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COMPARATIVE APPRAISAL OF ANTI-CORRUPTION LAWS: LESSONS NIGERIA CAN LEARN FROM NORWAY, UNITED KINGDOM AND UNITED STATES' ANTI-CORRUPTION STRATEGIES

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ABSTRACT

The study undertakes comparative legal and policy analyses of corruption in the upstream petroleum sectors of Nigeria, Norway, the United States, and the United Kingdom. These countries were selected as case studies because they are rich in petroleum resources with favourable Transparency International annual rankings and due to their status as relatively advanced petroleum jurisdictions with stringent anti-corruption laws. The study is a doctrinal legal research that adopts a point-by-point comparative approach with library research method. The study reveals that corruption thrives on the weak enforcement of anti-corruption laws and lack of political will in providing effective regulatory intervention. In conclusion, the study finds that anti-corruption agencies in the selected countries are more effective because of their governments' political will to combat corruption, as well as adequate or sufficient budgets and the strict enforcement of their laws in contrast to Nigeria. It recommends among other reforms, soft law approach and strict enforcement of anti-corruption laws for transparency in the upstream petroleum sector of Nigeria.

JEL Classifications Code: *K2, K42, Q4, Q5, P28, K32, K12.*

Key words: Corruption, Strategies, Upstream Petroleum Sector, Transparency

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1. INTRODUCTION

The comparison of the anti-corruption legal frameworks of the selected countries undeniably shows that no amount of regulations would be sufficient to combat corruption if not complemented by the intended political will of the Federal Government. The aim is to enforce its anti-corruption laws for the entrenchment of transparency in the sector (Transparency International, 2009). Drawing relevant inferences from selected case studies countries thus become instrumental for rethinking the inadequacies in the Nigerian anti-corruption legal regime.

There are many lessons that Nigeria can learn from the anti-corruption agencies of the foreign jurisdictions under consideration. The United States' Procurement Systems use debarment. By this means, it become a strong tool to deter corruption, promotes integrity in public procurement. It precludes companies and individuals from participating in government contracts for a stipulated period if found culpable of corruption or breach of contract (De Araujo, , 2013). Similarly, section 58(1)(6)(a) provides for debarment or blacklisting under the Nigerian Public Procurement Act, 2007 however, this provision is poorly enforced to combat corruption in the sector unlike in the selected jurisdictions where they are implemented strictly.

Nigeria can take advantage of the innovative mechanism of maintaining a national database on debarred petroleum companies for the sake of having a proper record. Nigeria can learn from the selected international upstream petroleum jurisdictions' due diligence procedures in refineries and the use of DNA fingerprinting on crude oil to ascribe a status of legitimacy to crude oil obtained and sold by the Nigerian National Petroleum Corporation (NNPC). This vital anti-corruption tool appears not to have been envisaged under the Nigerian anti-corruption legal regime, which contains no similar provisions. This would be effective in combating oil theft and to promote transparency in the sector (Oyewunmi and Olujobi, 2016). If this technology is properly systematised by NNPC, it can be a veritable anti-corruption tool for identifying stolen crude oil from Nigeria, and it will reduce incidents of crude oil thefts in the sector.

The participation of oil producing communities in the award or licensing process in Norway, the United Kingdom and the United States gives them a sense of ownership. The impact of petroleum activities on the oil producing communities is a major requirement to be considered before the award of petroleum licences or contracts in Nigeria. This important provision of participatory ownership appears not to have been contemplated under the Nigerian legal regime, which contains no similar provisions.

In contrast to Nigeria, the participation of oil producing communities in the award process of oil blocks or licences, modular crude oil refineries establishment in the sector by regulatory authorities gives them a sense of belonging, and this may reduce unending agitations for resource control by the oil producing communities (Jike, 2010). It will also reduce pipeline vandalism in Nigeria's upstream petroleum sector if replicated (Carvalho, 2017).

The Whistle Blowers Protection Act offers protection to informants from victimisation. It detects and prevents corruption. (Latimer and Brown, 2008). The Dodd-Frank Wall Street Reform and Consumer Protection Act 2010 protect whistle blowers. It also offers rewards to any whistle blower who offers the United States' Security and Exchange Commission (SEC) useful information that leads to enforcement actions against corrupt practices. This essential anti-corruption legal instrument appears not to have been contemplated under the Nigerian legal regime. There is the need for a Whistle Blowers Protection Act with incentives to validate the existing policy in Nigeria to protect the vulnerabilities of whistle blowers against

retaliation and to promote transparency in the sector in a way that is comparable with the selected case study countries.

