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Bluebook 21st ed.

Olusola Joshua Olujobi, Legal Framework for Combating Corruption in Nigeria - The Upstream Petroleum Sector in Perspective, 8 J. ADVANCED Res. L. & ECON. 956 (2017).

ALWD 6th ed.

Olujobi, O. ., Legal framework for combating corruption in nigeria - the upstream petroleum sector in perspective, 8(3) J. Advanced Res. L. & Econ. 956 (2017).

APA 7th ed.

Olujobi, O. (2017). Legal framework for combating corruption in nigeria the upstream petroleum sector in perspective. Journal of Advanced Research in Law and Economics (JARLE), 8(3), 956-970.

Chicago 17th ed.

Olusola Joshua Olujobi, "Legal Framework for Combating Corruption in Nigeria - The Upstream Petroleum Sector in Perspective," Journal of Advanced Research in Law and Economics (JARLE) 8, no. 3 (Summer 2017): 956-970

McGill Guide 9th ed.

Olusola Joshua Olujobi, "Legal Framework for Combating Corruption in Nigeria - The Upstream Petroleum Sector in Perspective" (2017) 8:3 J Advanced Res L & Econ 956.

AGLC 4th ed.

Olusola Joshua Olujobi, 'Legal Framework for Combating Corruption in Nigeria - The Upstream Petroleum Sector in Perspective' (2017) 8(3) Journal of Advanced Research in Law and Economics (JARLE) 956.

MLA 8th ed.

Olujobi, Olusola Joshua. "Legal Framework for Combating Corruption in Nigeria - The Upstream Petroleum Sector in Perspective." Journal of Advanced Research in Law and Economics (JARLE), vol. 8, no. 3, Summer 2017, p. 956-970. HeinOnline.

OSCOLA 4th ed.

Olusola Joshua Olujobi, 'Legal Framework for Combating Corruption in Nigeria - The Upstream Petroleum Sector in Perspective' (2017) 8 J Advanced Res L & Econ 956

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DOI: [https://doi.org/10.14505/jarle.v8.3\(25\).33](https://doi.org/10.14505/jarle.v8.3(25).33)

Legal Framework for Combating Corruption in Nigeria -The Upstream Petroleum Sector in Perspective

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Suggested Citation:

Olujobi, O.J. 2017. Legal Framework for Combating Corruption in Nigeria – the Upstream Petroleum Sector in Perspective. *Journal of Advanced Research in Law and Economics*, Volume VIII, Summer, 3(25): 956 – 970. DOI: [10.14505/jarle.v8.3\(25\).33](https://doi.org/10.14505/jarle.v8.3(25).33). Available from: <http://journals.aserspublishing.eu/jarle/index>

Article's History:

Received April, 2017; Revised May, 2017; Published June, 2017.
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Acknowledgements:

I sincerely acknowledge the financial contribution of Covenant University, Ota, Nigeria towards the full publication of this paper.

Abstract:

Corruption in the Nigeria's upstream petroleum sector is a serious concern and a major challenge facing Nigeria. Successive governments in Nigeria have fought corruption for decades with insignificant success. The paper examines how Nigeria's anti-corruption legal regime can eradicate corruption in the sector and critically assesses our national anti-corruption laws. The writer adopts analytical method by placing reliance on secondary data such as academic journals, articles, statutes and textbooks. The writer discovers that, the challenge is not only with the existing anti-corruption legal regime but enforcement of the laws to achieve the desired objectives of combating corruption. The writer finds that, what is required on the part of the government in addition to legislative and institutional reform strategies is the strong political will to prosecute the alleged corrupt offenders and implementation of the letter and spirit of the law against corruption. The writer further discovers that, national anti-corruption laws are the most effective legal instruments that can address corruption in the sector. The paper therefore suggests some new measures that could be implemented to eradicate corruption such as improvement on some national laws to boost transparency, probity in the sector which is believed will reduce if not eliminate corruption in the sector.

Keywords: corruption; upstream; petroleum sector; Nigeria and laws.

JEL Classification: K4; K32; Q40.

Introduction

Nigeria is the largest producer of crude oil in Sub-Saharan Africa with huge unexploited gas reserves (Owolabi 2007). Nigeria's natural gas reserve approximations are between 3-3.4 trillion cubic metres, the eighth largest in the world, and fifth in the Organization of Petroleum Exporting Member States (Omorogbe 1996). Nigeria's upstream petroleum sector is characterized with corruption, infrastructure shortfall, crude oil theft, pipeline vandalism and numerous internal security challenges (Oyewunmi and Olujobi 2016). Incomes earned by the Federal Government from the upstream sector are not constantly published for unjustifiable reasons (Oyewunmi and Olujobi 2016).

In 2012, over ₦15.7 trillion (Ikpeze 2013) of oil income was said to have accrued to Nigeria and this large revenue was mismanaged and nobody was punished for the mismanagement. Despite the enormous amount of money made by Nigeria from the sale of crude oil after its discovery (Amnesty International Report 2009), this abundant wealth is not reflected in the standard of living of most Nigerians due to corruption in the sector (The

United Nations Development Programmes Human Development Report Assesses Human...). Nigeria's upstream petroleum sector has been characterized with lack of good governance, accountability, inefficiency, lack of transparency and excessive power vested on the Petroleum Minister (Inyang, Peter and EJOR 2014).

In the same vein, Chevron Nigeria Limited was indicted in 1998 -1999 for tax evasion. It was alleged to have evaded about \$2.7 Billion in taxes through designated tax evasion scheme and alteration of accounts with accumulated penalties of \$8.1 Billion (Anele 2015) and through connivance with the Nigerian tax officials, Chevron was evaluated to have reduced the amount of tax than expected by Ninety Six Million Dollars (Anele 2015). The case of Halliburton is significant where the Company's official conceded that its Nigerian subsidiaries in 2006 offered bribes of \$2.4 million dollars to tax officials for tax rebate of over Fourteen Million Dollars in tax to the Company (Anele 2015).

Some of the major reasons of corruption in the sector include: lack of political will, absence of strong regulatory institutions, poor implementation of anti-corruption legal framework and total dependence on crude oil for national income (Nwanolue, Osegbue and Iwuoha 2013). Efforts made by successive governments in Nigeria to curb corruption in the sector revolves round setting up administrative and judicial commissions of enquiries into allegations of corruption (Civil Service Commissions and other Statutory Bodies (Removal of Certain Persons from Office) Decree No. 16 of 1976) and enactment of Codes of Conduct for government officials in the sector.

