cornish and Clarke³ that sees crime as a choice made based on the weighting of costs, benefits and opportunities, and that the branding of the activities as ‘illegal and sabotage’ becomes for militants and some ex-state actors, an anathema and rather a denial of inclusion as a ‘local expertise’. It is also from this perspective that the theorists of inclusion call for regularization, licensing and decriminalization. In other words, for the pro-oil theft and refining philosophy, the factors that influence the return of militants to the trenches in the creeks of the Niger Delta in the renewed form of oil theft and refining rather than hostage taking and violence as in the pre-amnesty deal days are detection, severity of punishment and preference for participation in the ‘enclave’ economy.

Criminal activity in the nature of oil theft and refining is similar to normal or regular sector paid employment in that it requires time and produces an income. Additionally, the level of neglect of the environment and the human capital of the region produces or gives rise to ‘poor legitimate labour market opportunities of potential criminals’, such as low wages and high rates of unemployment, which further increases the supply of young males to oil criminal activities.⁴ It is in these ways, that oil theft and artisanal refineries cause ripples in the national economy.

Strands in conflict mineral theories

Yet, this seemingly mortal war between the indigenous population and communities of militant delta involved in oil theft and illegal refining on the one hand and the state and the multinationals on the other hand and the debate of differences of opinion between pro-illegal refining and anti-illegal refining in Nigeria seem to be on all fours with a number of strands in the theories of conflict minerals.

One of the strands in the thesis is that these minerals sustain inhuman activities, practices and abuse of power by the state and multinationals because they are cultivated using inhuman labour practices that entrenches exclusion and monopoly. The inhuman practices continue, according well founded research studies in *conflict minerals literature* in the Congo basin region and elsewhere, because the states that institute the practices often consist of or are controlled by highly corrupt military regimes or groups who have everything to gain by having more minerals mined and looted abroad without a consideration of the wellbeing of the local environment and human capital; and conflict minerals are one of the essential tools used by such regimes or rogue states to consolidate themselves in power.⁵

¹ Net Industries and its Licensors (2013), *Crime causation: Economic theories – Economic model of criminal behaviour: Basic theory, extension of the basic model, a brief sketch of the empirical evidence on the supply of crime.* <http://law.jrank.org/pages/802/crime>.

² Id.

³ *Economic theories of crime*, www.justice-studies.com/JS118-cho4PPT-PDF.pdf. Retrieved November 11, 2013.

⁴ Net Industries and its Licensors (2013), *Crime causation: Economic theories – Economic model of criminal behaviour: Basic theory, extension of the basic model, a brief sketch of the empirical evidence on the supply of crime.* <http://law.jrank.org/pages/802/crime>.

⁵ *Conflict minerals natural resources as weapons.* <http://conflictminerals.wordpress.com>. See also Conflict-minerals-curriculum-3.pdf.

A second strand in the thesis is founded on the collusion that exists between the state and the multinationals in what is, in ideological circles and literature, called the neo-capitalist war of interests of western colonialism. Conflict minerals at any rate are more easily appropriable by force and are associated with shorter wars and are wars more likely to end with military victories for one side than other wars as in the bombing and destruction of over 6,000 illegal refineries in the Niger Delta within a very short space of time and the on-going criminal prosecutions of both national and international accused persons connected and suspected to be involved in the crime and criminal conspiracy of oil theft and illegal refining in Nigeria. These, according to studies, are consistent with evidence that external factors and actors in the home states and economies of the multinationals have incentives to work round the clock to bring wars to a bail when natural resources supplies are threatened.⁶

The third strand of the thesis is in the nature of the elimination and extinction of the phenomenon of oil theft and illegal refining by the state and multinationals without considering the incipient local technological outcrop of the phenomenon of illegal oil refining and access to the resource by indigenous communities and militants in the guise of illegal refiners. The military disposition of the state and the industry to the phenomenon exemplifies the degree to which it is unwanted and the 'mortal-enemy appearance' of the phenomenon on the national legal stage. The prescription of military solution to reduce the flow of resources to militant groups or the informal parallel alternative economy seems intuitive to the state and the industry. Removing the ability of the indigenous communities to develop an alternative economy to the mainstream Nigerian oil prone monopoly economy in order to be in a position of strength to fund conflict in the Niger delta and thereby reduce conflict addresses a part of the greed motivated aspect of resource curse.⁷

Sub-cultural, relational-vengeance theories

Furthermore, it even goes beyond these strands of the conflict mineral theories to ecological, regional sub-cultural and the relational-vengeance theories. As a region, the Niger Delta and its people are seen in ecological terms as the land that follows with milk and honey, the goose that lays the golden egg and where wealth underground is in all measures, out of proportion with the poverty on the surface. And what the people get from it in return is hunger, joblessness, hopelessness and economic deprivation in a 'we and them' cultural and situational analyses.

