

# **Corrupt Practices in Nigeria's Oil Industry: OPL 245 Case Study**

## **Executive Summary**

Corruption allegations against Shell, Eni and some Nigerian government officials have for more than two decades triggered the clamour by anti-corruption activists within and outside Nigeria for investigation and prosecution of culprits in bribery relating to the award of the Oil Prospecting License (OPL) for Oil Block 245 popularly known as Malabu. Consequently, court processes have been instituted in the UK, Italy, Switzerland against Shell and Eni as corporate entities and individuals in connection with bribery allegations which also indicted a number of Nigerian government officials.

This report therefore focuses on events and circumstances culminating in disputes and malfeasances regarding the award of OPL 245. The report examines benefit analysis of OPL 245, terms of operations and roles of beneficiaries of the awards in the disputes that have lasted over the period. This report also examines issues arising from high profile inquiries into the corruption allegation as well as on going legal cases involving private and corporate individuals indicted or presumed to be culpable in the awarded of OPL for Oil Block 245 since the Nigerian company, Malabu Oil and Gas Limited first secured the oil prospecting rights to the Oil Block in 1998. The report appraises efforts of civil society groups and Nigerian government towards ensuring proper investigation and prosecution of on going cases arising thereto.

The report indicates wide range official abuses and flouting of due processes in the award of OPL-245 which is largely symptomatic of the depth of rot in the Nigerian oil sector; particularly in relations to operations of International Oil Corporations (IOCs). The case of OPL-245 largely speaks to ramified abuse of political power and compromised public sector which is at the heart of corruption in the Nigerian oil sector. Flowing from the report therefore is the urgency to address the prevailing gaps in governance model for Nigerian oil sector which unfortunately the long delay in the passage of Petroleum Industry Bill (PIB) otherwise referred to as Petroleum Industry Governance Bill (PIGB) may have unwittingly further compounded.

The report contains wide-range recommendations which include the need for the Nigerian government to deploy compelling political will in entrenching regimes of transparency and accountability in the oil sector through enduring governance model. Other recommendations include revocation of OPL 245 and conduct of proper inventories of assets connected thereto; thorough evaluation of existing OPLs to ascertain likelihood of abuses and need for remedies; overhauling existing models and templates for award of oil prospecting licences to avert the problems associated with OPL 245; conduct of judicial enquiry on oil prospecting regime in Nigeria; constituting committee of experts to review conditions under which OMLs are renewed; full automation of monitoring and regulatory agencies of the oil industry; ensure adequate compensation of host communities to engender peace and stability in the sector; ensure adequate post revocation compensation from the oil companies and commitment to greenhouse gas emission reduction in tandem with global quest to 'keep the oil in the ground' to safeguard the environment.

## **1.1. Introduction**

In spite of abundance of oil resources, lack of accountability and transparency with entrenched systemic corruption has denied Nigeria and its citizens meaningful benefits from proceeds of oil exploration and exploitation over 60 years after oil commercial oil exploration began in Oloibiri in 1956. However, more than ever in the history of corruption that has become endemic with Nigerian oil industry, the case of Oil Prospecting Lease (OPL) for Oil Block 245 has elicited deafening attention on a global scale with far-reaching steps being taken to unearth circumstances surrounding wide-range corrupt activities and prosecutions of supposed actors. This report is anchored on the need to re-examine benefit analysis of OPL-245 as well as controversies and legal intrigues that have trailed corruption charges involving two Transnational Oil Companies; Shell and Eni and some Nigerian government officials. Series of corruption litigations and indictments are currently on-going at transnational level; Italy, the Netherlands, Switzerland and spanning about a decade without resolution in sight. Unearthing the corruption in OPL-245 and prosecution of culprits of bribery within Nigerian government's circle, the public sector, as well as IOCs will inexorably bring tremendous positive impacts to bear in repositioning Nigerian oil industry and possibly put an end to the regime of corruption arising from poorly regulated and inefficiently managed oil industry governance in Nigeria.

OPL 245, in terms of fiscal benefits is one of the most important Oil Blocks in the history of Nigeria's oil industry. The high stakes involved in the disputes amongst prospecting oil companies and the undercurrent of high-level corruption can therefore be imagined. While this report provides a brief overview on the oil industry in Nigeria, the goal however is to focus on the nature of series of partnership Agreements that have come into play to govern the operations of OPL-245, the potential fiscal benefits of OPL-245 for Nigeria and the losses that have arisen as a result of corruption, the legal tussles over ownership and control of the Oil Block, investigations into corruption allegations and prosecution of on going cases and any other case that may be deemed appropriate in due course. The report also undertakes an overview of strategic and robust campaigns by local and international CSOs in the bid to shed light on the shady deal surrounding OPL-245. More importantly however, the desire is to deploy the report for mobilising sustained engagement of stakeholders across the board around the issues relating to OPL-245 with a view to bring relevant experiences to bear for the entrenchment of legislative and institutional frameworks for enabling governance model as well efficient regulations for Nigeria's oil industry.

