

# **NIGERIAN ANTI-CORRUPTION INITIATIVES**

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**Introduction** – In 1977, the United States of American enacted the Foreign Corrupt Practices Act (FCPA) with two primary functions, to criminalize bribery Penance, and eliminate tax deductibility of bribery penance.<sup>1</sup> Fears that the law will put American companies at a disadvantage in bidding to work abroad prompted the American government to pressure other Countries to follow suit.

As a result of the mounting pressure, in 1996, the Inter-American Convention against Corruption was born. Shortly thereafter in 1999, the Organization for Economic Corporation and Development (OECD) was introduced as the most wide spread anti-corruption initiative to combat bribery.<sup>2</sup>

Most recently the United Kingdom has followed suit with the introduction of the Extractive Industries Transparency Initiatives in 2002.<sup>3</sup> This initiative is an informational guideline that aims to increase transparency over payments by companies and revenues to governments in the extractive industries.<sup>4</sup> It has provisions similar to the United States's FCPA which is a tough anti-bribery law which no longer allows companies to make facilitating payments used to expedite routine business needs.<sup>5</sup>

Recently, the trend is that almost all the countries have a form of anti-corruption law or the other. Nigeria is no exception to the rule. Given also that Nigeria is consistently ranked in the top three most corrupt nations by anti corruption organization Transparency International (TI) in its Corruption Perception Index (CPI),<sup>6</sup> Nigerian government had no choice than to address the issue of corruption. The current initiatives by the Nigerian government to correct the global image of Nigerian will bethe focus of this paper.

First, this paper will take a look at the history of corrupt practices in Nigeria. Second, this paper will address the other global multilateral anti-corruption laws. Third, the paper will address sources of Nigerian anti-corruption laws in a chronological order. Fourth, the paper will take a look at current initiatives by the Nigerian government to eradicate corruption. Fifth, the paper will take an in depth look at Extractive Industries Transparency Initiatives and it s impact on the Nigerian anti- corruption fight. Finally, the paper will conclude by showing that although Nigeria has taken big stepstowards combating corruption, more is still to be done in a country like Nigeria where corruption is deeply rooted in the fabric of the nation, and has been for several years.

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<sup>1</sup> <http://www.transparency.org/index.html>. Energy Intelligence group, Inc., International Oil Daily September 24, 2003. (Scandals, Laws Prompt Majors to Confront Corruption Issue).

<sup>2</sup> Id.

<sup>3</sup> <http://www2.dfid.gov.uk/news/files/entirepostconference17june03.asp>.

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id. See also <http://www.transparency.org/index.html>. Energy Intelligence group, Inc., International Oil Daily October 7, 2003. (Bangladesh Tops bribery lists).

**History of Corrupt Practices in Nigeria** - Corruption is defined as “the abuse of public office for private gain.”<sup>7</sup> There may still be areas where peoples in different Countries have different feelings about what constitutes corrupt practices however most will agree that bribing a public official is corruption.<sup>8</sup> In view of that definition it is apparent that corrupt practices are frowned upon by the global society. Despite cultural and linguistic differences in Nigeria, one thing that most Nigerian’s will agree on, and which seems to be something that unites them almost unanimously is the fact that corruption has eaten into the fabric of the country.<sup>9</sup>

Ask any Nigerian that you see any where in the world and he or she will tell you that corruption in Nigerian has risen to an insurmountable height. Corruption has become the order of the day. The consensus is that corruption is so embedded in the national life of that country that everybody appears to have accepted it as a way of life when doing business in or with Nigeria. In fact corruption in the global world has become a source of concern for most countries and Nigeria is no exception.

In a poll conducted by anti-corruption organization Transparency International (TI) in 2002, out of 50,000 people polled in 64 countries in the world, more than half said they had paid a bribe in the last 12 months. Approximately half of all respondents also indicated that bribery affected business to a large extent. Overall, one in 10 respondents to the survey admitted that they or a member of their household has paid a bribe in the past year.<sup>10</sup>

The situation of corruption in Nigeria has become so pervasive that TI states that, between 1996 – 2002, Nigerian had oscillated between the world’s most corrupt nation to somewhere around the world’s worst four nation to do business with.<sup>11</sup>

Corruption was accepted as a way of life. The giving and acceptance of bribery was inculcated into the everyday running of the country to such an extent that the argument has been made that it is the culture of the Nation. If you refuse to give bribe you will hear the famous quote “It is the culture”. However, history has shown that corruption is never accepted as part of the culture of any nation.

Corruption in Nigeria manifests itself in four major varieties, namely: occasional or opportunistic corruption, widespread corruption, systematic corruption, and finally, destructive corruption.<sup>12</sup> I will address each type separately.

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<sup>7</sup> John D Sullivan, Anti-Corruption Initiatives from a business view point, available at <http://www.cipe.org/publications/fs/articles/initiatives.htm> at p3.

<sup>8</sup> Id.

<sup>9</sup> Official website of the Nigerian Office of Public Communications: Anti-Corruption crusade February 21, 2003 > [http://www.nigerifirst.org/article\\_262.shtml](http://www.nigerifirst.org/article_262.shtml). (Last visited February 23, 2006).

<sup>10</sup> See ><http://www.transparency.org/index.html>. Energy Intelligence group, Inc. International Oil Daily December 10, 2004. (Cameroon Tops Bribery Poll).

