

MANAGING FINANCIAL CRIME IN THE NIGERIAN PETROLEUM INDUSTRY: LESSONS FROM UNITED KINGDOM

By

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Abstract

Flowing from a careful analysis of earliest forms of Financial Crimes in Nigeria Petroleum Industry to 1914 (the year of amalgamation, first Oil Mineral Act, and the importation of the Criminal Code for Southern Nigeria and the Penal Code for Northern Nigeria); when examined in conjunction with the history of Financial Crimes in the United Kingdom, it is obvious that Britain have had to find ways of dealing with Financial Crimes in their country over much longer period of time than Nigeria, it follows therefore that it is only reasonable to seek to emulate or adopt the positive side of the long experience of legal and institutional frameworks of Financial Crimes Management in the United Kingdom. What then are these experiences that we can learn from to enable us to improve the effectiveness and efficiency of the Nigerian laws and institutions charged with the responsibility of Financial Crimes Management in the Petroleum Industry. These lessons therefore form the major gravamen of this paper.

Key Words: *Petroleum Industry, Corruption, Financial Crimes, Managing; Nigeria, United Kingdom.*

1.1 Introduction

Nuhu Ribadu was also of the view that when corruption is king, there is no accountability of leadership and no trust in the authority. Society devolves to the basic units of family and self, to the baser instincts of getting what you can when you can because you don't believe anything better will ever come along. And when the only horizon is tomorrow, how can you care about the kind of nation you are building for your children and your grandchildren? How can you call on your government to address what ails society and build stronger institutions? Corruption makes democracy impossible because it subverts the will of the people.

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A select few, with so much money and authority, continue to steal elections and make a mockery of the notion of government by the people or for the people. Nigeria today is the worst example of electoral theft in the world. So, it is also important that the United States and other partners in Nigeria stand by the Nigerian people first and foremost, and say that enough is enough.

Corruption is one of the greatest Financial Crimes the world has ever known. But those who are suffering the most from its poison are the least able to fight it; their resources, their health and well-being, and their futures have been stolen away. There is no surer salt in the earth of democratic and representative governance. It is for this reason that all should engage themselves in the fight against corruption.

The aim is to bring together all the basic laws and regulations, cases, and key source materials. It is aimed at covering all the key planks of the legal framework for combating corruption from code of conduct, physical responsibility, public procurement, financial crimes and corrupt practices. In August 2014, Nigeria announced that oil production had reached a record of 2.7m barrels a day but few experts believed it.¹ Oil is also being stolen at a record rate and traders' figures show output at well below the government's figures. Information about Africa's biggest oil industry is an opaque myriad of numbers. No one knows which ones are accurate; no one knows how much oil Nigeria actually produced. If there were authoritative figures, the truly horrifying scope of corruption would be exposed. Accordingly, this paper seeks to analyse the challenges bedeviling the management of financial crimes in the Nigerian Petroleum industry while considering the recent trends in the United Kingdom, with the aim of drawing lessons were perceived imperative.

1.2 Challenges in Managing Financial Crime in the Nigerian Petroleum Industry

The previous finance minister of Nigeria and technocrat of the world bank and international monetary fund, Ngozi Okonjo-Iweala, in her book titled- Fighting Corruption is Dangerous, gave realistic subtleties of the risks innate in any genuine exertion or endeavor to check or limit bribery and corruption, fraud, and money laundering in Nigeria. 'Battling corruption

¹ 'Nigeria's Oil: A desperate Need for Reform' *The Economist* (Lagos, 20 October 2012) <<https://www.economist.com/news/middle-east-and-africa/21564906-goodluck-jonathan-says-he-wants-reform-oil-industry-really>> accessed 10 September 2017

is dangerous', and not fighting corruption is significantly increasingly risky. This thesis cannot help but to agree that fighting financial crime in the petroleum industry is dangerous yet not battling the equivalent is significantly increasingly risky. The unpredictability of financial crime guideline and the executives in the petroleum industry in Nigeria is a direct result of the misty idea of the business which is additionally intensified by what seems, to be a piecemeal, ad hoc, and inadequate criminal justice system, coupled with an opaque petroleum industry.

