

# "From Darkness To Darkness"

**How Nigerians are Paying the Price  
for Corruption in the Electricity Sector**



**© Socio-Economic Rights and Accountability  
Project (SERAP)  
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# *Executive Summary*

## **Background:**

- 1) The importance of energy to the Nigerian economy led to the ineluctable need for reform. The Nigerian power sector has been faced with several challenges leading to reform initiatives due to the nature of the Nigerian state which is characterized by a confluence of factors. The much-publicised power sector reforms in Nigeria under the *Electric Power Sector Reform Act* of 2005 is yet to yield desired and/or anticipated fruits largely due to corruption and impunity of perpetrators, regulatory lapses and policy inconsistencies.
- 2) The country has lost more megawatts in the post-privatisation era due to corruption, impunity, vandalization of gas pipelines and other acts of restiveness in the resource-bearing communities, among other social challenges as reflected in this report.
- 3) The total estimated financial loss to Nigeria from corruption in the electricity sector starting from the return to democracy in 1999 to date is over *Eleven Trillion Naira* (N11 Trillion Naira). This represents public funds, private equity and social investment (or divestments) in the power sector. It is estimated that may reach over *Twenty Trillion Naira* (N20 Trillion Naira) in the next decade given the rate of Government investment and funding in the power sector amidst dwindling fortune and recurrent revenue shortfalls.

## **Initial/Preliminary/General Findings:**

The research finds that the following factors aid the tide of corruption and impunity of perpetrators in the Nigerian power sector:

- 1) Lack of effective monitoring and supervision.
- 2) The top-down model of electricity governance in Nigeria.
- 3) Institutional decay and the current corrupt attitudinal dispositions of sector officials and other players in the power sector.
- 4) The current structural arrangement.
- 5) Institutional improprieties.
- 6) State monopoly.
- 7) State-controlled electricity governance model.
- 8) The lack of Decentralized Energy Options.

### **CASE ONE: *CORRUPTION CHARGES AGAINST OWAN-LED NERC***

#### **Recommendations:**

- 1) Our findings from the NERC indicated that the officials were 'settled' with millions of Naira as severance packages and for embarrassing them with the charges.
- 2) There is need for the authorities to undertake a thorough, impartial and transparent investigation as to the reasons why charges were withdrawn.
- 3) Conscientious Civil Society groups should also demand to know the basis of withdrawing the charges and that the actual settlement sums paid to the ex-commissioners should be made public.
- 4) Authorities must re-investigate the case and recover any corrupt funds.

### **CASE TWO: *THE IGALI SCANDAL***

#### **Recommendations:**

- 1) The development is worrisome as persons entrusted with the keys to the nation's treasury allegedly conspired amongst themselves to loot helpless citizens and the families of the deceased employees of PHCN of their much-needed benefits.
- 2) Authorities should thoroughly, impartially and transparently investigate the case and not allow it to be swept under the carpet.
- 3) Suspected perpetrators including Mr. Igali should be brought to justice in fair trial and corrupt funds fully recovered.

### **CASE THREE: *THE REA SCANDAL***

#### **Recommendations:**

1. The REA scandal should be urgently revisited. The case was muddled-up or apparently compromised.
2. The National Assembly leadership and members should never be allowed to manipulate the award of electricity contracts or cite projects in their constituencies under the misplaced guise of "Constituency Project."
3. The bidding and award of contracts processes under the REA should be streamlined and made more transparent.
4. Federal Government should back-down from Rural Electrification initiatives and allow States to undertake rural electrification through their respective Local Governments and Development Areas.
5. The funds designated or earmarked for rural electrification should be channeled through the State in line Decentralized Energy Options (DEOPs) model, and strictly monitored.

#### **CASE FOUR: AEDC RECRUITMENT/JUMBO PAY SCANDAL**

##### **Recommendations:**

- 1) The recruitment scandal and corruption-induced jumbo pay to workers of the AEDC should be thoroughly, impartially and transparently investigated and report of the investigation widely published. Anyone found to be responsible should be brought to justice and corrupt funds fully recovered.
- 2) The ICPC should inform Nigerians about the current status of the probe of the case.
- 3) Federal Government should consider fully divesting its stakes in the power sector and allow for efficient, decentralized sector governance by Federal and State governments, as appropriate, in line with the provisions of the Second Schedule, paragraph 13 and 14 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

#### **CASE FIVE: SUIT AGAINST NERC ON SCANDALOUS TARIFF**

##### **Recommendations:**

- 1) It is an act of apostasy for government to ignore the provisions of the law and the necessary rules meant to regulate electricity matters.
- 2) Civil society should join other stakeholders in pursuing the appeal with a view to sending strong signals against power sector regulators and capitalist players that impunity and capitalists' collusion against the teeming masses and marginalized sectors of the population by coercing them to pay more and higher tariffs for "darkness" will not be condoned. This is a human right and consumer right issue.

#### **CASE SIX: MANITOBA HYDO SAGA**

##### **Recommendations:**

- 1) The Manitoba deal is shrouded in secrecy as essential details of the deal remain unknown to Nigerians till date.
- 2) The authorities should undertake a public-oriented audit on the state of affairs of the TCN two years before and after the Manitoba deal.
- 3) The outcome of the audit should form basis for further action and charges in court against the suspected perpetrators and corrupt funds fully recovered.

#### **CASE SEVEN: MELAYE V MANITOBA: RE-MANITOBA/TCN OPERATIONS**

##### **Recommendations:**

- 1) This is yet another unresolved allegation on the Manitoba Deal. This further underscores the need for the authorities to put the power sector right by urgently, thoroughly and transparently investigate the facts and circumstances of the deal and make public the findings of any such investigation. The outcome of the investigation should serve as useful tools and guides for repositioning the TCN for better efficiency of its statutory functions.

- 2) Civil society groups including the Nigeria Labour Congress (NLC) should scrutinize the Manitoba deal and TCN's operations and ensure full accountability.
- 3) The outcome of credible scrutiny by civil society groups may form the basis of new, independent probe and subsequent prosecution.

#### **CASE EIGHT: POWER SECTOR PRIVATIZATION SCANDAL**

##### **Recommendation:**

- 1) The Federal Government should undertake a thorough, impartial and transparent investigation into the power sector privatization with a view to doing things the right, fair and just way.
- 2) Ownership of public stakes of 40% in those entities should be revisited and further privatized to avoid using government/public resources to subsidize private entities.

##### **Observations and Additional Recommendations:**

- 1) Weak governance and supply shortages create fertile grounds for corruption. As corruption is pervasive, combating corruption in the sector requires mutually reinforcing improvements in public governance.
- 2) Stemming the trend of corruption in the power sector of Nigeria is a long-term process requiring sustained political commitment, changes in the incentives of stakeholders, and new standards of transparency and accountability. Holistically, it requires a paradigm shift in public governance and management of the sector.
- 3) The starting point to combating corruption and impunity could range from introducing transparency in the procurement process, to seeking expert consultation in investment decisions and enforcing accountability of public officials and utility managers, to fighting petty corruption in order to build public confidence and support.
- 4) Anticorruption strategy in the Nigerian power sector should focus on transparency and competition in procurement through public participation and independent regulatory institutions.
- 5) Attention should be focused also on petty corruption. Petty corruption in the electricity sector has not received much attention from the media and civil society organizations promoting transparency, which have tended to focus more large-scale corruption.
- 6) Regular financial audits and the publication of such audits should be made a mandatory requirement for all electricity companies in Nigeria whether government owned or otherwise.
- 7) For proper metering, Discos must take a proper and comprehensive collation of all power consumers in their jurisdictions before issuing new meters under direct purchases or CAPMI systems.

- 8) Discos must undertake initiatives to re-number and re-classify all electricity consumers in Nigeria for the purpose of issuing new meters.
- 9) Due process and transparency must be strengthened, in all appropriate quarters where decisions are taken on licensing, subsidy, power-purchase-agreements, operational equipment procurements and metering etc.

### **Recommendations on Governance and Leadership:**

1. Committed leadership at the top is a crucial change process required to trigger action and compliance, to drive core anti-corruption initiatives and to build and sustain support.
2. Establishing good governance by an enabling legal and regulatory framework is a necessary but not a sufficient condition for fostering accountability. Combating corruption calls for a range of actions that go far beyond the passing of laws or the pronouncement of policies.
3. The Federal Government must work with civil society groups to instil a culture of good governance in the Nigerian power sector and to avoid a repeat of the regrettable, sad experiences in the allied sector of oil & gas. This could be done by building coalitions to create a working environment conducive to career growth for employees to secure workers' continued commitment to reforms.
4. An objective and participatory system of performance assessment, training programs to upgrade employee skills, merit-based promotions, and incentives linked to performance should be put in place by the Federal Government. Penalties should be imposed for misdemeanours, especially those involving corruption and collusion while those showing loyalty and other anti-corruption tendencies should likewise be generously rewarded. Communication could take the form of a regular newsletter featuring a message from the chief executive of the electricity company on a matter of importance to employees, and updates about the progress or sector policies and reforms. Credible communications can help secure the support of a majority of the employees who may otherwise be ambivalent in the fight against corruption.

### **Independent Regulatory Regime**

- 1) The Federal Government must ensure the creation of an effective regulatory regime that is independent of the government. To be truly independent, a regulator will exhibit the following features:
  - a) The regime should be established by law specifying the role of the regulators, the mode of their appointment, service conditions, powers, immunities, and responsibilities.
  - b) The regulatory budget should be independent.
  - c) All regulatory procedures (on licensing, tariff setting, grievance redressal, and the like) should be well defined and widely publicized.
  - d) All regulatory decisions should be thoroughly explained and made after a transparent and participative process that is open to all stakeholders.



- e) Decisions should be subject to appeal before an appellate forum.
  - f) Decisions should be legally enforceable, and penalties should be set for noncompliance with regulatory orders.
  - g) Information on the regulatory regime should be made available to civil society in an easy-to-understand format.
  - h) The rights and obligations of the power company as well as those of the consumers should be clearly spelt out and given wide publicity, rigorously monitored, and firmly enforced.
  - i) Regulatory decisions should be predictable and timely.
  - j) Regulators should be held accountable for their actions, and mechanisms for appealing regulatory decisions should be established.
- 2) It needs to be emphasized that the creation of an independent regulatory regime by itself will not have any significant impact on corruptions and impunity of perpetrators. Several other conditions need to be fulfilled before the regulator can be effective. For example, the government must choose the right persons as regulators, give them sufficient financial autonomy to do their work, and demonstrate a willingness to uphold regulatory decisions even when they are politically inconvenient.

### **Consumers’ Charters**

- 1) The authorities must develop and widely publicised Citizens’ Charters in the Electricity Sector. The right to information, enshrined in law and enforced through regulatory institutions, can help reduce opacity and abuse of discretionary powers by electricity companies.
- 2) Citizens’ charters, wherever they have been publicized and enforced, have helped improve governance. Such charters spell out the rights and responsibilities of consumers and confer on them the right to receive good and quality service from power service providers.
- 3) Such a document may specify the standards to be followed by the electricity companies for various services, the fees chargeable, and the time frame for providing them.
- 4) Norms and Standards should include establishing the technical standards for generation, transmission, and distribution; laying down the norms for operational efficiency of the utilities; and regularly reviewing performances.

### **Independent Monitoring and Public Participation**

- 1) The Federal Government should closely and regularly monitor the performance of the electricity companies, and the results and outcomes of such monitoring should be widely

publicised for the benefit of the consumers and other stakeholders. The credibility of such monitoring will be enhanced if it is performed by the regulator or by a nonpartisan and expert body.

- 2) Public participation in making and implementing decisions should be encouraged through forums like standing committees, ad hoc committees, public hearings conducted by regulatory bodies (on matters such as tariffs, licensing, investments, financing, large contracts, and performance reviews of utilities), including active involvement of nongovernmental organizations and the media.
- 3) Corruption is deeply rooted and pervasive, but it can be fought successfully through empowering consumers and civil society by providing them access to information and the opportunity to participate in policy formulation and decision making. Consumers and civil society organizations can form essential components of powerful and effective coalition against corruption in the power sector.

#### **Role of Donors and Multilateral Agencies**

- 1) Power sector reforms in the past generally focused on matters such as industry and market structure, corporatization, and privatization. This approach overlooked the fact that many of the ills of the sector are the result of corruption, impunity, and neglecting other dimensions of governance.
- 2) It is critical for the governments and the donor community to pay attention to improving governance and accountability of utilities or power sector companies.
- 3) A reduction in the political cost of reform is desirable through empowerment of consumers and civil society by increasing access to information.

#### **Anti-Corruption Strategies:**

1. The Federal Government should undertake analytical and diagnostic work to identify the causes of the problem, its severity and effects, and the political cost of maintaining the status quo.
2. Consult on the diagnosis to create an authorizing environment for implementation of the strategy.
3. Disseminate diagnostic information without blaming the actors
4. Launch a communication campaign with strong and visible involvement of senior politicians and civil society actors.
5. Build a coalition including by ensuring buy-in by utility management and employees by addressing employee issues; securing employee commitment to reforms; improving customer service by establishing effective customer support centers; reducing the political cost of reform through better-targeted, transparent, judicious, and equitable enforcement; ensuring that service improvements precede tariff adjustments; and engage in meaningful consultation with and participation of civil society.

### **Improve electricity business processes**

1. Simplify and codify procedures
2. Introduce modern technology in selected areas
3. Foster efficiency and effectiveness of customer service and compliance with service standards
4. Make procurement transparent

### **Strengthen institutional mechanisms for accountability**

1. Separate commercial from regulatory functions
2. Strengthen audit and internal integrity units
3. Prosecute offenders in courts and confiscate their illegally acquired wealth

### **Encourage public participation**

1. Sponsor open discussions on all important matters in the Nigerian power sector
2. Institutionalize user surveys in the power sector for feed-backs.
3. Put in place a mechanism to redress public grievances
4. Implement an effective "right to information" program in the power sector.