Thus, although 'their region' has contributed immensely to the tune of 90% to the revenue of the state, 'they' have hardly benefited from it in the words of Adam Nossiter.⁸ In this 'them Vs us' descriptive analysis, El-Rufai⁹ explains that 'our people have been successfully divided by our elites along ethnic, religious and regional lines'. This chasm has become so deep seethed that it is impossible to have any meaningful discussion without the intervention of these 'evil sub-cultural lens'; and the scariest is that the division and bigotry has permeated more intensely, the youth militants ensuring a bleak, divisive and violent future with the state stoking its fire to remain in control. In an atmosphere of under-education, anger, poverty and bigotry, the youth militants, oil thieves and illegal refiners are indoctrinated by the systemic, corrupt state to believe that cutting corners is the roadmap to success.

In human ecological terms, what 'they' seem to offer the world in technological terms of 'their' interrelationship with the physical environment or in terms of the technology of illegal refining is being bombed and branded by 'us' (the state and multinationals) as illegal.¹⁰ The socio-economic conditions for oil theft and illegal refining are anchored on the human needs theory of social conflicts. Its central thesis is that all humans have basic needs which they seek to fulfill and failure caused by other individuals or groups (in this case, the Nigerian state and the multinationals) to meet these needs could lead to conflict, sabotage, theft and illegal refining.

⁶ Macartan Humphreys, *Natural resources, conflict, and conflict resolution*. www.jstor.org/discover. Jstor: The Journal of Conflict Resolution, Vol. 49, No.4 August, 2005.

⁷ TermPaper- Example 1.pdf, *Conflict minerals: The resource curse and implications in the DRC (Democratic Republic of Congo)*. www.jstor.org/discover. 30 April, 2012.

⁸ Adam Nossiter, *Far from Gulf, a spill scourge 5 decades old*. www.globalpolicy.org. June 16, 2010.

⁹ Nasir Ahmad El-Rufai, *Impunity, injustice and insecurity: What is the role of law?* <http://premiumtimesng.com>. May 23, 2013.

¹⁰ Alozieuwa, S.H.O., *Contending theories on Nigeria's security challenge in the era of Boko Haram insurgency*. The Peace and Conflict Review Vol. 7 No. 1. www.review.upace.org. Retrieved November 11, 2013. See also, Ibaba S. Ibaba and Okolo Philips O., *Resolving militia conflicts in the Niger Delta: The role and strategies of mediation*. www.webpages.uidahc. Retrieved on December 10, 2013.

The bottom line is that conflict by nature is inherent in every society no matter the level of development it has achieved and therefore cannot simply be wished away by the invisible hand of God. Their causes and effects according to Akpobibibo Onduku, are always many and varied; their histories more complex than can be easily understood; their solutions more challenging than can be imagined. But basically conflict is driven by unfulfilled human needs of the people in terms of autonomy, sense of justice, rights to inclusion and participation and are collective in character and provoked as in the delta by state and corporate neglect, persecution and denial of indigenous rights.¹¹

Human needs, frustration-aggression theories

The human needs theory is also related to the frustration-aggression theory. Both are strands in the mainstream economic theory of crime of oil theft. Jointly popularized by Dollard John, Doob Leonard, Miller Neal, O. H. Mowrer, and Sears Robert in their seminal work, *Frustration and Aggression* (1939),¹² its orientation is psychological and Alozieuwa, S.H.O., *Contending theories on Nigeria's security challenge in the era of Boko Haram insurgency*. The Peace and Conflict Review Vol. 7 No. 1. www.review.upeace.org. Retrieved November 11, 2013. See also, Ibaba S. Ibaba and Okolo Philips O., *Resolving militia conflicts in the Niger Delta: The role and strategies of mediation*. www.webpages.uidahc. Retrieved on December 10, 2013.its basic postulation is that aggression is always a consequence of frustration.¹³ According to this school of thought, relative deprivation is a perceived disparity between value expectation and value capabilities and the lack of a need satisfaction (defined as a gap between aspiration and achievement generally) relies on the psychological state of frustration and aggressive attitudes emanating from it.