## **1.2. Overview of the Oil Industry in Nigeria**

Nigeria is blessed with abundance of natural resources including hydrocarbons which makes her the third largest producer in the Continent of Africa and the 10th in the world. Over the last four decades, revenues from oil have consistently accounted for over 90% of Nigeria's foreign exchange earnings. The recoverable oil and gas reserves in Nigeria's Niger-Delta belt are respectively estimated at 34.5 billion barrels and 93 trillion cubic feet<sup>1</sup>. Nigeria has more than 600 oil fields with a relative million barrels of extractable reserves and large reserves of natural gas estimated at 176 trillion cubic feet. Unfortunately, however, less than ¼ of the gas deposit are harnessed for economic purposes while more than ¾ of the gas is flared to further compound the worsening environmental hazards in the oil producing communities and region.<sup>2</sup>

Until most recently when deregulation of Nigeria's downstream is manifesting in private initiatives in the area of crude refining, four government owned refineries located in Kaduna, Warri and Port Harcourt (now largely mothballed) have for decades operated with projected total production output of about 438,750 bbl/d out of which less than 40% of the full capacity are attained even when the refineries are in operation. Nigeria's oil industry is regulated through agencies including the exclusively publicly owned Nigerian National Petroleum Corporation (NNPC) and its many subsidiaries under the Ministry of Petroleum Resources.

To a large extent, lack of transparency and accountability that pervade public and private sectors of the country symphonises the unbridled corruption that is a dominant feature in Nigeria's oil industry. Thus, it is often said that the wide-spread high profile corruption in Nigeria provide a mirror to the colossal mismanagement of trillion dollars that have accrued from proceeds of oil revenue since commercial exploration of crude in large quantities began prior to independence in 1960. The Nigerian polity is largely driven by elite politics that is sustained by control of oil resources which reflects in the opaqueness of operations of NNPC and other agencies in the oil sector. Petrodollars politics of the elite has turned the major NNPC into cesspit of corruption which gained ascendancy from the time of oil boom in the 70s and has since assumed worsening trends within the last 30 years.

As the case with the NNPC, other key agencies in the oil industry such as Department of Petroleum Resources (DPR), Petroleum Product Marketing Company (PPMC) are also under the throes of political control. Reliance on oil as the main source of government revenue has impacted negatively on the growth of the industry while other viable non-oil sectors of the economy have been neglected for decades. Successive regimes under the military as well as in civil dispensation have prioritised political control of the oil industry over and above the compelling imperative of putting in place appropriate governance model that would translate into the growth of the oil sector. Overwhelming expectation that the Petroleum Industry Governance Bill (PIGB) would translate into enabling law has, so far, remained an illusion following a decade of prevarication by political elite who indulge in the bulk passing between the legislature and the executive.

## **2.1. Content of agreement of the OPL 245**

Oil Prospecting Lease for Oil Block 245 was allocated to a Nigerian Company; Malabu Oil and Gas in 1998. However, only \$2 million was paid by Malabu Oil of the \$20 million expected for the granting of the lease. Prior to July 2001 revocation of the OPL 245 allocated to Malabu Oil and Gas and Shell Nigeria Ultra Deep Limited (SNUD) had acquired 40% of the stake early in March that year. A fresh bid for OPL 245 was made by ExxonMobil and SNUD; the eventual winner of a fresh bid in 2002. Malabu Oil and Gas instituted legal action seeking reinstatement of its rights to the Oil Block notwithstanding a subsisting production sharing contract (PSC) agreement of 2003 between the NNPC and SNUD. The rights of Malabu Oil and Gas were restored through a resolution that validated the 2005 PSC agreement. SNUD however instituted another legal proceeding against the federal government at the International Centre for Settlement of Investment Disputes (ICSID) in Washington claiming \$2 billion as compensation in losses and

seeking full restitution of its rights as contained in 2003 PSC. In 2011, consent to a resolution agreement was reached with the payment of \$1,092,040,000 for the reallocation of the oil block 245.

The Resolution Agreement reached on 29 April 2011 between FGN, SNUD, Shell Nigeria Exploration and Production Company, Subsidiary of Shell (SNEPCo) and Nigerian Agip Exploration Ltd (NAE); Subsidiary of Eni sets the terms that govern the continued exploration and future production in Block 245. Timeline of events beginning with the award of OPL-245 to Malabu Oil and Gas Limited in 1998 culminating in series of disputes as well as litigations and the 29 April Resolution Agreement FGN, SNUD-Shell and NAE-Eni are as follow<sup>3</sup>:

<b>Date</b>	<b>Events</b>	<b>Implications</b>
<b>1998</b>	OPL-245 Block was allocated to a Nigerian company named Malabu Oil and Gas Limited.	Beginning of commercial operation of the Oil Block-245 popularly referred to as Malabu was given official backing by Nigerian government
<b>2001</b>	Shell Nigeria Ultra Deep Limited (SNUD) acquired a 40% stake of the Block	Acquisition of 40% share by SNUD signalled partnership and joint claims to rights to OPL-245 Block.
<b>2001</b>	OPL-245 to Malabu was revoked.	The revocation opens bid for the rights to the Block as a sole risk.
<b>2001</b>	OPL-245 Block was allocated to SNUD.	Malabu Oil and Gas initiated legal action to recover licence.
<b>2003</b>	Production sharing contract (PSC) was signed between Nigerian National Petroleum Corporation (NNPC) and SNUD	The signing of the PSC consolidated the Nigerian government's decision to revoke the rights of Malabu to OPL-245
<b>2006</b>	Rights to the Block 245 was restored to Malabu following a resolution of litigation	Fiscal terms of 2005 PSC was part of the condition of the restoration of the Block to Malabu
<b>2007</b>	SNUD instituted legal proceedings against the FGN at the International Centre for Settlement of Investment Disputes over the restoration of the Block-245 to Malabu,	SNUD anchored the litigation for the restoration of its rights to Block-245 on full restitution of terms set out in the 2003 PSC
<b>2011</b>	Three Resolution Agreements were reached on the reallocation of the rights to Block 245	Resolution Agreement between FGN and Malabu included payment of \$1,092,040,000 to Malabu to secure consent for the reallocation of Block 245