These efforts recorded little successes because government appears to lack the political will and moral integrity to lead the war against corruption in the sector (Ocheje 2001). The level of corruption in the sector makes it an exigent policy challenge to be addressed by the Federal Government through national laws, statutory regulatory bodies, the Nigeria's upstream petroleum operators, the Nigerians and other stakeholders in the sector (Ayoade 2012).

The Independent Corrupt Practices and Other Related Offences Act was enacted by the National Assembly in year 2000 during the regime of the former President, Chief Olusegun Obasanjo. It establishes the Independent Corrupt Practices and other Related Offences Commission (Adeniran 2008). After, the Economic and Financial Crimes Commission Act 2004 was made and the Economic and Financial Crimes Commission was established. Despite these extensive anti-corruption laws and institutions established by the successive governments in Nigeria, the challenges of corruption remain unabated in the sector. Nigeria loses at least 150,000 barrels of crude oil value at ₦2.2Billion daily (Igbikiowubo 2009) as a result of oil theft activities in the sector (Ingwe 2015). The fight against corruption in the upstream petroleum sector is for the good of Nigerians, it will promote good governance, transparency and sustainable economy. These explain the reason for international, regional and national efforts to find lasting solution to the problem of corruption in the sector through relevant national anti-corruption legislations.

The paper assesses the existing national anti-corruption legal framework for combating corruption in Nigeria, the flaws of such legal framework and proffers the panacea for successful anti-corruption crusade in the Nigeria's upstream petroleum sector.

The paper is divided into five parts. Part one opens with an introduction. Part two examines the background to the study. Part three discusses national anti-corruption legal framework. Part four discusses combating corruption in the Nigeria's upstream petroleum sector through transparency approach and with detailed national laws that can be improved upon to promote transparency in the upstream petroleum sector. It offers suggestions on how to combat corruption in the Nigeria's upstream petroleum sector with emphasis on the need for the enactment of legal regime on confiscation and recovery of proceeds of corruption in the sector. Part five contains conclusion.

1. Review of Literature

The evolution of corruption in Nigeria is dated back to the 1950s when the first panel of enquiry was initiated to investigate corruption (Iyanda 2016). During the military administration of President Olusegun Obasanjo, Two Billion, Eight Hundred Thousand Naira was alleged to be missing from the Nigerian National Petroleum Corporation (Nwaobi 2003), consequently, in 1979, the administration of President Shehu Shagari initiated another probe panel headed by Justice Ayo Irekfe to investigate the alleged missing fund in the Nigerian National Petroleum Corporation. The panel's report appears to be unsatisfactory to the public as the indicted persons were not prosecuted nor convicted for corruption.

Also, in 1983, the military administration of Major-General Muhammadu Buhari/Idiagbon that came to power after President Shehu Shagari's government was ousted, exhibited some level of determination to end corruption in Nigeria through the War against Indiscipline crusade and by initiating the Mohammed Bello Tribunal

to investigate the various alleged corrupt practices (Folarin 2010). The tribunal sanctioned a lot of persons found guilty of corruption but the punishment does not appear to have sufficient deterrence value in the upstream petroleum sector.

The administration of President Ibrahim Badamasi Babangida that came into power on August 27, 1985 did not appear to have shown much commitment to the fight against corruption in the upstream petroleum sector. The administration was indicted by Dr. Pius Okigbo Panel for the various corrupt practices such as the alleged missing income of Two Billion dollar Gulf war windfall in 1991 and the various corruptions at the Nigerian National Petroleum Corporation (Abdullahi 2012).

In January 1994, General Sanni Abacha set up Dr. Pius Okigbo Panel. The report of the panel uncovered the alleged missing fund of \$12.4 Billion oil revenues from the upstream petroleum sector (Ibrahim 2014). The Abacha's administration was alleged to have misappropriated 1.13 Billion dollars and inflated several contracts in the sector¹⁸. The administration of General Abdulsalam Abubakar was also alleged of involvement in corruption in the sector by Christopher Kolade Panel initiated to review contracts and licenses award procedures among others in the sector¹⁹.

Furthermore, in July 7, 1999 as a civilian President, Chief Olusegun Obasanjo set up a Panel of Inquiry headed by an Interim Management Committee of the Petroleum Trust Fund whose mandate was to wind up the activities of the Petroleum Trust Fund. The Committee reveals missing fund of ₦500 Million from the bank account of the organization²⁰. It was alleged that the money was withdrawn by unidentified persons. The report appeared to be unsatisfactory as nobody was punished or convicted for the various corrupt acts in the organization.

Also, in 2011, Eni and Shell petroleum Companies were alleged to have paid \$1.1 Billion for oil block OPL 245²¹ belonging to Malabu Company owned by the former Nigerian oil minister, Dan Etete Etete who awarded the oil block to his own Company while in office under the administration of the Late General Sani Abacha²². The minister and others indicted persons have been charged to court. The proceeding is still on going at the Federal High Court.

The Federal Government has enacted the Nigerian Extractive Industry Transparency Initiative Act and recently the proposed Petroleum Industry Bill in order to entrench transparency in the sector but there are still lacunae in the laws and further reform is necessary to entrench transparency and accountability in the upstream petroleum sector.

The opaque relationship between the Federal Government and the Nigerian National Petroleum Corporation has created transparency and governance concerns with incessant accusations of mismanagement and corruption in the sector. The alleged missing funds in the Nigerian National Petroleum Corporation by the former Central Bank of Nigeria's Governor Alhaji Lamido Sanusi and the alleged non-remittance of oil revenue to the Federation Account by the Nigerian National Petroleum Corporation were as a result of corruption (Sayne and A. Gillies 2016) which still continues unabated in the sector.

In Nigeria, there are a plethora of legislations and regulatory bodies meant to address the problem of corruption in the upstream petroleum sector and in other sectors as a whole (Opara 2007). The Federal Government has made numerous efforts to ensure transparency in the sector by implementing the Extractive Industries Transparency Initiative (EITI) and by replicating the same through the establishment of the Nigeria Extractive Industries Transparency Initiative (NEITI) (Amujiri 2013), review of public procurement processes and institution of due process mechanisms in public contracts with the aim of promoting transparent tender process with open and competitive bidding for government contracts in the upstream petroleum sector (Shaxson 2009).

¹⁸I. K. Ahmed, *supra* Note 25, p. 4.

¹⁹G.C. Nwaobi, *supra* Note 25, pp. 1-122.