<sup>11</sup> See Note 7 supra.

<sup>12</sup> Id.

***Occasional or opportunistic:*** This type of corruption involves the art of paying bribes to gain unfair advantage or the art of abusing one's position by taking bribes to perform official duties that one is obligated to perform by virtue of the office.<sup>13</sup> This type of corruption is so prevalent in Nigeria that it is expected, that every one knows that you need to grease the palm of the public officer before he can perform the functions of the office. In some situations, refusal to grease the palm of the official may lead to delays in obtaining the services sought.

***Widespread corruption:*** This type of corruption involves a situation where the society as a whole endorses the taking of bribes as socially acceptable.<sup>14</sup> Bribery in all facets of the Nigerian Industry has become so rampant that it is generally recognized as a means of obtaining services. In fact some Nigerians in defense of this corrupt practice claim that "culture demands it" However, as was pointed out before, all countries including Nigeria prohibit bribery as a matter of law.

***Systematic Corruption:*** This type of corruption deals with situations where everyone is on the take from employee to employer, and private citizen to office holders in an attempt to reap personal gain.<sup>15</sup> This type of corruption leads to outright extortion from anyone requiring services or negotiating contracts before services could be rendered or before such contracts could be awarded.<sup>16</sup> This type of corruption is the one that has brought Nigeria the bad name it has today as among the most corrupt nations because it is the type that most touches on Nigerian International business transactions.

***Destructive Corruption:*** This type of corruption involves situations where the rich is seeking to acquire more wealth, which leads to their doing whatever it takes to grab the giant share. This type of corruption is prevalent at the federal government level with top officials who have access to the country's financial resources.<sup>17</sup> These resources are confiscated by the privileged few to the detriment of the majority who are wallowing in poverty. Sometimes when contracts are awarded for these officials to build infrastructures in the particular locality or state, they usurp the resources for their own personal use thereby rendering the country bankrupt.

These various forms of corruption not only stifle development as resources are diverted to individual use but also imbue governance with inefficiency and increased costs.<sup>18</sup>

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<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Id.

As stated by the current president of Nigeria, his Excellency, Chief Olusegun Obasanjo, GCFR, Commander-in-Chief of the Armed forces of the Federal Republic of Nigeria, in his address at the 10th Anniversary Celebration of Transparency International, in Berlin, on November 7, 2003, there is need for anti-corruption initiatives.<sup>19</sup>

He stated in his paper that this need is necessitated by the story of corruption in Nigeria which is fairly known all over the world. He agreed that until 1999, when he introduced Nigeria's Corrupt Practices and Other Related Offenses Act, the country had practically institutionalized corruption as the foundation of governance.<sup>20</sup> He stated that the rise of corruption in Nigeria to unprecedented proportions led to easy decay of institutions of society. This decay he claimed led to privatization of opportunities by the powerful, intimidation of the judiciary, subversion of due process, manipulation of existing laws, suffocation of civil society, and the containment of democratic values and institutions.<sup>21</sup>

No one can argue that corruption is not a sure way to the destruction of a country especially a country like Nigeria that has been ranked at the top of corrupt nations in the world. Corruption not only affects the integrity of Nigeria in the global business world as a whole, but also the integrity of those countries with whom Nigeria is doing business with, including how these nations are perceived by other civilized nations.

The president in the same address traced the origin of corruption to the need for survival in a country where citizens are forced to devise extra-legal and informal means of survival.<sup>22</sup> He stated that power has become nothing but a means of accumulation and subversion as productive initiatives were abandoned and room was made for corruption to set in. In fact, he stated that at the root of this quagmire of corruption in Nigeria were the virtual collapse of governance, erosion of accountability procedures, and the prevalence of bad leadership.

The crippling effect of corruption is the erosion of public confidence in the country's political and economic institutions which in turn, has promoted a culture of contempt for the rule of law and ultimately and unfortunately a societal tolerance for a myriad of conducts previously considered abominable.<sup>23</sup>

As you can see from the address of his Excellency, the need for reforms and implementation of anti-corruption initiatives had not been greater than it is now for Nigeria. That address surmises succinctly the corrupt practices in Nigeria and

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<sup>19</sup> See, Text of lecture delivered by His Excellency, Chief Olusegun Obasanjo, GCFR, President, and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria at the 10th Anniversary Celebration of Transparency International, Berlin, November 7, 2003: Nigeria: From Pond of Corruption to Island of Integrity at <http://www.dfid.gov.uk>

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

how it has affected both the Nigerian economy and the Nigerian people. Nigerians knew that they could not afford the social, political, or economic costs that systematic corruption has inflicted on their country. They knew that failure to address the issue of corruption will amount to economic suicide. It became obvious to all involved that something had to be done to restore Nigeria to its former glory.

