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Theories of Corruption “Public Choice-Extractive Theory” as Alternative for Combating Corruption

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ABSTRACT

Corruption is a recurrent decimal in Nigeria’s upstream petroleum sector due to weak enforcement of anti-corruption and transparency laws. This sector is considered corrupt due to the rampant mismanagement of petroleum resources. The article analyses rent-seeking, public choice and extractive theories of corruption among others due to their impacts in combating corruption. It also queries other anti-corruption models that are relevant to this study to promote transparency and to strengthen national anti-corruption laws for combating corruption in the Nigeria’s upstream petroleum sector. The study is a doctrinal legal research that adopts a point-by-point comparative approach with library research method. The study proposed a hybrid theory of corruption titled “Public Choice-Extractive Theory of Corruption” as an alternative perspective that will effectively combat corruption in the sector. In conclusion, the study finds that corruption strives on the weak enforcement of anti-corruption laws and lack of political will in providing effective regulatory intervention. The study recommends among other reforms, soft law approach and strict enforcement of anti-corruption laws for transparency in the upstream petroleum sector in Nigeria.

KEYWORDS

Corruption, Enforcement, Theories, Transparency, Upstream Petroleum Sector

1. INTRODUCTION

The attention of legal scholars have been drawn to the weak regulatory governance in Nigeria’s upstream petroleum sector (Olujobi, 2017). The weak legal framework has had a detrimental consequence on the economic growth of the country (Global Witness, 2017). Corruption increases transaction costs in the sector, thereby undermining the judicious and proper management of petroleum resources for the development of the country.

One of the challenges that give room for corruption in the oil sector is the absence of a political will to combat corruption by the Federal Government of Nigeria. This legal deficiency has led to failure in transparency and good governance despite the various anti-corruption audit reports that have uncovered corruption in the sector. The lack of commitment to combat corrupt practices has led to the reluctance of some international anti-corruption institutions from providing their full supports on the repatriation of proceeds of corruption to Nigeria. These anti-corruption audit reports have not been used to gain useful insights to reform the sector. Meanwhile, some government officials are

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allegedly benefiting from the corrupt practices thereby resisting all transparency measures. This has led to loss of oil revenues to the government from the sector.

The fundamental problems with the anti-corruption legal framework are weak enforcement and the ambiguity of laws. Ambiguous laws make it difficult to understand its objectives, leading to loss of corruption cases in courts (Bello, 2014). This is evident in section 404(1)(a) of the Criminal Code that criminalises the demand of property. Similarly, many anti-corruption laws fail to concurrently combat corruption in both the private and public sectors. As majority of the upstream petroleum operators are private companies thereby weakening the enforcement of anti-corruption laws and encouraging corrupt practices in the sector.

Meanwhile, the law pertaining to bribing public officials entails the offering, promising, giving and receipt of bribes. However, the enforcement of the law is weak. Weak enforcement of anti-corruption laws by anti-corruption agencies due to corruption and bribery has occasioned loss of revenues to the Federal Government. Such revenues could have been used for infrastructural development in Nigeria, if there was compliance with the anti-corruption laws.

Consequently, in 2004, Nigeria set up an Investigation Committee to investigate the allegation of corruption in the sector but the then Attorney General of the Federation (AGF) and Minister of Justice Mr. Michael Aondoaka applied mere administrative reprieve instead of the criminal prosecution of Halliburton suspects (Igbinedion, 2011). This was a violation of the *rationale* for sections 174(1)(c) and 211 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) that empowered the AGF to institute, discontinue and undertake criminal proceedings against any person before any court in Nigeria with provisos of taking into cognizance public interest, justice and due process before the exercise of such powers. This abuse of power of *nolle prosequi* by the former AGF prompted loss of revenues to the Federal Government through frequent unprosecuted incidence of corruption in the sector.

The shoddy prosecution of corruption cases shows that the Federal Government lacks the political will to combat corruption in the sector. Since no one has been successfully prosecuted for the Halliburton bribery case in Nigeria, while other culprits have been convicted in the United States and Germany, this has brought ridicule upon the nation on the international scene. The decline in oil revenues and investments in the sector seems that the Federal Government has resolved not to prosecute the beneficiaries of Halliburton bribery (Ogbonna-Nwaogu, 2010). A strong political will is *sine qua non* for effective enforcement of anti-corruption laws to guarantee transparency and accountability in the sector.

Undoubtedly, Nigeria's mono economic status and overdependence on crude oil for national income have made the sector vulnerable to corrupt practices and other oil-related crimes, thereby leading to oil price volatilities and declined in oil revenues (Nwanolue, and Osegbue, 2013). This appears to be a threat to the world energy resources market due to problem of growth and development caused by prevalence of corruption in the sector. The Nigerian economy has been unstable due to the rising tension in the sector. The abandonment of other non-oil sectors, such as agriculture and solid minerals among others that would have generated more incomes for the Federal Government is a minus to the nation.

Also, the lack of transparent metering equipment for measuring crude oil sales or produce which has given room for corruption, malpractices and loss of oil revenues by the Federal Government for socio-economic development in Nigeria is a disadvantage. NNPC reports on crude oil produced and sold are full of contradictions due to secrecy in their operations. Also, the absence of stringent legal framework on record keeping and lack of legal provisions in the Act for timely publication of its detailed financial statements to the public. This has hampered transparency and encouraged prevalence of corruption in oil revenues from the sector.