## **SPECIFIC RECOMMENDATIONS TO INSTITUTIONS TO ADDRESS CORRUPTION AND IMPUNITY IN THE POWER SECTOR**

### **RECOMMENDATIONS TO THE FEDERAL GOVERNMENT:**

1. The Federal Government should revisit the REA scandal to send strong signals that corruption in the power sector will no longer be tolerated. The case was muddled-up or apparently compromised.
2. The Federal Government should streamline and make more transparent the bidding and award of contracts processes under the REA.
3. The Federal Government should back-down from Rural Electrification initiatives and allow States to undertake rural electrification through their respective Local Governments and Development Areas. The funds designated or earmarked for rural electrification should be channeled through the States in line Decentralized Energy Options (DEOPs) model, and strictly monitored.

5. The Federal Government should consider fully divesting its stakes in the power sector and allow for efficient, decentralized sector governance by Federal and State governments, as appropriate, in line with the provisions of the Second Schedule, paragraph 13 and 14 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
6. The Federal Government should, as the starting point to combating corruption and impunity of perpetrators in the power sector, ensure the introduction or strict compliance with transparency laws and rules in the procurement process.
7. The Federal Government should ensure that anti-corruption strategies in the Nigerian power sector focus on prosecution of suspected perpetrators of corruption, and transparency and competition in the procurement process through public participation and independent regulatory institutions.
8. The Federal Government and its agencies should also focus attention on petty corruption in the power sector by putting in place measures to discourage the practice.
9. The Federal Government should make regular and mandatory financial audits requirement for all electricity companies in Nigeria whether government owned or otherwise.
10. The Federal Government should ensure that due process and transparency are strengthened in all appropriate quarters where decisions are taken on licensing, subsidy, power-purchase-agreements, operational equipment procurements and metering etc.
11. The Federal Government must ensure Independent Regulatory Regime in the power sector to bring about the creation of an effective regulatory regime that is independent of the government.
12. The Federal Government should desist from further politicization of the appointment of the regulators (NERC Commissioners), as this is also found to be one of the reasons for corruption, impunity and inefficiency in the power sector.

**RECOMMENDATIONS TO THE ATTORNEY GENERAL OF THE FEDERATION AND MINISTRY OF JUSTICE:**

1. The Attorney-General of the Federation and Minister of Justice should request the report of the House of Representative Committee that probed government spending in the power sector from 2000 to 2007, make the report public and ensure appropriate legal action against anyone suspected to be involved in corruption as well as full recovery of corrupt funds
2. The Attorney-General of the Federation and Minister of Justice should take measures to obtain, widely publish and act on the report of the Elumelu House Probe Committee which had accused 21 persons and 36 companies of subversion of government policy on due process which gave rise to extension of contract beyond its original size, inflation of costs, duplication of contract awards, other kinds of corruption, and general lack of performance.

3. The Attorney-General of the Federation and Minister of Justice should direct Economic and Financial Crimes Commission (EFCC) and Independent Corrupt Practices and other Related Offences Commission (ICPC) to wade into the crisis of confidence between the National Integrated Power Projects (NIPP) and the Niger Delta Power Holding Company (NDPHC) as the Special Purpose Vehicle (SPV). Undocumented, monumental fraud and corruption is said to be perpetrated at the NDPHC, and investigation by the anti-graft agencies will ensure that those involved are brought to justice.
4. The Attorney-General of the Federation and Minister of Justice should direct Economic and Financial Crimes Commission (EFCC) and Independent Corrupt Practices and other Related Offences Commission (ICPC) to probe Metering and billing fraud and corruption. Most consumers are unhappy with their billing methodology and feel short-changed by the operators.
5. The Attorney-General of the Federation and Minister of Justice should team-up with the Ministry of Power, Works and Housing in generating templates for reforming the electric power sector law and regulations (as appropriate).
6. The Attorney-General of the Federation and Minister of Justice should promptly make progress on all outstanding cases of corruption in the electricity sector including by ensuring effective prosecution of all power sector cases being handled by the Ministry.
7. The Attorney-General of the Federation and Minister of Justice should take measures in collaboration with other agencies of government to ensure effective and technical scrutiny of all contracts, concessions and other official documentations in the power sector before executing or signing or committing the Federal Government to binding obligations under fraudulent or questionable deals like the Manitoba deals, power sector privatization and others.

**RECOMMENDATIONS TO THE EFCC, ICPC AND OTHER ANTI-CORRUPTION AGENCIES:**

1. The EFCC should revisit the case of the Ramsome Owan-led NERC and ensure the probe is made much more transparent and with active participation of credible NGOs.
2. The ICPC and EFCC should expedite action on the investigation and prosecution of Mr. Goodknows Ighali on the alleged diversion of funds of deceased PHCN workers, among others.
3. The ICPC should make public the status of the investigation and recommendations for prosecution (if any) on the AEDC Recruitment Scandal/Jumbo Pay Scandal given the facts that the Nigerian Government and public have 40% stakes in the AEDC.
4. The Manitoba deal is shrouded in secrecy as essential details of the deal remain unknown to Nigerians till date. The EFCC/ICPC should lead a public-oriented audit on the state of affairs of the TCN two years before and after the Manitoba deal.

5. The EFCC and ICPC should also probe the allegations of Senator Dino Maleye on the Manitoba deal to ensure credibility. The outcome should serve as useful tools and guides for repositioning the TCN for better efficiency of its statutory functions, and for any prosecution.
6. The EFCC should revisit the Elemelu scandal on the Rural Electrification scandal and ensure that all suspected perpetrators are brought to justice.
7. The EFCC and ICPC should scrutinize, prioritize and conclude pending investigations of all power sector-related cases and make report public (where applicable), as well as bring to justice suspected perpetrators.
8. The EFCC and ICPC should firm-out technical prosecution of all power sector cases to power sector specialists to work with criminal prosecution experts to ensure a winning, formidable prosecution team.

**RECOMMENDATIONS TO THE NATIONAL ASSEMBLY:**

1. The National Assembly should desist from and avoid manipulating the award of electricity contracts or cite projects in their constituencies under the guise of "Constituency Project".
2. The National Assembly should publish and ensure the full implementation of the recommendations of the report of the two-day Power Sector Workshop held on February 6th - 8th 2017.
3. The National Assembly should publish and widely circulate the report of Joint House-Senate Ad Hoc Committee on Labour and Power Sector stakeholders on 2016 increase on Electricity Tariff.
4. The National Assembly should commission experts to begin a review of the Electric Power Sector Reforms Act of 2005.
5. The National Assembly should publish widely and release the reports of all power sector-related probes to the Federal Government and Civil Society Organizations for necessary advocacies and prosecution by relevant agencies.

**RECOMMENDATIONS AND (ADDITIONAL NOTES) TO STATE GOVERNMENTS:**

1. The 36 state governments should wake up to their rights, duties and obligations under the Constitution of the Federal Republic of Nigeria relating to the power sector by working to promote and ensure access to regular and uninterrupted electricity supply for all residents within their states.
2. The 36 state governments have been abdicating the duties to the power sector, bearing in mind that Power is an item on the Concurrent Legislative List under the Nigerian Constitution 1999

(as amended). The Nigerian constitution provides for electricity regulation under items 13 and 14 of the Second Schedule, Part II, Concurrent Legislative List to the extent that: The National Assembly may make laws for the Federation or any part thereof with respect to-(a) electricity and the establishment of electric power stations; (b) the generation and transmission of electricity in or to any part of the Federation and from one State to another State.

3. A potential challenge in the sector is that, by virtue of paragraph 14, State Governments in Nigeria are at liberty to engage in licensing and regulation of electricity as provided by the Constitution. Item 14 states that: A House of Assembly may make laws for the State with respect to – (a) electricity and the establishment in that State of electric power stations; (b) the generation, transmission and distribution of electricity to areas not covered by a national grid system within that State; and (c) the establishment within that State of any authority for the promotion and management of electric power stations established by the State.
4. Power to regulate captive electricity generation should ordinarily vest in the State Governments. State Governments should challenge all unconstitutional provisions in the EPSRAc and regulation including Captive Power Generation.
5. The 36 state governments should begin the setting-up of State Electricity Regulatory Commissions. Eg. Lagos State Electricity Regulatory Commission ('LASERC'), Ogun State Electricity Regulatory Commission ('OGSERC'), Kano State Electricity Regulatory Commission ('KASERC'), etc to license private companies to engage in off-grid electricity generation, transmission and distribution including renewable electricity, captive electricity generation, rural electrification and others.
6. The 36 state governments should vigorously pursue the objective of Rural Electrification Act as State Electricity Subject. The Rural Electrification Act also established an agency, to be known as the Rural Electrification Agency (REA). The REA administers the Rural Electrification Fund (REF), a designated fund to provide, promote and support rural electrification programmes. Rural electricity is off-grid, and comes squarely within the ambit of regulatory purviews of the State Governments in Nigeria.
7. The report concludes that vesting Rural Electrification Agency (REA), Rural Electrification Fund (REF), and Rural Electrification Project (REP) in the hands of the Federal Government is patently unconstitutional. The 36 state governments should sue the Federal Government to challenge this infraction of the Nigerian Constitution 1999 (as amended). Rural electrification is off-grid and comes under the legislative competence of State governments. An attempt to bring 'off-grid' subject within 'National-Grid' is tantamount to what the writer had referred to in another piece as "National Greed".

## *Conclusion*

Before launching a campaign for eradicating corruption in the Nigerian powers, it is important to analyse the interests of various stakeholders. Political economy issues cannot, and should not be ignored. The vulnerabilities of consumers and the masses are such that the beneficiaries of corruption will most likely continue to have upper hands unless strategic steps are taken to reverse the trends, as indicated in this report. Plans need to be ready, and resources committed, for institutionalization of anti-corruption strategies outlined above for the Nigerian power sector to thrive, as some of these initiatives and strategies have proved successful in other jurisdictions as useful tools or methods for successfully fighting and/or eliminating corruption in the power sector. To be successful, relevant and credible non-state actors like Civil Society Organisations must play active roles.

### **SCOPE, METHODOLOGY AND BACKGROUND INFORMATION:**

A team of researchers worked to collect, collate, and analyze information on outstanding related cases of corruption and mismanagement in the power sector among others. The researchers did not undertake or conduct ethnographic research or survey. No formal interviews were conducted beyond gathering data and related materials on the subject. Useful information was also gathered from industry operators and experts on the subject in putting together this report.

The researchers made use of data and information collected from courts, some DISCOS, GENCO, Association of Electricity Distribution Companies, Power Sector Conferences, Textbooks, Case reviews, Classified and Declassified/ Unclassified Reports, On-line publications, Power sector Laws, Regulations and industry practices, informal interactions with professionals and other stakeholder.

This report takes into account the confidentiality of certain information and undertaken as to non-disclosure of sources of certain sensitive and confidential information supplied by third parties in the course of the research.



## PART ONE

### INTRODUCTION AND BACKGROUND ANALYSES

- 1) Almost any form of energy occurring in nature can be converted into electricity: energy from wind, waves, steam, and water rising from geysers; from tides, flowing water, sunlight, and the vast energy lying locked in the heart of the atom. The importance of energy to Nigeria led to the ineluctable need for reform. The Nigerian power sector has been faced with several reform initiatives due to the nature of the Nigerian state which is characterized by a confluence of factors.<sup>1</sup>
- 2) Economic interests, political forces, capitalists' entities and other bureaucratic institutions determined and/or influenced the nature of the power sector in Nigeria.<sup>2</sup> These absurdities manifest vividly in crippling the much-hyped electricity sector reforms in the country. The much-publicised power sector reforms in Nigeria under the *Electric Power Sector Reform Act of 2005*<sup>3</sup> is yet to yield desired and/or anticipated fruits largely due to corruption, regulatory lapses and policy inconsistencies.
- 3) The country has lost more megawatts in the post-privatisation era due to corruption, vandalization of gas pipelines and other acts of restiveness in the resource-bearing communities, among other social challenges as reflected in this report. The following points are to be noted by way of initial/preliminary findings of the research in 'Part two' (Pt. II) below.
- 4) The total estimated financial loss to Nigeria from corruption in the electricity sector starting from the return to democracy in 1999 to date is over **Eleven Trillion Naira** (N11 Trillion Naira). This represents public funds, private equity and social investment (or divestments) in the power sector. It is estimated that may reach over **Twenty Trillion Naira** (N20 Trillion Naira) in the next decade given the rate of Government investment and funding in the power sector amidst dwindling fortune and recurrent revenue shortfalls.

<sup>1</sup> Yemi Oke, "**NIGERIAN ELECTRICITY LAW AND REGULATION**", LawLords Publications. Abuja/Lagos: March, 2013, Yemi Oke, "**NIGERIAN ENERGY AND NATURAL RESOURCES LAW (NOTES & MATERIALS)**": Princeton Publishers. Lagos: June, 2016, Yemi Oke, "**ESSAYS ON NIGERIAN ELECTRICITY LAW**": Princeton Publishers. Lagos: June, 2016. See also Yemi Oke, "Beyond Power Sector Reforms: The Need for Decentralised Energy Options ('DEOPs') for Electricity Governance in Nigeria" (2012) 18: 1 the Nigerian Journal of Contemporary Law, at 67-92.

<sup>2</sup> Ibid.

<sup>3</sup> See *Electric Power Sector Reform Act (ESPR)*, 2005 Cap E 7 (Revised) Laws of the Federation of the Federal Republic of Nigeria (LFN) 2004.

