

# Petrodollar Corruption in Nigeria and the Implications for Economic Development

Melvin Mbaio\* and Oladiran A Ayodele\*\*

## Abstract

*The petroleum industry plays a significant role in supporting Nigeria's economy, but the benefits are hardly felt due to widespread corruption in the petroleum industry. The oil boom in the Nigerian political economy has led to its leaders engaging in corrupt practices that promote the parochial interests of the elites instead of implementing programmes that will lift citizens out of poverty. The gaps in the law are often exploited to allow for corruption. Corrupt and inept leadership in the petroleum sector has prevented development in Nigeria. Rather than being a blessing, Petroleum resources are now regarded as a curse. Unless these ominous gaps are addressed, corruption will persist in the petro-economy, which is the mainstay of Nigeria's economy. This article discusses the link between crude oil production and corruption in Nigeria. The article is based on doctrinal legal research comprising a detailed analysis of primary and secondary sources. It establishes that transparency and accountability in the operations of the upstream petroleum industry are necessary to eliminate corruption. The article discusses the causes and effects of petrodollar corruption in Nigeria and the measures adopted by the Federal Government to curb it. The article recommends the strict enforcement of laws and close monitoring and control to eliminate petrol corruption and offers other useful suggestions to combat corruption in the Nigerian petroleum industry.*

## Keywords

corruption; Nigerian oil economy; petrodollar; resource curse

## 1. Introduction

Corruption is a serious crime that undermines social and economic development and weakens the fabric of modern-day society.<sup>1</sup> Corruption hinders social and economic development and increases poverty by diverting domestic and foreign investment away from where they are most needed. Fighting corruption is a global concern because

1 UNODC South Eastern Europe on Corruption <<https://bit.ly/3bZ5Lge>> accessed 25 January 2022.

\* North West University, Mafikeng, South Africa. <<https://orcid.org/0000-0001-5917-2286>> Email: melvin.mbaio@nwu.ac.za

\*\* Osun State University, Osogbo, Nigeria. <<https://orcid.org/0000-0001-6065-555X>> Email: oladiran.ayodele@uniosun.edu.ng



corruption is found in rich and poor countries, although the evidence shows that it disproportionately hurts poor people.<sup>2</sup> Foreign direct investment is discouraged, and small businesses within the country often find it impossible to meet the 'start-up costs' required because of corruption. Corruption corrodes government institutions and starves the economy.<sup>3</sup>

Due to its serious corruption, Nigeria was rated 149th out of 180 countries in the 2020 Corruption Perception Index.<sup>4</sup> Crude oil, the mainstay of Nigeria's economy, is beset by inherent and pervasive corruption, which has hampered the economic development of Nigeria.<sup>5</sup> Corruption has significantly decreased the revenue of the Federal Government of Nigeria that is derived from oil. The international decrease in crude oil prices has exacerbated corruption and the misappropriation of crude oil revenues.<sup>6</sup> Corruption is rife, notwithstanding the plethora of anti-corruption statutes and regulations in the country. These are general anti-corruption statutes that are not explicitly enacted for the upstream industry. Corruption continues to be the greatest challenge in the upstream petroleum industry.<sup>7</sup> Fighting corruption in the upstream petroleum industry is essential for the country's socio-economic growth and alleviating poverty.<sup>8</sup>

Corruption in the oil industry is not a new phenomenon. Several instances of corruption have been recorded. For instance, the sum of US\$ 12.2 billion was suspected of having been misappropriated during the oil windfalls in 1991. This money could have been used for infrastructural improvement in Nigeria.<sup>9</sup> Because of large-scale corruption in the sector, many international oil companies are now divesting their interests, and this has resulted in widespread poverty and an infrastructural deficit in Nigeria, despite the country being endowed with abundant petroleum resources.<sup>10</sup> The legislation prohibits offering, promising, giving and acknowledging bribes, but the implementation of the legislation is ineffective. The poor implementation of anti-corruption legislation by anti-corruption organisations due to corruption and bribery have led to the government losing oil revenue. Such oil revenue could have been used for infrastructural enhancement in the country if the anti-corruption legislation had been complied with.<sup>11</sup> The lack of transparent financing model legislation and the variance between the country's Constitution and section 7 of the Nigeria National Petroleum Corporation (NNPC) Act on oil revenue expenditure thus created the opportunity for corruption in corporations by withholding oil revenues accruing to the Federal Government as operational costs in the sector.<sup>12</sup>

---

2 *Ibid.*

3 *Ibid.*

4 Corruption Perception Index <<https://bit.ly/3Pfb2hX>> accessed 24 January 2022.

5 Olusola, JO 'Nigeria's Upstream Petroleum Industry Anti-corruption Legal Framework: The Necessity for Overhauling and Enrichment' <<https://bit.ly/3Pqqlbg>> accessed 24 January 2022.

6 *Ibid.*

7 *Ibid.*

8 *Ibid.*

9 *Ibid.*

10 *Ibid.*

11 *Ibid.*

12 *Ibid.*

Corruption and the misappropriation of oil revenue are alleged to have been committed by government officials. These officials have allegedly connived with conglomerate upstream petroleum firms, who are said to have given significant sums to government executives in the industry to procure illicit oil contracts. This led to the government losing oil revenue due to the industry's absence of detailed due diligence mechanisms to evaluate oil contracts.<sup>13</sup>

The Nigerian economy largely depends on its oil sector, which supplies the bulk of its foreign exchange earnings and income.<sup>14</sup> While the boom lasted, petrodollars were responsible for over 90 per cent of Nigeria's foreign exchange earnings and close to 80 per cent of budgetary expenditure.<sup>15</sup> The petrodollar economy relied upon by Nigeria has facilitated endemic corruption. The oil industry has captured and continues to capture prime status in Nigerian's economic framework. The nation's economy relies on petroleum, which comprises almost 97% of export earnings and 80% of federal revenue generation.<sup>16</sup> Despite these wonderful resources, the country is still underdeveloped, due to the absence of infrastructure in education, health and social services, with dilapidated roads and bridges, erratic power supply, and inadequate potable water. Over 70% of the population lives in abject poverty, surviving on less than one dollar per day.<sup>17</sup>

Indeed, the wealth of oil resources in Nigeria has led to the economy becoming over-dependent on oil wealth, to the detriment of other sectors.<sup>18</sup> Corruption in the petroleum industry explains why a country that is so richly endowed with oil and gas resources is still classified as 'developing' after more than six decades of independence. Instead of the Nigerian economy booming thanks to oil, the economy is doomed for the people and future generations.<sup>19</sup>

The discovery of oil and gas and the oil boom that Nigeria experienced in the 1970s contributed to reprehensible corrupt practices in the country.<sup>20</sup> Since then, corruption has been the bane of economic development in Nigeria. This phenomenon permeates all sectors of the economy and has resulted in stunted economic growth. The pervasiveness of the scourge of corruption has pitched citizens against the government, feeding recruits into Boko Haram,<sup>21</sup> the terror movement growing in the northern part of the country. Other groups like al-Qaeda and Islamic State's West Africa Province (ISWAP) have also sprung up as a result of the failure of the state. In the Niger Delta, various freedom

13 *Ibid.*

14 Malachi, EB 'Petro-Economy and Corruption in Nigeria: A Legal Examination' (2013) 16(2) *IOSR Journal of Humanities and Social Science* 95-102.

15 *Ibid.*

16 Ibrahim, KM *et al* 'The Pathological Effects of Petrodollars on Nigerian Political Economy' (2017) 4(1) *Asia Pacific Journal of Education, Arts and Sciences* 88.

17 *Ibid.*

18 *Ibid.*

19 *Ibid.*

20 United Nations Economic and Social Council Distr. General E/CN.4/Sub.2/2004/23, note 4, 4.

21 Chayes, S 'Corruption and Terrorism: The Causal Link' (2016) *Policy Paper Against Corruption: A Collection of Essays* (2016) <<https://carnegieendowment.org/>> accessed 28 January 2022; Meagher, K 'Beyond Terror: Addressing the Boko Haram Challenge in Nigeria' *Norwegian Peacebuilding Resource Centre* (2014) <<https://www.files.ethz.ch/>> or <<https://bit.ly/3yTayZB>> accessed 28 January 2022.

fighters like the Niger Delta Avengers and the Niger Delta Volunteer Force (NDVF) have constituted themselves into forces against the Federal Government. In the eastern part of Nigeria, Nnamdi Kanu leads the Igbos through the Indigenous People of Biafra (IPOB) in revolt against the Federal Government.<sup>22</sup> The money meant for the armed forces has disappeared into the pockets of military elites, subverting efforts to fight the insurgents.<sup>23</sup> The oil-rich Niger Delta is bedevilled with all kinds of criminal activities that started as genuine protests against the region's underdevelopment, despite billions of dollars realised in the region through the production of crude oil.<sup>24</sup> What has happened to the billions of dollars realised from crude oil production in the 1970s during the oil boom and from 2005 to 2015? Most of the proceeds cannot be accounted for because they were lost to corruption.<sup>25</sup> The theft of public funds is not regarded with any seriousness. Every government that came to power stole for themselves and for their cronies more than they could ever need.