2. LITERATURE REVIEW

According to Karl Marx 1962 theory is a lucidly structured and deductively related law. It is a searchlight that illuminates a specific judgement and shows them for what they really are. It is also seen as principles, guidelines which aid deeper understandings of legal concepts and actions. It is means by which people make sense of judgements which comprises of ethical and political worlds. It is not very easy finding theoretical justifications for combating corruption in Nigeria's upstream petroleum sector. Theories are usually overlapping and interweaving but legal scholars adopts the theories under differing categorisation to serve different purposes depending on the types of research involved. Theories are interesting philosophical speculations or intellectual games. Reasons for theorizing corruption in the upstream petroleum sector are:

Examining corruption theories aids the development of a framework within which we can assess the values and assumptions that either unite or divide the plethora of cases, reform proposals, legislative amendments, and practices that constitute modern anti-corruption legal framework for combating corruption in the sector.

Corruption is not peculiar to the Nigeria's upstream petroleum sector it is rather a global phenomenon. Corruption has substantially reduced the earnings of the Federal Government of Nigeria from oil revenues. Consequently, most Nigerians are living in abject poverty, with the lowest human development indicators (World Bank, 2017). Nigeria is the eighth largest producer of crude oil worldwide and is the fifth largest in the Organization of Petroleum Exporting Member States (Omorogbe, 1996). Corruption and the mismanagement of oil revenues have been compounded by the global decline in oil prices. The decreasing influence the demand for Nigeria's crude oil on the international market is generating intensive operational costs due to old and dilapidated crude oil infrastructure or assets in the sector.

In addition to corruption, Nigeria's upstream petroleum sector is bedevilled with a number of other issues: pipeline vandalism and crude oil theft by militants in the Niger Delta Region, this causing the oil outputs to plunge from 2.3million barrels per day to one million barrels per day (bpd) in early 2016.

This decline in crude oil production has resulted in the insertion of a *force majeure* clause in petroleum agreements by petroleum companies in Nigeria. (*Force majeure* is a legal clause that allows upstream petroleum companies to stop operations or shipments without breaching contracts in the upstream petroleum sector). Corruption is prevalent in Nigeria despite the plethora of anti-corruption laws and policies in the country. However, these are general anti-corruption laws not specifically designed for the upstream petroleum sector. Corruption remains the most critical problem in the upstream petroleum sector in Nigeria.

As a result, most renowned scholars from the various disciplines have published several academic works on corruption, its manifestations, and how to combat it. However, it appears none of these publications have provided long-term solutions to the challenges posed by corruption in Nigeria's upstream petroleum sector. This present study sets out to offer options for combating corruption effectively in the sector through the use of soft law approach. This approach adopts among other issues such as: anti-corruption self-reporting mechanism, stringent enforcement and incentivisation of compliance with anti-corruption laws.

Combating corruption in the upstream petroleum sector is imperative for Nigeria's socio-economic development and poverty eradication. To be successful, the enforcement of these anti-corruption laws must be executed with sincere commitment backed up by strong political will. The Federal Government in providing effective regulatory intervention should render the much-needed assistance to the law officers. It will also entail the enlightenment of Nigerians in terms of the negative consequences of corruption in the sector.

Corruption in the petroleum sector of Nigeria is not a new concept. Several of such cases have been documented. One of such is the alleged \$12.2 billion missing oil windfalls in 1991 uncovered by the Pius Okigbo Committee during the General Ibrahim Babangida's era. The amount of money is

yet to be recovered (Okojie, and Momoh, 2005). The money could have been used for infrastructural development in the country.

Similarly, between 1998 and 1999, Chevron Nigeria Limited was accused of tax evasion and fraud (Otusanya, 2011). The company was alleged to have evaded about US\$2.7 billion tax in addition to the accumulated penalties of \$8,100,000 (Anele, 2015), in connivance with the Nigerian tax officials. The aim was to recycle the amount of tax payable to the Federal Government by \$76million, (Otusanya, 2011) thereby depriving the Federal Government of its statutory revenues for developmental projects in Nigeria. This fraud was attributed to the weak enforcement of its anti-corruption and transparency laws in the sector.

In 2011, the Royal Dutch Shell Petroleum Company and ENI were alleged to have short-changed the Federal Government by \$1.1 billion. The two companies did this by granting oil block OPL 245 to Malabu Oil and Gas Ltd. (Carvalho, 2017): The Company was allegedly owned by the former Nigerian Oil Minister, Dan Etete. Mr. Etete who awarded the oil block to the company while in office in contravention of Corporate Governance's Code and Code of Conduct Bureau and Tribunal Act, Cap. C15 Laws of the Federation of Nigeria, 2004 as contained in the Fifth Schedule of the 1999 Constitution of the Federal Republic of Nigeria (As amended). An interesting twist to the Malabu corruption saga is the fact that those who were indicted for bribery abroad in respect of the transaction have been convicted, whereas those indicted in Nigeria have not been arraigned nor convicted due to the weak enforcement mechanisms in the anti-corruption laws (Global Witness, (2017).

The 2012 report of the Petroleum Revenue Special Task Force also revealed another form of corruption to the extent that oil block bids from 2005–2007 were characterised by corruption and obligatory mergers. It was discovered in the report that preferential treatment was given to certain petroleum companies without considering their technical know-how or financial capability before the grant (Ribadu, 2012). This task force was set up by the former Minister for Petroleum, Diezani Allison Madueke, on behalf of the Federal Government headed by Mallam Nuhu Ribadu. The report further revealed that seven discretionary licences that worth over \$183 million in signature bonuses were not paid to the Federation Account from 2005-2011. These lapses were due to the poor enforcement of the Petroleum Profit Tax Act by the Federal Inland Revenue Service which has caused loss of revenues to the Government.