## PART TWO

### THE NATURE, EXTENT AND DYNAMISM OF CORRUPTION IN THE NIGERIA POWER SECTOR

#### Initial/Preliminary/General Findings:

- 1) The effective monitoring and supervision of the power sector has been made needlessly difficult and shrouded in secrecy through over-centralization of the administration and governance of the sector. This, the research discovers, often gives room for institutionalized, carefully structured corruption in the power sector of Nigeria.<sup>4</sup>
- 2) The top-down model of electricity governance in Nigeria encourages corruption and other illegal dealings. Despite the reforms, the electricity sector in Nigeria has continued to wallow in endemic corruption and impunity.
- 3) There is need for institutional reforms and the purging of current corrupt attitudinal dispositions of the officials and sector operators if the reforms will have any impact. It goes without saying that if Nigeria scales the hurdle of creating a vibrant electricity regime under the new legal framework, the social obstacles and challenges of managing and sustaining it will remain due to debased social orientation of infectious, systemic corruption.<sup>5</sup>
- 4) The structural arrangement under the current electricity regime makes for the perpetration of institutionalized corruption due to (over) centralized governance arrangement. This further justifies the arguments for decentralized electricity governance systems.
- 5) The power sector in Nigeria arguably stands in closer proximity for corruption like the oil and gas sectors. Not only because of the seeming overwhelming evidence of institutional improprieties in the energy sectors generally; but more for the fact that electricity is the most versatile and widely used form of energy in Nigeria. The nature of the electricity sector and inherent danger of the current centralized regulatory framework in Nigeria made it possible for corruption to thrive in the sector.<sup>6</sup>

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<sup>4</sup> Yemi Oke, *"Beyond Power Sector Reforms: The Need for Decentralised Energy Options ('DEOPs') for Electricity Governance in Nigeria"*, supra note 1.

<sup>5</sup> R. G. Eggert, "Mining and Economic Sustainability: National Economies and Local Communities" (Report of the Mining, Minerals and Sustainable Development Project, Vol. 19, October 2001) at 60.

<sup>6</sup> See Mohinder Gulati and M.Y. Rao, "Corruption in the Electricity Sector: A Pervasive Scourge" in J. Edgardo Campos and Sanjay Pradhan Eds., *The Many Faces of Corruption- Tracking Vulnerabilities at the Sector Level*, (The World Bank, Washington, D.C., 2007) at 115.

This position has been reiterated by notable commentators.<sup>7</sup>

- 6) State monopoly<sup>8</sup> despite a semblance of liberalization portrayed under the new regime provides fertile ground for inefficiency and corruption in the electricity sector.
- 7) A strictly state-controlled electricity governance model should ordinarily be unacceptable in a sector questing for active private sector funds. Not only does it encourage corrupt tendencies, state control also cripples genuine growth and competitiveness of the sector as it creates disincentives to genuine and innovation-driven competitions.
- 8) Rather than centralized state domination or governance, a model like DEOPs (Decentralized Energy Options)<sup>9</sup> that stimulates active participation of the stakeholders in the electricity sector should be embraced to bring about economically rewarding, viable and sustainable electricity regime in Nigeria.
- 9) The extent of corruption in the Nigerian power sector is correlated to the discretion held by decision makers, the absence of clear and enforceable accountability regime, and the lack of transparency in the decision-making process.
- 10) Corruption in the electricity sector in Nigeria is due to the fact that it is the most versatile, widely used and consumer-friendly form of energy. The entire infrastructure of a community- its home, offices, agriculture, industries, hospitals, banks, shopping malls, transport, communications, and recreational facilities- all depend on electricity as a form of energy.<sup>10</sup>
- 11) Corruption in the electricity sector manifests by way of fraud, bribery, moral turpitude, misappropriation of funds, acquisition of illegal wealth and involves offering, giving, soliciting or acceptance of an inducement or reward that may influence the actions taken by any authority, its members or officers.
- 12) The power sector generally (Nigeria inclusive) has a history of corporate fraud and financial malfeasance ranging from theft, false accounting, bribery and corruption, deception, collusion, and taking advantage of deficiencies in the regulatory regime.

<sup>7</sup> According to a commentator:

The infrastructure sectors are seen as being particularly vulnerable to corrupt practices given inter alia the large and lumpy expenditures involved (therefore easier to hide bribes), the reality that there are often relatively few qualified contractors (which can, in turn, lead to collusion) the presence of natural monopolies and the limits to competition (even with reform), the prevalence of 'regulatory capture,' and the numerous opportunities for discretionary decisions and 'rent taking' by public and private officials. The problem is compounded by the long tradition of corrupt practices in infrastructure in many countries and its embodiment in the political and social infrastructure.

*Ibid.*

<sup>8</sup> On the issue of State Monopoly in the power sector see Yemi Oke, “Challenges and Developments in the Nigerian Power Industry” (2014) ALP Business Review -Energy, 25-31.

<sup>9</sup> For details on the concept of Decentralised Energy Options propounded by Yemi Oke, see “*Beyond Power Sector Reforms: The Need for Decentralised Energy Options ('DEOPs') for Electricity Governance in Nigeria*” supra note 1.

<sup>10</sup> Rao, “*Corruption in the Electricity Sector*” supra note 6, at 115.

- 13) The pervasiveness of corruption in the power sector is legendary. Corruption has affected every process and activity in the electricity business.
- 14) Corruption in the electricity sector range from petty corruption at the level of meter reading/readers to grand larceny by the executives who award lucrative contracts and give concessions in the Power Purchase Agreement (PPAs).
- 15) Reliable data of these are always difficult to come by on incidents of power sector corruption. This challenge also manifests in Nigeria during this study due to inability to access sensitive information on sector operations/ activities.
- 16) Power or electricity theft is rampant among the citizens. This is a form of corruption by end-users who consume power and circumvent billing or tap into electricity from a Disco illegally without paying bills for such electricity consumption. This form of corruption is rampant among low-income electricity consumers in Nigeria.
- 17) Available documents reveal that more than one-tenth (12 percent) of Nigerian households and companies pay one form of bribes or another for electricity services.
- 18) The DISCOs have been unable to adequately bill or collect minimum amount of revenue required for their operations for varied reasons, and have resorted to difference means of survival ranging from borrowing, taking advantage of government subsidies, deferring payments, over-billing paying customers, reluctance to install pre-paid meters and other corrupt means.<sup>11</sup>
- 19) Although reliable data are difficult to obtain, rough estimates by industry experts show that the amounts involved in so-called petty corruption are significant. Petty corruption in the electricity sector is a recurring phenomenon and erodes the work culture of the utility through extortion or harassment of the consumers.
- 20) Electricity theft is also another form of corruption in the sector. Theft of electricity takes place in a variety of forms and thrives with the support of people from different walks of life: utility staff, consumers (acting individually or in powerful groups), labour union leaders, political leaders, bureaucrats, and high-level utility officials. Almost every operation in the Nigeria electricity sector is vulnerable to theft, be it generation, transmission, or distribution.
- 21) Corruption also manifests through the award of contracts and in purchases of large equipment due to weak watchdog institutions.
- 22) Corruption often manifests in the human resources segment of the power sector in Nigeria. Staff functions like human resource management fall prey to corruption. Interference by politicians is noticeable in routine personnel decisions such as recruitment, transfer, promotion, and disciplinary action. These are forms of social and institutional corruption.
- 23) Tax holidays, subsidies, and other types of concessions given to power firms as part of government’s policy to encourage investment in the sector easily lend themselves to misuse and corruption due to inability to administer the policy in an open and transparent manner.

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<sup>11</sup> Yemi Oke “Comparative Appraisal of Renewable Energy Laws and Policies” (2014) 1:1 Journal of International and Comparative Law, Obafemi Awolowo University, Ile-Ife, at 57-76.

## PART THREE

### ALLEGATIONS OF CORRUPTION AND FAILURE OF LEADERSHIP IN THE POWER SECTOR IN NIGERIA (1999-2015)

One of the findings of this research is that policy inconsistencies had fueled corruption and ineptitude in the power sector. The current political dispensation beginning in the year 1999 has so far witnessed a huge turnover of Power Ministers. These ministers have been reshuffled or removed for varied reasons ranging from incapacity to corruption to needless political considerations. In this segment, the report takes a look at the dispositions, achievements and failures on the part of past Ministers of Power from 1999 to 2015 with a view to ascertaining whether the problems are the sector itself in terms of its nature or complexities or inherent greed, incompetence and corruption attitudinal dispositions of the Nigerian political class/actors.

#### **Bola Ige (1999 to 2000)**

- 1) Research reveals that when the late Bola Ige took up the mantle of the Power and Steel Ministry in 1999, he probably didn't understand the magnitude of problems in the power sector and consequently, promised that within six months of his appointment, "power failure will be a thing of the past" and that on a regular basis, he will brief the nation on the state of power, steel and aluminum.
- 2) The power sector under Ige was characterized by epileptic and unreliable supply, bogus billing and archaic rate collection. The late Minister failed and was unable to put an end to these. His failure was attributed to acts of sabotage and corruption by people who were benefitting from the use of generators.
- 3) The late Bola Ige was not accused of corruption. The research has been unable to locate any documents, reports or any official or unofficial document alleging corruption on the part of the late Chief Bola Ige while he served as the Minister of Power and Steel.

#### **Olusegun Agagu (2000 to 2002)**

- 1) Though his short tenure as the Minister of Power was characterized by various financial scandals, Agagu was said to have generated more power, at least more than his predecessor. Documents or evidence of allegations could not be established.
- 2) The research finds that power generation increased from 1425 megawatts in 2000 when he (the late former Ondo State Governor) took over to more than 4000 megawatts and with a complementary reinforcement of the transmission and distribution systems by the time he left in 2002.
- 3) The foundation for the present privatization of the sector and unbundling of the Power Holding Company of Nigeria (PHCN) into different generation, distribution and transmission, was also laid during his tenure. He resigned in 2002 to contest the Ondo governorship election.

- 4) Although there were allegations of corruption against the late Agagu, the research has been unable to locate any formal documents, reports or any official or unofficial document alleging corruption on the part of the late Agagu beyond media reports.

#### **Liyel Imoke (2003 to 2007)**

- 1) He was former Chairman of the Technical Committee on the National Electric Power Authority (NEPA) but was later appointed Minister of Power and Steel in July, 2003.
- 2) Imoke presided over the implementation of the power sector reform, including the management of the passage of the Electric Power Sector Reform Bill in 2005, which resulted in the promulgation of the Nigerian Power Sector Reform Act of 2005, and consequentially, led to the establishment of the Nigerian Electricity Regulatory Commission (NERC), the Rural Electrification Agency (REA) and the unbundling of NEPA.
- 3) Also under Imoke's leadership, the Ministry devised, and began the implementation of a 25-year national energy development plan, embarking on the largest power programme in the world at the time under- the National Integrated Power Project (NIPP).
- 4) The Federal Government then budgeted a whopping N16 billion for the various reforms under Imoke which gone down the drains as it failed to generate the needed amount of electricity or meet the set goals. He was alleged to have personally collected the sum of \$7.8 million for the execution of the contract for the construction of the Jos-Yola Transmission Line, which was never executed.
- 5) There were documented/reported allegations of corruption against Imoke that fizzled-out shortly thereafter.
- 6) The allegation of \$7.8 million which Imoke allegedly collected for the execution of the contract for the construction of the Jos-Yola Transmission Line was either not investigated or badly handled.
- 7) The report recommends further questioning, probing and digging into this allegations by procuring relevance evidence (if it exists).

#### **Rilwan Lanre Babalola (2008 to 2010)**

- 1) When Babalola took over the affairs in the Ministry of Power, he met 3,700MW on ground and promised to increase it to 6,000MW and ensure a 24-hour power supply by the end of 2009.
- 2) Six months after assuring Nigerians of making a significant impact in the sector, in September 2009, the 3,700MW capacity he met on ground dropped to 2,710MW which shortfall was attributed to inadequate supply of gas to the new generators.

- 3) He left the position in March 2010 after a cabinet reshuffle, and the then President Goodluck Jonathan, got disappointed and personally took over responsibility for the Ministry of Power, personally ordering the implementation of the power sector reform.
- 4) No documented or reported case of corruption against Dr. Babalola during this period as the research has been unable to locate any documents, reports or any official or unofficial document alleging corruption on the part of Dr. Rilwan Babalola while he served as the Minister of Power and Steel.

### **Barth Nnaji (2011 to 2012)**

- 1) Appointed in July 2011, Prof. Barth Nnaji is the founder of the first indigenous power generating company in Nigeria and a former Minister of Science and Technology.
- 2) Prof. Nnaji set out to revamp the sector and succeeded in convincing world's leading engineering firms such as Siemens of Germany, Hundai Heavy Industries of South Korea and Electrobras of Brazil to come and invest heavily in Nigeria's power sector as authentic stakeholders, instead of mere contractors and equipment suppliers.
- 3) Siemens in collaboration with the National Power Training Institute (NAPTIN) and Northern Nigeria's universities, set out to develop a solar energy system in the country. This is in addition to accepting to build its first workshop in Africa, in Nigeria.
- 4) One of the policy inconsistencies of his regime was the abrogation of 141 megawatts of Integrated Aba Power Project built with equipment from General Electric (GE). Findings indicate that over N100 billion was invested into the project.
- 5) At the last phase of the project, despite the existing valid concession agreement, Enugu Electricity Distribution Company was handed over to another party by the Bureau of Public Enterprises (BPE) in a questionable and corrupt manner. There is need to probe this development by way of further investigation, prosecute suspected perpetrators and recover any corrupt funds.
- 6) The greatest undoing of the professor of Robotic Engineering was deliberately flouting the Code of Ethics of the privatization process which bars staff of the Bureau of Public Enterprises (BPE) and members of the National Council on Privatisation (NCP) from buying shares in companies being privatized, even though, he was reported to have personally informed Jonathan ahead of time. Nnaji resigned on August 28, 2012 which the London Economist in its September 8, 2012 edition described as the "extinguishing of a bright light in Nigeria."

### **Chinedu Nebo (February 2013 to 2015)**

- 1) The former Vice Chancellor of the University of Nigeria, Nsukka (UNN) and pioneer Vice Chancellor, Federal University, Oye, Ekiti State was appointed Minister of Power and Steel in February 2013.
- 2) Nebo is most remembered for handing over the assets of the PHCN to private investors on November 1, 2013, even though the exercise has been badly criticized by the Labour Union.
- 3) Prof. Nebo is alleged to have corruptly funded the privatized power sector with over N200 Billion despite privatization. This drew the ire of the Nigerian Labour leaders. According to a Labour leader:

*"This year alone, they have given the so called private sector over N200 billion. So, why fund them if you say the electricity is in the hands of the private sector? Why would you sell your house to somebody and you still give him money to maintain it? So, it's a fraud."*

- 4) Nebo's regime was characterized by frequent collapse of the transmission network leading to the inauguration of a 13-member committee to investigate the matter. The committee came up with a report that the current transmission network was designed to carry 3,000MW to 3,500MW. So, each time this load is exceeded, the system collapses.
- 5) His tenure was also characterized by pipeline vandalism which disrupted power supply, especially in the year 2014.<sup>12</sup>
- 6) The allegation of N200 Billion funding of the privatized power sector during Prof Nebo's tenure should be thoroughly and transparently investigated and anyone suspected to be responsible prosecuted. Any corrupt funds should be fully recovered.