<p><b>2011 (29 April)</b></p>	<p>Resolution Agreement between FGN, SNUD, SNEPCo, and NAE sets terms that govern the continued exploration and future production in the Block</p>	<ul style="list-style-type: none"> <li>• The FGN reallocates the Block to Nigerian Agip Exploration Limited (NAE, a subsidiary of ENI) and Shell Nigeria Exploration and Production Company (SNEPCo) (<i>Clause 1.2</i>).</li> <li>• NAE, on behalf of NAE and SNEPCo shall pay \$1,092,040,000 to the FGN to settle existing claims over Block 245 (<i>Clause 1.3</i>).</li> <li>• With the issuance of a new OPL, the 2003 PSC signed with SNUD is terminated (<i>Clause 1.4</i>).</li> <li>• NAE and SNEPCo agree to execute a Production Sharing Agreement (PSA) to set out the rights and obligations between themselves for the operation of the Block (<i>Clause 4</i>).</li> <li>• The PSA between ENI and Shell shall be treated as a Production Sharing Contract (PSC) as defined in Section 17 of the Deep Offshore and Inland Basins Production Sharing Contract Act, Cap D3, LFN 2004 (<i>Clause 5</i>).</li> <li>• The agreement includes a “stabilization” clause requiring that NAE and SNEPCo be protected from any future changes to the fiscal terms covering OPL 245 and any subsequent OML (<i>Clause 6</i>).</li> </ul>
<p><b>2011 11 May</b></p>	<p>Separate letters to ENI and Shell confirmed that the petroleum operations shall be governed by a PSA between Shell and ENI,</p>	<p>Fiscal terms as provided by the Deep Offshore and Inland Basin Production Sharing Contracts Act, Cap 3, LFN 2004, shall be applicable to the PSA between Shell and ENI.</p>
<p><b>2012 12 February</b></p>	<p>PSA was signed between ENI and Shell for OPL 245.</p>	<p>The agreement clarifies that there shall be no Cost Oil allocation and that Profit Oil will not be shared with the NNPC or the FGN and will be allocated to ENI and Shell in proportion to their Participating Interest.</p>

## **2.2. Circumstances surrounding the award of OPL 245 to the beneficiaries**

Investigations have since revealed that Mohammed Sani Abacha, son on Nigeria's Head of State when the OPL 245 was initially awarded to Malabu, owned the principal share of 50% of Malabu Oil and Gas. Dan Etete who masterminded Malabu deal created a fictitious Kwekwu Amafagha who held 30% of the share in proxy for the Minister while Hassim Hindu, the wife of a former Nigeria's Ambassador to US held 20%. The latest of the controversies surrounding the award of OPL for oil bloc 245 arose from the 2011 agreement that led to the concession of the oil block to Agip (a subsidiary of the Italian oil company ENI) and SNEPCo (a subsidiary of Shell). According to a report by Resource for Development Consulting, the PSA signed in 2012 following the 2011 RA is not an agreement between the NNPC and the contractor but an agreement between Eni and Shell which automatically translate into a Joint Operating Agreement to the exclusion of NNPC or any other authorised entity of the Nigerian government<sup>4</sup>.

Between 1998 and 2011 spanning over a decade, OPL 254 was awarded on three occasions under controversial circumstances. The Oil Block was awarded to Malabu Oil and Gas in 1998 but subsequently awarded to Shell Nigeria Ultra Deep Limited (SNUD) in 2002 and later rewarded jointly to NAE (a subsidiary of Eni) and Shell Nigeria Exploration and Production Company (SNEPCo) in 2011. Series of controversies trailed the awards of these contracts at different times; leading to a three different litigations at local as well as at international levels. Some cases are still pending in courts in Lagos and Abuja.

A key element of OPL awarded to beneficiaries in respect of the controversial 245 Oil Block is the preference for Production Sharing Contract (PSC) as against the hitherto practice of Joint Ventures contract between the NNPC and the private oil companies; particularly the International Oil Companies (IOC). However, NNPC as an equity partner in the joint ventures was expected to generate revenues like the private oil companies in addition to paying its share of costs referred to as 'cash calls'. But as often the case under the joint ventures arrangement, NNPC defaulted in meeting its financial obligations which prompted the preference for PSC beginning from the 90s.

Under the PSC arrangement, the NNPC holds the concession on behalf of the government while the international oil company (IOC) is the contractor. Revenues accrue to the government under threefold fiscal instrument, namely: (1) payment of royalty, taxes, (2) payment of taxes - Education Tax and Petroleum Profits Tax (PPT), (3) share of after-Cost Oil Production Profit Oil. PSC model was prepared in 1993 and subsequently revised in 2000 and 2005. The contract for Block 245 between NNPC and Shell in 2003 was based on PSC model revised in 2000 and other subsisting legislation like Petroleum Act, Cap 350, LFN 1990, and the Petroleum Profits Tax Act, Cap 354, LFN 1990.