²⁰Africa, Global Human Rights and International Operations 'Nigeria's Struggle With Corruption' (2006) Hearing Before the Sub-Committee on Africa, Global Human Rights and International Operations of the Committee on International Relations House of Representatives one Hundred Ninth Congress, available on line at: http://Chrissmith.House.Gov/Uploadedfiles/2006.05.18_Nigerias_Struggle_With_Corruption.Pdf (March 3, 2017), pp. 1-74.

²¹Global Witness 'A Joined-Up Approach to Tackling Natural Resource-Related Corruption and How There Isn't One!' In S. Rose-Ackerman et al., eds 'Anti-Corruption Policy' (Carolina Academic Press, USA, 2012) available on line at: [http://graduateinstitute.ch/files/live/sites/iheid/files/sites/ctei/shared/CTEI/Pauwelyn/Publications/rose-ackerman-carrington%20pdf%20\(2\).pdf](http://graduateinstitute.ch/files/live/sites/iheid/files/sites/ctei/shared/CTEI/Pauwelyn/Publications/rose-ackerman-carrington%20pdf%20(2).pdf) (visited March 3, 2017), pp. 113-136.

²²Global witness 'Eni appears to have misled shareholders over Nigeria corruption scandal at 2014 AGM' (2015) available on line at: <https://www.globalwitness.org/en/blog/eni-appears-have-misled-shareholders-over-nigeria-corruption-scandal-2014-agm/> (visited March 2, 2017), p. 1.

Transparency concerns have been a major challenge in the management and operation of the Nigerian National Petroleum Corporation and this has continued unabated. Transparency and accountability of the Nigerian National Petroleum Corporation is essential to the development of Nigeria's petroleum sector that provides over Ninety Five percent of Nigeria's government foreign exchange earnings (Quarterman 2005).

2. Methodology

The writer adopts analytical method by placing reliance on secondary data such as academic journals, articles, statutes and textbooks written by renowned legal scholars on corruption.

3. National Anti-Corruption Legal Framework

There are anti-corruption legal framework in Nigeria that expressly prohibit, criminalize, punish acts of corruption and abuse of office. Despite these enormous anti-corruption laws, corruption, bribery and abuse of power have remained incessant in the Nigeria's upstream petroleum sector (Babatunde 2014). What is an anti-corruption law? Generally, anti-corruption law is the law that prohibits and punishes acts of corruption. The following are the general anti-corruption laws in Nigeria:

3.1 The Criminal Code²³:

This is only applicable in the Southern part of Nigeria and this includes the Niger Delta areas which contain most of the Nigeria's oil and gas reserves. It contains some specific sections dealing with offences such as obtaining property by false pretence²⁴, cheating²⁵ and fraudulent false accounting²⁶. Prosecution under the Code is challenging, due to failure of the key stakeholders in the Nigerian Criminal Justice System such as the law enforcement agency, public prosecutor and the courts to discharge their duties efficiently²⁷. Successful conviction under the Code depends on the cooperation of one of the parties and getting a credible witness against the erring government official charged with corruption might be difficult²⁸. The sections of the Code on corruption and related offences are very technical and often confusing to the Nigerian Police prosecutors considering their level of education. It is alleged that they often bring charges under wrong sections and wrong laws which often leads to acquittal of an otherwise guilty government's official charged with corruption in the Nigeria's upstream petroleum sector.

The Code did not abridge the offence of corruption in the upstream petroleum sector and it is limited to public sector corruption without including private sector corruption or the person that offered the bribe. Sections 98 (1) (a) (b), 112, 404 and 494 contain official corruption. Section 99²⁹ provides for the offence of extortion including extortion that occur in the upstream petroleum sector and section 98(1) contains punishment section for any public official who corruptly demand for, obtain or secure property or advantage of any kind for himself or any other person or corruptly agrees or attempt to receive it, it is punishable with seven years imprisonment.

Section 98(a)³⁰ punishes any person who corruptly gives, confers or procures any property or benefit of any kind to or for a public official or any other person who corruptly promises or offers to give or confer or to procure or attempt to procure any property or benefit to gain favour with seven years imprisonment.

Also, section 104 of the Code penalizes anyone who is hired in the public service in Nigeria who directs to be done in the misuse of the power of his office does any act which is detrimental to the rights of ones else is punishable with two years imprisonment. Section 404 of the Code penalizes any person who is employed in the public service and who sells any property other than its reasonable market value shall be liable for five years imprisonment. Section 439 concerns public officers saddled with receipt, keeping or management of any part of

²³Criminal Code Act, Cap 77, Laws of the Federation of Nigeria 2004.

²⁴*Ibid.* s. 419.

²⁵*Ibid.* s. 420.

²⁶*Ibid.*s. 434 and s. 439 provisions on corruption were amended by the Criminal Justice (Miscellaneous Provisions) Act 1966 by replacing the provision with section 98(a), 98(b), 98(c) and 98(d).

²⁷Organization for Economic Co-operation and Development (OECD). 'Effective Means of Investigation and Prosecution of Corruption' Expert Seminar held in Bucharest, Romania on 20-22 October 2010, hosted by the National Anti-Corruption Directorate of Romania. Available on line at: <http://www.oecd.org/corruption/acn/47588859.pdf> (visited March 2, 2017), pp. 1-132.

²⁸Ameachi v. Commissioner of Police (1958) NRNLR 123. Also, in Biobaku v. Police (1951) 20 NLR 30

²⁹Criminal Code, Cap C.38, Laws of the Federation of Nigeria, 2004.

³⁰*Ibid.*, p.10.

the public revenue or property. Where such officer dishonestly accounts for such property he is culpable of misdemeanor and liable on conviction to two years imprisonment.

Nigerian National Petroleum Corporation is a creation of statute enacted by the National Assembly³¹. As a Federal Government corporation, promotion of State's policy is a fundamental obligation of the corporation³². The Nigerian National Petroleum Corporation's officials are public officials who are bound by the provisions of this Criminal Code and where such officers give false accounts of public revenues they are liable on conviction to two years' incarceration. These sections have not been sufficiently invoked to punish many corrupt activities in the Nigeria's upstream petroleum sector due to poor cognizance of the efficacies of the Code to combat Nigeria's upstream petroleum corruption.

The Code failed to explain '*mens rea*' of corruption unambiguously. The *mens rea* for official corruption as stated under sections 98, 98(a) and 98(b) of the Code is that the act must have been executed 'Corruptly' the word was used without any attempt to describe it.