There seems to be a serious challenge in the administration of signature bonus in Nigeria. For instance, there was over US\$566 million in outstanding signature bonuses and statutory fees that some petroleum companies ought to have paid in advance to the Federation Account. Non-transparent methods of managing signature bonuses and poor record-keeping systems in the Department of Petroleum Resources were also exposed. The Petroleum Profit Tax payment made by the petroleum companies was based on unsupervised self-assessments. This was accepted without further confirmation by the Federal Inland Revenue Service which also occasioned loss of revenues to the Government due to weak enforcement of its anti-corruption laws. The recommendations of the report for the entrenchment of transparency in the operations have not been enforced.

Similarly, there is the Halliburton bribery scandal, where the sum of One Hundred and Eighty (\$180,000,000.00) million US dollars was allegedly offered as bribe to secure the contract for the construction of the Bonny Island Liquefied Natural Gas Project between 1995 and 2004 (Barbara C.G., and Kathleen, 2006). Halliburton's subsidiary Kellogg, Brown and Root (KBR) was indicted for the violations of Foreign Corrupt Practices Act. The United States' Government fined Halliburton \$579 million and its Chief Executive Officer was sentenced to seven years imprisonment (Ajuzie, 2010).

Corruption has always been a challenge in the upstream petroleum sector, particularly in the NNPC. The Federal Government has made several institutional and legal efforts to promote transparency in the sector by establishing the Nigeria Extractive Industry Transparency Initiative under the Nigeria Extractive Industries Transparency Initiative (NEITI) Act, 2007 and the Sovereign Wealth Funds to manage the excess earnings from crude oil under the Nigeria Sovereign Investment Authority (Establishment) Act, 2011, Cap N.166, Laws of the Federation of Nigeria 2004. The

Niger Delta Development Commission (NDDC) under the Niger-Delta Development Commission (Establishment) Act, 2000 Act, No. 6, Laws of the Federation of Nigeria was also enacted to promote a swift and sustainable development of the Niger Delta oil producing areas. The Federal Government also instituted the Amnesty Programme to sustain harmony and development in the Niger Delta region through the provision of vocational skills and training of reformed militants. The Federal Government similarly instituted the Presidential Advisory Committee Against Corruption (PACAC) on August 2015 (The Presidency, 2016), the Presidential Committee on Assets Recovery to retrieve stolen assets on November 18, 2016 under the Recovery of Public Property (Special Provisions), Act, Cap R.4, Laws of the Federation of Nigeria, 2004 and the National Prosecution Coordination Committee to advise on corruption cases on May 27, 2016. The Federal Government also revoked the Infrastructure Protection Contracts with the former militants due to prevalence of crude oil theft and corruption in the sector.

However, as global attention is shifting from fossil fuels to renewable energy, there is renewed clamour among Nigerians for the diversification of the economy. This has been largely due to the global oil price slump, low demand for Nigeria's crude oil on the international market, and the endemic corruption in the oil sector. Oil prices have dropped significantly from \$110 a barrel in 2010 to \$48 per barrel in 2014 increased relatively to \$54.15 per barrel in 2017, \$72.8 in 2018 and \$65.06 in 2019 but dropped to \$30 because of the widespread of Coronavirus (Covid-19) and other oil market forces. This has decreased the revenues of the Federal Government from oil.

These developments prompted various anti-corruption probes, such as the reports of the Nigeria Extractive Industries Transparency Initiative (NEITI) 1999–2004, 2005, 2006–2008. The reports of the audit of the importation of fuel commission by the NNPC in 2008, and in 2009–2011 with the report of the audit of the NNPC by KPMG Professional Services submitted to the Presidency on November 22, 2010, which exposed corruption in the sector. The 2012 Report of the Mallam Nuhu Ribadu Petroleum Revenue Special Task Force set up by the Federal Government too uncovered different corrupt practices in the sector.

The above anti-corruption audit reports brought to the fore lack of transparency, which promotes corruption and retards development in the sector. These occurred due to the absence of political will on the part of the Federal Government to combat corruption. These corruption cases have been perennial features of the sector. Therefore, there is the need for a proactive approach to combat corruption in the oil sector. Transparency in the sector is critical to national development, since the sector accounts for over 95% of Nigeria's foreign exchange earnings.

As a result of large-scale corruption in the sector, many international oil companies are now divesting their interests and this has also resulted in extensive poverty and infrastructural deficit in Nigeria, despite being endowed with abundant petroleum resources. Nigeria is said to have lost up to 40% of its oil revenues to corruption, (Thomson Reuters, 2004), even though International anti-corruption conventions and national anti-corruption laws have been passed.

Also, Transparency International gave Nigeria a low score in its Corruption Perception Index as 146th out of 180 countries with 26 out of 100 (Transparency International, Corruption Perceptions Index, 2019) due to prevalence of corruption in the sector among others.