The current government started by taking a look at what others in the other parts of the world are doing to eradicate corruption and followed suit by revisiting some of its own anti- corruption laws, promulgating other anti-corruption initiatives, and creating task forces to implement those initiatives.<sup>24</sup>

### **Multilateral anti-corruption initiatives by industrialized nations –**

The first country to address the issue of corruption is the United States with its enactment of the Foreign Corrupt Practices Act (FCPA) of 1977. That Act was enacted to bring a halt to the bribery of foreign officials and to restore public confidence in the integrity of the American business system, and make it a crime to offer bribe to foreign officials in order to obtain services.<sup>25</sup>

That Act was necessitated by several publicized scandals involving bribery of foreign officials. Investigations by the Securities and Exchange Commission (SEC) in the mid-1970 revealed that over 400 U.S. companies admitted making questionable or illegal payments in excess of \$300 million to foreign government officials, politicians, and political parties.<sup>26</sup>

The Act's basic provisions makes it unlawful for a firm (as well as any officer, director, employee, or agent of a firm or any stockholder acting on behalf of the firm) to offer, pay, promise to pay (or even to authorize the payment of money, or anything of value, or to authorize any such promise) to any foreign official for the purpose of obtaining or retaining business for or with, or directing business to, any person.<sup>27</sup>

Following this Act in 1998, the United States congress enacted the International Anti-bribery and Fair Competition Act, which amended the original FCPA and expanded its coverage in several important areas, including enlarging the definition of "foreign Officials" to include officials of public international organization like the UN, and labeling as corrupt practices payments made to obtain "any improper advantage."<sup>28</sup> The Act extends its reach to corrupt practices that occurred within or outside the United States.

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<sup>24</sup> Id.

<sup>25</sup> See > <http://www.bisnis.doc.gov/bisnis/fcp1.htm>.

<sup>26</sup> Id.

<sup>27</sup> Id. (A similar prohibition applies with respect to payments to foreign political party or official thereof or candidate for foreign political office).

<sup>28</sup> INTERNATIONAL PETROLEUM TRANSACTIONS, SECOND EDITION (Rocky Mountain Mineral Law Foundation 2000), p 84.



Similarly, in the 1990's, other countries joined United States in the fight against corruption by enacting their own laws aimed at combating corruption in international transactions. The Organization for Economic Cooperation and Development (OECD) in its negotiated treaty required advanced countries to pass laws that are similar to FCPA. This treaty came into effect in 1997 and has been ratified by 30 member countries, and implemented by six additional non member countries.<sup>29</sup> It is known as the Anti-corruption Convention that has captured worldwide attention as the first global instrument to fight corruption in cross-border business transactions and to that end has made great headway.

By promoting high standards through the recommendations of the working group, the Convention has contributed to leveling the competitive playing field for companies doing trans-border business. This is one of the most important aims and achievements of the OECD Anti-bribery Convention.<sup>30</sup>

In comparison with other multilateral anti-bribery instrument, the OECD Convention specifically targets foreign bribery and makes it a crime to bribe foreign official. In other words, it is a punishable offense for a public official in one of its multinationals to bribe a public official in a developing country for a public works contract.<sup>31</sup>

The anti-bribery Convention goes beyond ensuring that parties outlaw foreign bribery, it also ensures effective enforcement through systematic monitoring. The OECD mandates the working group to follow up on the countries' efforts to implement the convention's standards. The monitoring process is based on a rigorous system of peer review divided into two phases.<sup>32</sup>

Phase 1 involves a comprehensive assessment of the conformity of the country's anti-bribery laws with the OECD convention. Phase 2 involves one week of intensive meetings in the examined country with key actors from government, business, trade unions, and civil society to assess how effective that country's anti-bribery laws are in practice.<sup>33</sup>

Both phases culminate with reports of the working group's findings and recommendations for action to be taken to improve compliance with the Convention. These reports are made publicly available on the OECD's Internet site.<sup>34</sup> This Convention has not only led the global fight against foreign bribery, it has also provided the framework for a united stand against corruption by the international community.

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<sup>29</sup> See > <http://www.oecd.org/dataoecd43/8/34107314.pdf>. The OECD Anti-Bribery Convention: Does it work? (Last updated: February 6, 2006).

<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> Id.

<sup>33</sup> Id.

<sup>34</sup> See > <http://www.oecd.org/bribery>.

Following these series of anti-corruption moves, came the United Kingdom's anti-corruption initiatives. The Prime Minister Tony Blair is at the forefront of the current war against anti-bribery in the extractive industries. He led the Extractive Industries Transparency Initiative (EITI) which is essentially a voluntary disclosure code. The EITI was launched by the Prime Minister at the World Summit on Sustainable development in Johannesburg, September 2002.<sup>35</sup> Its aim is to increase transparency over payments by companies and revenues to governments in the extractive industries.<sup>36</sup> The initiative will allow for increased transparency over payments by companies to governments and government-linked entities, as well as transparency over revenues by those host country governments.

It is a well known fact that revenues from the petroleum industry in form of taxes, royalties, signature bonuses, and other payments are important engines for economic growth and social development in developing Countries. However, lack of accountability and transparency in these revenues can exacerbate poor governance and lead to corruption, conflict, and abject poverty. This is essentially what happened to Nigeria, a developing country that is rich in oil and gas resources.

Increasing transparency and knowledge of revenue will empower citizens and institutions to hold governments accountable. Mismanagement or diversion of funds away from the sustainable developmental purposes will become more difficult with open records and will help developing countries attract foreign direct investment.

Although Nigeria is known internationally as one of the most corrupt nations of the world, it is not because Nigeria does not have laws that proscribe corruption or that Nigeria is lacking on anti-corruption initiatives. It is simply because corruption has eaten so deeply into the system of the country that it will take considerable effort to get her out of the strong holds of corruption.