A robust criminal defense lawyer is supposed to have a good capacity to analyze facts and law, carry out criminal defense investigation of any given case in the same vigor as the prosecution does. He is expected to either on his own or using special criminal investigators in intelligence and evidence gathering. In other words, looking at the case with the same spectacle as the prosecution team. He should have a mastery of the case in equal fitting or better than the prosecution in order to have a good chance of successfully defending the accused person. The reason for this is that, the life or liberty of suspect/accused person is at stake. The prosecutor would consider the client of the criminal defense lawyer, a suspect or an accused person whereas, the criminal defense lawyer should consider his client innocent and should do his utmost within the bounds of professional conduct rules until the evidence proves otherwise.

The above proposition may seem like an ideal or utopia in a Nigerian criminal practice for the reasons that this thesis will now examine in considering the challenges that the criminal defense lawyer faces and they are as follows:

1. Inadequacy of Legal Aide and Impecunious Client: most suspects and accused persons in Nigeria can ill-afford the services of a lawyer and finances necessary to properly defend a criminal action. Criminal prosecution is funded by government from the moment of arrest through to acquittal, conviction, and or sentence, including appeals unlike criminal defence that is largely funded by the suspect or accused person or their family and friends. In contrast, criminal defence in the United Kingdom is largely funded by the government on a means and merit tested bases.²

²Frank Agbedo, *Rights of Suspects and Accused Persons Under Nigerian Criminal Law* (1st edn, Crown Law Publications 2009).

2. All criminal cases in Nigeria are tried by a magistrate or a single judge, and it is easier to get a conviction and more difficult to defend a suspect or accused person before them than if the same were brought before a judge and a jury. The concept of judge and jury trial is better for the criminal defence team since the jury would often be randomly drawn from electoral or voters register and ensures that a suspect or accused person is tried by his peers as is the case in England.
3. The absence of tape/video recorded interviews at the police station coupled with the reluctance of the police to cooperate with criminal defence lawyers to ensure compliance with the law particularly fairness to the suspect/accused person.
4. The absence of uniform national criminal law as the Southern and Northern Nigeria uses different criminal laws for example, the Penal Code Act for the North, and the Criminal Code Act for the South. This piece of legislation was an inheritance from the British colonial masters imported from Queensland, Australia in 1914, the year of amalgamation of the Northern and Southern protectorate. It sadly remains good law today over a hundred years since its imposition. Arguments for the abolition of the Penal and Criminal Codes can be summarized as follows:
 - a. Sir Fredrick Luggard as he then was, wrote in his book 'The Dual Mandate', that the two reasons for British presence in Nigeria are:
 - i. The enhancement of British trade interest in Nigeria
 - ii. To organize Nigerians not to do anything to hinder the British trade interest in Nigeria. The mechanism for organizing Nigerians not to do anything to hinder said trade interest is the use and application of the Penal and Criminal Codes. It follows therefore that the Penal and Criminal Codes was never intended for crime management in Nigeria. Where a Nigerian is alleged to have committed an offence that does not hinder British trade interest, he would be tried not under either of the Codes, but with the native law and custom. It begs the question as to why retain the Penal and Criminal Codes long after independence in 1960

- b. The United Kingdom throughout their history has never had Penal and Criminal Codes and are not likely to have one let alone, having for example the Penal Code in the Northern part of the United Kingdom, and the Criminal Code in the Southern part. This will be frowned at and vigorously resisted by the British society as discriminatory and in any event, if the idea of codification of criminal law is good, the British will not give it out gratis.
- c. The concept of Penal Code for the North and Criminal Code for the South offends part IV of the Constitution of the Federal Republic of Nigeria, 1999, as amended in particular, the section that deals with the quality of all Nigerians in the eyes of the law and non-discrimination.
- d. What amounts to felony in the Southern part of Nigeria under the Criminal Code is any offence punishable by a term of imprisonment of three years or more whereas, a felony in the North is not defined and therefore may not attract a punishment of three years or more. Significantly, Black's Law Dictionary defines felony as an offence that attracts a term of imprisonment of not less than one year.
- e. There are more offences today in Nigeria contained in various National Assembly Act but not contained in the Penal or Criminal Codes. There is no reason therefore why we should not have a uniform criminal law contained in various specific National Assembly Act as is the case with other countries particularly Britain.