3. METHODOLOGY

The objective of this study is to analyses rent-seeking, public choice and extractive theories of corruption among others due to their impacts in combating corruption. It also queries other anti-corruption models that are relevant to this study to promote transparency and to strengthen national anti-corruption laws for combating corruption in the Nigeria's upstream petroleum sector. To achieve this listed objective, the study is a doctrinal legal research that adopts a point-by-point comparative approach with library research method. The study proposed a hybrid theory of corruption titled "Public Choice-Extractive Theory of Corruption" as an alternative perspective that will effectively combat

corruption in the sector. In conclusion, the study finds that corruption thrives on the weak enforcement of anti-corruption laws and lack of political will in providing effective regulatory intervention in combating corruption in the sector.

4. STATEMENT OF PROBLEMS

The Nigeria Extractive Industries Transparency Initiative's (NEITI) audit report indicated that the new Port Harcourt refinery lacked the metering equipment for measuring crude oil transfer through pipelines to depots during 1999–2004 due to absence of legislation on compulsory and transparent usage of metering equipment for measuring crude oil sales or produce. This gave room for corruption, lack of accountability and loss of oil revenues by the Federal Government from the sector (Nwokeji, 2007). The alleged missing 20 billion US dollars oil revenues from the NNPC as alleged by the former Governor of the Central Bank of Nigeria, Lamido Sanusi, through domestic crude oil sales still remains unresolved due to poor enforcement of transparency laws (Akinola, 2015). The weakness of the enforcement agencies occasioned shortage in national oil revenues for developmental projects in Nigeria.

Further, the 2009 and 2011 NEITI's reports revealed that some oil and gas companies colluded with some tax officials to evade tax payments of about \$8.3 billion. The amounts which they ought to have deposited in the Federal Government's treasury due to weak enforcement of the provisions of the Petroleum Profit Tax Act (Nigeria Extractive Industry Transparency Initiative Report, 2017). All of these have given room for corruption and low oil revenues credited to the Federal Government's account.

Likewise, the challenge of restructuring in Nigerian National Petroleum Corporation (NNPC) due to corruption and persistent shortage of oil revenues as the current structure of the corporation contradicts international standard and practice for viable, transparent commercial legal entity that is independent with self-accounting mechanism on profits. This will guarantee transparency like Statoil in Norway which operates like other commercial oil companies without any special status of statutory corporation where the governments only act as regulators and charge corporate taxes, this has enhanced transparency in their petroleum sector. Amendment of the Nigerian National Petroleum Corporation (NNPC) Act, Cap N123 Laws of the Federation of Nigeria, 2004 to expunge the petroleum minister as the chairman of the NNPC's board will enhance transparency through check and balance and thorough scrutinization of NNPC's commercial transactions in the sector.

In addition, there were over 566 million US dollars in outstanding signature bonuses and statutory fees that some upstream petroleum companies ought to have paid in advance to the Federation Account. This amount occasioned deficit in oil revenues to the Federal Government. Non-transparent methods of managing signature bonuses and poor record keeping systems in the Department of Petroleum Resources were also uncovered by Nuhu Ribadu's report in 2012. The Petroleum Profit Tax payments made by some petroleum companies were based on unsupervised self-assessments. These payments were accepted without further confirmation by the Federal Internal Revenue Service to promote transparency in the sector. The recommendations of Nuhu Ribadu's report for the entrenchment of transparency in the upstream petroleum operations have also not been enforced to curb corruption in the sector.

Also, in 2013, the audit report of the Nigeria Extractive Industries Transparency Initiative (NEITI) alleged that the NNPC has not transferred dividends amounting to \$14.34 billion of the Nigeria Liquefied Natural Gas (NLNG) Project with an interest and loan repayment to the sum of \$12.92 billion to the Federation Account (Nigeria Extractive Industries Transparency Initiative (NEITI) 2013. This is due to the absence of laws compelling it to transfer the money immediately to the Federation Account. Moreover, this has given room for corruption and deficit in oil revenues accruing to the Federal Government for the development of the nation.

The non-remittance of oil revenues by Nigerian National Petroleum Corporation and some of its subsidiaries to the Federation Account that could have been used for infrastructural development in Nigeria, but due to the flaws in sections 80, 162(1) of the 1999 Constitution (as amended) that failed to stipulate expressly the time frame for the remittance of oil revenues to the Federation Account and failure to curb discretionary spending by NNPC has given room for corruption in the sector.

The absence of financing model law and the conflict between the country's Constitution and section 7 of the NNPC Act on oil revenues spending thus initiating opportunity for corruption in the corporation by withholding oil revenues accruing to the Federal Government as operational costs in the sector.

For instance, in 2014, the report of the NEITI audit on oil and gas industries revealed non-remittance of oil revenues of over N2.23 trillion by the NNPC to the Federation Account (Nigeria Extractive Industries Transparency Initiative, 2014). This was a flagrant contravention of the Constitution and Fiscal Responsibility Act, 2007. NEITI's 2015 audits and reports exposed the failure of Nigerian National Petroleum Corporation (NNPC), Nigerian Petroleum Development Company (NPDC) and other oil companies to remit the sum total of N3.78 billion to the Federation Account (Nigeria Extractive Industries Transparency Initiative Policy Brief, 2017). NEITI'S Annual Progress Report, 2016, also revealed that unremitted dividends of the NLNG project worth \$15.823 billion on loans and interests from year 2000 to year 2014 were paid to NNPC but were not remitted to the Federation Account, (Nigeria Extractive Industries Transparency Initiative 2016), thereby giving room for corruption and shortfall in oil revenues accruing to the Federal Government from the sector.