One principal lesson from Norway, the United Kingdom and the United States that can be learnt is the incorporation of anti-corruption, transparency and environmental protection clauses into their petroleum licenses and contracts with the petroleum companies to deter corruption in the sector (Kaunda, 2016). There is the need to implement anti-corruption self-monitoring mechanisms in Nigeria's anti-corruption laws to prohibit facilitation payments.

2. STATEMENT OF PROBLEM

There is an absence of compliance defence procedures under the Nigerian Economic and Financial Crimes Commissions Act and the Independent Corrupt Practices Commission Act. Unlike the United Kingdom's Bribery Act, the Foreign Corrupt Practices Act Resource Guide provides for the consideration of suitability of the indicted upstream petroleum company's compliance program when deciding on what action should be taken and what sanctions should be imposed when the provisions of the Act have been breached (Department of Justice, Security and Exchange Commission, 2012). Therefore, there is an urgent need for legislative reform of Nigeria's anti-corruption laws to include compliant defence to mitigate corruption or bribery of corporate bodies in the sector.

To promote transparency in the sector, the Government of Norway separated the functions of their national oil company from policy formulation and regulation to focus on oil exploration activities; it operates like other commercial oil companies without any special status, unlike Nigeria, where NNPC executes regulatory functions as well as participates as an operator in the sector. The lesson learnt is the need to separate the regulatory functions of NNPC from its roles as a commercial operator in the sector. However, to promote transparency in the sector section 7(1) of NNPC Act should be amended to give room for full remittance of all revenues of the corporation to the Federation Account and for timely and accurate disclosure of its financial statements to the public.

The lessons learnt from the selected countries show the need for the establishment of non-judicial grievance anti-corruption mechanisms such as an anti-corruption self-monitoring mechanism (Morland, and Dagestad, 2017), the debarment of companies from Cap. C20, Laws of Federation of Nigeria, 2004, participating in public bids if found guilty of corruption and the disqualification from being a director as done in the United Kingdom under Companies Directors Disqualification Act 1986. Non-compliance with the Act attracts 2 year imprisonment or a fine or a summary conviction of 6 months. Similar provision exists in Nigeria for the disqualification of a director for a period of not more than 10 years as provided for under section 254 of the Companies Allied Matters Act Cap C.20 Laws of the Federation of Nigeria 2004 and section 13z (bb) of the Investment and Security Act, 2007, Cap. P28, Laws of Federation of Nigeria, 2004. However, the challenge has been poor enforcement of the Acts (Awolalu, 2017).

Furthermore, the court in *Olubunmi Oladapo Oni v. Administrative Proceedings Committee of Securities and Exchange Commission & Anor* [2013] LPELR 20795(CA) affirmed that a regulatory authority has the power to disqualify an unfit person from being a director of a public company.

In Norway, upstream petroleum companies are required to establish whistle-blower hot lines for employees who wish to notify anti-corruption agencies or the company of corrupt practices. This can be through mobile hotlines, anonymous email addresses or by using external whistleblowing hot lines managed by dispassionate service providers and the enactment of whistle-blowers policies.

All these methods are utilized in the selected countries to prevent corruption, which Nigeria can replicate in the upstream petroleum sector to combat corruption. Anti-corruption clauses are also incorporated into all upstream petroleum agreements in Norway, the United Kingdom and the United States with the aim of rescinding such contracts where corruption is detected in any projects funded by their governments. If this clause can be replicated in Nigeria, it can combat corruption in the sector.

The Nigerian Criminal Code only criminalises bribing public officials; this entails only the giving and promising of bribes and does not include the receiving of bribes unlike the selected countries in which both the giving and the receiving of bribes are criminalized with stringent sanctions. Since the receipt of a bribe is alleged to occur often in the petroleum sector and this has not yet been criminalised strictly under the Code, there is the need for an urgent amendment of the Code to combat corruption in the sector.

Moreover, the United States, Norway and the United Kingdom have a controllable number of anti-corruption agencies with structured operations. Their financial intelligence units have clarity of roles; they are independent and separate from their other anti-corruption agencies in contrast to Nigeria where the Economic Financial Commission (EFCC) and the financial intelligence unit are merged without any independence from the Economic and Financial Crimes Commission. There is therefore, the need to make Nigeria's Financial Intelligence Unit distinctive from the Economic and Financial Crimes Commission (EFCC).