Notwithstanding, it was the PSC 2005 model that became legally binding when the Oil Block 245 was restored to Malabu Oil and Gas following the restoration of its rights via a court pronouncement in 2006. In contrast, under 2011 Resolution Agreement (RA) that govern the OPL contract for Oil Block 245 awarded to ENI and Shell, the PSC was based on Deep

Offshore Production Sharing Contracts Act of 2004. With this arrangement, the potential loss to Nigeria was projected in excess of \$4 billion as a result of the removal of “*the central feature of the production sharing system: a share of Profit Oil for the government*” in the RA and PSA binding on the agreements reached with ENI and Shell in 2011 and 2012 respectively according to *Resources for Development Consulting*<sup>5</sup>.

Unlike the 2003 and 2005 PSC projected to generate \$14 billion dollars for government as revenues over the duration of the project, the RA and PSC agreed with ENI and Shell in 2011 and 2012 respectively would generate \$10 billion as consequently much lower compare with 2003 and 2005 PSC with increase in oil prices. The cumulative percentage of revenue accruable to the government based on the 2003 PSC was projected at 60% compared to 65% under 2005 PSC and 41% under 2011 RA / 2012 RSA. It should be noted that the projection under 2011 RA / 2012 PSA was a far cry from the 65% to 85% recommended by the International Monetary Fund (IMF) for oil producing countries.

### **3.1. Estimate value of OPL 245 to the IOCs as at time of operations**

It is estimated that at “Nigeria’s current OPEC oil output quota of 2.2 million barrels per day, OPL 245 alone can provide all Nigeria’s oil production needs for over 11 years”<sup>6</sup>. Whereas increase in number of drills and higher oil prices ultimately determine the value of revenue accruable to contractor under OPL operation, the case of Oil Block 245 however presents a different scenario. As already indicated, the percentages of total revenues that accrued to IOCs with respect to OPL 245 contract awarded to ENI and Shell from RA 2011 and PSA 2012 arrangements was 59% compared to 41% that accrued to the government of Nigeria. The IOCs had 40% and 35% share of the revenue in the PSC 2003 and 2005 PSC arrangements as against Nigeria’s 60% and 65% within the same period.

Because “the fiscal terms that emerged from the Resolution Agreement of 2011 and the PSA signed between ENI and Shell in 2012 are not consistent with the essence of a normal production sharing system”, according to evaluation analysis by *Resources for Development Consulting*, the estimated value of revenues to IOCs is projected at Internal Rate of Return of 15.3% against 12.6% and 10.9% in 2003 and 2005 respectively. The total cash flow estimate for ENI and Shell on the basis of RA and PSA signed in 2011 and 2012 is \$14,180M as against \$9,588M and \$8,32M for the PSC signed in 2003 and 2005 respectively. The corresponding Net Present Values for PSC signed in 2003 and 2005 are \$1,143M and \$385M compared to \$2,690M for RA 2011 and PSA 2012 under which ENI and Shell was granted OPL to operate Block 245<sup>7</sup>.

The economic value of OPL 245 based on the RA and PSA agreements for the contact that guides the operation of ENI and Shell at a projected oil price of \$85 per barrel is estimated at total cash flow of \$19,099M compared with \$12,945M and \$10,978M for PSC of 2003 and 2005. The estimate Net Present Value and the corresponding Internal Rate of Return for RA and PSA agreements of 2011 and 2012 are \$4,919 and 19.3% compared to PSC 2003 estimated at \$1,801M and 14.0% and 2005 estimated at \$2,718M and 16.0%.

### 3.2. Forecast potential revenues to the Federation of Nigeria

Notwithstanding the shortcomings that characterised the various PSCs which replaced joint venture regime operation until the 90s, the least volume of revenues to the federation was under the regime of RA 2011 / PSA 2012. The potential revenues accruable to the Federation based on proposed terms contained in the 2018 Petroleum Industry Fiscal Bill (PIFB) and the matching PSC. It is already established that the terms contained in the 2011 RA and 2012 PSA have been adjudged the least favourable to the federation in values of all the fiscal regimes that have been applied to Oil Block 245 since Malabu Oil and Gas was awarded in 1998. Increase in oil price is a key determinant of the potential revenues for the federation and sourced from premium on royalties, cost oil, profit oil, taxes (comprising education tax and petroleum profits tax).

A 2009 valuation outcome of Oil Block 245 put the total recoverable reserves for oil production at 875 million barrels. At \$70 per barrel of 875 million barrels of oil production, the revenue projection to the Federation by 2003 PSC is \$32, 542 Million (66%) while the value for PSC 2005 is \$34, 887 Million (71%) compared with \$22,760 Million (46%) for RA 2011/ PSA2012. Under the PSCs (2003) and (2005), increase in oil prices translate to additional revenues for the Nigerian Federation and as well as corresponding improvement in the share profits to the contractors (i.e.) IOCs.<sup>8</sup>

#### 4.1. Benefits analysis of OPL 245

The long-drawn scramble for the control of OPL 245 perhaps depicts the significant importance of its economic values to potential contractors compared to other OPLs in Nigeria. Oil Block 245 located in water depths of about 2,000 metres on the southern belt of the Nigeria's Niger Delta<sup>9</sup> is widely believed to be the biggest oil reserves in Nigeria and probably Africa's richest oilfield with only 30% of the allocated oilfields (oil blocks) attaining commercial production<sup>10</sup>. According to report by *S&P Global Platts / The Barrel*, the estimate reserves of 245 Oil Block is 9 billion barrels which is approximately a quarter of Nigeria's total established reserves including an unspecified but large quantity of natural gas<sup>11</sup>. Decades of contentions over OPL245 have halted development of this major oil block and as well led to the acute loss of revenues to Nigeria.