This article addresses the following issues: conceptual clarifications, the causes and implications of corruption, the effects of corruption on the oil and gas industry, the EFCC and the anti-corruption crusade, international and regional collaboration to fight corruption, the role of the judiciary in combating corruption, and conclusions and recommendations.

## 2. Conceptual clarifications

### 2.1 The term 'petrodollar'

In 1944, world leaders met in Bretton Woods and agreed to establish the US dollar (then the strongest) as the *global currency*, which would also be backed by gold (this was insurance for the financially ruined nations at the time).<sup>26</sup> This system, however, crumbled in the 1960s. In 1973, under President Richard Nixon, the USA struck an agreement with Saudi Arabia to adopt the US dollar for the purchase of oil in the international market. This deal implies that every barrel of oil purchased from Saudi Arabia is purchased in

22 Sian, H and Sa'eed, H 'Conflict, Instability, and Resilience in Nigeria' (2018) *Rapid Literature Review 1427* GSDRC, University of Birmingham, Birmingham, UK <<https://gsdrc.org>> accessed 28 January 2022.

23 Tom, D 'The End of the Petro-state Era' (2016) <<https://bit.ly/3yv4GUY>>; Philip, I 'Corruption in Nigeria, not just *Boko Haram*, is at the root of violence' (2014) *The Guardian* <<https://www.theguardian.com/international>> accessed 24 July 2019; Aislinn, L 'Nigeria's former Defence Chief accused of using *Boko Haram* cash to buy mansion' (2016) *The Telegraph* <<https://www.telegraph.co.uk/world-news/>> accessed 24 July 2019.

24 Oviasuyi, PO and Uwadiae, J 'The Dilemma of Niger-Delta Region as Oil Producing States of Nigeria' (2009) 16 *Journal of Peace, Conflict and Development* 120 <<https://www.scirp.org/>> accessed 28 January 2022.

25 Tukur, T '55 Nigerians stole over N1.34 trillion in 8 years – Lai Mohammed' (2016) *Premium Times* <<https://bit.ly/2I683JX>> accessed 24 November 2019.

26 Anonwatcher 'Why the World Can't Rest: The Petrodollar' (2016) <<https://steemit.com/petrodollar>> accessed 24 July 2019. A war-weary world of 44 Allied nations from across the globe met in Bretton Woods to discuss the future of the new economic world. The World Bank, the International Monetary Fund (IMF) and the World Trade Organization (WTO) were also established subsequent to the Bretton Woods conference.

US dollars only.<sup>27</sup> Those who have 'foreign' currency first have to purchase United States dollars before being able to purchase oil.

In collusion with the Nixon Administration, the Rockefeller oil cartel convinced the leaders of the world, first, that oil (like gold) was a finite substance, and secondly, that all oil should be bought in dollars because the dollar is the world's reserve currency. This was an opportunity for the oil and banking cartels to determine what the world would have to pay for a barrel of oil and allowed them to increase the dollar price without any constraints.<sup>28</sup> The USA and its allies crushed all attempts at resisting this imposition.<sup>29</sup> Although the petrodollar has suffered some pockets of resistance from the Middle East, especially from Saddam Hussein of Iraq and Gadhafi of Libya, by 1975, most members of the Organisation of the Petroleum Exporting Countries (OPEC) had agreed on the 'oil for dollars' deal, with similar US military and weapons protection exchanges. The petrodollar eventually gained the upper hand, and today oil is being sold through the dollar rate. Nigeria, for instance, is a petrodollar state because it exchanges oil for dollars. The standing of the petrodollar was maintained by the US military, as both Saddam Hussein and Gadhafi discovered when they attempted to sell their oil in Euros and Dinars.<sup>30</sup>

Richards describes petrodollar corruption in Nigeria as a betrayal of trust which occurs when someone in a position of authority uses public funds and property for their personal use and dispenses them to whoever they please.<sup>31</sup> Atumah states that oil has become the means to siphon funds from the Nigerian Commonwealth.<sup>32</sup> The emphasis has been on the money laundered abroad, but the recent whistle-blowing policy has allowed for the discovery that a lot of the money is laundered inside Nigeria.<sup>33</sup>

Some of the common characteristics of petrodollar states are that the fate of their governments is inter-woven with the oil boom, orchestrated by the international petroleum economy, while the situation is worsened by the close ties between political leaders and senior officials of state-owned or state-controlled petroleum industries.<sup>34</sup> The political elites have placed close associates or even family members in important industry positions, maintaining long-term government control and in many cases enriching themselves personally as well.<sup>35</sup> These assertions apply with equal force to the Nigerian state. The political elites fight tooth and nail to gain political power to amass wealth from oil revenues for themselves and their cronies. Appointments to the Nigerian

27 *Ibid.*

28 Anti-Corruption Society 'What does peak oil, carbon dioxide, dollar devaluation and Smart Meters have in common?' (2011) <<https://bit.ly/3OWVaB0>> accessed 24 July 2019.

29 *Ibid.*

30 *Ibid.*

31 Richards 'Corruption pattern of patron-clientelism in Nigeria' discussed in Sonny Atumah 'Petrodollar "bankers" awry plans in whistle-blowers dens' <<https://bit.ly/3NUNaiB>> accessed 23 July 2019. Richards carried out research on the attitude of Nigerian elites who, after being put in charge of public funds and property, appropriate them for personal use and dispense them to whoever they please.

32 *Ibid.*

33 *Ibid.*

34 Tom (note 23 above).

35 *Ibid.*

National Petroleum Corporation (NNPC) depend on a person's political affinity or ethnic connection, close associates or family relations with the ruling party's leadership.<sup>36</sup>

## 2.2 The term 'corruption'

The term 'corruption' is difficult to define. Macrae states that the definition of corruption depends on the focus of the research.<sup>37</sup> Thompson describes two concepts of corruption: individual and institutional.<sup>38</sup> He explains that individual corruption occurs when an institution or its officials obtain a benefit that does not serve the institution and provide a service through external relationships under conditions that reveal a reciprocal exchange. He states that institutional corruption occurs when an institution or its officials accept a benefit that is directly useful to performing an institutional purpose and systematically provide a service to the benefactor under conditions that tend to subvert procedures that support the primary purposes of the institution.<sup>39</sup> Corruption is the misuse of public power (by an elected politician or appointed civil servant) for private gain. Evidence abounds that there is usually a collaboration between companies from developed countries and public officials of developing nations, often at an economic and social cost to the poor states.<sup>40</sup> Corruption can also be described as an act done with the aim of giving advantages that are inconsistent with the official duties and rights of others.<sup>41</sup>

The United Nations defines corruption as 'the abuse of entrusted public power for private benefit'.<sup>42</sup> This assumes, however, that corruption is only a public issue. Alubo has argued that corruption is also a private concern.<sup>43</sup> The United Nations further states that corruption affects all regimes' enjoyment of rights.<sup>44</sup> An ex-United States Attorney General, John Ashcroft has observed that 'corruption saps the legitimacy of democratic government, and its immoderate forms threaten democracy itself because democracy lives on trust, and corruption destroys trust'.<sup>45</sup>

Mbao and Komboni argue that corruption is the enemy of good governance.<sup>46</sup> They submit that 'it is endemic in all governments and is found in democratic and dictatorial

36 Bassey, JE and Edem, EE 'Patronage Versus Merit: A Systemic Review of Recruitment Dynamics in the Nigerian Public Service' (2021) 1(2) *AKSU Journal of Administration and Corporate Governance* 71-83.

37 Macrae, J 'Underdevelopment and the Economics of Corruption: A Game Theory Approach' (1982) 10(8) *World Development* 677-687 at 678.

38 Thompson, DF 'Two Concepts of Corruption' (2012) *Harvard University Edmond J Safra Centre for Ethics Working Papers*, No. 16 <<https://bit.ly/3OXgDtp>> accessed 19 July 2019.