Obaudu¹⁴ argues for instance that the frustrated people and groups in the delta resort to oil theft as a form of breach to socially accepted norms and exhibit the deviant behaviour of theft after making vociferous demands and threats on the state and corporations to no avail and do ultimately condescend to violent destruction of lives and properties. Again, the Nigerian's socio-economic indexes with special reference to the Niger Delta validate the assumption of the human needs and frustration-aggression theories. *The Human Development Index Trend* (HDIT) ranks Nigeria 156 out of 186 countries in 2011. The root causes are youth unemployment, poverty, low standard of living etc explaining aptly the situation in the delta where the theft of oil is directed towards the state and the multinationals.¹⁵ The frustration arising from the forceful approach of the state and the oil multinationals in bringing the delta communities to submission underlies and informs their quest for self-determination and autonomy in resource control or the right to inclusion and participation even if it is being pursued from the wrong end of the legal rod.

The basis of the exclusion is the state's promulgation of the 'trinity decrees' and petroleum industry bill all aimed at stripping the delta communities of any rights to land and resources and yet, the corporate organizations in tandem with the capitalist philosophy of 'profit, nothing more' have not accommodated the communities; rather, they have gained unrestrained access to the lands and the resources of the communities due to weak institutions and governance.¹⁶

Roy McMurtry, Alvin Curling, Scot Wortley and Randy Seepersad, et al, have in their famous Ontario *Review of the roots of youth violence*¹⁷ postulated that the link between economic conditions and crime has been explored by a wide range of theories. In economic theory of crime, poverty and unemployment is a necessary condition while inequality serves to further exacerbate the situation.

¹¹ Akpobibibo Onduku, *Environmental conflicts: The case of the Niger Delta*. Department of Peace Studies University of Bradford, United Kingdom. www.waado.org. November 22, 2001.

¹² Dougherty, E.J. and Pfaltzgrate Jr., L.R., *Contending theories of international relations: A comprehensive survey*, 2nd Ed., (New York: Harper & Row Publishers, 1990) p. 266. See also, Odaudu Daniel, *The Minister: Military and development in the Niger Delta region of Nigeria*. <http://www.joelistik.blogspot.com>. August 21, 2012.

¹³ Odaudu Daniel, Id.

¹⁴ Alozieuwa, S.H.O., Loc. Cit.

¹⁵ Ojajorotu Victor, *Militancy and oil violence in the Niger Delta*. Journal of Energy Security. www.ensec.org. August 27, 2009.

¹⁶ Id.

¹⁷ Roy McMurtry, Alvin Curling, Scot Wortley, Randy Seepersad, et al, *Review of the roots of youth violence: literature reviews*. Vol. 5 Chapter 5: Economic deprivation. www.children.gov.on.ca/ Retrieved on November 11, 2013.

Relative deprivation and social exclusion theories are all based on comparative analyses and they focus on the recognition of one's inequality and subsequent feelings of resentment and frustration arising from the denial of some people, the rights and opportunities that are afforded to others in their society.

Furthermore, the availability of oil and gas at competitive prices often find itself in countries of the global south where the capacity and willingness of the state in protecting its citizens against the damaging impact of the business is lacking.¹⁸ In states like Nigeria, according to Chris Hajzler,¹⁹ where there are absence or weak laws that govern methods of oil drilling and shipment, oil companies have persistently threatened the subsistence and livelihood of a vast number of local communities. The Nigerian state has been indicted for being largely irresponsible to these rights violation leaving these communities in the lurch and up to themselves with limited resources, technical, financial and otherwise, to cope and defend themselves before the state-controlled justice administration system. In a state-corporate oil complex as revisited by Noam Chomsky²⁰ in *The State-corporate complex: A threat to freedom and survival*, one continuity from Adam Smith to Karl Marx still remains that the masters of mankind who control the economic levers of the state also tend to have overwhelming influence over state policy and law; and today, the masters of mankind are multinationals and the elementary lesson still applies that state-corporate oil complex 'is indeed a threat to freedom and in fact even survival'. The masters of mankind insure that state law and policy serve their interest however grievous the effect of the law and policy on others both at home and overseas.