This thesis wishes to highlight some of the challenges or obstacles that clogs the wheel of criminal justice in Nigeria:³

1. The challenges of the Nigeria Police Force and their attitude towards victims and suspects:
 - i. The Nigeria Police Force should have no business in collecting money from victims and suspects at police station but in practice, it is a recurrent decimal. Most Nigerians who have visited the police station would have had to pay money to the

³Frank Agbedo, *Rights of Suspects and Accused Persons Under Nigerian Criminal Law* (1st edn, Crown Law Publications 2009)209

Nigerian police whether as victims/nominal complainants or suspects. Some examples of these illegal demands range from money to open a file, for fuel/transport to arrest the suspect, to further the investigation, etc., from the victim/nominal complainant, and money for police bail which ought to be free from the suspect;

- ii. Abuse of powers of arrest;
 - iii. Forceful extraction of confessional statements;
 - iv. Extortion of suspects and detainees;
 - v. Unlawful detention of suspects;
 - vi. Delay in charging suspects to Court;
 - vii. Delay in forwarding case files to the Director of Public Prosecution;
 - viii. Absence of investigating police officers to defend their investigation;
 - ix. Incompetence of police prosecutors etc.
2. The challenges of Prosecuting Lawyers:
- i. The Attorney General of the Federation and those of the various states are directly or indirectly, constitutionally responsible to initiate, manage and control all criminal prosecutions in Nigeria. Their objectivity and impartiality are sometimes called into question because of their dual office as they double as Minister of Justice and Commissioner of Justice at the State level, which makes them members of the cabinet of the Government of the day or legal adviser to the Government. This could create potential conflict of interest.
 - ii. Inadequate manpower (funding and personnel)
 - iii. Inadequate in-house training
 - iv. The risk of being compromised in the cases that they are prosecuting, owing to greed, corruption, and poor wages.
3. The challenges of the Defence Lawyers:
- i. Excessive legalism
 - ii. Delay tactics to frustrate quick disposal of cases
 - iii. Abuse of Court process
 - iv. Lack of interest in pro bono cases
 - v. Corruption and criminal justice
 - vi. Increasing failure to abide by professional conduct rules

4. The challenges of the Judiciary:
 - i. All the challenges of the Nigerian Police in dealing with criminal matters and those of the Prosecuting and Defence Counsels highlighted above, largely contribute to the challenges faced by the Judiciary;
 - ii. Judicial intimidation;
 - iii. Executive interference;
 - iv. The problem of locus standi;
 - v. Absence of uniform criminal law and procedure;
 - vi. Statutory obstacles to the administration of justice;
 - vii. Inadequacy of the legal aid scheme;
 - viii. Judges taking copious notes in longhand thereby, causing delay;
 - ix. The absence of jury;
 - x. Lack of judicial independence;
 - xi. Risk of judicial compromise

Nuhu Ribadu in his speech highlighted thus:⁴ that although corruption has effect on the global market. It doesn't exist in one place. And so, the only means to fight it is understanding corruption as a transnational problem. Corruption is paramount in places where weak regulations and oversight dominates. He further pointed that only societies that have been able to create necessary statutes and regulations to fight or criminalize corruption would make progress.

Having attained independence from Britain, and gained independence 1960, having fought a civil war, survived passed seven military regimes, and three botched attempts in building a real democracy, there is one factor in the failure of all attempts to govern Nigeria and that is corruption.