The significant flaw in the provisions of the Code is the failure of the Code to penalize corruption that have to do with private citizens who are not public officials. It is only applicable to corruption in the public sector committed by public officials but it also fail to include their relatives.

Generally, sections of the Criminal Code on corruption are rigid and not in consonant with the present day realities in the petroleum sector³³. It should be amended in line with the evolvement of corruption in the sector as well as correction of the gaps identified in the law to serve as a relevant anti-corruption legal framework in the sector. The Code if implemented efficiently after the gaps identified have been plugged would combat corruption in the Nigeria's upstream petroleum sector.

3.2 The Penal Code:³⁴

It is only applicable in the Northern part of Nigeria. It prohibits the offence of cheating, extortion, criminal misappropriation, criminal breach of trust and gratification³⁵. Public officer who accepts gratification for doing what he does not intend to do or who accepts reward for doing what he has not done is liable under the Code and shall be penalized with incarceration for a term which may extend beyond three years or with fine or with both³⁶. Where a public servant takes gratification while carrying out official act or duty, such official shall be liable to seven years' incarceration as sanctions or fines.³⁷

Also, section 122 of the Code provides that any public officer who fraudulently receives from any person any money or other property which he is not authorized to accept or which is in excess of the amount which he is permitted to receive, shall be penalized with imprisonment for five years or with fine or both. As provided in section 124 of the Code, a public officer charged with the obligation of making or translating any document and he or she makes the document in a manner which he or she knows and believes to be incorrect thereby intentionally cause injury to a person shall be liable to incarceration for a term of three years or with fine or both.

The flaw in the Code that is worthy of mention is the inability of the Code to penalize corruption that have to do with private citizens who are not public officials. It is only applicable to corruption in the public sector committed by public officials.

The provisions of the Code are wider and clearer but some of the provisions of the Code are not in conformity with the current realities in the Nigeria's upstream petroleum sector. The Code has been in place for a long time and there is poor prosecution and enforcement of its provisions thereby making the law redundant (Iyoha *et al.* 2017) in the fight against corruption in the Nigeria's upstream petroleum sector.

There is therefore the need for complete overhaul of this Code in anticipation of discovery of oil in marketable quantity in the Chad basin based on the recent presidential directive that Nigerian National Petroleum Corporation should search for oil in the Northern part of Nigeria (Muhammad 2016).

³¹Section 5 and 6 of the NNPC Act, Idoniboye-Obu .v. Nigerian National Petroleum Corporation (2006) NWLR Part 660.

³²M.A. Ayoade 'State Petroleum Ownership Model: Symbolism VS Progress?'(2009) UNILAG Current Law Series, Faculty of Law Journal, Volume 3. No: 1, p. 92.

³³E.O. Akingbehin 'Adequacy of Penal Sanctions Against Corruption in Nigeria' In M.A. Ayoade and S.A. Igbinedion et, al, eds,'Legal Perspectives to Corruption, Money Laundering and Assets Recovery in Nigeria' (Published by the Department of Jurisprudence and International Law, Faculty of Law, University of Lagos, 2015), pp. 43-70.

³⁴Penal Code Law, Cap. 89, Laws of Northern Nigeria, 1963.

³⁵*Ibid.* s.115-122.

³⁶*Ibid.* s.117.

³⁷*Ibid.* s.10.

The penalties imposed under the Code appear to be inadequate to serve as deterrence to others, bearing in mind the prevalence of the offence and the adverse effect of corruption in petroleum sector. The Code if implemented proficiently after the gaps identified have been amended would combat corruption in the Nigeria's upstream petroleum sector.

3.3 Independent Corrupt Practices and Other Related Offences Act³⁸:

The Act prohibits corrupt acts in both private and public sectors such as taking gratification,³⁹ offering or tolerating gratification through an agent,⁴⁰ dishonest attainment of property⁴¹, deceitful receipt of property⁴², deliberate frustration of investigation and bribery of public officials⁴³. The Act did not repeal the existing laws and institutional frameworks but it enlarged the regulatory framework against corruption.

The Act establishes an Independent Corrupt Practices Commission⁴⁴ with the powers to investigate, and prosecute the alleged crimes of corruption and other related offences under the Act. Sections 43-52 empower the Chairman of the Commission through the Court to enhance the investigation, prosecution, punishment of corruption and associated offences with the view of minimizing or eliminating corruption in Nigeria⁴⁵. It is empowered to educate and enlighten the general public on corruption with a view of mobilizing public support for the fight against corruption⁴⁶.

The punishments stated under the Act for the violations of its provisions vary subject to specific offence. Any public officer that demands or receives gratification on account of performance of official duties or any person who offer such gratifications in order to influence the officer in the performance of his duty is liable to seven years imprisonment⁴⁷. Also any person from whom gratification has been demanded or who offered gratification and who fails to report to the closest police station or nearest office of the Commission is liable to a fine of One Hundred Thousand Naira or imprisonment for a term not exceeding two years or both⁴⁸.

The number of sentences secured by the Commission has not been as high as one would have expected and one of the reasons for low conviction rate is the indiscriminate persistent injunctions granted in favor of the accused persons by the courts⁴⁹, especially influential corrupt suspects in the sector. The punishments prescribed for the violations of the offences under this Act are satisfactory but the enforcement mechanism is unsatisfactory because many of the suspects arraigned for corruption are discharged and some are acquitted by the court due to poor investigation and questionable prosecution techniques of the prosecution team of the Nigeria's anti-corruption agencies.

A major shortcoming in the Act is the inability of the Act to punish corruption that have to do with private citizens who are not public officials. The Act only applies to corruption in the public sector perpetrated by public officials. To combat corruption in the upstream petroleum sector will require criminalization of corrupt practices including public-sector and private-sector accomplices.

There is the need to amend the provisions of the Act to outlaw corruption in the private sector.

The Commission has not been active in prosecuting corruption in the upstream petroleum sector for lack of required technical know-how by the personnel of the Commission on upstream petroleum operations. The enabling law needs to be amended to cover corruption specifically in the upstream petroleum sector.

Section 53(1) of the Act is in conflict with the provision of section 36(5) of the 1999 Constitution of Nigeria (as amended) which states that every person who is indicted with a criminal offence shall be presumed innocent until he or she is confirmed guilty. This is notable principle in the Nigeria's Criminal Jurisprudence and the burden

³⁸ Laws of the Federation of Nigeria (LFN) 2004.

³⁹ *Ibid.* s. 8.

⁴⁰ *Ibid.* s. 9.

⁴¹ *Ibid.* s.12.

⁴² *Ibid.* s.13.