39 *Ibid.*

40 Mbonu, CE 'Corruption and its impact on the full enjoyment of human rights, in particular, economic, social and cultural rights' (2004) E/CN.4/Sub.2004/23, para 11, 6 <<https://bit.ly/2MxDjEu>> accessed 29 January 2022.

41 'The meaning of corruption' <<https://bit.ly/3OTXpVK>> accessed 19 July 2019.

42 United Nations Convention Against Corruption, New York, 2004 <[www.undoc.org](http://www.undoc.org)> accessed 13 January 2022.

43 Alubo, AO *et al* 'Plea-Bargain Mechanism in the Judicial Determination of Corruption Cases: A Critical Inter-Jurisdictional Assessment' (2013) *Nigerian Association of Law Teachers (NALT) Conference 24* <<http://www.worldcat.org>> accessed 29 January 2022.

44 Mbonu (note 40 above) para 7.

45 *Ibid.*

46 Mbao, MLM and Komboni, GG 'Promoting of Good Governance and Combating Corruption and Maladministration: The Case of Botswana' (2008) 12(1) *Law, Democracy and Development* 53.

politics, feudal, capitalist and socialist economies.<sup>47</sup> They state that corruption decreases the accountability of state officials and reduces transparency in the work of state institutions.<sup>48</sup>

Corruption in Nigeria has been described as systemic.<sup>49</sup> For instance, the former Nigerian military dictator, General Sani Abacha, was reported to have stolen an amount of US\$ 660 million, which was deposited in a Swiss bank. Also, authorities in Luxembourg were reported to have frozen the sum of US\$ 630 million belonging to the Abacha family in the Luxembourg subsidiary of a German bank.<sup>50</sup> A total sum of N 63.25 billion was said to have been recovered from the Abacha family.<sup>51</sup> The Swiss government, in accordance with its policy on the repayment of national assets taken illegally, has agreed with Nigeria and the World Bank to return almost US\$ 321 million for the benefit of the Nigerian people.<sup>52</sup>

### 2.3 The 'resource curse'

The term 'resource curse' refers to the inverse relationship between economic growth and natural resource endowment.<sup>53</sup> It describes the situation where an export-oriented natural resources sector (petroleum resources in the case of Nigeria) in a country generates large revenues for government, but paradoxically leads to underdevelopment and political instability.<sup>54</sup> The term is used to explain the negative development outcomes related to oil and gas and other minerals.<sup>55</sup> The African Development Bank and African Union report found that petroleum brings trouble – waste, corruption, grandiose consumption, debt overhang, environmental degradation, diminishing public services, war, and other forms of conflict.<sup>56</sup>

Corruption and the 'resource curse' are interrelated because the prudent management of revenue from petroleum for the development of the society should be a blessing rather than a curse. So, natural resources are not a curse, but a blessing, but when they are exploited and leave the environment devastated and the people impoverished, they become a 'curse'.<sup>57</sup> Furthermore, when the resources are exploited in an unsustainable manner, the revenue from the resources is diverted into private pockets by corrupt

47 *Ibid* 46.

48 *Ibid*.

49 Mbonu (n 40) para 13, 6.

50 *Ibid*.

51 Ijewereme, OB 'Anatomy of Corruption in the Nigerian Public Sector: Theoretical Perspectives and Some Empirical Explanations' (2015) 5(2) *SAGE Open* 4 <<https://bit.ly/3AD2kpu>> accessed 2 December 2019.

52 News excerpt from Channel Television news at 9:00 pm Nigerian time on 5 December 2017.

53 African Development Bank and the African Union 2009 'Oil and Gas in Africa' *Supplement to the African Development Report* 79 <<https://bit.ly/3yT14gQ>> accessed 30 May 2019.

54 *Ibid*.

55 *Ibid*.

56 *Ibid*.

57 Ikelegbe, A 'Economy of Conflict in the Oil Rich Niger Delta Region of Nigeria' (2006) 5(1) *African and Asian Studies* 23.

government officials, and the earnings from the resources are not ploughed back into the system to develop other sectors of the economy, then it is a curse.<sup>58</sup>

Despite the huge revenue realised from oil and gas production, Nigerians continue to face economic hardship.<sup>59</sup> The nation's huge resources make no difference to the lives of ordinary Nigerians.<sup>60</sup> Most Nigerians live below the poverty line, not even earning a dollar per day.<sup>61</sup> Mähler states that Nigeria is a good example of a nation where petroleum exploitation has turned into a curse because of corruption and other vices.<sup>62</sup>

### 3. Causes and implications of corruption

It is generally agreed that some of the causes of corruption include poverty, greed, bad examples shown by leaders, moral decay and mismanagement of resources, inadequate laws and weak institutions.<sup>63</sup> The repercussions of corruption are grave indeed and include the exclusion of the majority from development activities, the destruction of governance, the inequitable distribution of wealth, the disempowerment of key sectors of the economy, the subversion of the rule of law, and the rise of injustice.<sup>64</sup> Corruption 'undermines democracy and the rule of law, leads to human rights violations, distorts markets, erodes the quality of life and allows organised crime, terrorism and other threats to human security to flourish.'<sup>65</sup> It is self-evident that the stunted growth recorded in Nigeria, especially in recent times, can be attributed to corruption.<sup>66</sup>

Corruption is a cankerworm in a political system that condones it. It is the biggest vice the Nigerian society contends with today. Corruption pervades the Nigerian socio-political milieu and Omorogbe rightly observes that corruption, more than any other related vice, is the source of Nigeria's socio-political and economic problems.<sup>67</sup>

On the economic front, corruption depletes national wealth.<sup>68</sup> It affects all sectors of the economy, including public and private life.<sup>69</sup> Corrupt politicians invest limited

58 Ifeka, C 'Conflict, Complicity and Confusion: Unraveling Empowerment Struggles in Nigeria after the Return of Democracy' (2000) 27(83) *Review of African Political Economy* 15-123 at 83.

59 Donwa, PA *et al* 'Corruption in the Nigerian Oil and Gas Industry and Implication for Economic Growth' (2015) 11 *International Journal of African and Asian Studies* <<http://www.semanticscholar.org>> accessed 29 January 2022.

60 *Ibid.*

61 'Poverty: 112m Nigerians live below poverty line' *Vanguard News*, 18 October 2016 <<https://bit.ly/3ykEXyo>> accessed 5 December 2019; 'Nigerians living in poverty rise to nearly 61%' *BBC News*, 13 February 2012 <<https://bbc.in/3uADqTG>> accessed 5 December 2019.

62 Mähler, A 'Nigeria: A Prime Example of the Resource Curse? Revisiting the Oil-Violence Link in the Niger Delta' (2010) *German Institute of Global and Area Studies Working Paper* 5-7 <<https://bit.ly/3PemREX>> accessed 5 December 2019.

63 Alubo (note 43 above) 25.

64 *Ibid.*

65 United Nations Office on Drugs and Crime, United Nations Convention Against Corruption, New York, 2004, iii <<https://bit.ly/3RomZnt>> accessed 3 December 2019.

66 United Nations Office on Drugs and Crime (UNODC), 'Patterns and Trends of Corruption in Nigeria: Patterns and Trends Second Survey on Corruption as Experienced by the Population, 2019.

67 Omorogbe, J 'A Simplified History of Western Philosophy: Ancient and Modern Philosophy' (Joja Educational Research and Publications, 1991) vii.

68 Transparency International 'What is corruption?' <<https://www.transparency.org/what-is-corruption>> accessed 1 December 2019.

69 Mbonu (note 40 above) para 22, 9.

public resources in projects that will line their pockets, rather than investing for the public good.<sup>70</sup> Corruption weakens the financial system, hinders investment, and thus obstructs development, restricts trade, and distorts the size and composition of government expenditure.<sup>71</sup>

Corruption has resulted in the stunted economic development of the country and threatened the foundations of the country's society and justice.<sup>72</sup> Paulo Mauro of the International Monetary Fund (IMF) states that corruption inhibits economic development because of the deleterious effects on the economy.<sup>73</sup> For example, when corruption takes the form of tax avoidance or the inappropriate use of discretionary tax exemptions, the effect on the economy is a loss of revenue. The effects are more pronounced in the oil and gas sector. In collaboration with government officials, the oil companies divert to their personal accounts revenue that should go to government coffers.<sup>74</sup> Corruption is cancer, eating away remorselessly at the moral fibre of society.