Marxism on oil crime

Economic deprivation theories intersect with a number of other critical conflict theories like Marxism on oil crime. Although, Marx and Engel did not specifically address crime because it is a super structural issue, Willem Bongers,²¹ a Marxist criminologist, applied their economic and philosophical views to the issue of crime. And the crimes of oil theft and illegal refining are no exceptions. Firstly, what constitutes crime varies from one society to another depending on the existing notions of morality and the economic mode of production. Capitalist mode and morality are different from socialist morality and economic mode of production. Marxists identify the root of social problems like oil theft and illegal refining as capitalism and the inequalities it breeds in relation to access to the means of production and necessities of life. Inequality may lead to violence because it reduces self-esteem and fosters the development of negative self-image which in turn may lead to crime. For oil thieves and refiners, poverty and conflict are endemic in the creeks and the condition of poverty, unemployment in the mist of plenty expresses itself in the 'desperate effort to make things happen, to assert control' which results in illegality or 'taking laws into ones hands'.

The bottom line is that a petro-state is one in which oil has a dominant role to play in its national economy and one of the special properties of oil income is the ease with which it is harnessed and controlled by the central petro-state which plays god in the global south; and radical and critical criminology of the Marxist perspective considers that certain types of crime like oil theft take a different character. Oil theft can be seen as an attempt to take away or snatch from the rich but corrupt petro-state or the state-corporate oil complex what Eric Hobsbawm²² characterizes as 'social banditry'. This genre of banditry which is a protest-related violence may actually kick-start proto-revolutionary movements in the creeks of the delta which may ultimately lead to 'overthrowish' social change.

¹⁸ Claske Dijkema and Karine Gatelier, *A changing power equilibrium between actors: State, private sector and civil society?* www.allfreeessays.com. July 28, 2008.

¹⁹ Chris Hajzler, *Nigerian oil economy: Development or dependence*. www.arts.vsask.ca/economics/skjournals/sej-rd/ Retrieved on November, 2013.

²⁰ Noam Chomsky, *The State-corporate complex: A threat to freedom and survival*. www.chomsky.info/talks/20110407.htm. April 7, 2011.

²² *Conflict Theory*. <http://www.studymode.com/essays>. November, 2009.

Marxist legal philosophy endorses as a reaction to the status quo of the inequality in the current state-corporate complex, a violent revolutionary overthrow of the state which in itself is treasonable in the present legal configuration of the Nigerian bourgeois petro-state. The activities of oil thieves and illegal refiners are not far from the pursuit of the economic destabilization of the Nigerian state and the reaction of the Nigerian state is no less than a realization of the fact that oil theft and illegal refining are mortal enemies far beyond the criminal conceptualization of same. Economic sabotage is a great weapon of revolution and war but what is developing in the creeks appears to be taking a dimension of acquiring a way of life of its own to the extent of appealing for condo-nation and recognition as an incipient alternative economy. It is to the extent that this incipient economy is developing though from the womb of criminality that this research project appears to acquire one of its strongest appeals.

The question is whether there is a local technology developed and involved in the process of local refining in the creeks. If there is a technology developed in the process which is alleged by the state-corporate complex to be 'very crude' and a degrader of the environment can the technology be subjected to rational-scientific study and improvement? If the technology can be improved upon then, are there no ways the technology can be extricated from the garb and image of crime of theft and illegality? It is this ideology and process of extricating the baby from the bathwater (that is extricating the technology from the illegality) that drives the advocacy of this dissertation. This is because the criminal opportunity theorists²³ argue that criminal motivation alone is not sufficient to cause crime. In addition to motivation, the thieves and refiners in the creek of the delta require the opportunity to pursue the inclination to steal oil and refine it illegally.

Three such critical opportunities have been highlighted by Rosie Collington.²⁴ Firstly, although the delta has been heavily developed by enclave foreign oil companies maximizing production and profit, unemployment rates among the indigenous population has remained high leading in part and largely to the formation of militant gangs that run the illegal oil refineries tapping predominantly on the multinationals' main trunk pipelines as an option or opportunity to earn money and make a living that is fast developing into a full-fledged alternative economy. Secondly, resentment of the indigenous population against the state and the multinationals has built up to the hilt. In 2008 for example, the 50 year old Trans Niger Trunk line was twice burst by the militants within a few months and over 11,000 indigenous people of Bodo community consequently lost their livelihoods. Although the community sued Shell for the catastrophe, Shell, which has a market capitalization of 141 billion pounds, only offered 1,100 pounds per person an equivalent of two to three years net lost earnings: creating a cauldron of boiling resentment against Shell in the indigenous communities.