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<sup>12</sup> "Nigeria: Power Sector Corruption and the Nigerian Economy" Daily Independent (Lagos)  
<http://allafrica.com/stories/201401080399.html>



## PART FOUR

### REPORTED OUTSTANDING CASES OF CORRUPTION IN THE POWER SECTOR AND UNIMPLEMENTED REPORTS IN THE SECTOR

Findings indicate that the electricity industry did not collapse because there was lack of competent engineers, it collapsed because of a combination of low funding, poor and inexperience sector governance/management and systemic corruption. A number of cases of corruption in the power sector were documented while several others remain undocumented or unreported. Corruption cases that contributed to the downturn of the sector abound but for the purpose of this research work we would restrict ourselves to outstanding cases that were reported or documented:

#### CASE NO 1:

#### ***ALLEGATIONS OF FRAUD AND CORRUPTION PERPETRATED BY THE NIGERIAN ELECTRICITY REGULATORY COMMISSION (NERC) COMMISSIONERS UNDER THE CHAIRMANSHIP OF DR. RANSOME OWAN***

**Issues:** Whether there was indeed a criminal breach of trust and embezzlement of Three Billion Naira by the NERC Commissioners under the Chairmanship of Dr. Ransome Owan.

**Facts:** During the reign of Dr. Ransome Owan as the Chairman of the Nigerian Electricity Regulatory Commission, he alongside six (6) other commissioners were arrested by the Economic and Financial Crimes Commission (EFCC) on Wednesday 4th of February 2009 over an alleged Three Billion Naira (N3,000,000,000.00) Fraud.

#### **Findings:**

- 1) The ex-officials were arraigned on April 22, 2009 on a 197-count charge of alleged criminal breach of trust and embezzlement of the sum of Three Billion Naira.
- 2) Findings reveal that the alleged corruption was perpetrated largely through needless overseas trips, as the seven officials allegedly jerked up their estacode per trip to nearly 200 percent to commit the fraud.
- 3) From the documents presented before the Court, between January 2006 and December 2008, the management of NERC spent \$991, 919 on estacodes alone. It was also revealed that in February 2006, NERC management prescribed that the Chairman/Chief Executive Officer of the Commission was entitled to \$1,200 as estacode per night while other commissioners were to get \$1,000 per night.
- 4) A memo to that effect to the Chairman/CEO from the Executive Commissioner, Finance and Supply, dated February 7, 2006 specified that any overseas journey sponsored by the

commission would attract the prescribed rates while Federal Government rules guiding payment of estacode would apply for trips not sponsored by the electricity regulatory body.<sup>13</sup>

- 5) The Court had to discharge the former seven Commissioners sequel to the Federal Government's withdrawal of criminal charges leveled against them following the address of the Court by a lawyer from the chambers of the Attorney-General of the Federation and Minister of Justice, Mr. E.C. Okpe. Ekpe moved the application to withdraw the charge when he informed the Court that, "We are under the instruction of the Attorney General of the Federation to withdraw the charges against the accused persons."
- 6) The Counsel to the accused persons, Mrs. Anayo Offiah (SAN) and Dr. Tunji Abayomi, were happy and did commend the AGF for withdrawing the charges and further asked the Court to dismiss the charges and to also compel the EFCC to release the documents and monies seized from their clients when they were granted administrative bail by the EFCC.
- 7) In his short ruling, Justice Garba said, "The charges against the accused persons are hereby terminated." The Judge, however, refused to make an order compelling the EFCC to release to the accused persons the monies and documents seized from them but instead, advised the ex-officials to apply directly to the appropriate authority for the release of the documents and money.
- 8) The judge advised that, "If the commission does not release the documents, you can then apply to me for an order to compel it to release the documents."<sup>14</sup>

#### **Recommendations:**

- 1) We observed that the case of the Commissioners was muddled-up and apparently compromised for strange and unconventional reasons. The Government, through the office of the Attorney-General of the Federation and Minister of Justice had demonstrated obvious lack of interest in prosecuting the officials.
- 2) Our findings from the NERC indicated that the officials were 'settled' with millions of Naira as severance packages and for embarrassing them with the charges.
- 3) The authorities must reveal the reasons as to why the charges were withdrawn.
- 4) Conscientious Civil Society groups should also demand to know the basis of withdrawing the charges and that the actual settlement sums paid to the ex-commissioners should be made public.

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<sup>13</sup> See Yemi Oke "Implications and Challenges of a Privatized Power Sector In Nigeria: Perspectives to Host Community Concerns" (2014) the Justice Journal, Federal Ministry of Justice, 237-263; See also "How Owan others collected excess estacodes" Nigerian Muse <http://www.nigerianmuse.com /20090811020329zg/nigeria-watch/official-fraud-watch-towards-fraud-free-governance-in-nigeria/how-owan-others-collected-excess-estacode/>

<sup>14</sup> See "N3bn Fraud: Court Discharges EX-NERC Commissioners" The Nigerian Voice <https://www.thenigerianvoice.com/news/34643/3/n3bn-fraud-court-discharges-ex-nerc-commissioners.html>

- 5) The authorities should direct the EFCC and ICPC to reinvestigate the cases and ensure full accountability and restitution in the matter.

**CASE NO. 2:**

***THE 47 SUVs ALLEGEDLY BOUGHT BY THE FORMER PERMANENT SECRETARY OF THE MINISTRY OF POWER DR. GODKNOWS IGALI FOR THE GOODLUCK/SAMBO CAMPAIGN ORGANISATION***

**Issues:** This segment investigates the issue as to whether the former Permanent Secretary of the Ministry of Power, Dr. Godknows Igali diverted public funds to purchase 47 SUVs for the Ex-president's campaign.

**Facts:** An artisan acted as the whistle blower and hinted the Economic and Financial Crimes Commission of the alleged fraud and corruption on the basis of which the EFCC investigated and eventually recovered from the former Permanent Secretary in the Ministry of Power 47 SUVs. Investigations by the EFCC reveal that the former Permanent Secretary bought the vehicles for the former President Goodluck Jonathan's campaign in the 2015 general election. Godknows Igali was arrested by the Economic and Financial Crimes Commission was later released on administrative bail.

**Findings:**

- 1) Our research revealed that the sum of N1.5 billion with which the vehicles were acquired was allegedly sourced from the diverted N27 billion insurance premium of deceased workers of the defunct Power Holding Company of Nigeria (PHCN).
- 2) The vehicles were supplied by a Kaduna based Dilly Motors, and the cash was allegedly laundered by Igali through Baseworth Insurance Brokers Limited, a company that was under investigation in another case of alleged diversion of N27 billion insurance premium of deceased staff of the defunct Power Holding Company of Nigeria, in order to cover his track.
- 3) The EFCC had indicated that it had substantial evidence against Igali. The EFCC had frozen N6,811,846,443.05 in the accounts of some companies belonging to Roberts Azibaola a cousin to ex-President Goodluck Jonathan and Bestworth Insurance Brokers Ltd.
- 4) The frozen cash was part of the N27,188,232,208.20 benefits of the deceased employees of the defunct Power Holding Company of Nigeria (PHCN), which were allegedly diverted.
- 5) According to the EFCC, "Sometimes in 2014, some persons conspired amongst themselves and used Bestworth Insurance Brokers Ltd to divert N27,188,232,208.20 from the Federal Government of Nigeria through the Bureau of Public Enterprise (BPE)."
- 6) The said account was originally approved to be released to Great Nigeria Insurance Plc (GNIP) as Group Premium Insurance (death and accident) claim to the next of kin of ex-PHCN staff who died in service and those that suffered incapacitation from accidents.

**The following are some of our research findings on this alleged fraud and corruption:**

- 1) That the Federal Government decided to privatize the PHCN through BPE. The proceeds from sales were remitted to the Office of the Accountant-General of the Federation.
- 2) That the Federal Ministry of Power and the Federal Ministry of Labour in a bid to resolve a dispute emanating from the staff of the PHCN over unpaid insurance claims referred the matter to BPE who advised that the claim be paid from the proceeds of the privatized PHCN.
- 3) The alleged fraud and corruption was perpetrated by convincing the National Council on Privatization (NCP) to approve the disbursement of the funds.
- 4) That the National Council on Privatization (NCP) during its third meeting held on 4th August 2014, recommended the release of N27,188,232,208.20 to Great Nigeria Insurance Plc as settlement of insurance claim which the President approved.
- 5) Based on the above, on the 10th December 2014, the sum of N26,236,594,986 was released to Bestworth Insurance Brokers Ltd of 415 Ibadan Street, Kabba Road, Kaduna.
- 6) The EFCC has frozen about N6.8 billion in more than nine accounts and seized a N585 million property from a former Chief of Staff in respect of this alleged fraud and corruption.
- 7) Bestworth Insurance Brokers Limited maintains a corporate standard current Acc. No. 1771645118 with Skye Bank Plc; Ac No. 0025251085; 0025860162; 0025872242 with Unity Bank and Ac. No 1040199787, 10052599665, 05102001142, 107102000361; 10440359482 with Keystone Bank Plc.<sup>15</sup>
- 8) An order has been obtained from a court of competent jurisdiction to freeze these accounts to aid recovery by the investigators. We were unable to access official copy of the order, not being within the scope of this study.
- 9) Investigation established a direct link between the recovered vehicles and the N300 million paid to Dilly Motors Limited.
- 10) A credit balance of N2,004,846,443.05 traced to Bestworth Insurance Brokers Ltd Skye Bank Acct No: 17711645118 has been frozen and forfeiture proceedings initiated for the purpose of full recovery. Other transfers made to accounts of Bestworth Insurance Brokers Ltd domiciled with Unity Bank Plc were also traced, and the sum of N2,507,000,00 found in the accounts were frozen for possible recovery.
- 11) Former Permanent Secretary in the Ministry of Power, Ambassador Godknows Boladei Igali, □ has denied ownership of the 47 brand new vehicles forfeited to the Federal Government.

<sup>15</sup> See "Revealed: Seized 47 SUV's, 100 Motorcycles bought for Johnathans Campaign, Bought With Insurance Fund For Dead PHCN Workers Sahara Reeporters<http://saharareporters.com/2016/12/30/revealed-seized-47-suvs-100-motorcycles-bought-jonathan%E2%80%99s-campaign-bought-insurance-funds>.

- 12) According to the former permanent secretary, the 47 vehicles were mostly buses and hiluxes and are left-overs from the vehicles bought for the defunct Goodluck Jonathan/Namadi Sambo Campaign Organization.<sup>16</sup>

**Recommendations:**

- 1) The development is worrisome as persons entrusted with the keys to the nation’s treasury apparently conspired amongst themselves to loot helpless citizens and the families of the deceased employees of PHCN of their much-needed benefits.
- 2) The fraud and corruption should be thoroughly and transparently investigated and never allowed to be swept under the carpet.
- 3) Mr. Igali should be brought to justice for his alleged crime irrespective of the status of his backers.
- 4) The researcher had earlier communicated his interest and desire to personally collaborate in ensuring that Dr. Igali is prosecuted for this alleged fraud and corruption.

**CASE NO. 3:**

***ALLEGED MISAPPROPRIATION OF MONEY MEANT FOR RURAL ELECTRIFICATION AGENCY (REA) FUND BY FORMER SENATE COMMITTEE CHAIRMAN ON POWER, SENATOR NICHOLAS YAHYAH UGBANE AND HIS HOUSE OF REPRESENTATIVES COUNTERPART HON. NDUDI ELUMELU AND OTHERS***

**Issues:** Whether former Senate Committee Chairman on Power, Senator Nicholas Ugbane and his House of Representatives counterpart Hon. Ndudi Elumelu allegedly misappropriated N5.2 billion of the Rural Electrification Agency’s fund.

**Facts:** The duo, Elumelu and Ugbane were accused of misappropriating N5.2 billion meant for Rural Electrification Agency fund in their capacities as Chairman, House Committee on Power and Chairman Senate Committee on Power respectively. They were allegedly involved in influencing procurement processes to obtain undue advantage in contract award in Rural Electrification Agency.

**Findings: *Our research reveals the following:***

- 1) That duo allegedly colluded in misappropriating over N10 billion public funds from the account of REA. The research also established, based on evaluation and analyzing documents, a prima-facie case of misappropriation of unspent funds at the end of the year instead of returning same to the treasury.

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<sup>16</sup> See “The Forfeited 47 SUVs not mine, says IGALI, Ex-Permanent Secretary P.M. Express <http://pmexpressng.com/forfeited-47-suvs-not-mine-says-igali-ex-permanent-secretary/>

- 2) Alleged misappropriation of N500million to buy houses; diversion of REA’s funds; flouting of government’s rules on award of contracts and award of fictitious and unnecessary contracts without following due process.
- 3) Senator Ugbane was one of the members of the National Assembly that initiated the Grid Extension and Solar Electrification contracts and inserted same in the 2008 budget of the Rural Electrification Agency.<sup>17</sup>
- 4) That the said Grid Extension and Solar Electrification contracts were apparently used as conduit pipes with which funds of the Rural Electrification Agency were siphoned and awarded to companies either not prequalified to be awarded the contract or were phony or non-existing companies.
- 5) Former Managing Director, Rural Electrification Agency, Engr. Samuel Ibi Gekpe admitted in his statement, contained in the proof of evidence, that staff of REA were shown the sites for the purported solar-based projects in Sen. Ugbane’s constituency, in Kogi State by the Senator’s staff, stressing that the Senator showed heavy interest in the companies that won the contracts for the purported Grid Extension and Solar base projects.
- 6) In a ruling given on 24th of March, 2012 the Court released the law makers and dismissed the charges brought against them by the EFCC based on the fact that there was no prima facie case established against them.
- 7) The other seven who were prosecuted alongside the duo are the permanent secretary in the ministry of power, Abdulahi Aliyu; the Managing Director, REA, Samuel Gekpe, Simon Nanle, Lawrence Orekoya; Abdulsamad Jahun; Kayode Oyedeji, Igwe Paulinus, and Jibo Mohammed.<sup>18</sup>

**Recommendations:**

1. The REA scandal should be revisited and thoroughly investigated and competently prosecuted. The case was muddled-up or apparently compromised.
2. The Legislators should never again be allowed to manipulate the award of electricity contracts or cite projects in their constituencies under the misplaced guise of “Constituency Project.”
3. The bidding and award of contracts processes under the REA should be streamlined and made more transparent.