Corruption and capital drain have been the major factors in the lack of growth and development in the region. The corruption endemic to southern region is not just about bribery, but about mismanagement, incompetence, abuse of office, and the inability to establish justice and the rule of law. As resources are stolen, confidence not just in democratic governance but in the idea of just leadership ebbs away. As the lines of authority with the government erode, so too do traditional authority

⁴Nuhu Ribadu, 'Capital Loss and Corruption: The Example of Nigeria Testimony Before the House Financial Services Committee' in Jide Olakanmi & Co. (eds), 12 *Anti-Corruption Laws* (Panaf Press 2016).

structures. In the worst cases, eventually all that is left to hold society together is the idea that someday it may be your day to get yours. The African Union has reported that corruption drains the region of some \$140 billion a year which is about twenty-five percent of the continent's official GDP. However, during Major Gen. Sani Abacha's regime, it was believed that he took for himself \$5-6 billion and invested most of it in the western world.

Two cases out of eighty percent of cases involving corrupt practices, of which the EFCC carried out several investigations on two Governors; Mr. Joshua Dariye, Governor of Plateau state, and MR. D.S.P Alamiyeseigha, Governor of Bayelsa state. Mr. Joshua was found by the London Metropolitan Police to operate 25 bank accounts in London alone to juggle money and evade the law. Like many of the governors, he used front agents to penetrate western real estate markets where he purchased choice and expensive properties. The London Metropolitan Police determined Dariye had acquired £10 million in benefits through criminal conducts in London, while domestically the EFCC were able to restrain proceeds of his crimes worth \$34 million; while Alamiyeseigha had four properties in London valued at £10 million, plus another property in Cape Town valued at \$1.2 million. £1 million cash was found in his bedroom at his apartment in London. £2 million was restrained at the Royal Bank of Scotland in London and over \$240 million in Nigeria. This is in addition to bank accounts traced to Cyprus, Denmark, USA and the Bahamas.⁵

Nuhu Ribadu further emphasized that to fight corruption we must see corruption as not just a system of bribes and patronage, but the systematic undermining of responsible governance, of visionary leadership, of a society's ability to meet and overcome challenges. He further pinpointed that corruption is the root cause of sufferings of people in the society. It is also estimated that some \$20 Billion leaves Africa annually through the illicit export of money extorted from development loan contracts. These funds are being deposited in foreign banks by a network of politicians, civil servants and also businessmen. One obvious source of these revenues being oil money.

While most blames are being poured to Nigeria at its present state, local politicians thus encumbered themselves to an unholy alliance with the

⁵ Nuhu Ribadu, 'Capital Loss and Corruption: The Example of Nigeria Testimony Before the House Financial Services Committee' in Jide Olakanmi & Co. (eds), 12 Anti-Corruption Laws (Panaf Press 2016)

western financial institutions, this has also been the foundation of shame. One good illustration is the now famous case of Halliburton/KBR scandal, it has been reported that the Nigerian leaders received “stacks of US dollar bill in briefcases and sometimes in bullion vans” until some \$185 million had been exchanged for a contract to build a liquefied natural gas plant.

The other famous case is the Siemens scandal. According to the US Securities and Exchange Commission (SEC), Siemens made approximately \$12.7 million in “suspicious payments” for Nigerian projects, including to government customers for four telecommunications projects. The total value of the four contracts was approximately \$130 million. There are many other instances. The total amount in bribes is staggering. In both of these cases, the United States and Germany, the parent nations of these two companies, have initiated stern investigations and issued out hefty fines on the companies – but those who received the bribes in Nigeria continue to enjoy the fruits of their labors, which only means the cycle will continue. It is clear that KBR did their own calculus: \$185 million in bribes, plus eventually almost \$600 million in fines for violation of the Foreign Corrupt Practices Act, but they won \$6 billion in business for their efforts.⁶ When the EFCC was formed in 2003, Nigeria had never secured a single criminal conviction for corruption charges, however due to political support from President Olusegun Obasanjo; and other prominent ministers including Nasir El Rufai, from whose budget the original income came in for support and also from the Judiciary, in 2007 up to 275 cases of 1000 cases in court where secured in court.