**Nigerian anti-corruption laws: chronology of sources of Nigerian anti-corruption laws and initiatives** – Giving the way the practice of corruption has become generally accepted in Nigeria, one may think that it is because there are no laws against corruption. This is not the case. In fact, there are several laws that proscribe corruption in the public sector including the Nigerian Constitution.

The Nigerian 1979 constitution in its 5th schedule provides a code of conduct for public officers. The code requires, among other things, that they publicly declare

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<sup>35</sup> See > <http://www2.dfid.gov.uk/news/files/entireportconferenced17june03.asp>.

<sup>36</sup> Id.

all assets at regular intervals to the code of conduct Bureau. The Bureau was designed to monitor compliance with anti-corruption regulations in the code.<sup>37</sup>

The code of conduct established a tribunal, a quasi-judicial body to hear charges and impose penalties. The penalties include; vacation of office, seizure of assets, and disqualification from office for violation of the code of conduct.<sup>38</sup>

In addition to the Nigerian Constitution, there are other laws, regulations, and initiatives that have been enacted or implemented to fight corruption. A few of those laws, regulations, and initiatives will be addressed below.

The most sweeping law is the Corrupt Practices and Other Related Offenses Act enacted by the Nigerian legislature on June 13, 2000. This Act was the brain child of the current President, Chief Olusegun Obasanjo, GCFR, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria upon the return of Nigeria to civilian government. Although he proposed the bill in 1999 it did not pass until 2000. The Act led to the inauguration of the Independent Corrupt Practices Commission (ICPC) on September 29, 2000.<sup>39</sup>

The ICPC is the point agency for the war against corruption with the following specific functions: Preventive and investigative powers over corrupt practices, enforcement and prosecution powers against offenders, and educational and public awareness powers to educate the public about the evil of corruption and why it should be eliminated.<sup>40</sup>

The Act was aimed at prohibiting corruption and prescribing punishment for those who violate its provisions. The Act prohibits bribery in relation to bidding at auctions, bribery for giving assistance, or using influence in the procurement of contracts.<sup>41</sup> It also prohibits soliciting or accepting advantage as incentive or reward for giving assistance or in the promotion, execution, and procurement of contracts.<sup>42</sup>

This Act went a step further and prescribed punishment for public officials who inflate the price of goods and services above prevailing market prices or professional standards. The Act also makes it an offense to award or sign any contract without budget power, approval and cash backing. Among the 19 specific offenses cited by the Act, the most important is the failure to report a bribery transaction.<sup>43</sup>

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<sup>37</sup> [File:///web%20Development/knowledge%](File:///web%20Development/knowledge%20) National Center for State Courts (Last modified June 10, 2004).

<sup>38</sup> Id.

<sup>39</sup> See Note 7 supra.

<sup>40</sup> Id.

<sup>41</sup> Id.

<sup>42</sup> Id.

<sup>43</sup> Id. at p2

Other initiatives by Nigeria include the fact that Nigeria was a party to the Economic Corporation of West African States' Attorney General and Justice Ministers' Accra declaration on Collaboration against Corruption issued in 2001.<sup>44</sup> This collaboration is based on the need for all member States of ECOWAS to come together as a united body in the fight against corruption. In addition, Nigeria also joined in the development of the still inchoate sub-regional protocol on Corruption.<sup>45</sup>

Similarly, Nigeria as part of its commitment to the crusade against corruption is one of the leading continental powers behind the implementation of New Action Plan for Africa Development (NEPAD), which seeks to establish a platform for a new partnership between Africa and the rest of the world in an effort to eradicate corruption.

In line with its need to eradicate corruption, Nigeria also ratified the UN convention against Transnational Organized Crime in 2001, although the convention entered into force as a United Nations Convention on September 29, 2003.

The Convention represents a major step forward in the fight against transactional organized crime, and a major step forward signifying the recognition of UN Member States that corruption is a growing problem that can only be solved through close International cooperation.<sup>46</sup>

The Convention is a legally binding instrument committing states that ratify it to taking a series of measures against transactional organized crime. These include: the creation of domestic criminal offenses to combat the problem, and the adoption of new, sweeping frameworks for mutual legal assistance, extradition, law-enforcement cooperation, and technical assistance and training.<sup>47</sup>

State parties will be able to rely on one another in investigating, prosecuting, and punishing crimes committed by organized criminal groups. The Convention deals with the fight against organized crime in general and some major activities in which transactional organized crime are commonly involved, such as money laundering, corruption and the obstruction of investigations and prosecutions.<sup>48</sup>

Pursuant to its commitment to reduce corruption if not eradicate it, and its ratification of the UN Convention Against Transnational Organized Crime, Nigeria on December 2002, established the Economic and Financial Crimes Commission (EFCC) to investigate all financial crimes. The EFCC will establish

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<sup>44</sup> Id. p4

<sup>45</sup> Id.

<sup>46</sup> See > [Http://www.undoc.org/unodc/en/crime\\_cicp\\_convention.html](http://www.undoc.org/unodc/en/crime_cicp_convention.html).

<sup>47</sup> Id.