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<sup>17</sup> See Yemi Oke “Energy Resources for National Development: Options for Socially Sustainable Electricity Generation, Transmission and Distribution in Nigeria” (2015) Vol. 3 No. 1, UNILAG Journal of Humanities (UJH), at 134-146. See also “REA Scam: How Elumelu, Two other Legislatures regained freedom” Daily Trust Newspaper <https://www.dailytrust.com.ng/daily/index.php/law/138-rea-scam-how-elumelu-two-legislatures-regained-freedom>.

<sup>18</sup> See “EFCC Accuses Elumelu, Ugbane of stealing over N10BN” The Nigerian Voice <https://www.thenigerianvoice.com/news/27134/efcc-accuses-elumelu-ugbane-of-stealing-over-n10bn.html>

4. The Federal Government should back-down from Rural Electrification initiatives and allow States to undertake rural electrification through their respective Local Governments and Development Areas.
5. The funds designated or earmarked for rural electrification should be channeled through the States in line with Decentralized Energy Options (DEOPs) model, and strictly monitored.<sup>19</sup>

#### **CASE NO 4:**

#### ***OUTRAGEOUS SALARIES RECEIVED BY SOME MEMBERS OF THE ABUJA DISCO***

**Issues:** Whether or not some members of the Abuja Disco fraudulently and corruptly received outrageous salaries compared to their counterparts.

**Facts:** A major labour crisis unfolded at the Abuja Electricity Distribution Company over an alleged fraudulent allocation of outrageous salaries and perks to a few officials. While a privileged few drew as high as N36 million a month from the public liability company that is operating on deficit, majority of equally qualified and even more critical staff absorbed from the previous government-owned Power Holding Company of Nigeria, PHCN, allegedly received peanut.

After the privatization of PHCN, the Nigerian government retained substantial stakes in the distribution companies, including the Abuja DISCO which means the government is entitled to part of the profit. But this must happen only after the operation cost of the company, comprising overhead and personnel cost, are deducted. Surprisingly, for about four years, the company recorded only losses instead while at the same time paid outrageous salaries to a select few.

**Findings:** The following are our findings in respect of this case:

- 1) The highest paid director takes home N36 million a month, while a staff with Ordinary National Diploma, OND, takes home as high as N1.9 million monthly. The select few earn jumbo perks, majority of the key staff retained from PHCN are paid peanuts – between N50,000 to N150,000.<sup>20</sup>
- 2) The company’s financial statement prepared by KPMG, as at December 31, 2014, the Abuja Electricity Distribution Company’s revenue increased from N36.01 billion in 2013 to N48.1 billion. Yet, the company declared a higher loss of N25.61 billion in 2014, up from N13.37 billion in 2013. Notwithstanding the loss, the company’s administrative expenditure nearly doubled – from N13.67 billion in 2013 to N24.93 billion in 2014.

<sup>19</sup> Supra note.

<sup>20</sup> See “Investigation: Abuja Electricity boss’ N36million monthly pay, others tear apart firm” Premium Times <http://www.premiumtimesng.com/investigationspecial-reports/191578-investigation-abuja-electricity-boss-n36million-monthly-pay-others-tear-apart-firm.html>.

- 3) The highest paid director in the company (believed to be the Managing Director), who received N5.67 million as salary monthly in 2013, had his pay reviewed by over 640.7 percent, to N36.33million.
- 4) Six directors who received between N3.5million and N4million a month in 2013 also got a raise to between N145 million and N150 million annual pay. Within the year, N719.7million was also spent on "salaries and other short-term benefits to key management personnel compensation.
- 5) After the privatization of PHCN, about 3,601 former workers of the defunct company were re-engaged on November 1, 2013, by the new firm. The workers were retained mostly as casual staff. The Abuja distribution company recruited another set of employees in 2014, either as permanent or contract staff.
- 6) The company's approved salary structure ranged between N47, 186.80 for the least paid staff on grade level JS1 step 1, and N1.137.069.17 for the highest paid official on grade level EG1. This payroll reflects a huge disparity in favour of the new employees.
- 7) Some of the new employees lack technical competence and practical experience, but they were made to pocket between N1.2 million and N1.9 million per month. Their colleagues from PHCN receive between N50,000 and N200,000 per month, irrespective of qualification and experience. Only a few of the older workers of the retained PHCN staff earn N200,000 and above.
- 8) Abuja Electricity Distribution Company is one of the 11 successor power distribution companies (DISCOs) of PHCN. It was created to undertake electricity distribution activities and related business in Niger, Kogi and Nasarawa states and the Federal Capital Territory.
- 9) The company is owned 60 percent by KANN Utility Company Limited, a joint venture between Xerxes Global Investment Ltd, CEC Africa Investment Ltd and Abuja Electricity Distribution Plc. The Nigerian Government controls 40 percent of the company through the Bureau of Public Enterprises, which has 32 percent, and the Ministry of Finance which owns eight percent.
- 10) Prior to the power sector privatization exercise, BPE had disengaged over 4,000 former PHCN employees on October 31, 2013, as part of the winding down process. The AEDC was later allowed to re-engage about 3,601 of the workers for an initial contract period of six months.
- 11) Details of the company's financial statement showed that at the completion of the re-engagement process, 3,658 workers were on the company's payroll in 2013, consisting of Administration (845), Finance (399), Marketing (1,116) and Technical (1,298). The figure, however, fell to about 2,243 in 2014, with Administration having 320, Finance (279), Marketing (859) and Technical (785).
- 12) Apart from discriminatory salaries, the partly-publicly owned AEDC is also allegedly engaged in Consulting house of fraud and corruption.



- 13) Our research reveals monumental fraud and corruption in the company's payroll traceable to an agency, TBS Consulting, hired to handle staff recruitment in 2014.
- 14) TBS consulting was hired by the Executive Director, Human Resources and Corporate Affairs, Tolulope Mark-Ojie.
- 15) Ms. Mark-Ojie hired Yusuf Mosunmola, one of the directors and a key member of the TBS Consulting management team, as Head, Organisational Development & Learning for AEDC, and then allowed her to continue to function simultaneously in both positions.
- 16) As director of the consulting firm, Ms. Mosunmola was in charge of the entire recruitment process for all categories of employees in AEDC.
- 17) A director revealed in a document that all the contract staff recruited by TBS Consulting for AEDC had "special arrangements" with Ms. Mark-Ojie on how the salary penned against their names would be split. Quoting:
 

*Not all the salary actually gets into their (contract staff's) pockets," Mr. Okaisabor explained. "The contracting firm has some personal arrangement to get part of the money paid to them as salaries by the company. The practice is that the contracting firm gets the money from the company and pays the staff. Most of the names found on the company's payroll are either non-existent or belong to persons who work directly for Madam's (Ms. Mark-Ojie) other companies.<sup>21</sup>*
- 18) The staff said the special arrangement must have been in connection with allegations that at least 60 percent of the salaries credited to most of the high earners on the company's payroll every month goes to Ms. Mark-Ojie.
- 19) Some of the names on the AEDC payroll that raised eyebrows were those of two contract staff hired in 2014 and posted to the Lokoja District office. They include Akanku Olusegun, a National Diploma holder in Electrical, and Higher National Diploma (HND) (in view), who is paid N823,764 per month.
- 20) Adesulu Adebayo, another National Diploma holder in Electrical holder in the same office, who takes home N764,097.60 salary every month. Curiously, several of their colleagues in various district offices with either similar qualifications or superior university degrees of many years' standing, are paid a paltry N50,000.
- 21) Ms. Mosunmola brought in from TBS Consulting, remains one of the highest paid officials, who pockets a whopping N1.84 million pay every month. This is in addition to the N27million and another N10 million paid to her as furniture allowance and accommodation respectively, aside from the obvious challenge of conflict of interests by working for AEDC and TBS Consulting simultaneously.

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<sup>21</sup> Ibid @ pg.22

- 22) Some top AEDC officials were invited by the Independent Corrupt Practices and Other Related Offences Commission (ICPC) for questioning following a petition by some aggrieved workers.
- 23) Those invited included the Managing Director; Executive Director, Human Resources; Head of Finance/Financial Controller and Principal Manager in charge of Procurement.
- 24) The ICPC’s invitation letter had asked the affected AEDC top officials to provide for examination the statute/law/enabling Act establishing the company; the company’s nominal roll since 2013, and certificate of compliance in recruitment process from the Federal Character Commission.<sup>22</sup>
- 25) The officials were also asked to furnish the Commission with the company’s payroll for June 2015; company policy; list of contracts awarded from January 2013; statement of Account; statement of salary accounts as well as recruitment report detailing advertisements, short listings, result sheets/scores since 2013.
- 26) Director General of BPE, who is a member of the Board of AEDC, representing the Federal Government, said in a terse response to the reporter’s inquiry that he was not aware of the activities of Ms. Mark-Ojie and Ms. Mosunmola.
- 27) Both were reported to have been issued letters and asked to proceed immediately on suspension after they were named in the staff recruitment scandal.<sup>23</sup>

**Recommendations:**

- 1) The recruitment scandal and corruption-induced, jumbo pay to workers of the AEDC should be thoroughly and transparently investigated and report of the investigation widely published. Anyone found to be responsible for corrupt acts should be prosecuted and any corrupt funds fully recovered.
- 2) Civil society groups should formally demand the status of the investigation or probe by the ICPC and to demand that progress be made in the matter.
- 3) The Federal Government should consider fully divesting its stakes in the power sector and allow for efficient, decentralized sector governance by Federal and State governments, as appropriate, in line with the provisions of Second Schedule, paragraph 13 and 14 of the Constitution of the Federal Republic of Nigeria 199 (as amended).<sup>24</sup>

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<sup>22</sup> Ibid.

<sup>23</sup> See “Abuja Electricity Suspends two officials after Premium Times Exposure on Recruitment Scam” Premium Times <http://www.premiumtimesng.com/news/top-news/191684-abuja-electricity-suspends-two-officials-after-premium-times-expose-on-recruitment-scam.html>

<sup>24</sup> See Yemi Oke on DEOPS, supra note 1.

**CASE NO 5:**

***ATTEMPT MADE BY NERC TO HAVE THE ELECTRICITY TARIFF INCREASED***

**Issues:** This segment investigated the attempt of the NERC, being the regulators, to increase electricity tariff while a suit seeking to refrain the act was pending at the Federal High Court.

**Facts:** A consumer right activist sued the NERC upon making it public that it wanted to increase the electricity tariff. The action was instituted against them for the intended act at the Federal High Court sitting in Lagos, presided over by Hon. Justice M. B Idris. But while the action was pending in Court and a subsisting restraining order obtained against them, NERC still went ahead and increased the electricity tariff. The matter was filed as **Suit No: FHC/L/CS/768/2015 Toluwani Yemi Adebisi v Nigerian Electricity Regulatory Commission.**<sup>25</sup>

**Findings:**

- 1) Despite the epileptic power supply provided to the citizens and the outrageous billing that follows, the NERC increased electricity tariff while an interlocutory order<sup>7</sup> stopping it was pending in a suit filed specifically for the purpose of stopping the tariff increase.
- 2) The Commission (NERC) meant to regulate the relationship between the electricity generators; distributors and consumers would appear to have taken sides with the operators (generators and distributors).
- 3) Justice Mohammed Idris of the Federal High Court in Lagos had annulled the increment while delivering judgment in a suit filed by a human rights lawyer, Mr. Toluwani Yemi Adebisi, against NERC and DISCO companies.
- 4) The Judge described NERC's action as procedurally ultra vires, irrational, irregular and illegal. Justice Idris, while relying on Sections 31, 32 and 76 of the Electricity Power Sector Reform Act (EPSRA) 2005, held that, "NERC acted outside the powers conferred on it by the Act and failed to follow the prescribed procedure."<sup>26</sup>
- 5) The Judge pointed out that the "NERC has not shown that it acted in due obedience to the prescribed procedures and that there is no evidence that NERC complied with Section 76(6) (7) and (9) of the EPSRA Act."
- 6) The defiance stance of NERC was also pointed out in the Judgment of the Court, thus: "It is clear from the affidavit evidence that the increase in tariff was done by NERC in defiance of the order of this court made on May 28, 2015 which directed parties in the case to maintain the status quo."<sup>27</sup>

<sup>25</sup> Official, Certified True Copy of the Judgement in this Suit was applied for and received from the Registry of the Federal High Court sitting in Lagos.