Generally, Oil Prospecting Licensing regime in Nigeria has, over the decades, been characterised by the opaque nature of transactions leading to the award of oil blocks to contractors. Notwithstanding legal and administrative frameworks enunciated in successive statutes since the Petroleum Act of 1969 was enacted, awards of OPL for oil blocks have always been shrouded in controversies with allegations of corruption. Nigeria has always been the ultimate victim of the rather uncompetitive and largely compromised licensing process of oil blocks yet the oil and gas sector remains the mainstay of the country's economy in the face of acute neglect of the non-oil sectors.

As is the case with OPL 245 transaction, similar but not exact examples of inappropriate negotiation leading to underpayments of required revenues to the federation has been cited of **South Atlantic Petroleum** (SAPETRO) owned by the T.Y. Danjuma whereby OPL 246 attracted the payment of \$2 billion by Chinese investors as well as in the case of **Famfa Oil**



owned by African richest woman, Folorunso Alakija and Chevron in respect of Agbami fields oil block<sup>12</sup>. It is evident that not only is the licensing regime of oil block in Nigeria fraught with administrative limitations, the governance models are largely compromised leading to a situation whereby only 30 per cent of allocated oil blocks have actually matured to optimal level of commercial production according to a 2017 report by Natural Resource Governance Institute (NRGI).

Although, the Department of Petroleum Resources (DPR) is saddled with the mandate of awarding OPLs, a critical challenge has to do with undue influence of highly placed public officials and political office holders who abuse discretionary powers to compromise the process. Indeed, a report by the Natural Resource Governance Institute (NRGI) in 2017 identified regimes of licensing as the weakest link in the nation's oil and gas industry; particularly in terms of value addition<sup>13</sup>.

Notwithstanding, shortcomings in the awards of OPLs in the past are also attributable to low level of capacities of DPR personnel to effectively undertake process leading to the awards of OPLs. As investigations have so far revealed, prospective contractors in the oil and gas sectors; particularly IOCs bidding for oil blocks more often than not exploit institutional challenges of agencies in the oil sector which is further enhanced by the influence-peddling mediocrity associated with meddlesomeness of public officials and political office holders.

#### **4.2. Other benefits derivable from the operational OPL 245**

The exploration benefits of OPL 245 are generally considered to be enormous and of huge economic importance to the Nigerian government and the contractors. Apart from the estimate reserves of 9 billion barrels, additional oil and gas potentials were reportedly discovered in 2005 and 2006 respectively at Etan and Zabazaba fields with projected 560 million barrels of oil equivalent (Mboe) and situated within OPL 254.

Etan and Zabazaba deep-water project is currently being developed under a \$13.5bn integrated partnership involving Nigerian Agip Exploration (NAE) and Shell Nigeria Exploration and Production Company (SNEPCO). Etan and Zabazaba deepwater project is projected to deliver the first output in year 2020. The project is expected to encourage local production of floating production storage and offloading (FPSO) vessel while other output of the project is to be deployed into supporting small and medium scale businesses.

Ethan and Zabazaba integrated oil and gas project is expected to deliver additional benefits that would translate into more revenues for government and the contractors when fully operational. A Very Large Crude Carrier (VLCC) to be developed into floating, production, storage and offloading vessel (FPSO) with a capacity of 120,000 barrels per day (kbbbls/d) is expected to deliver wide range of business opportunities with high rate of revenue returns. The existing Liquefaction plant in Bonny Island is also expected to be further boosted by outputs from Ethan and Zabazaba integrated oil and gas project.

## **5. Recent interventions in the OPL 245 saga**

Since the lid was blown off OPL 245 Scam in 2001, series of interventions have been initiated to redress the inadequacies and to remedy the lapses. The lingering controversies surrounding OPL 245 which involve international oil companies (IOCs) in separate capacities or in partnership continue to elicit global reactions as more revelations have emerged on the scene regarding high level conspiracies by some Nigerian government officials who abused their official position to corruptly enrich themselves.

A more recent intervention on the OPL 245 saga led to the unravelling of more facts about the culpability of ENI and Shell whose officials have been discovered to have connived with individuals and parties in Nigeria. Since investigations are crucial in unravelling the conspiracies involving officials of government and agencies of the oil companies, local and international efforts by anti-corruption activists and campaigners have led to further revelations. Essentially, interventions have been initiated and sustained in form of litigations as well as continuous campaigns by local and international civil society groups geared towards pressing demands for actions from Nigerian government against those culpable in the OPL-245 license scandal. There are three separate on going corruption cases in Nigeria's Federal capital, Abuja involving all the suspects (individuals and companies) including a former Attorney General of the Federation, Mohammed Adoke. Italian Deputy Prosecutor; Sergio Spadaro was reported to have confirmed that Mohammed Adoke "got a N300 million mortgage from a Nigerian Bank for a property valued at N500 million and that N300 of the amount was a bribe from the OPL deal according to the record before the Milan court in on going trial of Shell and Eni<sup>14</sup>.