⁴³ *Ibid.* s.18.

⁴⁴ *Ibid.* s.3.

⁴⁵ *Ibid.* s.6, Cap C. 31, Laws of Federation of Nigeria, 2004.

⁴⁶ *Ibid.* s.6(e).

⁴⁷ *Ibid.* s.9.

⁴⁸ *Ibid.* s.23.

⁴⁹O. Aina 'How Corruption Contributes to Poverty' (2014) Being paper presented at the International Conference on Development of Social Enterprise and Social Business for Eradication of Extreme Poverty and Street Begging, holding at Chittagong, Bangladesh, December 19-20, available online at: <http://icpc.gov.ng/wp-content/uploads/2015/03/How-Corruption-Contributes-to-Poverty.pdf> (visited October 28, 2016), pp. 1-15.

of ascertaining the culpability of the defendant beyond reasonable doubt leans on the prosecutor. The provision of section 53 of the Act contravenes the constitutional provision and there is the need for its amendment.

The Act does not explain '*mens rea*' of corruption clearly. The *mens rea* for official corruption as stated under sections 8 and 9 of the Act is that the act must be done 'Corruptly' without any effort to define it. For successful prosecution of corruption cases all that should be required of a prosecutor is for him to show the court the illegal receipt or demand for gratification other than the suspect legitimate remuneration in respect of an official act. It is submitted that sections 8 and 9 of the Act should be amended.

Section 1 of the Act outlaw bribery perpetrated outside Nigeria by any Nigerian or any person awarded Nigeria's citizenship⁵⁰. The Act should be amended to make it an offence to bribe a foreign public official. The Act also outlaws reassigning or using any sum allotted for a specific goal for another project or service. It is punishable with imprisonment for one year or with a fine of Fifty Thousand Naira on conviction⁵¹. In the case of Nigeria .v. Alhaji Morouf Ajisegiri⁵² where the first Defendant, who was a public officer who directed that the budget for stationeries should be used for procuring religious gifts for religious ceremony was convicted under section 22(5) of the Act. The Act if implemented efficiently after the gaps identified have been corrected, it would combat corruption in the Nigeria's upstream petroleum sector.

3.4 The Economic and Financial Crimes Commission (EFCC) Act⁵³:

It was enacted in December, 2002 to address the issues of corruption and other related financial crimes. It was subsequently repealed and re-enacted in 2004 as the Economic and Financial Crimes Commission (Establishment) Act. Section 6 of the Act provides for the functions of the Commission. By virtue of section 7 of the Act, the commission is charged with the responsibility of enforcing the following Acts: The Money Laundering Act 1995, the Advance Fee Fraud and other Related Offences Act, 1995, the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act, 1994 (as amended)⁵⁴, the Banks and other Financial Institutions Act, 1991 (as amended) (BOFIA), Miscellaneous Offences Act and any other laws or regulations relating to economic and financial crimes in Nigeria.

Section 16 provides that any public officer who gives false information to another public officer which misleads that officer's decision is culpable of an offence and shall be liable upon conviction to a fine of Two Hundred and Fifty Thousand Naira or imprisonment for five years or both.

Also, section 17 provides that a person who retains, conceals or removes from jurisdiction proceeds of criminal conduct on behalf of another person is culpable of an offence indictable with term of incarceration of not less than five years or to fine of equivalent to five times the value of the proceeds of the criminal act or both.

Section 18 states that, the fact that an accused person is in custody of financial resources or property which is above his known source of income, may be evidenced and taken into consideration by the court as substantiating the evidence of any witness in the trial. Sections 20-26 of the Act have adequately provided for the seizure and forfeiture of such assets. The procedure for the forfeiture and seizure of such assets is provided for under sections 27-35 of the Act.

The punishments prescribed under the Act are adequate. It is submitted that corruption in the upstream petroleum sector will be curbed through comprehensive enforcement of the Act. The Commission coordinates the various bodies engaged in anti-corruption crusade, money laundering, and implementation of laws prohibiting economic and financial crimes in Nigeria⁵⁵.

It is worthy of note that, it is the President who appoints and who may sack the Chairman and officials of the Commission in accordance with the provision of section 3(2) of the Act. The Act empowered the President to

⁵⁰*Ibid.* s. 8, 9, 10, 18, 21 and s. 22.

⁵¹*Ibid.* s. 22(5).

⁵²Unreported Suit No AB/ICPC/1/2005, Hon. Justice O. A. Ogundipe, High Court of Ogun State, Abeokuta, verdict delivered on October 30, 2006. The judgment of the trial court was affirmed by the Court of Appeal. Unreported Suit No CA/1/278/06, judgment delivered on 5 May 2010.

⁵³Laws of the Federation of Nigeria (LFN) 2004.

⁵⁴*Ibid.* s.7.

⁵⁵U.A. Chinedu. 'Political Economy of Corruption and Regulatory Agencies in Nigeria: A Focus on the Economic and Financial Crimes Commission (EFCC), 2000' (2010) being an unpublished thesis submitted to the Department of Political Science, for the Award of Masters of Science Degree in Political Science of the University of Nigeria, Nsukka, available online at: University of Nigeria, Nsukka's website, <http://www.unn.edu.ng/publications/files/images/Uzendu%20Anselm%20C,%20Research%20Project.pdf> (August 27, 2016), p.6.

control and direct the composition of the Commission⁵⁶. The President could direct the Commission on who to investigate, arrest, detain or prosecute. The effect of such situation is that the commission will not arraign any person who is in the good book of the president.

Also, the agency was alleged during the era of its former chairman, Mallam Nuhu Ribadu to have subjected individuals to arbitrary arrests, prosecutions and detention for indefinite periods of time without preferring formal charges and trial by the court of law. The commission was alleged of coercive interrogations in the course of which unethical methods were used to extract incriminating evidences from the suspects (Lababidi 2007).

Moreover, there have been cases of humiliating treatment like hand-cuffing of suspects of upstream petroleum corruption. The question now is; does the EFCC Act contain any provision authorizing hand-cuffing of corruption suspect from the Nigeria's upstream petroleum sector? The answer is No! This is a clear case of humiliating treatment by the Commission which contravenes section 34(1) (a) of the 1999 Constitution of Nigeria (as amended). The Commission was also alleged to be selective in prosecution, partial in its investigation of corruption cases and only aimed at political opponents in the sector. The Commission should respect fundamental human rights of every suspect as stated in the 1999 Constitution of Nigeria (as amended).