<sup>26</sup> For details on the judgement of Hon. Justice Mohammed Baba Idris, sss Suit No: FHC/L/CS/768/2015 Toluwani Yemi Adebisi v Nigerian Electricity Regulatory Commission See also "Court Annuls Hike in Electricity Tariff" This Day Newspaper <https://www.thisdaylive.com/index.php/2016/07/14/court-annuls-hike-in-electricity-tariffs/>

<sup>27</sup> Ibid. See also "Court Nullifies Increment in Electricity Tariff" Daily Trust <https://www.dailytrust.com.ng/news/general/story/155214.html>

- 7) According to Justice Idris, the tariff increase from July 1, 2015 was done in breach of the 'status quo' order. The Judge also declared that the NERC's action was clearly hasty, reckless and irresponsible. "This country is in a democracy where the rule of law shall prevail over impunity or whimsical desires. Anything to the contrary will be an invitation to anarchy. It is the law that what is done officially must be done in accordance to the law."
- 8) According to the Judge: "Investors are free to do business in Nigeria but they shall abide by the law of this country. Nigeria is not a kangaroo State. Nigeria is not a banana republic. It is intolerance and extremely dangerous for any branch of the Executive to create a posture it may not obey certain orders of the court. That is tantamount to Executive recklessness which will lead to lawlessness."<sup>28</sup>
- 9) The judge declared that "the increment in electricity tariff which took effect after the institution of this action and while a restraining order is subsisting is hereby declared illegal and same is hereby set aside."<sup>29</sup>
- 10) He also directed NERC to reverse to the status quo while restraining it from further increasing electricity tariff.
- 11) Similarly, following SERAP's intervention, two UN special rapporteurs had ruled in November 2013 in the Joint Letter of Concern sent to the government of former President Goodluck Jonathan that "access to electricity (and regularity of supply) is a significant problem in Nigeria," and raised eight questions for the government to answer within 60 days."
- 12) The letter with reference No NGA 5/2013 and dated 26 November 2013, and signed by two special rapporteurs expressed concerns that "at the end of 2012, Nigeria with a population of about 160 million people only generated about 4,000 megawatts of electricity, which is ten times less than some other countries in the region with less population."
- 13) The UN special rapporteurs argued that "all beneficiaries of the right to adequate housing should have sustainable access to energy for cooking, heating and lighting. The failure of States to provide basic services such as electricity is a violation of the right to health."
- 14) The rapporteurs Ms. Magdalena Sepúlveda Carmona, Special Rapporteur on extreme poverty and human rights and Ms. Raquel Rolnik Special Rapporteur on adequate housing wanted answers to the following questions: Are the facts alleged by SERAP accurate? What kind of impact assessments were conducted to gauge the potential impact of the electricity tariff increases on the human rights of people living in extreme poverty in Nigeria? If so, provide details. Did public consultations take place, including with potentially affected persons and especially people living in extreme poverty? If yes, please give details of the dates,

<sup>28</sup> See "Court Orders NERC To Reverse Increase in Electricity Tarrif" Channels Television  
<http://www.channelstv.com/2016/07/13/court-orders-nerc-to-reverse-increase-in-electricity-tariff/>

<sup>29</sup> Ibid.

participants and outcomes of the consultations. Was accessible and culturally adequate information about the measure actively disseminated through all available channels prior to consultation? What measures have been put in place to ensure that the human rights of people living in extreme poverty in Nigeria will not be undermined by the increase in electricity tariffs? In particular, what measures are in place to ensure that they can enjoy their right to adequate housing, including sustainable access to energy for cooking, heating and lighting, which is a component of this right? Are there any accessible independent review or complaint mechanisms in place, such as administrative mechanisms through the NERC Power Consumer Assemblies (PCA), available for individuals to challenge the classification of customers and/or the corresponding tariffs? If such mechanisms exist, please give details. What mechanisms exist to ensure transparency, accountability and regular monitoring over the use of tariff revenue within the government? What mechanisms are available to address allegations of corruption, or other complaints? What mechanisms are in place to monitor and regulate service provision by private actors, as required under the State’s duty to protect? Please describe any existing policies or measures aimed to promote affordability of electricity provision for people living in extreme poverty. Are any subsidies already available and implemented? What is being done to mitigate the hardship imposed by increased tariffs, especially for persons living in poverty?

- 15) The special rapporteurs also wanted answers to the alleged “mismanagement throughout the privatization process, and around 3.5 billion USD that has been mismanaged annually over the last ten years, and a total of 16 billion USD released to improve electricity supply in the country that has not been properly accounted for. The Business Units which have taken over from the PHCN participate in large-scale corruption such as graft from exorbitant consumer bills, rejection of payment to independent third parties such as banks to keep management of funds secret, unprecedented disconnection of consumers’ power lines, general bribery and fraud amongst staff, adding up to over NGN 1 billion extra charged to consumers annually.”
- 16) According to the special rapporteurs, “The increases in electricity tariffs, problems with measuring electricity usage, lack of improvement in the quality of the service and lack of transparency in the use of funds, reportedly disproportionately impact on those with little disposable income, as well as exacerbate the scarcity of energy supply for those who already cannot afford electricity even if connected to the grid.”
- 17) The special rapporteurs pointed to Nigeria’s international obligations “under various international human rights instruments and in particular: the International Covenant on Economic, Social and Cultural Rights (ICESCR, acceded to by Nigeria in 1993), the International Covenant on Civil and Political Rights (ICCPR, ratified by Nigeria in 1993), the Convention on the Elimination of All forms of Discrimination against Women (CEDAW, ratified by Nigeria in 1985) and the African (Banjul) Charter on Human Rights and People’s rights (ratified by Nigeria in 1983). The human rights framework does not dictate a particular form of service delivery and leaves it to States to determine the best ways to implement their human rights obligations. However, the State cannot exempt itself from its human rights obligations when involving non-State actors in service provision. On the contrary, when non-State actors are involved in service provision, there is a shift to an even stronger focus on the obligation of the State to protect.”

- 18) The special rapporteurs further argued that, “As part of its obligation to protect, the State must safeguard all persons within their jurisdiction from infringements of their rights by third parties. Involving non-State actors in service provision requires, inter alia, clearly defining the scope of functions delegated to them, overseeing their activities through setting regulatory standards, and monitoring compliance. Given the fact that in Nigeria electricity provision has been outsourced to the private sector, the obligation remains for the Nigerian government to ensure that private sector actions do not result in violations of the right to an adequate standard of living.
- 19) This landmark ruling by the special rapporteurs has not yet been complied with by the Federal Government.

**Conclusion/Recommendations:**

- 1) It is an act of apostasy for government to ignore the provisions of the law and the necessary rules meant to regulate matters.
- 2) The Federal Government should fully comply with the orders of the court pending the determination of any appeal.
- 3) The Federal Government also fully with the ruling by the two special rapporteurs and fully respond to all of the questions raised by the special rapporteurs.
- 4) Civil society groups should collaborate in pursuing the appeal with a view to sending strong signals against power sector regulators and capitalist players that impunity and capitalists’ collusion against the teeming masses by coercing them to pay more and higher tariffs for “darkness” will no longer be condoned.

**CASE NO 6:**

***THE QUESTIONABLE \$23.6M MANITOBA DEAL WITH THE TRANSMISSION COMPANY OF NIGERIA (TCN)***<sup>30</sup>

**Issues:** Whether or not the Manitoba deal had elements of corruption and corrupt practices in the structuring and operation of the agreement with TCN.

**Facts:** The Manitoba had been controversial from the onset.<sup>31</sup> The House of Representatives on 16th June, 2016 mandated its House Committee on Power to investigate the contract entered between the Government of Nigeria and Manitoba, owing largely to allegations of Manitoba’s inability to meet its key performance indicators (KPI) under the management contract and failure to justify the humongous sums of money it has drawn in expatriate emoluments.<sup>32</sup>

<sup>30</sup> See generally and particularly, Yemi Oke, “Manitoba Hydro and Electricity Undertakings in Developing Countries: The Case of Nigeria” (2012) 36: 1 Manitoba Law Journal, at 37-65.

<sup>31</sup> Ibid.

<sup>32</sup> See “Nigeria accuses Manitoba of Failure, Orders TCN to suspend Further Payment” Nigeria Electricity Hub <http://www.nigeriaelectricityhub.com/2016/10/28/nigeria-accuses-manitoba-of-failure-orders-tcn-to-suspend-further-payment/>.

**Findings:**

- 1) The government of Nigeria handed over the transmission company to a Canadian company Manitoba, to manage and under a management service contract of over \$200 million.<sup>33</sup>
- 2) The deal signed with Manitoba Hydro International Nigeria Limited to manage the Transmission Company of Nigeria failed to add any value to the Nigerian power sector in its five years of operation despite huge expenses.
- 3) The TCN had honoured financial requests from Manitoba running to hundreds of millions of dollars in contract payments without recourse to any budgetary procedures or formalities and control by any institution.
- 4) The TCN has been unable to install an electricity tower testing facility in the country despite the Technical Services Agreement with Manitoba Hydro. Installing the facility would have been a huge revenue generating facility on the continent of Africa.
- 5) According to the House of Reps Committee:  
*"We can see that Manitoba has not added value to our system when they were here, our capacity was nowhere near where we are now but since they left, Nigerian engineers that understudied them have been in charge and are responsible for raising our capacity to 5,500mw."<sup>34</sup>*
- 6) The deal also aided the TCN to perpetrate capital flight by not encouraging local contractors in its business activities.
- 7) Findings also show that the company (TCN) could not execute most of its approved 44 projects after having 50 percent of its N30 billion 2016 budget released to it. Funds were released from Eurobond.
- 8) \$23.6 million allegedly paid to Manitoba Hydro International (MHI) of Canada to manage the Transmission Company of Nigeria (TCN) would appear to be without due process.<sup>35</sup>

**Recommendations:**

- 1) The Manitoba deal is shrouded in secrecy and essential details of the deal unknown to Nigerians.
- 2) A public-oriented audit should be urgently carried out on the state of affairs of the TCN two years before and after the Manitoba deal.
- 3) The outcome should form basis for further action and charges against anyone suspected to have engaged in corrupt practices and any corrupt funds fully recovered.

<sup>33</sup> See Yemi Oke on Manitoba Deal, *supra* note 29.

<sup>34</sup> *Ibid.*

<sup>35</sup> "Nigerian Lawmakers begin probe of \$23.6m TCN Contract to Manitoba" Sweet CrudeReports <http://sweetcrudereports.com/2016/11/25/nigeria-lawmakers-begins-probe-of-23-6m-tcn-contract-to-manitoba/>

## CASE NO 7:

### **MELAYE VS. MANITOBA: RE-ALLEGATION OF N13.8BN FRAUD**

**Issues:** Whether Manitoba Hydro International Nigeria Limited abused Public Procurement Act and diverted funds amounting to N13.8 billion.

**Facts:** Chairman of the Senate Committee on the Federal Capital Territory Senator Dino Melaye in his petition dated 28th July, 2016 called on the Economic and Financial Crimes Commission, EFCC, to probe Manitoba Hydro International Nigeria Limited for alleged abuse of Public Procurement Act and diversion of funds amounting to N13.8 billion.<sup>36</sup>

- 1) The petition was submitted to the Director of Public Affairs of the EFCC. The petition alleged that the company was awarded a management contract to oversee the Transmission Company of Nigeria.<sup>37</sup>
- 2) The petition alleged over-inflation of contract. The cost was initially \$30 million and was subsequently renewed for one more year at the cost of \$5.2 million.
- 3) The petition also alleged that the company was involved in splitting of contract to avoid TCN Tenders Board and Ministerial Tenders Board as observed in the case of contract of repairs of telecommunications equipment and power stations: 340kv substations (S1 and S2) which amounts to N247,061,796 and N248,859,350 respectively.<sup>38</sup>
- 4) The petition alleged the failure of the company to ensure probity, accountability and transparency in the management of the TCN, as well as its failure to audit TCN's account since assumption was in contravention of the terms of contract signed between the company and the BPE.
- 5) The petition also alleged irregularities in the Market Operations Sector on the ground that the management contract requires the company to expand the TCN's wheeling capacity to 6,000 megawatts, which was never realised. The TCN's performance under the management of the company has fallen so low that the company inherited 4,000 megawatts and has now dropped to 1,500 megawatts presently.
- 6) Melaye, therefore, called on the anti-graft agency to launch an investigation into the activities of the company, while urging the Federal Government to prohibit the company due to several contraventions of the BPE Act 2007.

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<sup>36</sup> See "Melaye drags Manitoba to EFCC over alleged N13.8bn Fraud" Vanguard Newspaper <http://Www.Vanguardngr.Com/2016/08/Melaye-Drags-Manitoba-Efcc-Alleged-N13-8bn-Fraud/>

<sup>37</sup> See "Sen. Melaye reveals breakdown of alleged N13.8BN Fraud, drags Manitoba to EFCC" Yaw Naija Entertainment <https://yawnaija.tv/sen-melaye-reveals-breakdown-of-alleged-n13-8bn-fraud-drags-manitoba-to-efcc/>

<sup>38</sup> Ibid.



**Findings:**

- 1) The petition has some merit in it, but has yet to be thoroughly investigated.

**Recommendations:**

- 1) This is yet another unresolved allegation on the Manitoba Deal. This further underscores the need to put the power sector right by digging deep into the circumstances of the deal.
- 2) The Manitoba deal and TCN's operations should be scrutinized for public good by credible civil society groups.
- 3) The outcome of credible scrutiny by socially responsive civil society groups may form basis of new, independent probe and subsequent prosecution.
- 4) The outcome of any investigation should serve as useful tools and guides for repositioning the TCN for better efficiency of its statutory functions, and any prosecution.

**CASE NO 8:**

***CORRUPTION AND MANIPULATION IN THE PRIVATIZATION OF PHCN***

**Issues:** Whether there was corruption in the privatization process of PHCN.

**Facts:** Opinions differ on this issue. The following findings were made:

- 1) The Federal Government resolved to privatize the sector owing to the need to ensure efficiency and effective performance of the sector through enacting the Nigerian Electric Power Sector Reform Act, 2005.<sup>39</sup>
- 2) This led to the proscription of the National Electric Power Authority (NEPA) and subsequently the creation of Power Holding Company of Nigeria (PHCN), which was unbundled into 18 successor companies, comprising six generation companies (GENCOS), 11 Distribution companies (DISCOS) and Transmission Company of Nigeria.
- 3) Majority equity stakes of the GENCOS and DISCOS were sold in 2013, while ownership of the TCN was retained by the Federal Government under management concession.
- 4) The bidding and award processes were not sufficiently transparent.
- 5) The Labour, Electricity workers and other stakeholders had objected to the privatization and sale of those national assets.