In the political sphere, corruption is a major obstacle to democracy and the rule of law. In a democratic system, offices and institutions lose their legitimacy when they are misused for private gain.<sup>75</sup> Corruption creates distrust of the political system.<sup>76</sup>

### 3.1 Effects of corruption on the oil and gas industry

The method of award of exploration and production licences in Nigeria is prone to abuse because the procedures are not well regulated.<sup>77</sup> For instance, the Petroleum Act empowers the Minister of Petroleum to allocate licences for the exploration, prospecting and mining of oil.<sup>78</sup> The Minister has discretion in the award of licences, and this is prone to misuse.<sup>79</sup> During successive periods of military rule, most licences were awarded

70 Transparency International 'What is corruption?' <<https://www.transparency.org/what-is-corruption>> accessed 1 December 2019.

71 Mbonu (note 40 above) para 22, 9.

72 Adeleke, FAR and Olayanju, OF 'The role of the judiciary in combating corruption: Aiding and inhibiting factors in Nigeria' (2014) 40(4) *Commonwealth Law Bulletin* 5 <<https://doi.org/10.1080/03050718.2014.973894>> accessed 29 January 2022.

73 Paolo, M 'The Persistence of Corruption and Slow Economic Growth' (2002) *International Monetary Fund Working Paper* 3.

74 Anti-Corruption Database (ACID) 'Jonathan's campaign chief, others divert N155bn crude oil money to corrupt Zambian officials' (2015) <<http://antigraft.org/news>> 15 November 2021. It was reported that a Nigerian oil and gas company, Sarb Energy (which was registered for the purpose of the fraud), acted as a dodgy intermediary in a non-transparent government-to-government crude oil sale between the Nigerian and Zambian governments. The cronies of the Nigerian government officials shared 50 per cent commission from the proceeds of the foreign crude oil lifting contract, turning them into instant billionaires. This was reported by Joshua Olufemi in the *Premium Times* 2 November 2015.

75 Transparency International 'What is corruption?' <<https://www.transparency.org/what-is-corruption>> accessed 1 December 2019.

76 Ijewereme, OB 'Anatomy of Corruption in the Nigerian Public Sector: Theoretical Perspectives and Some Empirical Explanations' (2015) *SAGE Open* 1 <<http://www.uk.sagepub.com/aboutus/openaccess.htm>> accessed 2 December 2019.

77 Gillies, A 'Reforming corruption out of Nigerian oil?' (2009) *Centre of International Studies University of Cambridge* 2 <<https://bit.ly/3ABqyk4>> accessed 23 November 2019.

78 Petroleum Industry Act (PIA) 2021, s 3(1)(g) and s 68(3).

79 *Ibid* s 2.

on a discretionary basis by the Head of State.<sup>80</sup> Oil blocks were awarded to individuals who later sold them to oil companies at a huge profit.<sup>81</sup> However, the current Petroleum Industry Act of 2021 has introduced some provisions to curb the excesses of the Minister. The Commission established by the Act now has the power to grant exploratory licences.<sup>82</sup> The Minister may grant a petroleum prospecting licence to a qualified applicant on the recommendation of the Commission and where the Minister does not grant the licence, the Minister shall inform the Commission in writing of the reason(s) for the decision.<sup>83</sup>

The purchase of the OPL 245 offshore oilfield in Nigeria in 2011 is a well-known case. It was alleged that Shell and Eni paid US\$ 1.3 billion (€ 1.09 billion) to buy the massive oilfield from Malabu Oil and Gas, a firm that was owned by former Nigerian Minister of Petroleum, Dan Etete. Italian prosecutors argued that US\$ 1.1 billion of the purchase price comprised bribes that landed in the pockets of middlemen and politicians, including former minister Etete. Prosecutors also argued that Shell and Eni knew that most of the money was being used for bribes. Both firms denied the charges. After three years, the case came to court when anti-corruption non-governmental organisations brought a complaint in a Milan court. However, the court acquitted the defendants in 2021, stating that the companies and the 13 defendants had no case to answer.<sup>84</sup>

In 2014, the ex-Governor of the Central Bank of Nigeria said that the sum of US\$ 20 billion was stolen from oil revenue, adding that the said amount was not remitted to the coffers of the Federal Government.<sup>85</sup> Some Nigerian politicians and their cronies were indicted in the Halliburton Scandal when a US oil service company pleaded guilty to paying around US\$ 180 million in bribes to top Nigerian Government officials, to obtain four contracts, worth over US \$6 billion, to construct Liquefied Natural Gas (LNG) facilities in Nigeria.<sup>86</sup>

Corruption has been a great impediment to the growth of the Nigerian economy. Donwa *et al* observe that although there were direct foreign investments in the petroleum sector, they have had little or no effect on the economic growth of Nigeria because of the lack of accountability and transparency, and the prevalence of corruption in all sectors of the Nigerian economy.<sup>87</sup> They further argued that corruption impairs economic development by diverting investment funds meant for infrastructural facilities, public goods and services to a few individuals.<sup>88</sup> Nigeria, the largest oil producer in Africa, ranks among the world's poorest states and is also one of the most heavily indebted nations of the world.<sup>89</sup> The Corruption Perception Index as compiled by Transparency International between 2006 and 2020 is reproduced here.

---

80 Gillies (note 77 above).

81 Donwa *et al* (note 59 above).

82 PIA 2021, s 71.

83 PIA 2021, s 72(5).

84 'Italian court acquits Shell, Eni in Nigeria corruption case' <<https://bit.ly/3ard2F3>> accessed 29 December 2021.

85 The Economist 'The \$20 billion hole in Africa's largest economy' <<https://econ.st/3Ax47N0>> accessed 29 May 2019.

86 Donwa *et al* (note 59 above) 36.

87 *Ibid* 29.

88 *Ibid* 30.

89 *Ibid* 32.

**Table 1: Nigeria's ranking in the Corruption Perception Index from 2006 to 2021**

| Year | Ranking           | No. of countries surveyed | Year | Ranking           | No. of countries surveyed |
|------|-------------------|---------------------------|------|-------------------|---------------------------|
| 2006 | 142 <sup>nd</sup> | 163                       | 2014 | 136 <sup>th</sup> | 175                       |
| 2007 | 147 <sup>th</sup> | 180                       | 2015 | 136 <sup>th</sup> | 168                       |
| 2008 | 121 <sup>st</sup> | 180                       | 2016 | 136 <sup>th</sup> | 176                       |
| 2009 | 130 <sup>th</sup> | 180                       | 2017 | 148 <sup>th</sup> | 180                       |
| 2010 | 134 <sup>th</sup> | 178                       | 2018 | 144 <sup>th</sup> | 180                       |
| 2011 | 143 <sup>rd</sup> | 183                       | 2019 | 146 <sup>th</sup> | 180                       |
| 2012 | 139 <sup>th</sup> | 176                       | 2020 | 149 <sup>th</sup> | 183                       |
| 2013 | 144 <sup>th</sup> | 177                       | 2021 | 154 <sup>th</sup> | 180                       |

*Source: Adapted from a compilation of Transparency International Corruption Perception Index Reports 2006-2021*<sup>90</sup>

Since Nigeria's economy depends largely on the oil and gas industry, it is incumbent on the government to ensure a sound legal and regulatory framework that will reduce corruption so that the country can develop. This was why the government enacted the Nigeria Extractive Industries Transparency Initiative (NEITI) in 2007.<sup>91</sup> The NEITI is a national subset of the global movement known as the Extractive Industries Transparency Initiative (EITI).<sup>92</sup> The EITI was established in June 2003 to achieve sustainable development and poverty reduction in resource-rich countries plagued by the 'resource curse'.<sup>93</sup> If well implemented, this legislation could be a useful tool for government and citizens in the quest for improved transparency and responsibility in the management of revenue from mining, oil and gas.<sup>94</sup> According to the Act, the NEITI was formed with the following objectives:<sup>95</sup>

- (i) To ensure due process and transparency in the payments made by all extractive industry companies to the Federal Government and statutory recipients;
- (ii) To monitor and ensure accountability in the revenue receipts of the Federal Government from extractive industry companies;
- (iii) To eliminate all forms of corrupt practices in the determination, payments, receipts and posting of revenue accruing to the Federal Government from extractive industry companies;
- (iv) To ensure transparency and accountability in the application of resources from payments received from extractive industry companies; and
- (v) To ensure conformity with the principles of the Extractive Industries Transparency Initiative.

90 Adapted from the compilation of Transparency International Corruption Perception Index Reports 2006-2021 <<https://guardian.ng>> accessed 30 January 2022.

91 NEITI Act of 2007.

92 Donwa *et al* (note 59 above) 38.

93 Mailula, T *Protection of Petroleum Resources in Africa: A Comparative Analysis of Oil and Gas Laws of Selected African States* (2013) 275 <<http://uir.unisa.ac.za>> accessed 18 April 2020.