The greatest challenge confronting the agency is the lack of independence. There is the need for the agency to be truly independent and to act in conformity with the rule of law and Constitutional provisions. The agency is alleged of disobedience to court orders as results of several bail orders that the commission has failed to complied with. There are allegations of corruption among the employee of the agencies which some have not been investigated or prosecuted.

The agency lost most of its corruption cases in courts due to poor investigations techniques. The agency should endeavor to complete all its investigations painstakingly without leaving any loopholes for the defence's counsel during the trial of corruption cases in the sector.

3.5 Manifestation of Corruption in the Nigeria's Upstream Petroleum Sector

Award of licenses for oil exploration and production in the upstream petroleum sector in disregard of due process create opportunities for corruption in the sector (Olujobi and Oyewunmi 2017). The Petroleum Act gives the Minister of Petroleum and Energy Resources absolute power to grant oil licenses for oil exploration without any legal procedure entrenched in the Act to regulate the exercise of such powers and to prevent abuse of such powers by the minister (Obioma 2012). Most petroleum licenses were awarded on a discretionary basis by the Minister. For instance, in 2011 Eni and Shell Petroleum Companies were alleged to have paid \$1.1 Billion as bribe for the award of oil block OPL 245 to Malabu, the Company purported to be own by the former Nigeria's petroleum minister, Dan Etete Etete.

The Nigeria's upstream petroleum sector bidding procedure is another avenue for corruption because of the archaic Petroleum Act regulating the sector that never anticipated evolvment of corruption in the sector (Donwa 2015) and failure of the Act to provide for clear and transparent bidding procedure in the sector. For instance, Wilbros International was alleged to have paid the sum of Six Million Dollars as bribe for pipeline construction in Nigeria. The Federal Government has not initiated any legal action against the Company till date. There is the need to make the bidding procedure in the sector transparent and open as proposed in the Petroleum Industry Bill which is pending before the National Assembly. It will combat corruption and promote transparency in the sector if eventually passed into law.

The Nigeria's upstream petroleum sector regularly award contracts and these contracts are characterized with procurement abuses such as tender rigging and price inflation among others. For instance, Halliburton Company admitted to have paid about One Hundred and Eighty Million Dollars as bribe to the officials of the Federal Government to secure contract worth over Six Billion Dollars to build the Liquefied Natural Gas facilities in Nigeria (George and Lacey 2006). It is alleged that the Federal Government's official only favour Companies in which they have a financial, equity interest or that belonging to their political cronies (Usman 2011). There is the need to entrench best practice principles in the sector and to embrace transparency, fair, open competition and to make long-term interest of Nigerians a priority. There is the need for procurement reform to guarantee transparency and accountability in the sector.

Bottlenecks and inefficiencies in the upstream petroleum sector activities and transactions as a result of the delays by the Board of the Nigeria National Petroleum Corporation, National Petroleum Investment Management Services and the Federal Executive Council to approve upstream petroleum sector transactions,

⁵⁶*ibid.* s. 3(2).

projects and contracts often give room for corruption and other rent-seeking opportunities in the sector for accelerated administrative approval by the Minister.

Another source of corruption in the Nigeria's upstream petroleum sector is the crude oil theft from the pipelines, flow stations and export facilities in the sector. The Nigerian Government has lost not less than 150,000 barrels of crude oil valued at Two Billion, Two Hundred Thousand Naira daily to crude oil theft and this has reduced national incomes which ought to have accrued to the federation account as a result of the connivance of the Federal Government's officials in the sector. This might discourage onshore investments in the Nigeria's upstream petroleum sector. Exploration and mining of mineral resources without the authorization of the Federal Government is illegal. It is alleged that the Military Joint Task Force assigned to monitor the crude oil pipelines in the sector are culpable of the theft activities. It is alleged that they accept bribes from crude oil thieves and allow them to steal the crude oil as against national economic interest (Usman 2011).

Also, in 2009, thirteen suspected Filipinos were charged with crude oil theft worth Three Hundred Million Naira at the Federal High Court, Benin where they were convicted and sentenced to Five years imprisonment each or a fine of One Million Naira for stealing 12,500 metric tonnes of crude oil from the Niger Delta Areas⁵⁷. Lack of specific oil and gas legal framework criminalizing crude oil theft is responsible for this scourge of crude oil theft in the sector. Section 3(e) (f) (IV) of the Nigeria Security and Civil Defence Corps (Amendment) Act No: 6, 2007 only provide for pipeline protection as one the functions of the Corps without stating clearly the penalties to be meted out to the perpetrators. There is the need to make the Niger Delta militants shareholders in the Federal Government's proposed modular refineries in Nigeria will put an end to crude oil thefts and other social unrest in the sector. There is the need for Nigeria's upstream oil and gas sector specific anti-corruption legal framework combating corruption and other rent-seeking activities and promoting transparency, openness and accountability in the sector.

Domestic crude oil allocation is designed to supply Nigeria's refineries crude oil but currently, it is now being maneuvered to cause revenue loss to the Federal Government as against the objective. The Federal Government has not taken any step to combat this in the petroleum sector. There is the need for the amendment of the law to make provision for guidelines for crude oil importation and sales to prevent corruption in the sector. The Nigeria's upstream petroleum sector infrastructure such as usage of pipeline transportation of crude oil and other facilities gives room for monopolies and opportunities for corruption through discretionary control of right of usage and fixing of charges for usage (Oluwadayisi and Mimiko 2016).

The Nigeria Extractive Industry Transparency Initiative provides an annual comprehensive audit report which has been under-utilized in the upstream petroleum sector. There is the need for better dissemination of the report and to seek support for the initiative to entrench transparency in the sector. The agency should extend the scope of its transparency measure to other areas that operate oil blocks and oil contracts. Extension of the Nigeria Extractive Industry Transparency Initiative's jurisdiction to cover the activities of the Petroleum Technology Development Fund, Niger Delta Development Commission and oil producing communities to entrench transparency and accountability in the usage of extractive resources or proceeds⁵⁸

The Nigeria Extractive Industry Transparency Initiative revealed that about Twelve Billion, Nine Hundred Thousand US Dollars was paid by the Nigeria Liquefied Natural Gas as dividend to Nigerian National Petroleum Corporation but it was not remitted into the Federation Account⁵⁹. The challenge of the Nigeria Extractive Industry Transparency Initiative is that it has no power to enforce its reports or recommendations against erring multinational Companies or government's agencies. The Nigeria Extractive Industry Transparency Initiative Act should be amended to give power to prosecute erring Companies in the sector and to compel the Nigerian National Petroleum Corporation to remit all outstanding payments to the federation account.