Further, in 2014, the audit report of the Nigeria Extractive Industries Transparency Initiatives on oil and gas industries revealed there remains a non-remittance of oil revenues amounting to N2.23 trillion by the NNPC to the Federation Account (Nigeria Extractive Industries Transparency Initiative, 2014). In addition, the legal framework regulating Nigeria's upstream petroleum sector are archaic. They do not represent the current legal developments and anticipated legal challenges in the sector. Nigerian Extractive Industries Transparency Initiative (NEITI) revealed that Federal Government lost the sum of N1.74 trillion in oil revenues in 2013 owing to non-passage of Petroleum Industry and Governance Bill (PIGB) and other vital petroleum laws to reform the sector (Moghalu, 2018). There is therefore, the need for a total overhaul of the laws to combat corruption and to promote transparency in the sector.

Also, the forensic audit report conducted by Price water house Coopers on behalf of the Federal Government on the operations of the Nigerian National Petroleum Corporation (NNPC) on the non-remittance of crude oil revenues in 2012 and 2013 have not been put to use. This would have taken initiative to bridge the gaps identified in our anti-corruption laws.

The report recommended, among others, the restructuring of the NNPC as the current structure of the corporation contradicts sustainable commercial legal entities in the sector. However, in the United Kingdom and the United States, the governments only act as regulators and charge corporate taxes without any national oil companies (Carlyle, 2017). This approach enhances transparency in their oil sectors unlike in Nigeria where the NNPC performs both the regulatory and commercial roles. Such functions gave room for corruption and abuse of discretionary powers due to the absence of law that separate its regulatory and commercial roles in the sector.

In the same way, the 2016 Nigeria Extractive Industry Transparency International's Annual Progress Report revealed that unremitted dividends (Onya, and Elemanya, 2016) of the NLNG project worth \$15.823 billion US dollars on loan and interests from 2000 to 2014 were paid to NNPC. The amounts were also not remitted to the Federation Account (Nigeria Extractive Industries Transparency Initiative, 2016). This contravenes sections 80, 162(1) of the 1999 Constitution (as amended) that states that all funds that are paid to the Federal Government must be remitted to the Federation Account thereby aided corruption in the sector.

Corruption and the mismanagement of petroleum revenues are believed to be perpetrated by public officials. These officials collaborate with multinational upstream petroleum companies, who

are said to have offered substantial payments to government officials in the sector to secure illicit oil contracts. This occasioned loss of revenues to the government due to lack of comprehensive due diligence mechanisms in the sector to scrutinise oil contracts.

The Shell Petroleum Development Company (SPDC), ChevronTexaco, ExxonMobil Corporation, Agip Oil Company, and Total Oil Company are the major petroleum operators in Nigeria. Some petroleum companies are alleged to be beneficiaries of corruption to the detriment of the Nigerian State and its citizens. If this is not combated, it may consistently hamper economic growth and transparency in Nigeria's upstream petroleum sector. (US Energy Information Administration, 2015).

It is undebatable that, had the Federal Government combated corruption in the upstream petroleum sector and used the earned revenues judiciously during the oil boom, Nigeria would have recorded unprecedented infrastructural development in all sectors. However currently, oil prices have dropped significantly from \$110 a barrel in 2010 to \$48 per a barrel in 2014 and as low as \$31 per barrel in 2016 (Bello, 2017). In 2017 it was \$44.5 per barrel while in 2018 it was \$57 per barrel and in the first quarter of 2019 and now 2020 it is about \$30 per barrel. However, it is anticipated that the price will increase.

The NNPC, as the main statutory body regulating the sector, may be deemed as opaque national oil corporation since its activities have been allegedly characterised by corruption and concealment. The practice of awarding oil pioneer status to petroleum companies that have been well established for years deprives the Federal Government of its statutory oil revenues in the sector due to archaic legal framework regulating Nigeria's upstream petroleum sector which give room for corruption.

Further, it is not in conformity with the global best practices for instance the Petroleum Act, (Laws of the Federation of Nigeria, 2004). The Petroleum Profits Tax Act, Cap, p.13, Law of the Federation of Nigeria, 2004. The Deep Offshore and Inland Basin Production Sharing Contracts (PSC) (Amended) Act, and sections 16(3),17 of Production Sharing Contract Act. This Act requires that the 1993 Production Sharing Contracts should be reviewed once the value of crude oil exceeds \$20 a barrel or 15 years after the contracts the review has not been done for years. This causes a loss in oil revenues to the Federal Government, (Olaniwun, 2017). Therefore, there is a need for a total overhaul of the laws to promote transparency in the sector.

There is the need for the Federal Government to formulate a clear legal framework for the collection of revenues by the NNPC and for the financing of its operations. Such an approach helps to promote transparency in its financing and prohibit the discretionary allocations of funds in the sector. Section 7 of the NNPC Act, 1977 must be amended to explicitly spell out what funds the corporation can retain and how they can be allocated rather than the current legal provision, which is not explicit.

The petroleum sector being the main source of Nigeria's economy is bedeviled with systemic and endemic problem of corruption. This problem has impeded the economic growth of the country. Notwithstanding the current global trend in relation to the use of alternative energy and the demphasis on oil, the Federal Government of Nigeria is exploring various options to effectively resolve this problem through anti-corruption legal framework. It is expected that the Federal Government makes the best use of her oil revenues while it lasts, for a meaningful development of the country by uprooting corruption from the sector.