The United States' Foreign Corrupt Practices Act prohibits the bribery of foreign officials and imposes the duty of record-keeping and obligation of maintaining internal accounting stipulations by all listed companies, including petroleum companies, in the United States. It prohibits the payment of money or anything of value to a foreign official to assist in obtaining a business advantage in the petroleum sector. Any individual who violates the law may be fined 100,000 US dollars or twice the amount of the payment or sentenced to 5years' imprisonment or both (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2015). Nigeria's anti-corruption laws have not yet outlawed acts of bribery by foreign officials or officials of foreign organisations in the sector. There is therefore, the need to replicate this in the country's anti-corruption laws.

Norway, the United States and the United Kingdom have transparent procedures for the awarding of oil licences and contracts through an open competitive bidding process (Olujobi, and Oyewunmi, *et al*, 2017). Environmental protection, its impacts and sustainability are precedent conditions considered in these countries before oil licences will be granted to any company; on the other hand, in Nigeria, it is based on the highest bidder benchmark without paying much attention to their technical know-how, competence, financial capabilities, the environmental impacts, and impacts on the host communities.

The proceeds of corruption in the selected countries are recovered through a civil process and it is based on a "balance of probabilities", which makes recovery easier and faster rather than "proof beyond reasonable doubt" as required under the criminal law forfeiture procedure. In Nigeria, there is no legal framework on civil recovery of the proceeds of corruption. Recovery is done through criminal procedure, which is very slow and does not yield the expected deterrence outcome and this has prompted the researcher to propose the "Model Civil Forfeiture of Proceeds of Corruption Bill" and the establishment of an "Asset Forfeiture Fund" for compensation of victims of corruption for the losses suffered due to acts of corruption in Nigeria's upstream petroleum sector with the proposed "Asset Forfeiture Commission" to manage and retrieve proceeds of corruption or assets connected to corrupt

activities in Nigeria. The payments of the compensation should be made fairly and in a transparent manner (Buhari, 2016).

3. RESEARCH METHODOLOGY

The study undertakes comparative legal and policy analyses of corruption in the upstream petroleum sectors of Nigeria, Norway, the United States, and the United Kingdom. These countries were selected as case studies because they are rich in petroleum resources with favourable Transparency International annual rankings and due to their status as relatively advanced petroleum jurisdictions with stringent anti-corruption laws. The study is a doctrinal legal research that adopts a point-by-point comparative approach with library research method. The study reveals that corruption thrives on the weak enforcement of anti-corruption laws and lack of political will in providing effective regulatory intervention (Olujobi, 2017).

4. TABLE 1 COMPARISON OF THE ANTI-CORRUPTION LEGAL REGIMES OF THE SELECTED CASE STUDY COUNTRIES[1]

The *rationale* for the comparison is to gain useful insights to propose the reform of Nigeria's anti-corruption laws to combat corruption, to promote transparency and efficiency in the upstream petroleum sector.

Table 1

S/N	Anti-Corruption Legal Frameworks/Strategic Responses to Corruption Risks in Upstream Petroleum Sector	Nigeria	Norway	United Kingdom	United States
1.	Criminal Code	Yes	Yes	Yes	Yes
2.	Penal Code	Yes	Yes	Yes	Yes
3.	Whistle Blowers Protection Act	Not Applicable	Yes	Yes	Yes
4.	Money Laundering Prohibition Act	Yes	Yes	Yes	Yes
5.	Public Contracts Regulations	Yes	Yes	Yes	Yes
6.	Petroleum Act	Yes	Yes[2]	Yes[3]	No[4]
7.	Extractive Industries Transparency Initiative	Yes	Yes[5]	Yes[6]	No[7]
8.	Corporate Governance Code	Yes	Yes	Yes	Yes
9.	Sovereign Wealth Fund	Yes[8]	Yes[9]	No[10]	Yes[11]
10.	The State participates through Direct Financial Interest	Through National oil Company (NNPC)	Through (Statoil) Direct Financial Interest	Not Applicable	Not Applicable
11.	Accounting directive that requires companies to disclose payments made to foreign governments for oil licence/exploration.[12]	Not Applicable	Not Applicable	Yes[13]	Yes[14]
12.	Disqualification of companies' directors and debarment of companies culpable of corruption from public procurement/bids.[15]	Yes[16]	Yes[17]	Yes[18]	Yes[19]
13.	Due diligence on crude oil traders/crude oil refinery due diligence.[20]	Not Applicable	Yes[21]	Yes[22]	Yes[23]
14.	Powerful national oil company with commercial role and regulatory functions directly under President and Minister of Petroleum. President as the *de facto* oil Minister.	Yes	National oil company operates like other commercial oil companies without any special status.	No	No
15.	Non-Prosecution and Deferred Prosecution Agreements.	Not Applicable	Not Applicable	Yes[24]	Yes
16.	Stringent enforcement of anti-corruption laws.	No	Yes[25]	Yes	Yes

Table KeyNotes

[1] The table was prepared by the researcher with the content sourced from other literatures, which have been properly referenced.