It was alleged that the Nigerian National Petroleum Corporation entered into series of crude oil swap contracts worth over Thirty Five Billion Dollars between 2010 - 2014 and the current offshore processing

⁵⁷U. A. Chinedu 'Political Economy of Corruption and Regulatory Agencies in Nigeria: A Focus on the Economic and Financial Crime Commission (EFCC), 2000-2010' Available on line at: <http://www.unn.edu.ng/publications/files/images/Uzendu%20Anselem%20C,%20Research%20Project.pdf> (March 18,2017), pp. 1-118.

⁵⁸A. Gillies 'Corruption and reform in the Nigeria's Oil Sector' The Politics of Development and Security in Africa's Oil States (SAIS, Washington DC; April 2-3, 2009) available on line at: <http://www.connectsaisafrica.org/mockup4/wp-content/uploads/2014/12/Gillies.pdf> (visited March 17, 2017), pp. 1-45.

⁵⁹Nigeria Extractive Industry Transparency Initiative 90% Corruption in Nigeria in Oil Sector' (2016) available on line at: <http://sweetcrudereports.com/2016/12/21/90-corruption-in-nigeria-in-oil-sector-says-neiti> (visited March 20, 2017), p. 1.

agreements that contains several uneven terms in the contract which is not serving Nigeria's interest⁶⁰. The process was criticized by the Nigeria Extractive Industries Transparency Initiative as not being transparent and lack accountability. All Crude Oil Swap Contracts with unfair or unbalanced terms should be revoked to prevent corruption in the sector. All Crude Oil Swap Contracts should be awarded through an open competitive award of refined products exchange agreements with strong anti-corruption clauses to promote transparency and accountability in the sector.

4. National Laws That Can Be Improved Upon In Nigeria to Promote Transparency

There are some national laws that can be reviewed to enhance transparency in the Nigerian upstream petroleum sector. Some of them are:

4.1 Public Procurement Act⁶¹:

The popular method of corruption that is responsible for significant loss of government revenue is the inflation of government contracts⁶². Corruption in the award of government contracts may undermine the capacity of the contractors to render quality services. The Act harmonizes the existing government policies and practices on procurement in Nigeria. It is an effort by the Federal government to eliminate corruption in the sector. Prior to the enactment of the Act, rules governing public procurement are mostly administrative regulations and practices which bring inconsistency and inefficiency in the regulations of public procurement and this has resulted to corruption, mismanagement of public funds, poor development planning and ineffective delivery of public services and projects in Nigeria. The expenditures of most oil industries are covered by the Act especially Joint Venture Agreements that may be prone to corruption in the sector.

The Act is an indication of the Federal Government's resolve to eliminate corruption in Nigeria's procurement system and to ensure transparency, efficiency in the management of public expenditures to promote healthy competition, good value and entrenchment of professionalism in public sector procurement as well as to combat corruption, abuse of power in the award, implementation of contracts and tasks in the sector (Jacob 2010).

The Act applies to all Federal Government procurement entities and other entities where not less than Thirty Five percent of the proposed project costs come from the Federal Government's budget. Section 1 of the Act establishes the National Council on Public Procurement. It is the body that regulates the issue of public procurement in Nigeria and the organ that approves issues concerning administration and management of public procurement. Part 2 of the Act establishes the Bureau of Public Procurement. It is the agency saddled with the implementation of the Act and the regulation of every aspects of public procurement involving the Federal Government and its agencies.

The Act does not apply to procurement by national defence or national security except where the President expressly permits⁶³. Caution must be exercised as regards the exemptions because it can be abused to circumvent due process of law. Section 16 contains detailed fundamental principles to be followed in all cases of public procurement in Nigeria. Section 16(1) (b) emphasizes the essential of procurement plan with budgetary appropriations and Public Procurement Bureau must ensure that funds are available to meet the obligations which are subject to threshold in the regulations made by the Bureau before a contract is awarded. This is to ensure that any contract awarded is subject to proper planning and scrutiny. Section 58 of the Act creates various offences relating to public procurement. Sentences to be imposed shall not be below five years but not exceeding ten years incarceration. The Federal High Court is the only court vested with jurisdiction to try offences under the Act⁶⁴.

Section 6 provides for the powers of the Bureau which includes; grant or refusal to grant the certificate of no objection for a procurement activity above the set threshold non-approved by the council; cancel the whole or any of the procurement proceeding, maintain record of Companies and individuals disqualified from partaking in public procurement exercise in Nigeria. For the Act to combat corruption efficiently in the Nigeria's upstream

⁶⁰Natural Resource Governance Institute 'Nigeria Lost Over ₦6.4 Trillion to Corruption-Ridden NNPC Oil Sales' (2015) available on line at: <http://www.premiumtimesng.com/news/headlines/187783-nigeria-lost-over-n6-4-trillion-to-corruption-ridden-nnpc-oil-sales-nrgi-report.html> (March 20, 2017), pp. 1-2.

⁶¹Laws of the Federation of Nigeria (LFN), 2004.

⁶²M.A. Ayoade, *Supra* note 17, p. 54.

⁶³*Ibid.* s.15(2).

petroleum sector there is the need for constant reform of the Act to welcome new innovations in the fight against corruption in the sector such as the use of modern technology and skills to combat corruption.

The Act provides no clear distinction between the various types of procurement, and it fails to include professional bodies on the National Council on Public Procurement, it favours the lowest evaluated responsive bid, it accommodates only two methods of tendering, it favours only open competitive tendering and its fails to recommend or provide mechanisms for disputes resolution under the Act.

The following are suggested by the writer: inclusion of relevant stakeholders such as professional bodies in the procurement process to ensure effective monitoring of the process, to facilitate its efficiency, to end corruption in delivery of projects and to allow for amicable settlement of disputes that often arise during the execution of project in the upstream petroleum sector, projects not advertised for public bidding should not be accepted to promote transparency in the sector.

Section 16(1) (b) of the Act makes it imperative to have a procurement plan with budgetary appropriation and the Public Procurement Bureau must ensure that funds are available to meet obligations within the threshold in the regulations made by the Bureau through a 'Certificate of No Objection to Contract Award' from the bureau. Before any contract is awarded, the agency awarding such contract must follow due process and obtain a certificate to ensure that all contracts are subject to through planning and scrutiny⁶⁵. The Act, if implemented meticulously after the gaps identified have been modified would combat corruption, enhance transparency and accountability in the upstream petroleum sector.