Nuhu Ribadu also stated that the EFCC helped to address the problem of the Niger Delta, his opinion was driven by the fight against corruption. He pointed out that one of the governors of the Delta that was investigated offered him \$15 million in cash to halt the investigation against him. He was charged for both theft of state revenues and for the bribery attempt. Nonetheless he is the most powerful political figures in both the ruling party and the country.

Several attempts have been made on the life of Nuhu Ribadu who has survived the assassination attempt and dismissal from the service.

⁶ Nuhu Ribadu, ‘Capital Loss and Corruption: The Example of Nigeria Testimony Before the House Financial Services Committee’ in Jide Olakanmi & Co. (eds), 12 Anti-Corruption Laws (Panaf Press 2016)

International and Local agencies have been of great help to the EFCC, some of which includes the US Secret Service, The FBI, the US Postal Service and the Department of Justice. Locally the Financial Action Task Force also forced Nigeria to develop new anti-money laundry laws and spurred the creation of EFCC.⁷

3.1 Management of Financial Crimes in the United Kingdom

The United Kingdom's Criminal Justice System starting from the police and other agencies, to the defence and prosecuting authorities, are better equipped and more readily adhere to legal and professional conduct rules and ethics than their counterparts in Nigeria.

The Nigerian Judiciary is no better equipped to deal with this very important task as they take longer time to dispense criminal justice, probably more corrupt, take copious notes of proceedings in long hand than their United Kingdom counterpart. The UK Prison System is equally better in terms of the likelihood of a convict serving his/her term of years in prison without opportunity to escape through compromising prison officers or jail break.

The laws and Institutions dealing with Financial Crimes Management in the United Kingdom has been extensively discussed in chapter two of this thesis. Equally, the laws and Institutions responsible for Financial Crimes Management in the Petroleum Industry in Nigeria, has been extensively discussed in chapter three of this thesis, whilst chapter four concentrated on the variety of Financial Crimes in the Nigerian Petroleum Industry and the Impact of these Crimes in the Petroleum Industry, the national, and global economy.

This paper therefore, only wishes to summarize the lessons from the United Kingdom with regard to Financial Crimes Management in the honest belief that it will assist in Financial Crimes reduction in the Nigerian Petroleum Industry, and therefore, increase profit to the stakeholders and consequently, the national and global economy.

The lessons learned from the management of petroleum industry in the United Kingdom are as follows:

⁷ Nuhu Ribadu, 'Capital Loss and Corruption: The Example of Nigeria Testimony Before the House Financial Services Committee' in Jide Olakanmi & Co. (eds), 12 Anti-Corruption Laws (Panaf Press 2016)

1. Gross inadequate human and capital resources to deal with the mammoth task of Financial Crimes Management in the Petroleum Industry in Nigeria.
2. Additionally, there are inadequacies in: training and discipline, interagency cooperation, Anti-Financial crimes Policies, education and enlightenment program, of criminal justice personnel, ethics, facilities, courts, witness protection scheme, whistle blowers' scheme, private sector participation such as banks and other private institutions.
3. Obstacles to Effective Criminal Justice System in Nigeria- The Nigerian Police for example has challenges ranging but not limited to: Abuse of Powers of arrest; Extraction of confessional statement; Extortion of detainees; Unlawful detention of suspects; Delay in forwarding case files for DPP's advice; Absence of IPO to defend his investigations before the court; Incompetence of police prosecutors.

The issues raised so far, makes the work of the Nigerian Police Force almost impossible whether we look at the total number of officers in relation to the population of the country and or in relation to their duties/functions, this is further compounded by inadequate training, discipline, and welfare package, when compared to the United Kingdom's police force.