Moreover, the gaps in the literature that this study intends to fill are the absence of hybrid anti-corruption theory called "Public Choice-Extractive Theory" as alternative for Combating Corruption in Nigeria's Upstream Petroleum Sector and some distinct anti-corruption laws in Nigeria's anti-corruption legal framework. For instance, the refusal to integrate and adopt stringent enforcement of both the hard and soft law approaches with incentives for compliance with anti-corruption laws in combating corruption in the sector in conjunction with international cooperation hampered the effectiveness of the existing national anti-corruption legal framework in Nigeria's upstream petroleum sector as proposed by this study.

5. THEORETICAL ANALYSIS OF CORRUPTION IN NIGERIA'S UPSTREAM PETROLEUM SECTOR

Theories are used as interpretational answers to the increasingly challenging organisational structure, extractive industry governance, anti-corruption and transparency laws in the upstream petroleum sector. It will also aid the understanding of the rationale behind different corporate governance models applicable from one jurisdiction to the others. It will also engender coherent approach to policy-making, anti-corruption and transparency laws to combat corruption in the upstream petroleum sector and to situate the nuance of corrupt practices within a body of anti-corruption law theories and also demonstrate where any eventual research findings originated.

Several theories have been expounded by scholars underlining the cause of corruption and how it can be combated. An understanding of these theories can give an insight into these problems and, in the context of this study, can assist in combating the corruption prevalent in Nigeria's upstream petroleum sector. Three theories are essential to this study: Rent-Seeking Theory of Corruption, Extractive Theory of Corruption and Public Choice Theory of Corruption (Figure 1).

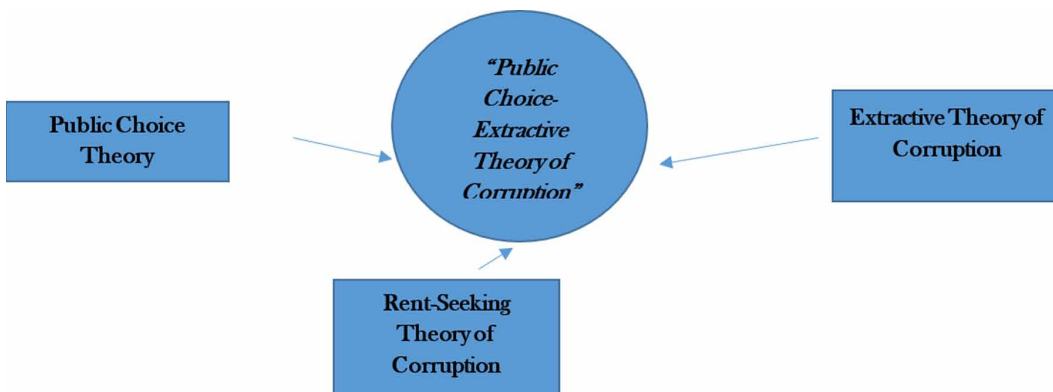
5.1 Rent-Seeking Theory of Corruption

The tenets of this theory were detailed by Gordon Tullock in 1967. The theory, however, has been traced to the work of Anne Kruger in 1974. The theory helps the study by defining rent seeking theory of corruption as the processes of disbursing resources that create no social benefits with the aim of influencing public policies outcomes and consequently public resources spent are socially wasted. According to this theory, rent-seeking is the disbursement of resources and efforts in creating or transferring rents.

The justification for the theory is that it reduces administrative rent-seeking activities and bottlenecks in Nigeria's upstream petroleum sector, and it promotes transparency and due processes in the sector. According to this theory, corruption occurs in cases where artificial barriers to entry are created as a means for bribes or other undesirable behaviour, such as lobbying. The theory focuses on the collaboration between the State and other stakeholders in the sector. The State has the power to assign proprietary rights of oil trade through licensing, regulations, taxes, and by awarding oil contracts.

However, the theory supports the study by arguing that artificial barriers are created by government officials in the sector through bureaucracy and administrative bottlenecks. Government officials as well as other stakeholders in the sector influence the State to create these to serve their self-interest and then exploit petroleum operators in the sector. Corruption does not only occur in cases where companies give bribes, so that artificial barriers to entry are removed and they operate, it triggers

Figure 1. How to combat corruption



disputes over rent and causes upstream petroleum companies to compete for preferential treatment, which is against due process.

In this case, there is the need to differentiate between corruption and lobbying. Lobbying differs from corruption; in that it is legal while corruption is not. Corruption is the pecuniary gain or other benefits transferred between a bribe-giver and a bribe-taker, whereas lobbying is an attempt to sway another person without the involvement of any payments. In the same vein, corruption differs from other rent-seeking activities due to the varying levels of transparency.

The theory suggests a reduction of artificial barriers by the State. The researchers of this paper (hereafter, the researchers) argues that certain barriers to entry may be socially effective; for instance, barriers to enter Nigeria's upstream petroleum industries by imposing the requirement of licence. This perceived barrier may prevent persons with fraudulent intentions from gaining access to the sector. The challenge the theory faces lies with describing rules that give rise to artificial barriers and those that do not.

The theory also has shortcomings in terms of designing incentives and managing incorruptible behaviour. To combat corruption in the sector, finding solutions to these problems are fundamental. The researcher argues that corruption is an obstacle to economic development; thus, competitive lobbying is preferable to corruption.