94 *Ibid.*

95 NEITI Act of 2007, s 2.

In 2003, the Federal Government of Nigeria declared its acceptance of the principles and criteria of the global initiative and publicised its decision to apply the EITI. However, the NEITI has not been very different from other governmental efforts to curb corruption until now. Ezekwesili<sup>96</sup> states that to have a successful fight against corruption in Nigeria, '[o]penness, transparency, information, competition, sanctions, incentives, clear rules and regulations that are strictly enforced must be Nigeria's watchwords because these virtues are enemies of corruption.'<sup>97</sup> So, to have a corruption-free society these virtues must be embraced in Nigeria. Successive administrations have designed measures to fight the menace of corruption with varying degrees of success.<sup>98</sup> The EFFC was established in 2004 to combat corruption. Some of the methods adopted by the Commission to curb corruption and their effectiveness are discussed below.

## 4. Institutional mechanisms

### 4.1 Independent Corrupt Practices and Other Related Offences Commission

The Independent Corrupt Practices and Other Related Offences Commission was established under section 1 of the Corrupt Practices and Other Related Offences Act, 2000. Section 2 provides for the composition of the Commission and members' qualifications. Members are appointed by the President subject to confirmation by the Senate, and members must be people of proven integrity. Section 6 states that the Commission must receive complaints and investigate and prosecute offenders. The Commission also has the duty of supervising the review of practices and procedures of public bodies where, in the opinion of the Commission, these may aid or facilitate corruption.<sup>99</sup> More importantly, the Commission must advise and assist any agency or parastatal with eliminating or minimising fraud or corruption. It must educate the public about bribery, corruption, and related offences and enlist and foster public support in combating corruption.<sup>100</sup> From the above, it can be seen that the Commission is given an adequate legal mandate to effectively combat corruption. Like the Nigerian police, the officers of the Commission are given similar powers of arrest and prosecution as the police.<sup>101</sup> Despite these provisions empowering the Commission, it has had limited success. One reason is the fact that investigating corruption is an expensive undertaking, requiring considerable resources, which very few developing countries can afford.<sup>102</sup> The Commission has not been active in prosecuting corruption in the upstream petroleum sector because its personnel lacks

---

96 Ezekwesili Oby was a former Vice President of the World Bank's Africa division from May 2007 to May 2012, and held various portfolios under former President Olusegun Obasanjo, including Minister of Education.

97 Olatunji, K 'Ezekwesili, others urge radical fight against corruption' (2017) *The Guardian* <<https://bit.ly/3ao4ZJ2>> accessed 5 December 2019.

98 Donwa *et al* (note 59 above) 29.

99 Corrupt Practices and Other Related Offences Act 5 of 2000, s 6(b).

100 Section 6(c).

101 Section 6(d) and (e).

102 Ojukwu, CN 'Legal and Institutional Mechanisms Combating Corruption in Nigeria' <<http://www.nigerianlawguru.com/articles>> accessed 25 January 2022.

the required technical know-how on upstream petroleum operations.<sup>103</sup> The enabling law needs to be amended to cover corruption, specifically in the upstream petroleum sector. It is also recommended that the government should provide the Commission with adequate resources.

Section 53(1) of the Act provides that once it is proved in any proceedings that any gratification was accepted, obtained, solicited, given, promised or offered by the accused, or the accused attempted to accept, obtain, solicit, give, promise or offer, such gratification shall be presumed to have been corruptly accepted, given, promised or offered unless the contrary is proved. This particular provision is contrary to section 36(5) of the Constitution of Nigeria, which states that every person who is indicted shall be presumed innocent until he or she is confirmed guilty. This is a notable principle in Nigeria's criminal jurisprudence, and the prosecutor bears the burden of ascertaining the defendant's culpability beyond a reasonable doubt.<sup>104</sup> Any law inconsistent with the Constitution's provisions shall be null and void to the extent of its consistency.<sup>105</sup> Therefore, section 53(1) of the Act must be amended to conform with the provisions of the Constitution.

#### 4.2 The EFCC and the anti-corruption crusade

Before establishing the Economic and Financial Crimes Commission (EFCC), the government had established the Independent Corrupt Practices and Other Related Offences Commission (ICPC) pursuant to the Corrupt Practices and Other Related Offences Act 2000.<sup>106</sup> The mandate of the Commission was to receive and investigate reports of corruption and, in appropriate cases, prosecute the offenders; to examine, review and enforce the law on corruption and procedures in public institutions, with a view to eliminating corruption in public life; and to educate and enlighten the public about corruption and related offences to enlist and foster public support for the fight against corruption.<sup>107</sup> The ICPC was ineffective in its fight against corruption<sup>108</sup> due to poor funding, inadequate personnel, including a lack of qualified personnel to fight corruption, political interference, and the slow judicial process.<sup>109</sup> For these reasons, the Economic and Financial Crimes Commission (EFCC) was set up in 2004. The EFCC has the power to seize properties suspected to be related to the offence.

The EFCC has prosecuted hundreds of corruption cases, and hundreds of cases come to it daily for investigation and prosecution. It has sometimes been successful in securing convictions, and sometimes not.<sup>110</sup> However, the EFCC has also complained

103 Olusoji, OJ 'Legal Framework for Combating Corruption in Nigeria – The Upstream Petroleum Sector in Perspective' (2017) *Journal of Advanced Research in Law and Economics* 961.

104 Constitution of the Federal Republic of Nigeria (CFRN), 1999 (as amended).

105 CFRN 1999, s 1(3).

106 Act 5 of 2000 Laws of the Federation of Nigeria.

107 Act 5 of 2000 s 6(a)-(f); Awopetu, A 'An Appraisal of Nigerian Independent Corrupt Practices and Other Related Offences Commission (ICPC), 2001-2013' (2015) 3(7) *Review of Public Administration and Management* 59 <<http://www.arabianjbm.com/RPAM>> accessed 2 August 2019.

108 *Ibid* 65.

109 *Ibid* 63.

110 Adanikin, O 'EFFCC secures six per cent conviction in nine years' (2021) *International Centre for Investigative Reporting* <<https://bit.ly/3c28vsY>> accessed 22 January 2022.

about inordinate delays in the administration of justice in Nigeria and has adopted plea bargaining to secure convictions in some of its handled cases. The EFCC has employed plea bargaining in high-level corruption cases of the retired Inspector General of Police, the Oceanic Bank Chief Executive Officer, and some ex-governors involved in financial and economic crimes.<sup>111</sup>

Section 14(2) of the EFCC Act, 2004 deals with the use of plea bargaining and this provision has been used variously and to maximum effect.<sup>112</sup> The EFCC has been ingenious in using this provision in a number of cases to secure convictions, and accused persons have even made restitution in some cases. For example, in 2005, the ex-Inspector General of Police, Tafa Balogun, was charged with corruption and embezzlement of the public fund in the amount of N 10 billion. He agreed to return most of the funds and received only six months' imprisonment. The former Governor Diepreye Alaamieyeseigha received a lenient sentence for pleading guilty and making restitution; the former Managing Director of Oceanic Bank International, Cecilia Ibru, was convicted and sentenced to six months' imprisonment each for three charges of financial crimes, returning N 191 billion in cash and assets.<sup>113</sup>

Section 14(2) of the Act allows the Commission to exercise its discretion by withdrawing an allegation regarding any offence punishable under the Act by accepting such sum of money as it thinks fit, not exceeding the maximum amount for which that person would have been liable if he or she had been convicted of that offence.

Alubo argues that the use of plea bargaining will address some problems in Nigerian criminal procedure.<sup>114</sup> It will enable the courts to convict accused persons charged with capital offences, even when the court would have ordinarily found that they were 'not guilty'.<sup>115</sup>

The Court of Appeal in *Federal Republic of Nigeria v Lucky Igbinedion*<sup>116</sup> enumerated the advantages of plea bargaining as follows:

1. Accused can avoid the time and cost of defending himself at trial, the risk of harsher punishment, and the trial's publicity.
2. The prosecution saves time and expense of a lengthy trial.
3. Both sides are spared the uncertainty of going to trial.
4. The court system is saved the burden of conducting a trial on every crime charged.<sup>117</sup>

111 Ani, CC 'Plea Bargaining: Immunity from Punishment' (2012) *NIALS Roundtable on Plea Bargaining* 6 <<https://legalpediaonline.com/plea-bargain>> accessed 30 January 2022.

112 Alubo (note 43 above) 17-18.

113 Ani (note 111 above) 6.

114 *Ibid* 15.