4. Lack of comprehensive criminal database, unlike the United Kingdom.
5. The Petroleum Industry in Nigeria is not as transparent as its counterparts in the United Kingdom.
6. Pays fewer adherences to the freedom of information legislation.
7. Has less management strategy for Financial Crimes in the Petroleum Industry.
8. Inadequate mechanism for refining crude oil.
9. Still maintains a non-privatized downstream sector.
10. Petroleum swap is prevalent in Nigeria and non-existent in the United Kingdom and remains a viable source of Financial Crimes in the Petroleum Industry in Nigeria whilst remaining lawful.
11. The Nigerian Government should encourage the International Oil Companies to create more employment, social and environmental policy as part of their corporate social responsibility.
12. That the Joint Venture agreement between the Nigerian Government and the International Oil Companies is not

comparable to those between the United Kingdom's Government and the Oil Companies.

13. The United Kingdom's Petroleum Industry is less dependent on middlemen than in the Nigerian Petroleum Industry.
14. The Nigerian Petroleum Industry does not use its State-of-the-Art equipment for measuring the amount of crude oil drilled when compared to that of the United Kingdom, where the State ownership of land is non-existent and royalties are paid to land owners, whether government or private.
15. Land ownership and compensation regime is not as fair as it is in the United Kingdom.
16. The United Kingdom has a zero-tolerance policy for gas flaring, when compared to Nigeria.
17. The Criminal and Penal Codes are ancient, anachronistic, and not fit for purpose but, remains valid law in Nigeria when it could never be accepted in the United Kingdom.
18. The non-passage of the Nigerian Petroleum Industry Bill causes Nigeria a financial loss of 15 billion naira annually and minimizes the ability of Nigeria to properly regulate its Petroleum Industry like that of the United Kingdom.

4.1 Conclusion

It is obvious that the year 1914 is the genesis of Financial Crimes in the Petroleum Industry in Nigeria. The financial loss to the Nigerian economy has been colossal and incalculable or unquantifiable. It is equally true that Financial Crimes in the Petroleum Industry in Nigeria cannot be completely eliminated nor can Financial Crimes management and regulation be comparable to that of the United Kingdom since British colonial masters have been bedeviled with Financial Crimes and commensurate length of time to formulate policies and Financial Crimes management and techniques to curb and reduce its impact on their economy. The best that Nigeria can do as a nation is to adopt a holistic approach Financial Crimes management and regulation by giving this very important sector the necessary manpower and resources in a bid to a gradual reduction in Financial Crimes that will enable it achieve increased revenue and profit to the stakeholders.

4.2 Recommendations

Flowing from the above stated, this paper recommends as follows:

1. The Nigerian opaque petroleum industry should be made more transparent in line with the Nigerian extractive industries transparency Act, 2007, just like the United Kingdom's equivalent. Ensure that the nation's refineries have an average production capacity of sixty-five (65%) percent, minimize the use of middlemen, and use the nation's state-of-the-art equipment for measuring the amount of oil drilled, this will enable to ensure accuracy and less reliance on the international oil companies' measurement. The above will ensure that petroleum swap will be a thing of the past.
2. This paper further recommends that there should be increased corporate social responsibility particularly in the oil producing region of the country, this will help minimize its citizen's welfare and security challenges including financial crimes in the petroleum industry.
3. There should be enhanced criminal liability legislation, training, education of the general public, about their responsibilities towards the petroleum industry and government owned properties. This should alongside all of the above further ensure that financial crimes particularly pipeline vandalism and oil theft is significantly reduced. This training and education should be included in the nation's educational curriculum from primary to tertiary institutions, in the same way as anti-cultism, national anthem and pledge, with a possible establishment of an academy.
4. That there should be laws relating to corporate criminal responsibility that is rigorously enforced, encourages whistle blowers, and ensures effective witness protection scheme. This will ensure better corporate financial crimes management and environmental protection particularly, in the oil producing region that is bedevilled with gas flaring, black sooth, oil spillage, air and water pollution.
5. That there should be a comprehensive review of the joint venture agreement to a tripartite agreement between the federal government of Nigeria, the international oil companies, and the host communities. This will further ensure fairness, equity, and justice between the stakeholders, and reduce the conflict amongst them, violence, and kidnapping.