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<sup>39</sup> See generally Yemi Oke, "The Pathway to Energy Liberation in Nigeria: Lessons for Namibia" in Oliver C. Ruppel & Bernd Althusman (Eds.) Perspectives on energy security and renewable energies in sub-Saharan Africa-practical opportunities and regulatory challenges (Macmillan Education Namibia: Windhoek, 2015) at pages 57-80.

- 6) The privatization of power assets has already entered into major crises as anticipated ranging from illiquidity, load rejection, metering, corrupt practices, lack of gas to power the stations, disinterestedness of investors, lack of injection of fresh capital after acquisition of financing, tariff interest, consumer apathy, foreign exchange hostilities, and sundry issues.
- 7) Most of the companies that won the bids had no prior experience in the power sector and little or no capacity at all to manage the sector. The privatization of PHCN would appear to have yielded the country total darkness.<sup>40</sup>
- 8) Gains of privatization were lost through alleged corruption, manipulation of rules and disregard to extant laws and lack of transparency in the exercise.
- 9) The lofty goals of privatization were marred by the sale of the sector to preferred bidders that could not pay the bid value on the sale, instead the PBE encouraged the deferment of payment and restructuring of payment terms in contravention of bidding rules to the disadvantage of other bidders.
- 10) Most of the acquiring companies only managed to put together acquisition finances without potent capacity to source or attract post-acquisition funding to upgrade the generation and distribution infrastructure.
- 11) Government has had to further intervene by way of funds ejection, guarantees and assurances despite privatizing those assets.<sup>41</sup>

### **Recommendations:**

- 1) There is need to probe, without reversing, the power sector privatization with a view to doing things the right, fair and just way.
- 2) Ownership of public stakes of 40% in those entities should be revisited and further privatized to avoid using government/public resources to further subsidize private entities.<sup>42</sup>

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<sup>40</sup> On power sector privatisation see Yemi Oke, "NIGERIAN ELECTRICITY LAW AND REGULATION". LawLords Publications. Abuja/Lagos: March, 2013, Yemi Oke, "NIGERIAN ENERGY AND NATURAL RESOURCES LAW (NOTES & MATERIALS)": Princeton Publishers. Lagos: June, 2016, Yemi Oke, "ESSAYS ON NIGERIAN ELECTRICITY LAW": Princeton Publishers. Lagos: June, 2016. See also "Beyond Power Sector Reforms: The Need for Decentralised Energy Options ('DEOPs') for Electricity Governance in Nigeria" (2012) 18: 1 The Nigerian Journal of Contemporary Law, at 67-92.

<sup>41</sup> "Privatization of PHCN a Fraud, Electricity Workers Tell Buhari" Vanguard <http://www.vanguardngr.com/2015/05/privatisation-of-phcn-a-fraudelectricity-workers-tell-buhari/>

<sup>42</sup> See Yemi Oke, "Right-Based Approach to Energy Resource Governance in Nigeria" (2013) 2 The Nigerian Journal of Public Law, University of Lagos, at 53-78.

## **OTHER ALLEGATION OF CORRUPTION AND/OR LACK OF TRANSPARENCY IN THE NIGERIAN POWER SECTOR**

### **CASE NO 9:**

#### ***THE NIPP AND OVER-INFLATED CONTRACTS AND OTHER DEALS***

- 1) Findings reveal that the transparency of award and execution of the NIPP contracts are in serious doubts. The Obasanjo's administration spent \$10 billion on NIPP with no results in terms of increase in power generation. This is distilled from the testimony of the Former President's Chief Economic Adviser –Taminu Yakubu, while testifying before the Senate probe committee.
- 2) The probe committee found that \$13.278,937,409.94 was expended on the power sector in eight years while unfunded commitments amounted to \$12 billion.
- 3) The report of the probe committee alleged that some of the companies that were awarded contracts were not registered with the Nigerian Corporate Affairs Commission and that while many of the contractors collected money and abandoned the contract, others did a very poor work in execution of their contract.
- 4) The Government had depended on unbudgeted money to execute a multi-billion NIPP contracts. The Late President Yar'adua suspended payments for NIPP due to a suit by the Revenue Mobilizations and Fiscal Commission which challenged the propriety of using money from the excess crude account to finance NIPP.
- 5) The leading company for the execution of this project, Siemens was blacklisted and its supply contract cancelled in December 2007 by the late President Yar'Adua's Government over allegation of offering \$14 million bribe to government officials.

### **CASE NO. 10:**

#### ***REPORT OF THE ELUMELU HOUSE COMMITTEE ON POWER SECTOR FUNDING***

- 1) The report of the House of Representative Committee that probed government spending in the power sector from 2000 to 2007 was termed controversial and was neither discussed by the House of Representative nor accepted by the government.
- 2) The report of the Elumelu House Probe Committee accused 21 persons and 36 companies of subversion of government policy on due process which gave rise to extension of contract beyond its original size, inflation of costs, duplication of contract awards and general lack of performance.
- 3) The crisis of confidence between the National Integrated Power Projects (NIPP) and the Niger Delta Power Holding Company (NDPHC) as the Special Purpose Vehicle (SPV) is also noted to have undermined the success of the power sector.

- 4) The power tussle and lack of proper coordination among the Ministry of Power and Steel and the agencies floated by the federal government, including PHCN, NDPHC, and the officials of NIPP who were carved out from the nucleus of PHCN managers, contributed to the poor execution and control of the NIPP projects because the agencies were working at cross purposes.
- 5) The report of the Elumelu Committee recommended all persons and companies accused of corruption by its report for further investigation and punishment by Economic and Financial Crimes Commission (EFCC) and Independent Corrupt Practices (and other related offices) Commission (ICPC).
- 6) Immediately the probe exercise was concluded, it became a subject of controversy. Leadership of the House of Representatives insisted that some powerful Nigerians were preventing its submission to the House by the committee and its subsequent consideration by the House, while others said that some members of the committee demanded bribe in the course of performing their oversight function.
- 7) Eventually the report of the Elumelu Committee was never discussed by the House and the whole exercise became a failed project. It was alleged that the committee investigating power sector corruption was, indeed, itself corrupt.
- 8) The members of the probe committee were accused of having collected bribe ranging from N10 million to N100 million from some of the contractors and persons who testified in the public hearing organized by the probe committee
- 9) The issues raised in the report of the probe committee were eventually undermined and matter remained unresolved.

#### **CASE NO. 11:**

##### ***UNDOCUMENTED CORRUPTION IN THE POWER SECTOR***

- 1) Metering and billing fraud: Most consumers are unhappy with their billing methodology and feel short-changed by the operators.
- 2) Billing methodology shrouded in secrecy.
- 3) Billings do not reflect actual electricity consumptions in most cases
- 4) Most if not all, officials of the DISCOs are still very corrupt and demand gratification from customers before doing the job they are paid to do.
- 5) Grand corruption against the Federal Government owner of the 40% stakes in the DISCOS, and by implications, the Nigerian masses due to non-remittance or under-remittances of the monies collected by the DISCOs.

## Other Reported Problems in the Nigerian Power Sector

In the last few weeks, the Nigerian press has been festooned with resonating and audacious headlines. Some of the prominent ones identified as relevant for this research and its findings are:

- 1) "...Power grid collapses, generation drops from 2, 243mw to zero mw-Daily Trust 1/04/16 Page 3..."
- 2) "... Nationwide darkness worsens... This Day 5/04/16 Headlines..." Daily Trust of 24/03/16 page 17.
- 3) "...NERC scores electricity companies Discos and Gencos low..." This Day of 30/03/16.
- 4) "... MDAS, Military, State and Local Governments owe Discos N58Billion..." This Day 24/02/16 Page 12 states.
- 5) "...TUC says Discos profiting from fraud and wants sale of power plants reversed..." Daily Trust of 26/03/16 Page 41.
- 6) "...Power plummets from 5,000 to 1,500 as consumers reject tariff hike as Senate and Labour Unions reject tariff increase..." In the Guardian of 3/03/16 Page 3.
- 7) "...Power operators seek \$40Billion sovereign guarantee to foreign investors to provide 20, 000 mw of electricity..." This Day 5/04/16 Page 23.
- 8) "...major gas problems are project delivery and vandalism, International Oil Companies can assist in supply of gas instead of flaring..." This Day of 8/04/16 reads:
- 9) "... Power sector lost N7.7. Billion to workers strikes in two years-Fashola..." Same This Day reads: "...Delta State Government signs MOU with U.S firm to build 500 mw power plant..." This Day of 11/04/16 reads.
- 10) "...Concerns mounts over non-reconstitution of NERC Board..." Daily Trust of 12/04/16 Page 17 reads "...Electricity firms, consumers groan as grid records 161 collapses since 2009..."
- 11) "...Fashola orders NERC to stop CAPMI metering scheme..." This Day of 26/04/16 Page 23. "...99% of electricity (3, 132mw) lost in one day...Osinbanjo. Punch Newspapers of 26/04/16..."
- 12) Perhaps the most effective and subtle headline which necessitated the publication of this article has been Kayode Komolofe's back page article in This Day of 6th April 2016 which read "...When Silence Is Not Golden..." The article questioned Nigerian consultants for failing to highlight the inefficacy of the privatization process as a panacea to the Nigerian power sector reforms.

## PART FIVE

### ADDITIONAL FINDINGS AND OBSERVATIONS

- 1) In the past 16 years, the Federal Government tried unsuccessfully to make the power sector play its role as the driver of industrialization. Despite the huge funds pumped into the sector, power generation has not gone beyond 4,500 megawatts.
- 2) The main reason why Nigeria cannot produce enough amount of energy is their over dependence on petroleum. Corruption in the Petroleum sector has negatively and significantly affected the power sector.<sup>43</sup>
- 3) The politicization of the appointment of the regulators (NERC Commissioners) is also found to be one of the reasons for corruption and inefficiency in the power sector. A number of those politicized appointment ensure people that lack requisite skills and capacity were appointed.
- 4) The research observes that power sector problems in Nigeria is also partly due to low generation, increased tariff with no correspondent increase in power supply, a distorted electricity market and inability to create a new functional power market, poor gas supply and vandalism of gas pipelines, estimated billing by Discos, insufficient meters etc.<sup>44</sup>
- 5) From the point of view of electricity regulators, the challenges lie in the creation of new electricity markets, lack of proper regulation of Gencos and Discos, lack of competition, lack of capacity building in the industry, lack of sufficient technical experts in the industry, increased tariffs, the introduction of policy nomenclatures such as multi-year tariffs and bulk traders, etc.

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<sup>43</sup> See Yemi Oke *“Comparative Appraisal of Renewable Energy Laws and Policies”* (2014) 1:1 Journal of International and Comparative Law, Obafemi Awolowo University, Ile-Ife, at 57-76. See also *“Renewable Energy: Nigeria's Solution To The Nigeria Power Need”* African Brains

<http://africanbrains.net/2012/10/31/renewable-energy-nigerias-solution-to-their-power-needs/>.

<sup>44</sup> See Yemi Oke, *“Implications and Challenges of a Privatized Power Sector In Nigeria: Perspectives to Host Community Concerns”* (2014) *the Justice Journal, Federal Ministry of Justice*, 237-263.

## PART SIX

### RECOMMENDATIONS ON APPROPRIATE INITIATIVES

#### Background to Recommendations:

Further to the above findings, analyses and evaluation of the challenges, cases, reports and others documents examined in putting together this report, this research is of the opinion that the problem with Nigeria has not always been about the law but instead the ways in which we use those laws. For the reforms to yield desired results, certain important points need to be taken into consideration.

#### Recommendations:

- 1) Weak governance and supply shortages create fertile grounds for corruption. As corruption is pervasive, combating corruption in the sector requires mutually reinforcing improvements in public governance.<sup>45</sup>
- 2) Stemming the trend of corruption in the power sector of Nigeria is a long-term process requiring sustained political commitment, changes in the incentives of stakeholders, and new standards of transparency and accountability. Holistically, it requires a paradigm shift in public governance and management of the sector.
- 3) The starting point for combating corruption could range from introducing transparency in the procurement process, to seeking expert consultation in investment decisions and enforcing accountability of public officials and utility managers, to fighting petty corruption in order to build public support.
- 4) Anticorruption strategy in the Nigerian power sector should focus on transparency and competition in procurement through public participation and independent regulatory institutions.
- 5) Attention should be focused also on petty corruption. Petty corruption in the electricity sector has not received much attention from the media and civil society organizations promoting transparency, which have tended to focus more on corruption on large-scale corruption. Because of the sheer magnitude in terms of the money involved and the number of people affected, combating petty corruption at the consumer interface of the electricity supply utility may assume more importance in some cases.
- 6) Regular financial audits should be made a mandatory requirement for all electricity companies in Nigeria whether government owned or otherwise. The audit committee should report to the board of directors, and action taken on the recommendations of the audit committee should be included in the agenda of the board meetings.

<sup>45</sup> See Yao, *supra* note 6, at 142-147.

- 7) Systemic corruption has been the cankerworm that has eroded service delivery in the power sector for the last two decades. Year in, year out, power expenses are budgeted for in the national budget, only to disappear and to be re-budgeted for the next year. Massive corruption is responsible for the non-replacement of power equipment in the last 16 years.
- 8) For proper metering, Discos must take a proper and comprehensive collation of all power consumers in their jurisdictions before issuing new meters under direct purchases or CAPMI systems. Discos need to take out time to re-number and re-classify all electricity consumers in Nigeria for the purpose of issuing new meters.<sup>46</sup>
- 9) Due process and transparency must be strengthened, in all appropriate quarters where decisions are taken on licensing, subsidy, power-purchase-agreements, operational equipment procurements and metering etc. In similar vein, efforts must be made to improve on security of lives and property and by so doing, encourage a business-friendly atmosphere for the power sector to thrive nationwide.<sup>47</sup>

#### **Recommendations on Governance and Leadership:**

- 10) Committed leadership at the top is a crucial change process required to trigger action and compliance. A “champion” for change in the power sector is desirable as core leader in the sector backed by necessary resources, to drive core anti-corruption initiatives and to build and sustain support.
- 11) Establishing good governance by an enabling legal and regulatory framework is a necessary but not a sufficient condition for fostering accountability. Combating corruption calls for a range of actions that go far beyond the passing of laws or the pronouncement of policies. It requires establishment of good governance at all levels of society. Introducing good governance in electricity-related matters amounts to inculcating a new culture among the employees, the consumers, and the general public.<sup>48</sup>
- 12) Introduction of good governance will be resisted by all who have benefited by its absence such as politicians, utility executives, utility employees, labour unions, and sections of the public. Electricity is a phenomenon of fairly recent origin to many of them, and the body of laws relating to electricity, itself an area of rapid growth. Every attempt must be made by civil society groups to instil a culture of good governance in the Nigerian power sector to avoid a repeat of the regrettable, sad experiences in the allied sector of oil & gas.