115 *Ibid*.

116 (2014) LPELR – 22760 (CA).

117 *Federal Republic of Nigeria v Lucky Nosakhare Igbinedion & Ors* (2014) LCN/7100(CA).

The EFCC relies on the provisions of EFCC Act for plea bargaining.<sup>118</sup> Kalu predicates the basis for plea bargaining on the 'progressive interpretations of Sections 174 and 211 of the Constitution of the Federal Republic of Nigeria 1999'.<sup>119</sup> Section 174 provides that

- (1) The Attorney-General of the Federation shall have power—
  - (a) To institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial, in respect of any offence created by or under any Act of the National Assembly;
  - (b) To take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and
  - (c) To discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.
- (2) The powers conferred upon the Attorney-General of the Federation under subsection (1) of this section may be exercised by him in person or through officers of his department.
- (3) In exercising his powers under this section, the Attorney-General of the Federation shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process.

Kalu has argued, and rightly too, that the Attorney-General is unquestionably seized with jurisdiction to plea bargain. He locates this, therefore, at the doorstep of the Constitution.<sup>120</sup>

The practice has been criticised on the grounds that it will be counterproductive in the fight against corruption, as it will encourage other public officers to continue stealing public money.<sup>121</sup> In the words of Bola Ajibola:<sup>122</sup> 'It will make a mockery of the entire process of dealing with corruption. The rule of law is clear. Those who are found guilty of any crime committed within Nigeria should be duly and adequately punished.'<sup>123</sup>

Ogunode states that corruption is endemic in the Nigerian polity and the desire to wipe it out is wishful thinking. According to him, the issue of plea bargaining in the country's penal system is not only disturbing but a subtle way of allowing corrupt government officials and persons off the hook.<sup>124</sup>

118 Ani (note 111 above) 6.

119 Kalu, AU 'The Role of Plea Bargaining in Modern Criminal Law' (2012) Paper presented at a Roundtable on Plea Bargaining organised by the Nigerian Institute of Advanced Legal Studies (NIALS).

120 Alubo (note 43 above) 18.

121 Eze, TC and Eze, A 'A Critical Appraisal of the Concept of Plea Bargaining in Criminal Justice Delivery in Nigeria' (2015) 3(4) *Global Journal of Politics and Law Research* 31 <<https://bit.ly/3ypThFT>> accessed 30 January 2022.

122 Prince Bola Ajibola was a former Justice of the International Court at The Hague.

123 Eze and Eze (note 122 above) 41.

124 Ogunode, S 'Criminal Justice System in Nigeria: For the Rich or the Poor?' (2015) 4(1) *Humanities and Social Science Review* 34.

Despite the criticism, a plea bargain is justified on the ground that it allows for the recovery of looted money.<sup>125</sup> For example, a former Chairman of the EFCC, Ibrahim Lamrode, has vigorously canvassed in support of the practice, justifying it as follows:

We are all witnesses to the fact that cases commenced as far back as 2007 against some former Governors such as Uzor Kalu, Chimaroke Nnamani, Saminu Huraki, and Joshua Dariye have hardly made any meaningful progress in the trial because of regular exploitation of the inherent problems in the Justice system to truncate trials.<sup>126</sup>

It is important to note that plea bargaining is incorporated into the Administration of Criminal Justice Act of 2015 because of support for the practice.<sup>127</sup>

### 4.3 The efficacy and effectiveness of the EFCC re-visited

However, corruption in Nigeria has defied all known cures; the political elites, including some legislators, are involved in corruption.<sup>128</sup> Most Senators are either former Governors or have had held an administrative office and have at least one fraud allegation to answer.<sup>129</sup> The chairman of the EFCC is having a running battle with the Senate at present. The executive has insisted on using the nominated candidate who, according to them, has the requisite experience and fortitude to carry on the anti-corruption crusade against formidable corrupt individuals in high positions of authority in Nigeria.<sup>130</sup>

The executive has been accused of selective justice; for instance, the US\$ 620,000 oil subsidy scandal involving Alhaji Farouk Lawan, a member of the House of Representatives, and some others has been swept under the carpet.<sup>131</sup> The Halliburton Willbros Siemens multi-million dollar scandals involved a number of Nigerians.<sup>132</sup> Those involved in the scandal were tried and punished in the countries where the bribes originated. However, their Nigerian collaborators still walk the streets undisturbed because the case involved some highly connected political elites.<sup>133</sup>

The failure to prosecute corruption shows that the Federal Government lacks the political will to fight corruption in the industry. A strong political will is a prerequisite for the efficient implementation of anti-corruption legislation to promote transparency and accountability in the oil industry in Nigeria.

125 Alubo (note 43 above) 18.

126 Eze and Eze (note 122 above) 42.

127 Administration of Criminal Justice Act of 2015, s 270.

128 Akinrujumu, A 'Ezekwesili slams National Assembly over corruption and poor performance' (2017) <<https://bit.ly/3yqddbz>> accessed 6 December 2019; Olufemi, J *et al* 'Top 10 Corruption Scandals Nigeria's National Assembly Hasn't Resolved' (2015) *Premium Times* <<https://bit.ly/3c4tnjz>> accessed 6 December 2019.

129 Ugonna, U '5 Senators still undergoing corrupt charges' (2016) *Naij.com*; Adebayo, T 'Saraki's Corruption Trial: Nigerian lawmakers speed up controversial bill to amend anti-corruption law' (2016) *Premium Times* <<https://bit.ly/3nNjKZ1>> accessed 6 December 2019.

130 The chairman was in an acting capacity which could be renewed on yearly basis.

131 Ojo, JS 'Looting the Looters: The Paradox of Anti-Corruption Crusades in Nigeria's Fourth Republic (1999-2014)' (2016) 12(9) *Canadian Social Science* 1-20 at 13.

132 Opejobi, S 'Halliburton scandal: Buhari may go after IBB, Abdulsalami, Jubril Aminu' *Daily Post* 26 January 2016 <<https://bit.ly/3RlvTSB>> accessed 6 December 2019.

133 Ogunode (note 125 above) 34.

In 2016, the National Extractive Industry Transparency Initiative (NEITI) alleged that the NNPC and the NPDC had withheld the sum of US\$ 21.7 million and N 316 billion from the Federation account.<sup>134</sup> As stated earlier, the NEITI must 'monitor and ensure that all payments due to the Federal government from all extractive industry companies, including taxes, royalties, dividends, bonuses, penalties, levies and such like, are duly made'.<sup>135</sup> The failure to surrender to the fiscus all proceeds due to it is symptomatic of the pervasive nature of the scourge of corruption.

At the international level, in 2001, the heads of states of the 13 Member States of the Southern African Development Community (SADC)<sup>136</sup> adopted measures to create, maintain and strengthen systems for protecting individuals who, in good faith, report acts of corruption. This provision is contained in Article 4(1)(e) of the SADC Protocol and deals with the protection of whistleblowers. Also, in terms of Article 5(6) of the AU Convention, States Parties undertake to adopt measures that ensure that citizens report instances of corruption without fear of reprisals.

It is important to note that the UN Convention contains a similar provision in Article 33 of the Convention: each State Party shall consider incorporating into its domestic legal system suitable measures to provide safeguards against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the appropriate authorities any facts concerning offences established in accordance with the UN Convention. The present administration in Nigeria has implemented a whistle-blowing policy to expose corrupt government officials.

Early in 2017, the EFCC recovered US\$ 9,772,800 and £ 74,000 from the former Managing Director of the NNPC.<sup>137</sup> This money was hidden in Sabon Tasha, a town in the Kaduna metropolis. This revelation was made possible through the whistle-blowing policy of the Federal Government. Sometime in 2016, the Federal Government introduced a whistle-blowing policy based on the Whistleblower Act of 2011. The Nigerian Whistleblower Act protects individuals who work for the government or organisations and report misconduct in their organisations.<sup>138</sup> According to the former Minister of Finance, Kemi Adeosun, the legislation aims to enable patriotic citizens to report criminal acts such as the mismanagement or misappropriation of public funds and assets, like properties and vehicles; financial malpractice or fraud; collecting or soliciting bribes; corruption; diversion of revenues; unapproved payments; splitting of contracts; procurement fraud; kickbacks and over-invoicing.<sup>139</sup>

134 Falana, F 'Why Nigerian Government is losing corruption cases' *saharareporters.com* accessed 26 July 2019.

135 NEITI Act 2007, s 3.

136 SADC members are Angola, Botswana, the Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

137 Atumah, S 'Petrodollar "bankers" awry plans in whistle-blowers dens' (2017) <<https://bit.ly/3AKEjwK>> accessed 31 January 2022.