Thirdly is the resentment of the indigenous communities against the corrupt state. For instance the quality control measures adopted by the state in oil trade is un-reassuring such that the Minister of Trade and Investment admitted to the Presidency that 24 million barrels of oil worth N252 billion was stolen between July and September, 2012 and that his signature was 'forged' on the export clearance permit used to export the crude oil from Nigeria.²⁵ When these debilitating opportunities are added to the senseless corrupt disposition of state actors and its national oil company, it is unlikely that the gangs and militiamen who run the oil theft operations and illegal refineries in the creeks would hang up in the light of these inexplicable opportunities created for them to justify their moral grounds for oil theft

²³ James P. Lynch, *Criminology*. autocww2.Colorado.edu.<http://www.encarta.msn.com>. Retrieved on December 6, 2013.

²⁴ Rosie Collington, *Counting the costs of the Niger Delta's broken oil industry*. www.theworldoutline.com. September 23, 2013.

²⁵ Uwotu Ken, *The 'pimps and whores' in Nigeria's oil trade*. www.international.to/ir. December 3, 2013.

²⁶ Felix Ebruba Ayanrouh, *Corporate responsibility and human rights abuse in the Niger Delta*. www.globalpolicy.org. November, 2009.

²⁷ Julia028, *Outline and assess Marxist explanation of crime*. www.studydrive.com March, 2011.

²⁸ Adeola Yusuf, *Rallying international community against oil theft*. <http://www.dailyindependentnig.com>. April 30, 2013.

²⁹ Odunlami Temitayo, Mohammend Hamisu, Hamza Ibraheem and Edozie Victor, *Nigeria: Top politicians, Generals simile as oil theft cripples Nigeria*. <http://www.m.africafocus.com/stories>. July 1, 2013.

In other words, Marxist legal literature and philosophy argue that the crime of oil theft and illegal refining can only be understood from the nature of the corrupt and exploitative economic system that the Nigerian state-corporate complex has created. This Marxist perspective as canvassed by Felix Ebruba Ayanruoh²⁶ in *Corporate responsibility and human rights abuse in the Niger Delta* believes that oil theft and illegal refining are grounded on a fundamental and systemic disregard for the human rights and the inequalities of resource allocation. However, the state-corporate complex has its appeal in legal functionalism. It argues that the crimes of oil theft and illegal refining are carried out not due to material deprivation but by the poor socialization of the thieves and refiners. It is this patrimonial, functionalist perspective that informed the amnesty deal and the associated technical and vocational peace studies attached to it. That after the amnesty deal oil theft and illegal refining assumed an industrial, stratospheric toga underscores a paradigm shift in the economic struggle in the creeks. It is no longer the human traffic crime of kidnap and high-jacking alone but the economic crime of illegal participation in the local refining of the product.²⁷

The United Nations Office for Drugs and Crime estimated in its 2013 report that 150,000 barrels of crude worth \$6bn is stolen yearly in Nigeria and 80% of this is exported by syndicates of the illicit trade while the balance of 20% is cooked: refined illegally and dangerously in the creeks of the delta by young men producing and selling fuel as a source of income.²⁸ Invariably, building refineries, which has been to the state a nightmare, a magical and impossible assignment, seems to be the pastime of oil thieves in the creeks; the level of sophistication and technology notwithstanding. The thieves have even devised ways and means of building underground refineries to evade discovery and destruction by the Joint Military Task Force (JTF) teams.²⁹

CONCLUSION AND RECOMMENDATION

Economic perspectives in the explanation of crime in Nigerian legal philosophy and advocacy are unpopular in that any defence to economic crime on the basis of economic pressure or survival is unlikely to attract the recognition or the sympathy of a Nigerian court of law. Therefore economic causation of crime of oil theft and illegal refineries remain theoretically and practically academic. Yet critical economic theories on the explanation of the crimes are very convincing and adequate but the extent to which they can be advanced, adopted and reinforced in a Nigerian court of law in defence of the offences of oil theft and establishment of illegal refineries remain bleak. State policies actuated towards the economic liberalization of the hydrocarbon sector to encourage inclusion and participation of the deprived indigenous communities, are also not as forthcoming as they ought to be. These have largely left the communities at the vagaries of illegalities and uncertainties in their economic activities in an attempt to pursue economic survival in the creeks. A complete vault face is therefore necessary in the legal understanding and advocacy on the economic crimes of oil theft and illegal refineries. Courts before which trials of culprits of these economic crimes are to be determined may require a higher degree of reorientation and a shift from the traditional common law perception of common criminality and the unavailability of economic deprivation and survival as a valid defence for the offences of oil theft and illegal establishment of refineries.

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