In May, 2020, a UK court had declined to go ahead with \$1.1 billion case filed by Nigerian government in 2018 against Royal Dutch Shell and Eni over OPL-245 license bribery in 2011<sup>15</sup>. Notwithstanding, there are emerging indications suggesting possible culpability of more high profile Nigerian public officials as on going cases involving officials of Shell linked with bribery from proceeds of OPL-245 may have recently revealed. In July, 2020, Italian Prosecutor pressed for the conviction of past and current executives of ENI including its Chief Executive Officer, Claudio Descalzi and former head of upstream, Malcolm Brinded for complicity in the OPL-245 license bribery case<sup>16</sup>. Meanwhile, Nigeria's legal representative, Lucio Lucia at the Milan Court in September, 2020 indicted Nigeria's immediate past president, Goodluck Jonathan of being privy to the deal involving his AGF Mohammed Bello Adoke<sup>17</sup>.

### **5.1. Intervention by the Nigerian government**

The current Nigerian government under its anti-corruption initiative-launched investigations into OPL245 scam and has consequently taken steps to revoke the controversial OPL from ENI and Shell in line with recommendations by local and international anti-corruption platforms and individuals<sup>18</sup>. Beyond the call for revocation of OPL 245, the Nigerian government is expected to remain committed to recovering the \$1.1 billion dollars that was paid by ENI and Shell following the 2001 RA supposedly to Nigerian government treasury but that is largely believed to have been diverted into private coffers. Nigerian House of Representatives had in a resolution in 2014 asked the government to revoke the contract for OPL 245 following a report of investigation by a committee of the lower chamber of the National Assembly. A member of the

Nigerian House of Representatives, Mr. Kayode Oladele who had called for the review of subsisting agreements on OPLs<sup>19</sup> hinted that further “investigation in to OPL 245 scam was necessitated by discovery that “\$1.1 billion paid by Shell and Agip for OPL 245 was disguised as payment to the Federal Government”<sup>20</sup>.

Nevertheless, the Nigerian government appears to be under intense pressure from influential officials to take steps considered more rewarding in the resolution of the controversies beyond the bringing culprits to justice and full recovery of illicit funds that are proceeds of corrupt transactions with regards to OPL 245. Specifically, Nigeria’s Attorney General as well as the Minister of Petroleum Resources have offered advice to the government on the way forward. The Attorney General of the Federation, Abubakar Malami, had advised President Muhammadu Buhari that it was better government to avoid “acrimonious litigations” and high costs of legal proceedings which could aggravate the non-operational status of OPL 245 while cases are being litigated upon. Indeed, Nigerian chief law officer advised that the “criminal charges preferred against Mohammed Adoke, ex-AGF, and Dan Etete, a former minister of petroleum resources, by the Economic and Financial Crimes Commission (EFCC) are unsustainable”. On the other hand, the Minister of State for Petroleum Resources Ibe Kachikwu also advised the President that Nigerian government should rather be committed to options that would enhance the stake of the country in deal<sup>21</sup>.

## **5.2. Legal Intervention**

Investigations and legal proceedings regarding OPL 245 scam have been launched in Nigeria, UK, Netherlands, Italy and Switzerland. While investigation appears unending over OPL 245, the Economic and Financial Crimes Commission (EFCC) in 2017 secured an order of Nigerian court for temporary forfeiture of OPL 245 from the Royal Dutch Shell and Eni pending the completion of investigation into OPL saga<sup>22</sup>. The Italian and Dutch authorities have earlier launched investigation into the deal which led to conviction of a Nigerian and Italian middlemen in the deal in Milan. Legal option towards unravelling conspiracies that characterised the different phases of the scam has also led to ongoing investigation of ENI and Shell; two international oil companies that won OPL245 deal through the 2011 RA and 2012 PSA resolution in an Italian court. An Italian Prosecutor has initiated legal proceedings over a \$520 million believed to be proceeds from the illicit OPL 245 transaction and meant to be a bribe for Nigerian government officials as well as a \$50 million allegedly delivered to Roberto Casula who was ENI’s head of African Operations. On October 17, 2018, Global Witness Co-founder, Simon Taylor gave evidence in the trial in furtherance of a criminal complaint lodged in 2013 in collaboration with Re-Common and The Corner House<sup>23</sup>. All those charged in all the cases instituted in Nigeria and Italy have all pleaded innocence.

## **5.3. Advocacy efforts by Local and International anti-corruption groups and stakeholders**

Advocacy efforts by local and international anti-corruption groups have led to a number of discoveries and fresh revelations on OPL 245 scam in addition to sustaining the tempo of campaigns aimed at ensuring justice and recovery of stolen assets/funds that are proceeds of the illicit OPL transactions. HEDA Resource Centres instituted a mandamus case before a

Federal High Court in Lagos to compel the Attorney General of the Federation and Minister of Justice to revoke the licence awarded in 1998<sup>24</sup>. The 1989 Constitution operational at the time of allocation of OPL245 in 1998 forbade a public office holder from superintending over a process in which he has an interest. Contrary, to that code of conduct for public office holders, Dan Etete awarded the OPL245 licence to a company in which he has 30% interests. The report of a study recently released by Global Witness, HEDA Resource Centre, Re:Common, and The Corner House on Block 245 has provided detailed analyses of the infractions committed against the Nigerian state that already culminated in the loss of huge sums of revenues to the federation. The report also identify booby-traps for revenue losses as manifestly contained in the 2011 RA and 2012 PSA which remains the legal status of ownership of OPL 245 by ENI and Shell.