[2] The Petroleum Act, November 29, 1996 No.72 regulating petroleum activities including licensing of companies in the sector. Last amended December 7, 2017, No: 2281. Available at: https://www.legislation.gov.uk/ukpga/1998/17/contents (accessed April, 1, 2020).

[3] Petroleum Act, 1998. Available at: https://www.legislation.gov.uk/ukpga/1998/17/pdfs/ukpga_19980017_en.pdf (accessed April 3, 2020).

[4] The United States has Energy Policy Act, 2005.

[5] Deutschland Extractive Industries Transparency Initiative, "Implementation of the EITI in G7, EU and OECD Countries Facts and Figures" (2016), available at: https://eiti.org/sites/default/files/documents/study-on-eiti-implementation-in-oecd-countries.pdf (accessed April 3, 2020).

[6] M., Litvinoff, "United Kingdom Joins Global oil, Gas and Mining Transparency Initiative" (2014), available at: https://www.business-humanrights.org/sites/default/files/documents/uk-joins-global-oil-gas-mining-transparency-initiative-15 Oct14.pdf (accessed April 3, 2020), p.1.

[7] W., Naylor, "The U.S. Withdraws from the EITI, and Latin America's Civil Society Shudders" (2017), available at: https://thglobalamericans.org/2017/11u-s-withdraws-eiti-latin-americas-civil-society-shudders/ (accessed April 3, 2020), p.1.

[8] Nigeria Sovereign Investment Authority (Establishment) Act, 2011, C1 LFN, 2004.

[9] The City UK, "United Kingdom the Leading Western Centre for Sovereign Wealth Funds" (2015), available at: https://www.thecityuk.com/assets/2015/reports-pdf/sovereign-wealth-funds-2015.pdf (accessed April 3, 2020), p.12.

[10] House of Commons Library, "United Kingdom Sovereign Wealth Fund" (2016), available at: researchbriefings.parliament.uk/researchbriefing/summary/cdp-2016-0243 (accessed August 13, 2020), p.1.

Sovereign Investment Lab, "The Sky Did Not Fall Sovereign Wealth Fund Annual Report 2015" (2015), available at: http://www.ifswf.org/sites/default/files/bocconi%20sil%202016%20report.pdf (accessed August 12, 2020), p.13.

It was announced around December 2014 but not yet established or funded. The Chancellor of the Exchequer George Osborne confirmed plans for the establishment of new sovereign wealth fund for the North of England. The fund is to use tax revenues from the exploitation of shale gas reserves in the North of England to invest in economic development projects.

[11] Many States in US established Sovereign Wealth Funds to provide revenues for state government. Alaska Permanent Fund established in 1976 by Article 9, S. 15 of Alaska State Constitution. Founded by oil revenue and managed by a state-owned corporation. It worth about 55 billion US dollars.

Alabama Trust Fund created in 1985 due to offshore natural gas discovery in 1978. The source of fund is royalty payments from oil and gas companies. It worth about 2.5 billion US dollars.

R., Schimbor, "The Impact of Sovereign Wealth Fund Investments on Listed United States Companies" (2009), available at: https://www.econ.berkeley.edu/sites/default/files/richard_schimbor_thesis.pdf (accessed April 3, 2020), p.1.

[12] Chapter 10 of the Accounting Directive (the Directive), 2013/34/EU. Available at: http://eur-lex.europa.eu/lexuriserv/lexuriserv.do?uri=oj:l:2013:182:0019:0076:en:pdf, (accessed April 4, 2020).

[13] United Kingdom Companies Act, 2006 requires directors of companies registered in the UK to prepare accounts for the company for each of its financial years which must reflect "True and Fair view" of the company.

[14] Dodd-Frank Act, require US oil companies to disclose payments made to foreign governments for taxes and other fees in excess of $100,000 made to foreign governments for licences.

[15] J., Doyle, "Directors in the Dock Restrictions and Disqualification" (2006), available at: http://www.dilloneustace.com/download/1/directors%20in%20the%20dock%20restrictions%20and%20disqualification.pdf (accessed April 4, 2020), p.1.

[16] Section 58(1)(6)(a) of the Public Procurement Act 2007 provide for "Blacklisting or Debarment" of Corrupt Business Entities for a period not less than 5 Calendar years or 5 years imprisonment but not exceeding 10 years without an option of fine but enforcement has been the challenged in Nigeria unlike the selected case study countries.