138 Akinnaso, N 'Nigeria's whistle-blower policy' (2017) *Punch* <<http://punchng.com/nigerias-whistle-blower-policy/>> accessed 24 July 2019.

139 The Defender 'Whistle blowing: Beyond financial incentives' (2016) <<http://www.thedefenderngr.com>> accessed 24 July 2019.

Another huge corruption case involving former National Security Adviser, Col Sambo Dasuki, was unravelled by the EFCC. He was alleged to have corruptly diverted a US\$ 2.3 billion arms purchase fund.<sup>140</sup> The scandal rocked top functionaries and the leadership of the People's Democratic Party.<sup>141</sup> Dasuki claimed that the money was shared between top members of the party to contest the 2015 national election in Nigeria.<sup>142</sup>

The arms deal scandal investigation traced N 2.3 billion to the then Ekiti State Governor. The EFCC applied to court and obtained an order *ex parte* from the Lagos Division of the Federal High Court to freeze the accounts of Mr Fayose, the Ekiti State Governor at Zenith Bank. The application was granted, but another application to vacate the order filed before a High Court of the Ado Ekiti Division of the court was granted by Taiwo J. The EFCC also promptly appealed against the new order. In this case, in the course of the investigation, Chief Mike Ozekhome, counsel to the governor, was found to have been paid N 75 million as a legal fee. The EFCC then applied for an order *ex parte* to freeze Chief Mike Ozekhome's account from Anka J of the Federal High Court sitting in Lagos.<sup>143</sup> The court declined, claiming that it could not stand as an appellate court over a decision made earlier by Taiwo J.

Another embarrassing case involves a Supreme Court Justice and other High Court judges. In *FRN v Justice Adeniyi Ademola & Two Ors*,<sup>144</sup> the learned judges were arraigned and tried on 18 charges of taking bribes, among other charges. After the prosecution had closed his case, counsel for the defendants filed a no case submission. The learned trial judge, Okeke J, dismissed the suit on the basis that no case against the defendants had been established.

The above-mentioned cases on corruption were taken to court but, unfortunately, the cases suffered setbacks at the trial. Many reasons have been offered for the setbacks. For example, some of the cases were lost due to the limited investigating capacity of the anti-corruption agencies, and the lack of inter-agency collaboration and coordination of investigation and prosecution.<sup>145</sup>

Another reason for the failure of the EFCC in its crusade against corruption is the mode of appointment into the agency. Most of the agency's board members are appointed from Ministries and Departments of the Federal Government.<sup>146</sup> The power to appoint and remove the EFCC chairman resides in the Presidency. For as long as this situation remains, the EFCC cannot be said to be autonomous.<sup>147</sup>

---

140 Ikeke, N 'Arms Deal Saga: Top people who have been implicated' (2015) <<https://www.naij.com>> accessed 26 July 2019.

141 The People's Democratic Party was ousted by the APC of President Muhammadu Buhari in 2015; Ikeke, N 'Arms Deal Saga: Top people who have been implicated' (2015).

142 'Arms Fraud: Dasuki Reveals How Former Senate President Got N10.7billion for his Campaigns' (2015) <<https://bit.ly/3OXcMfX>> accessed 26 July 2019.

143 See *FRN v Mike Ozekhome* FHC/AD/CS/27/2016.

144 FCT/HC/CR/21/2016.

145 Falana, F 'Why Nigerian Government is losing corruption cases' (2017) *saharareporters.com* <<https://bit.ly/3bYez5S>> accessed 31 January 2022.

146 *Ibid.*

147 Ijewereme (note 76 above) 6.

## 5. International and regional collaboration to fight corruption

Nigeria has ratified and domesticated the two major anti-corruption instruments: the United Nations Convention Against Corruption, 2004 and the African Union Convention on Preventing and Combating Corruption and Related Offences, 2003. Nigeria is also a member of an international body known as the Egmont Group,<sup>148</sup> which links member countries in an effort to repatriate stolen funds that are hidden away in foreign banks, but Nigeria was recently suspended for not implementing the international standard for a financial investigation. The Nigerian Financial Intelligence Unit was established to assist the government in bringing back all monies fraudulently hidden away in foreign banks with the help of the international financial intelligence agencies.

This section discusses the two international instruments and Nigeria's membership of the International Financial Intelligence Unit, otherwise referred to as the Egmont Group.

### 5.1 United Nations Convention Against Corruption, 2004

The Convention introduces an inclusive set of standards, criteria and principles that all nations can apply in order to improve their legal and regulatory regimes to fight corruption.<sup>149</sup> It encompasses a wide range of corruption offences, including domestic and foreign bribery, embezzlement, trading in influence and money laundering. It calls for preventive measures and the criminalisation of the most prevalent forms of corruption in both the public and private sectors. It requires the member states to return assets obtained through corruption to the State from which they were stolen.<sup>150</sup> The Convention presents a new fundamental principle and a framework for more substantial cooperation between States to prevent and detect corruption and to return the proceeds of corruption. This is important to many developing nations where corrupt government officials have plundered the nation's wealth and where new governments are in desperate need of resources to rebuild and rehabilitate their societies.<sup>151</sup>

The objectives of the Convention are to:

1. promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
2. promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
3. promote integrity, accountability and proper management of public affairs and public property.<sup>152</sup>

148 The Egmont Group of Financial Intelligence Units is an international organisation that facilitates cooperation and intelligence sharing between national financial units to investigate and prevent money laundering and terrorist financing.

149 UN Office on Drugs and Crime – United Nations Convention Against Corruption, New York, 2004, iii <<https://bit.ly/3uxEMyM>> accessed 3 December 2019. It entered into force in 2005.

150 *Ibid.*

151 *Ibid.*

152 Article 1(a), (b) and (c) of the UN Convention Against Corruption.

Regarding the Convention's scope of application, Article 3(1) states:

The Convention shall apply, in accordance with its terms, to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with this Convention.

However, despite the elegant provisions of the Convention, it does not provide for a process to ensure effective implementation.<sup>153</sup> No agency is established to monitor Member States' compliance with its provisions.<sup>154</sup>

## 5.2 African Union Convention on Preventing and Combating Corruption and Related Offences, 2003

The African Union Convention on Preventing and Combating Corruption and Related Offences, 2003<sup>155</sup> (AU Anti-corruption Convention) provides a comprehensive framework and is unique among anti-corruption instruments in containing mandatory provisions with respect to private-to-private corruption and on transparency in political party funding. Other strong points of the AU Convention are mandatory requirements for the declaration of assets by designated public officials and restrictions on immunity for public officials.<sup>156</sup> It also pays special attention to the need for the media to have access to information.<sup>157</sup>

The AU Anti-corruption Convention aims to achieve the following: first, to promote and strengthen the development in Africa of anti-corruption mechanisms;<sup>158</sup> secondly, to promote, facilitate and regulate cooperation among state parties;<sup>159</sup> thirdly, to remove obstacles to the enjoyment of human rights, including economic, social and cultural rights;<sup>160</sup> and fourthly, to establish conditions necessary to foster transparency and accountability in the management of public affairs.<sup>161</sup> Although this initiative is a step in the right direction, it has been observed that there is no strong link between corruption and the violation of human rights and that it lacks a serious and effective mechanism for holding states accountable.<sup>162</sup>

---

153 Babu, R 'The United Nations Convention Against Corruption: A Critical Overview' (2006) 32 <<https://bit.ly/3c3cC87>> or <<https://doi.org/10.2139/ssrn.891898>> accessed 4 December 2019.

154 *Ibid.*

155 It entered into force on 5 August 2006.

156 AU Convention on Preventing and Combating Corruption and Related Offences, Art 7(1) and (5).

157 Article 12(4).

158 Article 2(1).

159 Article 2(2).

160 Article 2(4).

161 Article 2(5).

162 Olaniyan, K 'The African Union Convention on Preventing and Combating Corruption: A Critical Appraisal' (2004) 4 *African Human Rights Law Journal* 74 <<https://bit.ly/3nNVGFh>> accessed 3 December 2019.