<sup>48</sup> Id.

a Financial Intelligence Unit (FIU) to deepen its capacity for monitoring and enforcing laws against money laundering and other economic crimes.<sup>49</sup>

In February of 2003, Nigeria passed the new Corrupt Practices and Other Related Offenses Act to “strengthen” the 2000 Act. The general belief is that the Act weakened the provisions of the 2000 Act. Nevertheless, it is still geared towards the elimination of corrupt practices in Nigeria.<sup>50</sup>

Nigeria has also adopted the African Union Convention on the Prevention and Combating of Corruption in 2003. This Convention’s primary purpose is the elimination of corruption in African Nations. Its objective is to promote and develop mechanisms required to prevent, detect, punish, and eradicate corruption and related offenses in the public and private sectors.<sup>51</sup> To promote, facilitate and regulate cooperation among state parties to ensure effectiveness of measures and actions to prevent, detect, punish, eradicate corruption and related offenses, and to establish the necessary conditions to foster transparency and accountability in the management of public affairs.<sup>52</sup>

The Convention covers corruption and related offense dealing with soliciting or accepting any benefit, gift or advantage by public official to perform a public function, offering or granting directly or indirectly any benefit, gift, or advantage by a public official in the performance of the public duties, diversion by a public official of public property for individual or personal use, illicit enrichment, and other related benefit by a public official in the discharge of public affairs.<sup>53</sup>

In view of the foregoing, one is safe to state that corruption is not part of the Nigerian culture. Although it may not seem so given the fact that corruption is an accepted way of life, corruption is a recognized crime in Nigeria and against the law. In fact, Nigeria, like other countries has always had laws that outlaw bribery and corruption both in the private and public sectors.

Although the current trends of corruption in Nigeria have led to the subversion of the rule of law, and the crippling of governance, and the downfall of the Nigerian economy, Nigerians recognizes that desperate situations calls for desperate measures. Therefore, the Nigerian government started looking at various ways to eradicate corruption and to implement several strategies aimed at combating corruption and restoring Nigerian’s image in international communities.

### **Current initiatives by the Nigerian to combat corruption: elements of anti-corruption initiatives -- As his Excellency, Chief**

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<sup>49</sup> See > <http://www.whitehouse.gov/news/releases/2004/06/20040610-34.html>.

<sup>50</sup> Id.

<sup>51</sup> See > <http://www.addistribune.com/Archives/2002/09/20-09-02/Africa.html>

<sup>52</sup> Id.

<sup>53</sup> [http://www.africanunion.org/official\\_documents/Treaties\\_%20Convention\\_%20protocols/Convention%20Corruption.edf](http://www.africanunion.org/official_documents/Treaties_%20Convention_%20protocols/Convention%20Corruption.edf).

Olusegun Obasanjo outlined in his address at the 10th anniversary of Transparency International in Berlin on November 7, 2003 several initiatives have been implemented by the Nigerian government to eradicate corruption. These initiatives include: more accountability in the public sector, enforcement of existing anti-corruption laws, establishment of a Public Procurement Commission, the implementation of the due process mechanism, the publication of information and requirement of transparency in the petroleum industry, the requirement of transparency in the privatization and market liberalization processes, and finally, the requirement of transparency in the political process.<sup>54</sup> I will now address each initiative in more details.

***More Accountability in the public sector:*** This initiative calls for new transparent, accountable, and zero corruption tolerance in Nigeria. To this end the federal government has created new institutions with specific mandate to promote transparency in government budgets and financial operations. These measures will encourage open and competitive tender arrangements for government contracts. It will lead to the establishment of due process and the elimination of excess “fat” from government contracts.<sup>55</sup>

The government has also embarked on a massive anti corruption campaign involving all public officials, public sector reforms that eliminate the opportunity for corruption, and increased exposure of poor governance. Policies that expose corrupt practices have been adopted as well as sanctions for such acts through independent anti-corruption agency and economic and financial crimes commission.<sup>56</sup> It must be noted that these initiatives have not met with overwhelming support by Nigerians and often times it has become very difficult to create awareness in a country like Nigeria where corruption had become institutionalized.

***Enforcement of existing anti-corruption laws:*** – Although there are enough laws to take care of corrupt practices in Nigeria, these laws have in the past been ignored or left dormant or have not been enforced. The current government has adopted specific policies that are intended to alter perceptions, attitudes and the ways in which public institutions in Nigeria work. The Corrupt Practices and Other Related Crimes Act of 2000 provided for the creation of an Independent Corrupt Practices and Other Related Crimes Commission (ICPC) with a primary objective of deterring corruption in the public sector.<sup>57</sup>

The Commission is made up of a chairman and twelve members, two members each drawn from the country’s six geopolitical zones. The Act specifically stated that the commission is an independent body. Section 3(14) of the enabling Act

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<sup>54</sup> See Note 47 supra. (A press release on the new partnership between G8 industrialized States and Nigeria).

<sup>55</sup> See Note 17 supra at p2.

<sup>56</sup> Id.