[17] Norwegian Companies Act, 1997.

[18] Section 9A - 9E, United Kingdom Companies Directors Disqualification Act, 1986 (as amended).

[19] Securities Act, 1933 and Securities and Exchange Act, 1934 as amended by the Sarbanes-Oxley Act, 2002 and the Dodd-Frank Act, 2010. The Company Law Enforcement Act, 2001, sections 150-160 of the Companies Act 1990 disqualifies a person from being a director where fraud or corruption is established against such person.

[20] Under United Kingdom Bribery Act, 2010, the defence, "Adequate Procedures" to prevent bribery being committed on behalf upstream petroleum companies must be well-versed with the following six principles: Proportionate Measures, Top Level Commitment, Risk Assessment, Due Diligence, Communication i.e. Training, Monitoring and Review.

[21] A.G., Carlson, "Due Diligence in Oil and Gas Acquisitions" (2007), Vol. 54, Article 9, *Annual Institute on Mineral Law*, p.4.

[22] RPS group, "European Refineries - Good Buy or Goodbye? The Dilemma Facing Potential Purchasers" (2012), available at: http://www.rpsgroup.com/energy/services/advisory/downstream/pdf/refinery-acquisition-good-buys-or-goodbye.aspx (accessed April 4, 2020), p.6.

[23] Section 1502 of the Dodd-Frank Act. 2010.

[24] D., Saraganidas, "Criminal Liability of Companies and Critical Review Whether a Form of Negotiated Criminal Resolution, Like Deferred Prosecution Agreements Deters Corruption" (2018), available at: International Hellenic University, https://repository.ihu.edu.gr/xmlui/bitstream/handle/11544/29174/demetrios%20saraganidas%20llm%20dissertation.pdf?sequence=1(accessed June 28, 2020), p.34.

[25] Birthe Eriksen and T., Soreide, "Zero-Tolerance to Corruption? Norway's Role in Petroleum-Related Corruption Internationally" In P., Le Billon and A., Williams (eds.), *Corruption, Natural Resources and Development: From Resource Curse to Political Ecology* (Edward Elgar, Canada, 2017), pp.5-9.

5. RESEARCH FINDINGS AND DISCUSSION OF RESULTS

The study focused on point-by-point comparative legal and policy analyses of the national anti-corruption legal regimes and corruption in Nigeria, Norway, the United States, and the United Kingdom and calls for the use of the lessons learnt to reform Nigeria's anti-corruption legal framework. These countries were selected because they are relatively rich in petroleum resources and they have favourable Transparency International annual rankings as mentioned. Also, because of their status as relatively advanced petroleum jurisdictions with stringent anti-corruption laws; they can help to bridge the gaps identified in Nigeria's legal regime. The study has found that corruption strives on weak enforcement of anti-corruption laws and a lack of political will in providing effective regulatory intervention

6. CONCLUSIONS AND RECOMMENDATIONS

It concludes that anti-corruption agencies in the selected countries are more effective than those in Nigeria because of the political will of the governments of the former to combat corruption with sufficient or adequate budgets and the strict enforcement of their laws. The Federal Government has made efforts to mitigate the consequences of corruption and promote

a durable infrastructure in Nigeria by enacting a plethora of national laws criminalising corruption, but these appear deficient due to weak enforcement.

The study found out that there are many lessons that Nigeria can learn from the anti-corruption mechanisms of the foreign jurisdictions under consideration.

The United States' procurement systems use debarment as a strong tool to deter corruption and to promote integrity in public procurement. It precludes companies and individuals from participating in government contracts for a stipulated period if found culpable of corruption or breach of contract. It was revealed that a similar provision under section 58(1)(6)(a) of the Nigerian Public Procurement Act provides for debarment or blacklisting; however, this provision is poorly enforced to combat corruption in the sector unlike the selected jurisdictions where they are implemented strictly.

The study revealed that the participation of oil producing communities in the award or licensing process in Norway, the United Kingdom and the United States gives them a sense of ownership. The impact of petroleum activities on oil producing communities is a major requirement that is considered before the award of petroleum licences or contracts in these countries while participatory ownership is absent under the Nigerian legal regime. This participation of oil producing communities in the award process of oil blocks or licences in the sector by regulatory authorities will give them a sense of belonging and may reduce the unending agitations for resource control by the oil producing communities and pipeline vandalization to the barest minimum.

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Competing Interests

The authors declare that there is no competing or conflicting interest whatsoever**.**

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The authors declare no conflict of interest whatsoever.

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