5.2 Extractive Theory of Corruption

Extractive theory of corruption means the relationships between state, its agent and the society. Here the states' agent uses the resources of the state for the benefits of their leaders. The emphasises the fact that the state is a stronger party in the relationship who benefits most from corruption they are the major shareholders in the upstream petroleum companies the state is seen as a passive player. As cited by Iyanda 1999, (Amundsen, 1999), Amundsen opines, (Iyanda, 2012), in his work "Corruption: Definitions, Theories and Concepts", that the concept of the extractive theory is based on the idea of authoritarianism – the use of force and exploitation of a State's resources by rulers or their agents. Adebisi, 2015 further revealed that the theory is based on the principles of authoritarian government and neo-patrimonial States. Balancing the concerns regarding corruption, Amundsen, (Amundsen,1999) in his article "Political Corruption: An Introduction to the Issues", argues that a few government officials profit from corruption by utilising the State's apparatus to extort resources for the benefit of the ruling government.

The theory supports this study by resisting autocratic regimes and the government's officials who use powers and resources of the State (oil revenues) to protect their personal interests at the detriment of the nation's economy and development. The theory accentuates a renowned postulation that power has the propensity to corrupt, and unlimited power leads to absolute corruption. In other words, where excessive power is concentrated absolutely in the hands of a few persons such as the minister of petroleum's discretionary power in the oil sector, there is more potential for corruption, abuse of power, wealth seeking and extraction of resources for personal gain.

5.3 Public Choice Theory

The theory was propounded between 1950 and 1960. The major proponents of the theory are James Buchanan, Gordon Tullock, and Mancur Olson (Udama, 2013), Public Choice theory centres on individuals' interests and preferences which model ones' behaviour in taking rational decision. This often churns out pre-determined goals for such individuals through optimal maximization of every utility. The theory is useful for a better understanding of corruption. It allows one to predict consequences of corruption, since most anti-corruption laws are enacted with sanctions for non-compliance.

The theory supports this study by emphasising that individual is responsible for both his actions and the consequences of his actions. In the upstream petroleum context, the theory is concerned with corrupt government officials who attempt to make the most of their utility in the sector through

malpractices. Graaf, in his work “Causes of Corruption: Towards a Contextual Theory of Corruption” (Graaf, 2007) argues that government officials are rational scheming individuals who resolve to become corrupt when the advantages outweigh the disadvantages, which refers to the combination of expected penalties and the likelihood of being indicted for corruption.

The theory explains the cost of corruption in the sector as follows: when one is corrupt, one is impairing developments and growth in the sector. Langseth, in his work “Prevention: An Effective Tool to Reduce Corruption” (Langseth, 1999) believes that to make penalties effective in preventing corruption, it is crucial to link the payments of anti-corruption agencies with the amount of corruption proceeds retrieved from the sector. Anechiarico and Jacobs, 1996 in their work “The Pursuit of Absolute Integrity”, argue that imposing stiffer penalties with severe preventive measures may improve the chances of being caught for corruption and may increase the cost of corruption through detailed preventive anti-corruption mechanisms, which is based on the uncompromised enforcement of anti-corruption laws and sanctions in the sector.

6. TOWARDS A HYBRID THEORY: “PUBLIC CHOICE-EXTRACTIVE THEORY OF CORRUPTION” – AN ALTERNATIVE PERSPECTIVE TO EFFECTIVELY COMBAT CORRUPTION IN NIGERIA’S UPSTREAM PETROLEUM SECTOR

Having evaluated the strengths and weaknesses of the theories discussed above, the researchers opines that Public Choice-Extractive Theory of Corruption is the best theory that situates this work because it effectively explains the cost of corruption in the sector. The thesis presents an alternative approach for modelling corruption in the sector, called the “Public Choice - Extractive Theory of Corruption”. Applying other theories as a substitute for the Public Choice-Extractive theory may occasion incorrect strategies in combating corruption. The theory is derived from the public choice theory and extractive theory of corruption with an underlying aim to curb corruption and to promote transparency in Nigeria’s upstream petroleum sector.

Public Choice-Extractive Theory of Corruption defined the damaging impacts of corruption on the Nigeria’s economy and on its citizens by undermining investments and other socio-economic activities in the sector. The theory emphasis on the need for stringent anti-corruption measures to deter corruption. This is useful through the use of soft law approaches that incentivize anti-corruption laws that will promote efficiency of the anti-corruption laws by making corruption a high-risk crime in the sector. It stresses the need for securing public cooperation in reporting corrupt practices and publication of corruption convictions in the upstream petroleum sector to discourage corruption in Nigeria.

Public Choice-Extractive theory underscored the need for corruption preventive, deterrence measures and the protection of the vulnerabilities of whistle blowers and witnesses who testify in court against corrupt NNPC’s officials. It advocates the need for Civil Forfeiture of Proceeds of Corruption and Witness Protection Bills to guarantee public awareness and to secure confidence in the Federal Government’s anti-corruption efforts by entrenching transparency and accountability in the sector.

The theories help the study to highlight the need to redesign the existing anti-corruption legal framework due to its deficiencies and to strengthening national anti-corruption legal framework based on the lessons learnt from the selected jurisdictions to promote transparency in Nigeria’s upstream petroleum sector.

It emphasised that corruption arises when public officials entrusted with the formulation and enforcement of policies exploit the power for private benefits by manipulating State’s apparatuses and institutions to achieve outcomes, which are incompatible with the social welfare of Nigerians (Udombana, 2002). The Public Choice-Extractive theory of corruption can be utilised when a few stakeholders profit from transactions in the upstream petroleum sector in the name of the State. The theory supports the study by drawing attention towards corrupt government officials who evaluate the merits and demerits of their actions before their involvement in corrupt practices.