<sup>57</sup> Id. at p3.

provides that the Commission “shall not be subject to the direction or control of any other person or authority.” Members of the Commission must fall into six categories which is, a retired police officer not below the rank of Commissioner of Police, a legal practitioner with 10 years of experience or more, a retired judge of a superior court of record, a retired public servant not below the rank of a director, a woman, and a youth between 21 and 30 years of age at time of appointment.<sup>58</sup>

The Act removes all immunities from prosecution from every citizen including government officials of any rank against whom complaints were lodged. This provision of the Act holds it up as an all encompassing piece of legislation aimed at prohibiting corruption with far reaching application to cases or conducts which were previously not regarded as criminal offenses.<sup>59</sup>

The functions of the Commission can be classified into three major groups namely, prevention, enforcement, and education. Under the preventive function, the Commission has powers to examine practices, systems and procedures of public entities. It also has the power to review, direct, instruct and assist officers or governmental agencies on ways of eliminating and or minimizing corruption by such officers or agencies.<sup>60</sup>

Under its enforcement function, the Commission has power to investigate and prosecute cases of corruption and other related crimes. It has the power to search, seize, arrest and summon all persons charged under the Act including the power to enter building and premises to recover property acquired through corruption. It can examine any person and has power to gather any information including the power to demand disclosure of privileged information including core attorney work product.<sup>61</sup>

Under its education function, the Commission has the mandate to educate and enlighten Nigerians on the effect of bribery and create public awareness on the need to eliminate all forms of corruption and other related crimes. The citizens are encouraged to report corrupt practices, and the Commission promises to take prompt action once a report has been received.<sup>62</sup>

The overall objective for the creation of the ICPC is to purge Nigeria of her corrupt mentality, and apprise them of the risk involved in corrupt practices and the consequences that may be suffered by the perpetrators of corrupt practices. The Commission carries its functions out through five departments, its prosecution department, Investigation department, administrative/finance department, public enlightenment/publicity and education department, and finally

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<sup>58</sup> See Note 7 supra at p2.

<sup>59</sup> Id.

<sup>60</sup> Id. at p3.

<sup>61</sup> Id.

<sup>62</sup> Id.

planning/review and research department.<sup>63</sup> The Commission's success rate is not so high but it is a strong step towards the eradication of corrupt practices in Nigeria.

Another initiative implemented by the Nigerian government so far in its fight against corruption is the creation of the Economic and Financial Crimes Commission (EFCC) by the Act of the National Assembly. EFCC is to track financial crimes, money laundering, and other economic misconducts that have created difficulties for the country with the OECD Financial Action Task Force (FATF). EFCC was established to tighten controls and enforce sanctions against fraud.<sup>64</sup>

The targeted fraud is the widely known scam commonly known as "419" crimes, referring to section 419 of the Nigerian penal code that makes it an offense to obtain money by false pretenses. The widely known scam of e-mail letters promising shares of proceeds of illicit activities that often emanate from fraudulent Nigerians is fast losing its wide spread appeal because of the work of this Commission.

The Nigerian government has embarked on reforms that are ongoing in the system of justice administration and the police. These reforms range from anti-corruption campaign, provision of necessary equipment and recruitment, and training of personnel. There is also multi-dimensional initiative that has swept the banking section led by the Central Bank of Nigeria, the capital market, and insurance section which involves the setting up of Financial Intelligence Unit (FIU).<sup>65</sup>

***Establishment of a Public Procurement Commission:*** - Similarly, the Nigerian government has set up, as part of her public procurement initiative, the Budget Monitoring and Price Intelligence Unit (BMPIU) to commence contract award review, oversight, and certification process known as "Due Process." It is a mechanism that certifies for public funding only those projects that have passed the test of proper project-implementation packaging.<sup>66</sup> Those projects must comply with the stringent requirements of international competitive bid approach in award process.

Since the implementation of the "Due Process" mechanism 2 years ago, the Nigerian government has saved over \$500 million through the reduction in contract sums.<sup>67</sup> The public confidence in the contract award process is gradually returning according to his Excellency. In fact, his Excellency stated that Nigeria is currently considering a bill to codify public procurement policies and laws that

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<sup>63</sup> Id.

<sup>64</sup> See note 17 supra.

<sup>65</sup> Id.

<sup>66</sup> Id.

<sup>67</sup> Id. at p4



will lead to the creation of a Public Procurement Commission with broader oversight mandate on all federal procurements.<sup>68</sup>

***More Transparency in the oil and gas sector:*** - Also, Nigeria, as part of its mandate for signing unto the EITI, has started providing information and transparency in the oil and gas sector. The initiative asks participants to acknowledge that transparency is crucial to effective financial management and accountability, and to recognize the need for consistent and workable approach to disclosure of payments and revenues especially in the petroleum industry.

Pursuant to this mandate, the administration will allow for checks and balances by providing information about its actions, receipts and expenditures in the oil sector. The administration will now publish budgets, record of revenue collection, and statutes and rules dealing with oil and gas industry.<sup>69</sup>

The government also encouraged the Nigerian National Petroleum Corporation (NNPC) and other oil companies doing business in Nigerian to make full disclosure of revenue and cost of operation so that Nigerians can cross- reference it with information published by the Nigerian government in a bid to remove public doubts about one sided figures.<sup>70</sup>

The offices of Accountant General and Auditor General of the Federation are asked to improve transparency and reduce corruption by publishing information relating to revenues. The current policy in Nigerian regarding the oil and gas sector is “publish what-you-pay” and “publish what you earn”.<sup>71</sup>

Nigerian government will publish monthly details of oil and gas earnings in a move to boost transparency in producing countries. The initiative is carried out by the administration working with representatives from both the private and public sectors and civil society through a National Stakeholders Working Group (NSWG). This group has also engaged United States Goldwyn International Strategies to help set the terms of reference and scope for an independent audit of Nigeria’s extractive industries.<sup>72</sup>

Goldwyn has now drafted a program of physical audits designed to provide a complete picture of the oil and gas that has been produced, lifted, lost, refined and exported during 1999 – 2004; a review of financial flows; showing who has paid money, how much and to whom; and a process of audit to cover capital expenditure proposals, checks and balances in the import of products, comparative analysis, benchmarking, and recommendations for improvement.<sup>73</sup>

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<sup>68</sup> Id at p5

<sup>69</sup> Id.