4.2 The Petroleum Profits Tax Act⁶⁶:

The Act is being administered by the Federal Board of Inland Revenue. The power to assess, administer and collect all taxes from the upstream petroleum Companies is vested on the Board. The Act regulates the fiscal activities of all upstream petroleum Companies involved in petroleum operations. Section 5(1) shows that culture of official secrecy still manifest under the Act where it requires every person involved in the administration of the Act to treat all information and documents on incomes or chargeable profits as confidential. Section 8 of the Act levies tax on all profits generated by Companies involved in petroleum activities in Nigeria. The Act only detailed the offences but failed to provide mechanism for exposing tax defaulters.

Chevron Nigeria Limited was alleged of tax evasion and fraud of about \$10.8 Billion in 2005 and Exxon Mobil was ordered to pay about One Billion US Dollars to the Federal Inland Revenue Services as penalty for tax evasion⁶⁷. The Companies should be made to pay more penalties for tax evasion to serve as deterrence to corruption in the upstream petroleum sector by other multinational upstream petroleum Companies⁶⁸. Tax evasion deprives the Federal Government of huge revenues and should be discouraged with severe penalties.

Absence of clear process for assessment of tax defaulters in the upstream petroleum sector is a major challenge of the Act. The punishments recommended for different types of offences under Part X of the Act are inadequate considering the current economic realities in the sector.

The Act fails to establish methods for verifying whether the computations are true status of the financial positions of the upstream petroleum Companies to prevent corruption. There is the need to overhaul sections of the Act in line with the global best practice to deter corruption in the upstream petroleum sector. The Federal Government should be transparent and give accurate account of the revenues it generates through tax to eliminate corruption in the administration of Petroleum Profits Tax in the sector. The amendments to the Act should remove transportation cost by tankers as deductible items to promote the usage of pipelines and railway for transportation of crude oil. There is the need for amendment of the part of the provisions of the Act which treat information in respect of chargeable profits of upstream petroleum Companies as confidential. Penalty for late payment of tax should increase to ten percent rather the current five percent which is very small considering the Billions of dollars being generated in the sector. There is the need to sanction upstream petroleum Companies severely for failure to deduct tax and for non-remittance of tax. The Act if implemented efficiently should combat corruption, embed transparency and accountability in the Nigeria's upstream petroleum sector.

⁶⁵ M.A. Ayoade, Supra note 17, p. 56.

⁶⁶ (as amended) Cap 13 Laws of the Federation of Nigeria (LFN), 2004.

⁶⁷ 2014 Annual Activity Report of the Nigeria Extractive Industries Initiative.

⁶⁸B.T. Oremade 'Perception of Petroleum Profits Tax Compliance in Nigeria' (2010) unpublished thesis submitted in partial fulfilment of the requirements of Bournemouth University for the degree of Doctor of Philosophy available on line at: http://eprints.bournemouth.ac.uk/17520/1/Tunde_COMPLETED_THESIS_NOVEMBER_2010.pdf (visited February 20, 2017), pp. 1-286.

Conclusion

The analysis of the various anti-corruption legislations reveal that Nigeria have several municipal anti-corruption legislations and anti-corruption agencies which has not reduced corruption nor translated into successful prosecution of corrupt government officials in the upstream petroleum sector. The Federal Government through the legislature has exhibited concern to curb corruption through the enactment of various national anti-corruption legislations, even though there is no stand-alone anti-corruption law addressing corruption in the Nigeria's upstream petroleum sector.

The paper reveals gaps in the Nigeria's anti-corruption legal regime which include failure of the laws such as the Criminal Code, Penal Code, Independent Corrupt Practices Commission Act, EFCC Act and Money Laundry Prohibition Act to outlaws bribery concerning private sector and failure to criminalize the offences of bribery of foreign public officials and the offence of illicit enrichment. These gaps can be filled by amending the relevant laws to bring them into conformity with the International legal framework and initiatives against corruption.

The panacea to corruption in the sector is not enactment of new laws but comprehensive review of the existing anti-corruption legal framework for effective enforcement and to institutionalize accountability, probity, excellent record keeping culture and transparency in the sector⁶⁹. The paper discusses exhaustively national legal framework approaches to corruption and combating corruption through transparency approach. The paper finds that what is lacking is putting the machinery of law into active motion to combat corruption in the sector and what is required now on the part of the Federal Government in addition to legislative and institutional reforms strategies is the strong political will to prosecute cases of corruption and continuous implementation of the letter and spirit of the anti-corruption laws in the upstream petroleum sector without fear or favour (Chatain and Mcdowell 2009).

The current legal framework in the Nigeria's upstream petroleum sector is very weak in terms of provisions for good governance, transparency, excellent record keeping and accountability. Most of the laws in the sector are outdated and not in conformity with the current reality in the upstream petroleum sector. The proposed Petroleum Industry Bill, which is an improved alternative to the current regulatory framework in terms of clarity of functions and transparency, should be promptly passed into law by the National Assembly⁷⁰.

Active compliance with the provisions of the Nigerian Extractive Industries Transparency Initiative Act which requires Companies in the Nigeria's oil sector to report all payments, costs and earnings from each license or transactions and for the Federal Government to publish all money received in respect of the contracts and licenses granted. There should be regular publication of the industry's license and contracts on the upstream petroleum sector statutory regulators' websites. This will in turn inform the general public on the number of licenses and contracts entered into by the Federal Government and allow for credible scrutiny of the transactions.

The paper finds that for effective combat of corruption in the sector,⁷¹ strict penalties for corruption should be adopted. The new legal regime should be an epitome of corruption prevention, education on the adverse consequences of corruption, better enforcement, monitoring and evaluation of corruption in the sector. There is also the need to harmonize anti-corruption legislations in Nigeria; this will make the fight against corruption more manageable. It is also advisable to strengthen the capacities of the anti-corruption agencies to carry out their functions effectively. This will check the issue of duplication of responsibilities and it will save cost for the Federal Government. There is also an urgent need for stringent enforcement of national anti-corruption laws, inter-state and inter-border cooperation amongst anti-corruption agencies to facilitate mutual cooperation against corruption in the upstream petroleum sector.

Finally, the general extant anti-corruption laws can only combat corruption in the sector, if executed properly in accordance with the letter and spirit of the law without fear or favour by the anti-corruption agencies. Punishing perpetrators and recovering stolen assets will deter potential offenders in the sector thereby leading to good governance, economic prosperity and reduction of corruption in Nigeria's upstream petroleum sector.

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