How can the “Public Choice-Extractive Theory of Corruption” alter the landscape of corruption in the sector? The theory can reduce corruption in the sector with emphasis on the point that when one is corrupt, he/she is impairing development. It highlighted the need for “Civil Forfeiture of Proceeds of Corruption Bill”, for civil process for recovery of proceeds of corruption and for the establishment of the “Asset Forfeiture Fund” for compensation of victims of corruption for the losses suffered due to acts of corruption with the proposed “Asset Forfeiture Commission” to manage and retrieve proceeds of corruption or assets connected to corrupt activities in the sector. It identified the problems with the national anti-corruption laws and filled the gaps by introducing soft law approach to complement national anti-corruption laws for combating corruption in the sector.

It underlined the need for a legal template and framework for the domestication of relevant international anti-corruption conventions by mainstreaming relevant portions of the national anti-corruption legal framework of Norway, the United States, and the United Kingdom in order to use the lessons learnt to reform Nigeria’s anti-corruption laws.

The theory further supports the study by illuminating the cost of corruption by laying emphasis on the fact that power has a tendency to foster corruption, and unqualified power distorts a person’s morals completely (Okechukwu and Inya, 2011). The theory accentuates that when absolute power is bestowed on an individual, there is a greater impulse for the abuse of power. The discretionary power of the Minister of Petroleum to award oil blocks in Nigeria petroleum sector should be reviewed for checks and balances in order to prevent the abuse of power and in conformity with the global oil industries’ practices like the United Kingdom, the United States and Norway, where the discretionary powers of petroleum ministers are checked by legislations.

The theory focuses on corrupt government officials who try to maximise their utilities in the upstream petroleum sector with emphasis on the fact that individuals are rational evaluating beings who choose to be corrupt when the estimated benefits are greater than the expected negative consequences of corruption.

The theory helps to understand that one may reasonably opt not to be corrupt if there are severe punishments for corruption. In support of this argument, Jeremy Bentham (Mbaku, 2000) said that pain and pleasure are the two factors that restrain or drive human actions and are the grounds on which the moral source of utility is derived (Bentham, 2010). Utilitarianism also upholds the same position that corruption is acceptable when it increases the pleasure in its entirety but is not suitable if it creates pains for the majority (Veenhoven, 2004). The rationale is to maximise the amount of happiness to as many Nigerians as possible through the just distribution of petroleum resources for the overall development of Nigeria by using the existing anti-corruption laws to combat corruption and to promote transparency in the upstream petroleum sector.

According to the theory, the principle of utility does not focus on actions and the motivation behind these actions. It is rather based on the expected consequences of every action of corrupt government officials and the damage they inflict on the nation’s economy. The theory operates when the State is not only a formidable force in the society but also where petroleum operators have transformed into the dominant ruling class in control of the State’s upstream petroleum resources (Omoyibo, 2012). The researcher states that one may reasonably opt not to be corrupt if there are severe punishments for corruption.

7. DISCUSSION OF FINDINGS

This study seeks the enforcement of the existing anti-corruption legal framework in conjunction with the reform of various pitfalls identified in the process and the enactment of basic anti-corruption laws that are absent in the Nigeria’s anti-corruption legal framework. The theories help the study to highlight the need to redesign the existing anti-corruption legal framework due to its deficiencies and to strengthening national anti-corruption legal framework based on the lessons learnt from the selected jurisdictions to promote transparency in Nigeria’s upstream petroleum sector. The findings

reveal absence of an alternative theory for combating corruption in Nigeria's upstream petroleum sector, titled "Public Choice-Extractive Theory of Corruption" for transparency in the sector. The need to fill the various gaps identified in Nigeria's anti-corruption laws through "soft law approach" to complement national anti-corruption laws for combating corruption in Nigeria's upstream petroleum sector to reform Nigeria's anti-corruption laws.

It emphasised that corruption arises when public officials entrusted with the formulation and enforcement of policies exploit the power for private benefits by manipulating State's apparatuses and institutions to achieve outcomes, which are incompatible with the social welfare of Nigerians.

8. RECOMMENDATIONS AND CONCLUSION

The major concern is whether the legal frameworks discussed above are effective to combat corruption in Nigerian upstream sector despite the huge numbers of the existing anti-corruption laws. It is submitted that absence of Whistle blowers Protection Act, legal template for the domestication of relevant international anti-corruption conventions and Civil Forfeiture of Proceeds of Corruption Act for the civil process of recovery of proceeds of corruption and for the establishment of an "asset forfeiture fund" for the compensation of victims of corruption for the losses suffered due to acts of corruption. This means that Nigeria's anti-corruption laws are incomplete. Enactment and passage of these bills into laws by the National Assembly will complement the existing national anti-corruption laws, promote efficiency and transparency in the Nigeria's upstream petroleum. The study recommends the following:

1. an alternative theory for combating corruption in Nigeria's upstream petroleum sector, titled "Public Choice-Extractive Theory of Corruption" for transparency in the sector.
2. the need to fill the various gaps identified in Nigeria's anti-corruption laws through "soft law approach" to complement national anti-corruption laws for combating corruption in Nigeria's upstream petroleum sector to reform Nigeria's anti-corruption laws.

DISCLOSURE STATEMENT

The authors declare no conflict of interest whatsoever.

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