<sup>70</sup> <http://www.transparency.org/index.html>. Energy Intelligence group, Inc. International Oil Daily, April 21, 2005. (Nigeria outlines plan to audit Oil Sector).

<sup>71</sup> See Note 66 supra.

<sup>72</sup> See Note 68 supra.

<sup>73</sup> Id.

As part of the transparency initiative, the Nigerian government has chosen the UK's Hart Group to conduct an audit of the Country's oil activities over the past five years. Following guidelines set by the EITI, the audit will focus on the amount of oil produced, revenue received by the government and the administration of joint venture operations.<sup>74</sup> It is said to be the most comprehensive energy sector transparency audit conducted and would assess whether payments has been recorded in the Central Bank of Nigeria.

The exercise under the Nigerian EITI will be three-tiered, including a physical audit of oil output, exports, and domestic consumption; a financial audit of payments made by oil companies and revenues received by the government; and a process audit looking at operations and procedures in terms of financial management and procurement relating to joint ventures. It will also investigate the theft of crude oil and illegal bunkering.<sup>75</sup>

This audit will also be able to review whether there has been any divergence in the amount oil companies claim to have paid to government and what government declares to have received.<sup>76</sup>

In an interview with international Daily, the special advisor to the Nigerian President and head of budget monitoring, Oby Ezekwezili stated that the reports from the Hart's Group will be used to publicize everything as widely as possible. The report will be measured against what the companies say they have paid to the Nigerian government and what the Nigerian government says it has received. Any discrepancies found will then be addressed.<sup>77</sup>

The story on the street is that the Nigerian government has always guarded jealously the oil and gas industry in the past. Revenue from that industry is secretly held. Even the Nigerian National Petroleum Company (NNPC)'s detailed accounts have eluded the public for many years, while joint venture partners like Exxon Mobil, ChevronTexaco, Royal Dutch/Shell, Eni, and Total have to varying degrees proved just as reluctant to publish detailed breakdowns of their Nigerian operational budget.

This situation has created a climate of suspicion in Nigeria where citizens blame successive governments and oil companies for diverting cash that should have been funding infrastructure and public service to personal or individual use. This current situation is what made the special advisor who is also spearheading Nigeria's anti-corruption drive, along with others, to set up systems for

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<sup>74</sup><http://www.transparency.org/index.html>. Energy Intelligence group, Inc., International Oil Daily, March 17, 2005. (Nigeria Hires UK Firm for Oil Sector Audit It in a bid to shake off Corruption Reputation).

<sup>75</sup> Id.

<sup>76</sup> Id. (Information provided by Oby Ezekwezili, the special advisor to the Nigerian President on corruption and head of budget monitoring). See also > <http://www.gasandoil.com/goc/news/nta51048.htm>.

<sup>77</sup> See Note 72 supra.

monitoring and checking expenditure in every Ministry, including Nigeria's Department of Petroleum Resources, which regulates the oil sector.<sup>78</sup>

***Transparency in the Privatization and Market Liberalization Processes:*** – This is another move by the Nigerian government to comply with the EITI and it involves the implementation of transparency in the privatization and liberalization of key economic sectors. For example, the sale of government-held equity in cement, petroleum marketing and banking companies in 2000 and 2001 was by open, competitive bidding.<sup>79</sup>

This program of transparency has been implemented by the assistance of the World Bank. There has been same degree of transparency in advertisement of all advisory services being procured, assets and shares being sold, and live televised auctions with national coverage for all divestiture transactions.<sup>80</sup> This practice is currently taking hold in the country and even the private sectors are following those trends in their services.

***Political Transparency:*** – A country cannot claim to be democratic if its political process is not transparent. Several initiatives are being implemented to ensure political transparency. There is an ongoing local government reform designed to check indiscipline, waste, disorganization, inefficiency, and corruption at that level. A campaign is underway to get the various state governments to adopt the Federal reforms.<sup>81</sup>

Nigeria has also as part of the initiative to eradicate corruption partnered with the G8 industrial nations to fight corruption. This partnership is titled “Compact to Promote Transparency and Combat Corruption” and is done based on the recognition that promoting transparency and integrity and fighting corruption require commitment and action on all sides.<sup>82</sup> Several strategies are being employed by the Nigerian government as they pursue cooperation through the compact in a spirit of partnership and mutual respect.<sup>83</sup>

In view of the above initiatives, it follows that the Nigerian government and the Nigerian people are aware of the fact that corruption is a big problem for the country and that something needs to be done about it. It seems that a lot has been put into place to fight corruption but the most sweeping of them all is the Extractive Industries Transparency initiative.

**Extractive Industries Transparency Initiatives - a big step towards eradicating corruption in Nigeria.** – As can be seen from

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<sup>78</sup> Id.