Local and international media have also featured as critical stakeholders, instrumental to the interventions aimed at keeping OPL 245 scam on the front burners of global conversations. Just as the Nigerian online media, *Saharareporters* and *PremiumTimes* have carried out series of investigations which propelled the Nigerian government and the EFCC to action. Foreign media have also been unrelenting in the quest to unearth the conspiracies by officials of IOCs in the OPL 245 scam. In April 2017, a global witness' report titled 'Shell Knew' indicated there are valid documents confirming officials of ENI and Shell had foreknowledge that the \$1.1 billion paid in 2011 was largely to service bribery and corruption<sup>25</sup>. In the fast-track trial of two middlemen (Nigerian Emeka Obi and Italian Di Nardo) in the deal, the Italian trial judge said Shell and Eni knew "their 2011 purchase of a Nigerian oil field would result in corrupt payment to Nigerian politicians and officials"<sup>26</sup>

## **6. Conclusions and Recommendations**

As the report indicated OPL 245 saga typifies depth of opaqueness and flagrant abuse of due process which are pervasive in the Nigerian oil sector. It is evident from the long drawn web of conspiracies and controversies that have attended OPL 245 that the Nigerian oil sector is poorly regulated and inefficiently managed. Unarguably, undue political influence is at the core of the rot in the sector. Unfortunately, there appears to be lack of commitment by political elite to holistically address the challenge by freeing the sector from political influence and manipulations. Malabu Oil and Gas would most likely not have been awarded OPL 245 in 1998 but for interest of the family of the then Head of State. In spite of the haze elicited by OPL saga and the stance of the current government on corruption, it is however not unlikely such politically motivated infractions still exists in varying degrees in the country.

In spite of clamour for enduring governance model for the oil sector which led to the initiation of Petroleum Industry Bill (PIB) now referred to as Petroleum Industry Governance Bill (PIGB) at the national assembly in December, 2008, the bill has not translated into an enabling law as a result of lack of political will and alleged influence of the IOCs. While the PIGB has become desirable as a critical imperative towards repositioning the oil sector, it has also become compelling for the Nigerian government to muster the courage to prosecute established cases of corruption in the case of OPL 245.

It is therefore recommended that investigation of parties involved in OPL-245 deal be concluded without further delay. Prosecution of Nigerian government officials alleged of complicity have become desirable as a right step towards repositioning the Nigerian oil sector. The following recommendations should also be accorded desired attention:

1. Extradition of persons already indicted in ongoing court cases to enable them answer to corruption charges.
2. Commitment of government to revocation of OPL-245 in addition to ensuring proper inventories of assets connected thereto that may require forfeiture.
3. Thorough evaluation of existing OPLs with the view to ascertaining likelihood of irregularities that may require remedies.
4. Overhauling existing governance models and templates for awarding Oil Prospecting Licences to avert ugly experiences associated with OPL-245.
5. Judicial enquiry on oil prospecting regime in Nigeria with the view to availing the public proper and adequate information.
6. Special panel or committee of experts to review conditions under which OMLs were renewed in the last 10 years.
7. Full automation of monitoring and regulatory agencies in the oil industry to drastically reduce human induced losses due to abuse or compromise of due process.
8. Ensure host communities, which are ultimate victims of corruption in oil industry are adequately compensated.
9. Ensure that post revocation and compensation from the oil companies should, as part of commitment to greenhouse gas emission reduction, ultimately translate into the global quest to 'keep the oil in the ground' in the overriding desire to safeguard the environment.