### 5.3 International financial intelligence units

Nigeria is a member of the International Financial Intelligence Units, otherwise referred to as the Egmont Group. The Nigerian version is referred to as the Nigerian Financial Intelligence Unit (NFIU). The NFIU is very important in realising the Federal Government's policy of bringing back to Nigeria all monies fraudulently hidden away in foreign banks. This body investigates financial crimes and follows up investigations abroad. An international body known as the Egmont Group coordinates member countries' financial intelligence units. A financial intelligence unit (FIU) serves as a national centre for the receipt and analysis of: (a) suspicious transactions; and (b) other information relevant to money laundering, associated predicate offences and financing of terrorism, and for the dissemination of the results of that analysis.<sup>163</sup>

A few major considerations shape the creation of the FIUs: anti-money laundering and counter-terrorism financing laws, existing law enforcement, and the need for an authority that will receive, assess and share financial information. The FIU should be able to obtain additional information from reporting entities and should have access on a timely basis to the financial, administrative and law enforcement information that it requires to undertake its functions properly.<sup>164</sup> This body is important to Nigeria because it assists Nigeria in tracing dubious financial transactions and helps to repatriate stolen funds hidden away in foreign banks back to Nigeria.

There are four models of FIUs:

1. The judicial model is established within the judicial branch of government where 'disclosures' of suspicious financial activities are received by the investigative agencies of a country from its financial sector, so that judicial powers can be brought into play, e.g., seizing funds, freezing accounts, conducting interrogations, detaining people, conducting searches, etc.
2. The law enforcement model implements anti-money laundering measures alongside already existing law enforcement systems, supporting the efforts of multiple law enforcement or judicial authorities with concurrent or sometimes competing jurisdictional authority to investigate money laundering.
3. The administrative model is a centralised, independent administrative authority that receives and processes information from the financial sector and transmits disclosures to judicial or law enforcement authorities for prosecution. It functions as a 'buffer' between the financial and the law enforcement communities.
4. The hybrid model serves as a disclosure intermediary and links to judicial and law enforcement authorities. It combines elements of at least two of the FIU models.<sup>165</sup>

163 Egmont Group 'Financial Intelligence Units (FIUs)' <egmontgroup.org> accessed 27 July 2019.

164 *Ibid.*

165 *Ibid.*

Before March 2018, the NFIU was merged with the EFCC. The Egmont Group demanded that Nigeria should ensure the independence of the FIU and should comply with the international standards of financial investigation. On 6 March 2018, the National Assembly passed the Bill establishing the Nigerian Financial Intelligence Unit (NFIU) as an independent entity, and the Bill was assented to by the President.<sup>166</sup> The Bill deletes section 2(c) of the EFCC Act and establishes the NFIU as an independent body.<sup>167</sup> Pursuant to section 5(1) of the Nigerian Financial Intelligence Unit Act, 2018, the President appointed a Director for the unit in 2019.

The second issue is to determine where the NFIU will be domiciled.<sup>168</sup> The law provides that the NFIU should be domiciled in the Central Bank of Nigeria, but its independence is guaranteed. The Chairman of the House Committee on Financial Crimes, Kayode Oladele, has argued that he would have preferred the issue of domicile to be resolved in favour of the EFCC, because the NFIU's work would have benefited from the policing powers of the EFCC.<sup>169</sup>

## 6. The role of the judiciary in combating corruption

An independent judiciary is pivotal to the success of the crusade against corruption. The rule of law thrives under an independent and incorruptible judiciary.<sup>170</sup> Accordingly, Joel Obura advocates that the judiciary should be pure in the fight against corruption.<sup>171</sup> In the view of Hon Justice SO Uwaifo,<sup>172</sup> 'a corrupt judge is more harmful to the society than a man who runs amok with a dagger in a crowded street.' A man with a dagger can be restrained physically, but a corrupt judge deliberately destroys the moral foundation of a society and causes incalculable distress to individuals by abusing his or her office while being referred to as 'Honourable'.<sup>173</sup>

Where the risk that corrupt activity will result in imprisonment and public humiliation is minimal, corruption is bound to thrive. Corrupt practices compromise the

166 The Egmont Group, at its 25th plenary held in Sydney, Australia, in September 2018, lifted the suspension of Nigeria.

167 The deleted s 2(c) of the EFCC Act provided that the EFCC 'is designated Financial Intelligence Unit (NFIU) in Nigeria which is charged with the responsibility of coordinating the various institutions involved in the fight against any money laundering and enforcement of the laws dealing with economic and financial crimes in Nigeria'. The Nigerian Financial Intelligence Unit (Establishment) Act, 2018 deleted s 2(c) of the EFCC Act.

168 It should be noted that the Egmont Group agreed that the Unit could domicile in any government agency including the EFCC.

169 *Punch* (7 March 2018) 40.

170 Oyetibo, T 'The Role of the Judiciary in Combating Corruption in Nigeria' *Premium Times* 26 September 2012 <<https://bit.ly/3Inwlf3>> accessed 2 August 2019.

171 Mbonu (note 40 above) para 31, 11.

172 Justice Samson Uwaifo was a Justice of the Supreme Court of Nigeria until 2005 when he retired from the Supreme Court.

173 The statement was part of the valedictory speech delivered by Justice Samson Uwaifo upon his retirement in 2005. See also UN Commission on Economic, Social and Cultural Rights, General Comment No. 4: Corruption and its impact on the full enjoyment of human rights, in particular, economic, social and cultural rights, 22 June 2005, E/CN.4/sub.2/2005/18. The progress report was submitted by the Special Rapporteur, Christy Mbonu.

right to equality before the law and the right to a fair trial. In particular, they undermine access to justice by the poor who cannot afford to offer or promise bribes. In countries where corruption is pervasive in the administration of justice, corrupt judges, lawyers, prosecutors, police officers, investigators, and auditors prevent the implementation of a country's laws and efforts to reform them.<sup>174</sup>

The independence of the judiciary is guaranteed in the Nigerian Constitution. Section 6 of the Constitution empowers the courts to adjudicate on all cases between individuals, corporate organisations, private persons and government, and between governments in Nigeria. Section 17(2)(e) of the Constitution guarantees the independence of the judiciary: 'the independence, impartiality and integrity of courts of law, and easy accessibility thereto shall be secured and maintained.' However, the section is erroneously placed under the Fundamental Objectives and Directive Principles of State Policy, whose provisions are non-justifiable in terms of section 6(6)(c) of the Constitution. This means that the government cannot be mandated to implement the said section where section 17(2)(e) of the Constitution is violated.

Because of the importance of the judiciary in the fight against corruption, as mentioned above, it must be free from all forms of interference, whether in relation to funding or political manipulation, so that it can freely determine cases placed before it. Secondly, the courts should expeditiously dispense with corruption cases before them and not hide behind technicalities because justice delayed is justice denied. Thirdly, judges should have further training to enhance their competency.<sup>175</sup>

## 7. Conclusions and recommendations

### 7.1 Conclusions

The political elites are occupied with gaining political power for selfish reasons. This article has identified serious corruption in Nigerian socio-economic life, especially in the petroleum sector. The article discussed how leaders engaged in corruption by diverting the large sums of money from crude oil production into private pockets, leaving citizens more impoverished than before oil was discovered. The article also noted that corruption in Nigeria is systemic – it has gone beyond petty or grand corruption – and this therefore calls for concerted efforts by the government and the governed to work together to fight the scourge.

Although provisions in the 1999 Constitution ensure the independence of the judiciary, this article has established that there are impediments to the independence of the judiciary. For instance, the appointment of judicial officers at whatever level is subject to the discretion of the President and the confirmation of the Senate at the federal level and that of the Governor and the House of Assembly at the state level. This signals danger in a corruption-ridden nation like Nigeria, where ethnic, political and religious considerations are given priority over rationality.

<sup>174</sup> *Ibid.*

<sup>175</sup> Oyetibo (note 173 above).

## 7.2 Recommendations

Based on the findings in this article, the following recommendations are made:

1. Political leaders should lead by example by encouraging probity and accountability in governance.
2. The government should recruit able and experienced members into the EFCC. The anti-graft agencies should be well funded, and investigators and prosecutors should be well motivated with adequate remuneration.
3. The agency should be free from undue influence or interference from government. There should be no sacred cows.
4. Existing laws against corruption must be enforced across the board – enforcement must not be selective or directed against members of the opposition party.
5. The independence of the judiciary must be guaranteed, and Nigeria must ensure adequate policing, with appropriate equipment and good pay for the law enforcement agencies to discourage corruption.
6. Non-governmental organisations, civil society, trade unions, the media and student bodies must be strengthened to fight corruption in all its forms.

If implemented, these recommendations should help reduce incidences of corrupt practices.

### **How to cite:**

Mbao, M & Oladiran, AA 'Petrodollar Corruption in Nigeria and the Implications for Economic Development' (2022) 2(1) *Turf Law Journal* 1-24.