<sup>79</sup> See Note 17 supra at p5.

<sup>80</sup> Id.

<sup>81</sup> Id at p6.

<sup>82</sup> <http://www.whitehouse.gov/news/releases/2004/0620040610-34.html>.

<sup>83</sup> Id.

above, Nigeria has embarked on a comprehensive national anti-corruption strategy as a pivotal step for accelerating the rebuilding of the nation's integrity systems.

The anti-corruption initiatives following the signing on to EITI and other Conventions is situated within the framework of a whole set of structural reforms. These strategies involve budget and fiscal transparency, public procurement legislation, policy and administration anti corruption institutions build-up, public service reform, and so on. These transparency initiatives were implemented to promote stability, accountability, efficiency, service delivery, and grassroots democracy.

Nigerian government under the EITI has announced intentions and specific measures to combat corruption. These measures include:

- a. The selective stakeholders will be sensitized and made to hold workshop.
- b. NGO's Civil Society, NNPC, Chevron, Shell, and all Companies are called upon to play their own role in this process of eliminating corruption by becoming more transparent in their dealings.
- c. Issuing requests for proposals for consultants to draft TORs for auditors to review annual accounts and tax filings of oil companies revenue.
- d. Proposals to audit government oil accounts including, NNPC, and Central Bank of Nigeria (CBN) accounts.
- e. Implementation of ways to disseminate the information regarding oil and gas revenue to the public.
- f. Develop templates for reporting information on a semi annual basis, and develop templates for reporting on semi-annual basis Gas production, sales, and revenues.
- g. Provide first semi-annual oil accounts report shared with public and posted on Economic Reform/NEEDS website, Newspaper publication, and allowing Civil Society monitoring.
- h. Established Oil and Gas Accounts Modeling and oversight unit in Ministry of Finance.
- i. Increase EFCC officer strength to 400 staff.
- J. Investigate resources and physical enabling environment.
- k. Establish Financial Intelligence Unit staffed and working.
- l. Review money laundering legislation to conform to FATF.
- m. Launch communications campaign against "419" Deploy database program for "419."
- n. Establish EFCC training school for capacity and specialized training of personnel.
- o. Amend ICPC legislation to accelerate prosecution. Set up an independent steering committee of civil society, private sector for oversight of ICPC conduct.

- p. Draft legal and Judicial Reform strategy appropriately costed with implementation plan.
- q. Extend the “Due process” initiative to cover all government agencies not presently covered.
- r. Publication and procurement of new procurement guidelines to government agencies and the public.
- s. Set up resident “Due Process” teams in all Federal Ministries and Agencies to complement departmental Tender boards and Federal Tender boards.
- t. Organize stakeholders’ workshops on review of procurement policy and procurement bill.
- u. Issue and make public Auditor General’s report.<sup>84</sup>

**Conclusion** - Nigeria has made a host of reforms and put into place a host of measures designed to help fight this war against corruption in Nigeria. Even the former Chairman and founder of Transparency International group, Peter Eigen, acknowledged that Nigeria has truly embraced the need to eradicate corruption.<sup>85</sup>

He stated that Nigeria is one of the first Nations to go a step further with its EITI by requiring not only that all data regarding revenue from the petroleum industries be published, but also that the foreign oil companies doing business in Nigeria publish what they have paid for better checks and balances.<sup>86</sup>

He pointed out that recently in February 2006, the Nigeria government published a comprehensive auditory report showing physical finance and physical flow. He stated that Nigerian’s requirement that the oil companies doing business with Nigeria publish production fees and capital has brought criticism from companies who are not happy with this degree of disclosure.<sup>87</sup> They believe that Nigerian with this move has gone far beyond what is required under EITI.

Nigeria is heading towards the right direction in its efforts to eradicate corruption, but she cannot do it by herself. She needs the help of the international community to win the war against corruption. As the President puts it in his address at the 10th Anniversary Celebration of Transparency International in Berlin on November 7, 2003, “Less rhetoric and more actual support would help, reinforce anti-corruption reforms in our countries.”

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<sup>84</sup><http://www.fmf.gov.ng/detail.php?link=erp>.

<sup>85</sup> Peter Eigen, Former chairman and Founder of Transparency International Group, Keynote address at the University of Houston International Law Journal symposium on “Fighting Corruption in the global Economy” in Houston, Texas. (April 12, 2006).

<sup>86</sup> Id.

<sup>87</sup> Id.

He urged TI to publish Corruption Encouraging Index, a Corruption Reduction Effort Index in addition to the Corruption Perception Index that it currently publishes to give the total picture on the campaign against corruption and corrupt practices globally. He believes that only such a holistic approach will give a realistic picture of the task that certain nations like Nigeria has taken to see that corruption is a thing of the past in their country.<sup>88</sup>

It is obvious that Nigeria has realized that it has a problem with corruption. Also true is the fact that it is implementing reforms and measures to combat it, but the truth remains that despite her efforts, more is still to be done to restore Nigeria's integrity. There is a general distrust of the government by Nigerians and as such most of these reforms are viewed as politically motivated. This distrust has risen to a greater height in the wake of his Excellency's move to amend the Nigerian Constitution to continue on for a third term. Thus, the war against corruption in Nigeria is not over by a long short. Progress has been made but the fight continues.

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<sup>88</sup> Id.