**Note on Acronyms**

**Agip** - A subsidiary of Italian oil company Eni

**bbl** - Barrel of oil (unit of volume)

**bpd** - Barrels of oil per day

**Eni** - Italian oil and Gas Company

**FGN** - Federal Government of Nigeria

**FID** - Final Investment Decision

**FPSO** -Floating Production Storage and Off-loading vessel

**IMF** - International Monetary Fund

**IOCs** - International Oil Companies

**IRR** - Internal Rate of Return

**ITA** - Investment Tax Allowance

**NAE** - Nigerian Agip Exploration Ltd. Subsidiary of Eni

**NNPC** -Nigerian National Petroleum Corporation

**NPV** - Net Present Value

**OPL 245**- Oil Prospecting Lease for Oil Block 245

**OPLs** - Oil Prospecting Licenses

**PIB** – Petroleum Industry Bill

**PIGB** -Petroleum Industry Governance Bill

**PPT** - Petroleum Profits Tax

**PSA** - Production Sharing Agreement

**PSC**- Production Sharing Contract

**RA** - Resolution Agreement

**SNEPCo** -Shell Nigeria Exploration and Production Company; Subsidiary of Shell

**SNUD** -Shell Nigeria Ultra Deep Limited

## References

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- <sup>1</sup>Zabazaba and Etan Integrated Development Project  
<https://www.offshore-technology.com/projects/zabazaba-etan-integrated-development-project/>
- <sup>2</sup>Petroleum industry in Nigeria  
[https://en.wikipedia.org/wiki/Petroleum\\_industry\\_in\\_Nigeria](https://en.wikipedia.org/wiki/Petroleum_industry_in_Nigeria)
- <sup>3</sup> Government Revenues from OPL 245: Assessing the Impact of Different Fiscal Terms by Resources for Development Consulting - R4D Nigeria 245- Timeline for Block 245 pg 4-5 \ [www.globalwitness.org](http://www.globalwitness.org)
- <sup>4</sup>Take The Future: Shell's scandalous deal for Nigeria's Oil  
<https://www.globalwitness.org/sv/campaigns/oil-gas-and-mining/take-the-future/>
- <sup>5</sup>OPL245 Cash Flow Model - Resources for Development Consulting  
[www.res4dev.com/opl245/](http://www.res4dev.com/opl245/)
- <sup>6</sup>Malabu fraud: Why Nigerian Government retrieved OPL 245 from Shell, Eni  
<https://www.premiumtimesng.com/news/headlines/221694-malabu-fraud-nigerian-government-retrieved-opl-245-shell-eni.html>
- <sup>7</sup>Malabu: Nigeria loses over \$10bn in one deal, say Reps, CSO  
<https://punchng.com/malabu-nigeria-loses-over-10bn-in-one-deal-say-reps-cso/>
- <sup>8</sup> Government Revenues from OPL 245: Assessing the Impact of Different Fiscal Terms by Resources for Development Consulting - R4D Nigeria 245- Government Revenue Analysis \ [www.globalwitness.org](http://www.globalwitness.org)
- <sup>9</sup>Wood Mackenzie - Asset Report Summary  
<https://www.woodmac.com/reports/upstream-oil-and-gas-opl-245-zabazaba-and-etan-6895871>
- <sup>10</sup>OPL 245 award, others show Nigeria must entrench transparent oil licensing process  
[www.energymixreport.com/opl-245-award-others-show-nigeria-must-entrench-transparent-oil-licensing-process/](http://www.energymixreport.com/opl-245-award-others-show-nigeria-must-entrench-transparent-oil-licensing-process/)
- <sup>11</sup>The case of Nigeria's OPL 245: What's the deal for oil majors? S & P Global Platts / The Barrel - <https://blogs.platts.com/2017/05/24/nigeria-opl-245/>
- <sup>12</sup>Statoil Loses 5% Stake in Agbami Oilfield, To Pay Chevron \$1.1bn  
<https://www.thisdaylive.com/index.php/2018/05/14/statoil-loses-5-stake-in-agbami-oilfield-to-pay-chevron-1-1bn/>
- <sup>13</sup>Why Nigerians must insist on transparent oil licensing process'  
<https://guardian.ng/business-services/why-nigerians-must-insist-on-transparent-oil-licensing-process/>
- <sup>14</sup> Adoke's trial has nothing to do with OPL 245, Judge tells journalists – <https://www.thecable.ng/adokes-trial-has-nothing-to-do-with-opl-245-judge-tells-journalists>
- <sup>15</sup> Malabu Deal: UK Court Dismisses Nigeria's Sleaze Suit against Shell, Eni

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- <https://www.thisdaylive.com/index.php/2020/05/23/malabu-deal-uk-court-dismisses-nigerias-sleaze-suit-against-shell-eni/>

<sup>16</sup> Eni Calls Nigeria bribery case ‘completely groundless’ as prosecutors seeks jail sentence  
<https://www.offshore-energy.biz/eni-calls-nigeria-bribery-case-completely-groundless-as-prosecutors-seek-jail-sentence/>

<sup>17</sup> Nigeria Government Lawyer accuses Jonathan, Adoke and Diezani of receiving bribe to facilitate deal  
<http://saharareporters.com/2020/09/10/nigeria-government-lawyer-accuses-jonathan-adoke-and-diezani-receiving-bribes-facilitate>

<sup>18</sup> Malabu fraud: Why Nigerian Government retrieved OPL 245 from Shell, Eni  
<https://www.premiumtimesng.com/news/headlines/221694-malabu-fraud-nigerian-government-retrieved-opl-245-shell-eni.html>

<sup>19</sup> OPL 245 oil bloc scam: Reps call for immediate review of OPL contract agreement  
<https://www.businessdayonline.com/news/article/opl-245-oil-bloc-scam-reps-call-immediate-review-opl-contract-agreement/>

<sup>20</sup>Reps seek revocation of Malabu’s OPL 245 agreement  
<http://thenationonlineng.net/reps-seek-revocation-malabus-opl-245-agreement/>

<sup>21</sup>FG should have a stake in OPL 245’, ‘EFCC charges unsustainable’ — Malami writes Buhari  
<https://www.thecable.ng/fg-should-have-stake-in-malabu-deal-efcc-charges-unsustainable-malami-writes-buhari-on-opl-245>

<sup>22</sup>Shell and Eni to temporarily forfeit Nigerian oil prospect  
<https://www.ft.com/content/fcd50330-e491-11e6-8405-9e5580d6e5fb>

<sup>23</sup>Shell and Eni on trial  
<https://www.globalwitness.org/sv/campaigns/oil-gas-and-mining/shell-eni-trial/>

<sup>24</sup>*Nigeria: Malabu Oil Deal - Court Grants Heda Judicial Review Against AGF*  
<https://allafrica.com/stories/201806280089.html>

<sup>25</sup>Shell Knew  
<https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/shell-knew/>

<sup>26</sup>Italy judge says evidence shows Eni, Shell knew of Nigerian graft  
<https://uk.reuters.com/article/shell-eni-nigeria-trial/italy-judge-says-evidence-shows-eni-shell-knew-of-nigerian-graft-idUKS8N1SI006>



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