Policy Brief

Corrupt Practices in Nigeria’s Oil Industry: OPL 245 Case Study

Executive Summary
This report focuses on events and emerging issues relating to the award of Oil Prospecting Lease (OPL) for the controversial Oil Block 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 two decades. The report also examines issues arising from high profile inquiries into the corruption allegation as well as ongoing 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 ongoing cases arising thereto. The report refocused attention on wide range official abuses in the award of OPL-245 peculiar rot associated with the Nigerian oil sector; particularly in relations to operations of International Oil Corporations (IOCs). The report identifies huge losses suffered by Nigeria as a result of abuse of due process and corruption and establishes the need to address the prevailing gaps in governance model for Nigerian oil sector.

The report proposes a number of 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 for the oil industry; ensure host communities are adequately compensated 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
This report is anchored on benefit analysis of Oil OPL-245 in furtherance of the engagement of controversies and legal intrigues that have trailed corruption charges involving Shell and ENI and some Nigerian government officials which prompted on-going trials in Italy, Netherlands, Switzerland. OPL 245, in terms of fiscal benefits is one of the most important Oil Blocks in the history of Nigeria’s oil industry. The report focuses on operating Agreements that have come into play in governing 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 ongoing cases. Therefore, the report is aimed at deepening sustained engagement with stakeholders across the board around issues relating to OPL-245 with the view to bringing relevant experience to bear to entrench legislative and institutional frameworks for enabling governance model as well efficient regulations for Nigeria’s oil industry.

1.2. Methodology
The report was compiled by extensive appraisal of a research document titled: *Government Revenues from OPL 245: Assessing the Impacts of Different Fiscal Terms* published by Resources for Development Consulting ([www.res4dev.com](http://www.res4dev.com)). The report also benefit from overview of Nigerian oil industry, review of documents and publications relating to oil block 245; particularly with respect to the gamut of issues surrounding the rights of claim to OPL-245 by beneficiaries and partners, the fiscal regimes governing the operations of OPLs and OML as well as efforts by local and international stakeholders in engaging Nigerian government on investigation and prosecution of corrupt practices linked with OPL-254.

1.3. Outcomes / Implications
Findings show that at OPEC oil output quota of 2.2 million barrels per day, oil outputs from OPL 245 will meet Nigeria’s oil production needs for at least 11 years. Notwithstanding, contents of various agreements for OPL 245 were largely inconsistent and at variance with minimum international standard and in most cases leading to huge losses in revenue to the Nigerian government. Malabu Oil and Gas that was first awarded OPL-245 in 1998 paid only $2 million of the $20 million for the granting of the OPL while 40% of the stake in the oil block was ceded to Shell Nigeria Ultra Deep Limited (SNUD) by Malabu under controversial circumstances in March, 2001 prior to revocation by Nigerian government for months later in July of the same year. The IOCs had 40% and 35% share of the revenue in the Production Sharing Contract (PSC) 2003 and 2005 PSC arrangements as against Nigeria’s 60% and 65%. Conversely, OPL 245 contract awarded based on RA 2011 and PSA 2012 Agreements returned 59% ENI and Shell compared to 41% that accrued to the government of Nigeria. The inconsistency as further buttressed by evaluation analysis by RDC shows that estimated value of revenues to IOCs was projected at Internal Rate of Return of 15.3% against 12.6% and 10.9% in the 2003 and 2005 Agreements 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.

While the PSC 2005 model became legally binding when Oil Block 245 was restored to Malabu Oil and Gas in 2006 following restoration of its rights via a court pronouncement, the 2011 Resolution Agreement (RA) with ENI and Shell for OPL-245 was based on Deep Offshore Production Sharing Contracts Act of 2004. The RA (2011) and PSA (2012) Agreements with ENI and Shell translates to projected potential loss in excess of $4 billion to Nigeria 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. Whereas the 2003 and 2005 PSCs projected to generate $14 billion dollars in revenues for government over the duration of the project, the RA and PSC agreed with ENI and Shell in 2011 and 2012 respectively was to generate $10 billion notwithstanding increase in global crude prices. The findings show corresponding decrease in the projected
The percentage of revenue accruable to Nigerian government with 41% based on RA (2011) / PSA (2012) compared to PSC (2003) projected at 60% and PSC (2005) projected at 65%. The projected share accruable to Nigeria in the RA (2011) and PSA (2012) was largely at variance with the estimate range of 65% to 85% share that should accrue to oil producing countries as recommended by the International Monetary Fund (IMF).

1.4. Conclusions
The circumstances surrounding award of OPL for Oil Block 245 and the high profile corruption cases it has elicited reveal the depth of rot in the Nigerian oil sector. It is evident undue political influence and lack of effective and efficient governance regime have led to unbridled corruption and huge losses in revenues to Nigerian government. While prosecution of established cases of corruption relating to OPL 245 is imperative, enduring governance model for the oil sector as envisaged through the passage of Petroleum Industry Bill (PIB) now referred to as Petroleum Industry Governance Bill (PIGB) remains crucial in curtailing endemic abuses and corruption in the Nigeria’s oil sector.

1.5. Recommendation
A key recommendation in the report is the need to expedite the processes of investigation of parties involved in OPL-245 scam to logical conclusions to facilitate prosecution and recovery of assets due to Federal Republic of Nigeria. Completion of investigation and prosecution of cases in respect of OPL-245 has become desirable in demonstration of Nigerian Government’s resolve to reposition the Nigerian oil sector. Other recommendations that should be accorded desired attention are as follows:

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 award of oil prospecting licences to avert ugly experience 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 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.