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<sup>46</sup> See generally Yemi Oke, “*NIGERIAN ELECTRICITY LAW AND REGULATION*”. LawLords Publications, Abuja/Lagos: March, 2013, Yemi Oke, “*NIGERIAN ENERGY AND NATURAL RESOURCES LAW (NOTES & MATERIALS)*”: Princeton Publishers. Lagos: June, 2016, Yemi Oke, “*ESSAYS ON NIGERIAN ELECTRICITY LAW*”: Princeton Publishers. Lagos: June, 2016.

<sup>47</sup> See Mohinder Gulati and M.Y. Rao, “*Corruption in the Electricity Sector: A Pervasive Scourge*” supra note 6 at 140-152.

<sup>48</sup> Ibid.



### Building Coalitions

- 13) No reform is likely to succeed unless employees’ concern about their job security and career are addressed. Creating a working environment conducive to career growth for employees can secure workers’ continued commitment to reforms. An objective and participatory system of performance assessment, training programs to upgrade employee skills, merit-based promotions, and incentives linked to performance should be put in place. Penalties should be imposed for misdemeanours, especially those involving corruption and collusion while those showing loyalty and other anti-corruption tendencies should likewise be generously rewarded.<sup>49</sup>
- 14) Direct communication between the top management and the staff is a very effective way of keeping the employees up to date on accurate information. This communication could take the form of a regular newsletter featuring a message from the chief executive of the electricity company on a matter of importance to employees, and updates about the progress or sector policies and reforms. Credible communications can help secure the support of a majority of the employees who may otherwise be ambivalent in the fight against corruption.<sup>50</sup>

### Independent Regulatory Regime

- 15) Independent Regulatory Regime leading to the creation of an effective regulatory regime that is independent of the government.<sup>51</sup> To be truly independent, a regulator will exhibit the following features:
- k) The regime should be established by law specifying the role of the regulators, the mode of their appointment, service conditions, powers, immunities, and responsibilities defined in law and implemented in a transparent manner.
  - l) The regulatory budget should be independent, and funding should be secure.
  - m) All regulatory procedures (on licensing, tariff setting, grievance redressal, and the like) should be well defined and widely publicized, and the scope of government intervention in regulatory processes should be clearly specified by law.
  - n) All regulatory decisions should be thoroughly explained and made after a transparent and participative process that is open to all stakeholders.
  - o) Decisions should be subject to appeal before an appellate forum.
  - p) Decisions should be legally enforceable, and penalties should be set for noncompliance with regulatory orders.
  - q) Information on the regulatory regime should be made available to civil society in an easy-to-understand format.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid, at 140.

<sup>51</sup> Ibid.

- r) The rights and obligations of the power company as well as those of the consumers should be clearly spelt out and given wide publicity, rigorously monitored, and firmly enforced.
  - s) Regulatory decisions should be predictable and timely.
  - t) Regulators should be held accountable for their actions, and mechanisms for appealing regulatory decisions should be established.
- 16) It needs to be emphasized that the creation of an independent regulatory regime by itself will not have any significant impact on corruption. Several other conditions need to be fulfilled before the regulator can be effective. For example, the government must choose the right persons as regulators, give them sufficient financial autonomy to do their work, and demonstrate a willingness to uphold regulatory decisions even when they are politically inconvenient.

### **Consumers' Charters**

- 17) The right to information, enshrined in law and enforced through regulatory institutions, can help reduce opacity and abuse of discretionary powers by the utility.
- 18) Citizens' charters, wherever they have been publicized and enforced, have helped improve governance. Such charters spell out the rights and responsibilities of consumers and confer on them the right to receive service of good quality from the utility.
- 19) Such a document may specify the standards to be followed by the electricity firms for various services, the fees chargeable, and the time frame for providing them. A well-informed and empowered public armed with the right to critically examine the working of a utility is a powerful safeguard against corruption.
- 20) Norms and Standards should include establishing the technical standards for generation, transmission, and distribution; laying down the norms for operational efficiency of the utilities; and regularly reviewing the performance of the utilities.

### **Independent Monitoring and Public Participation**

- 21) The performance of the electricity companies should be monitored regularly and the results given wide publicity for the benefit of the consumers and other stakeholders. The credibility of such monitoring will be enhanced if it is performed by the regulator or by a nonpartisan and expert body.
- 22) Public participation in making and implementing decisions should be encouraged through forums like standing committees, ad hoc committees, public hearings conducted by regulatory bodies (on matters such as tariffs, licensing, investments, financing, large contracts, and performance reviews of utilities), including active involvement of nongovernmental organizations and the media.

- 23) Corruption is deeply rooted and pervasive, but it can be fought successfully through empowering consumers and civil society by providing them access to information and the opportunity to participate in policy formulation and decision making. Consumers and civil society organizations can form essential components of powerful and effective coalition against corruption.

### **Role of Donors and Multilateral Agencies**

- 24) Power sector reforms in the past generally focused on matters such as industry and market structure, corporatization, and privatization. This approach overlooked the fact that many of the ills of the sector are the result of neglecting other dimensions of governance.
- 25) It is becoming increasingly crucial that improvement in public and corporate governance should be an integral part of the processes to achieve corporatization, commercialization, and privatization in the power sector.
- 26) It is critical for the governments and the donor community to pay attention to improving governance and accountability of utilities.
- 27) Most of the steps for combating corruption outlined here can be implemented with a modest level of expenditure. As part of institutional mechanisms, a reduction in the political cost of reform is desirable through empowerment of consumers and civil society by increasing access to information.<sup>52</sup>

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<sup>52</sup> See generally Mohinder Gulati and M.Y. Rao, "Corruption in the Electricity Sector: A Pervasive Scourge" in J. Edgardo Campos and Sanjay Pradhan Eds., *The Many Faces of Corruption- Tracking Vulnerabilities at the Sector Level*, (The World Bank, Washington, D.C., 2007) at 140-151.

## PART SEVEN

### POWER SECTOR ANTICORRUPTION STRATEGIES

#### **Move from denial to acceptance of the problem and build a broad agreement among policy makers and key stakeholders:**

1. Undertake analytical and diagnostic work to identify the causes of the problem, its severity and effects, and the political cost of maintaining the status quo.
2. Consult on the diagnosis to create an authorizing environment for implementation of the strategy.
3. Disseminate diagnostic information without blaming the actors.
4. Launch a communication campaign with strong and visible involvement of senior politicians.<sup>53</sup>

#### **Build a coalition:**

1. Ensure buy-in by utility management and employees by addressing employee issues.
2. Secure employee commitment to reforms.
3. Improve customer service by establishing effective customer support centers.
4. Reduce the political cost of reform through better-targeted, transparent, judicious, and equitable enforcement.
5. Ensure that service improvements precede tariff adjustments.
6. Engage in meaningful consultation with and participation of civil society.

#### **Improve electricity business processes**

1. Simplify and codify procedures.
2. Introduce modern technology in selected areas.
3. Foster efficiency and effectiveness of customer service and compliance with service standards.
4. Make procurement transparent.

#### **Strengthen institutional mechanisms for accountability**

5. Separate commercial from regulatory functions.
6. Strengthen audit and internal integrity units.
7. Prosecute offenders in courts and confiscate their illegal gains.

#### **Encourage public participation**

8. Sponsor open discussions on all important matters in the Nigerian power sector.
9. Institutionalize user surveys in the power sector for feed-backs.
10. Put in place a mechanism to redress public grievances
11. Implement an effective “right to information” program in the power sector.

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<sup>53</sup> Ibid.

## PART EIGHT

### SPECIFIC RECOMMENDATIONS TO INSTITUTIONS TO ADDRESS CORRUPTION IN THE POWER SECTOR

#### RECOMMENDATIONS TO THE FEDERAL GOVERNMENT:

1. The Federal Government should revisit the REA scandal to send strong signals that corruption in the power sector will no longer be tolerated. The case was muddled-up or apparently compromised.
2. The Federal Government should streamline and make more transparent the bidding and award of contracts processes under the REA.
3. The Federal Government should back-down from Rural Electrification initiatives and allow States to undertake rural electrification through their respective Local Governments and Development Areas. The funds designated or earmarked for rural electrification should be channeled through the States in line Decentralized Energy Options (DEOPs) model, and strictly monitored.
4. The Federal Government should consider fully divesting its stakes in the power sector and allow for efficient, decentralized sector governance by Federal and State governments, as appropriate, in line with the provisions of the Second Schedule, paragraph 13 and 14 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
5. The Federal Government should, as the starting point to combating corruption and impunity of perpetrators in the power sector, ensure the introduction or strict compliance with transparency laws and rules in the procurement process.
6. The Federal Government should ensure that anti-corruption strategies in the Nigerian power sector focus on prosecution of suspected perpetrators of corruption, and transparency and competition in the procurement process through public participation and independent regulatory institutions.
7. The Federal Government and its agencies should also focus attention on petty corruption in the power sector by putting in place measures to discourage the practice.
8. The Federal Government should make regular and mandatory financial audits requirement for all electricity companies in Nigeria whether government owned or otherwise.
9. The Federal Government should ensure that due process and transparency are strengthened in all appropriate quarters where decisions are taken on licensing, subsidy, power-purchase-agreements, operational equipment procurements and metering etc.

10. The Federal Government must ensure Independent Regulatory Regime in the power sector to bring about the creation of an effective regulatory regime that is independent of the government.
11. The Federal Government should desist from further politicization of the appointment of the regulators (NERC Commissioners), as this is also found to be one of the reasons for corruption, impunity and inefficiency in the power sector.

**RECOMMENDATIONS TO THE ATTORNEY GENERAL OF THE FEDERATION AND MINISTRY OF JUSTICE:**

1. The Attorney-General of the Federation and Minister of Justice should request the report of the House of Representative Committee that probed government spending in the power sector from 2000 to 2007, make the report public and ensure appropriate legal action against anyone suspected to be involved in corruption as well as full recovery of corrupt funds
2. The Attorney-General of the Federation and Minister of Justice should take measures to obtain, widely publish and act on the report of the Elumelu House Probe Committee which had accused 21 persons and 36 companies of subversion of government policy on due process which gave rise to extension of contract beyond its original size, inflation of costs, duplication of contract awards, other kinds of corruption, and general lack of performance.
3. The Attorney-General of the Federation and Minister of Justice should direct Economic and Financial Crimes Commission (EFCC) and Independent Corrupt Practices and other Related Offences Commission (ICPC) to wade into the crisis of confidence between the National Integrated Power Projects (NIPP) and the Niger Delta Power Holding Company (NDPHC) as the Special Purpose Vehicle (SPV). Undocumented, monumental fraud and corruption is said to be perpetrated at the NDPHC, and investigation by the anti-graft agencies will ensure that those involved are brought to justice.
4. The Attorney-General of the Federation and Minister of Justice should direct Economic and Financial Crimes Commission (EFCC) and Independent Corrupt Practices and other Related Offences Commission (ICPC) to probe Metering and billing fraud and corruption. Most consumers are unhappy with their billing methodology and feel short-changed by the operators.
5. The Attorney-General of the Federation and Minister of Justice should team-up with the Ministry of Power, Works and Housing in generating templates for reforming the electric power sector law and regulations (as appropriate).

6. The Attorney-General of the Federation and Minister of Justice should promptly make progress on all outstanding cases of corruption in the electricity sector including by ensuring effective prosecution of all power sector cases being handled by the Ministry.
7. The Attorney-General of the Federation and Minister of Justice should take measures in collaboration with other agencies of government to ensure effective and technical scrutiny of all contracts, concessions and other official documentations in the power sector before executing or signing or committing the Federal Government to binding obligations under fraudulent or questionable deals like the Manitoba deals, power sector privatization and others.

**RECOMMENDATIONS TO THE EFCC, ICPC AND OTHER ANTI-CORRUPTION AGENCIES:**

1. The EFCC should revisit the case of the Ramsome Owan-led NERC and ensure the probe is made much more transparent and with active participation of credible NGOs.
2. The ICPC and EFCC should expedite action on the investigation and prosecution of Mr. Goodknows Ighali on the alleged diversion of funds of deceased PHCN workers, among others.
3. The ICPC should make public the status of the investigation and recommendations for prosecution (if any) on the AEDC Recruitment Scandal/Jumbo Pay Scandal given the facts that the Nigerian Government and public have 40% stakes in the AEDC.
4. The Manitoba deal is shrouded in secrecy as essential details of the deal remain unknown to Nigerians till date. The EFCC/ICPC should lead a public-oriented audit on the state of affairs of the TCN two years before and after the Manitoba deal.
5. The EFCC and ICPC should also probe the allegations of Senator Dino Maleye on the Manitoba deal to ensure credibility. The outcome should serve as useful tools and guides for repositioning the TCN for better efficiency of its statutory functions, and for any prosecution.
6. The EFCC should revisit the Elemelu scandal on the Rural Electrification scandal and ensure that all suspected perpetrators are brought to justice.
7. The EFCC and ICPC should scrutinize, prioritize and conclude pending investigations of all power sector-related cases and make report public (where applicable), as well as bring to justice suspected perpetrators.
8. The EFCC and ICPC should firm-out technical prosecution of all power sector cases to power sector specialists to work with criminal prosecution experts to ensure a winning, formidable prosecution team

## **RECOMMENDATIONS TO THE NATIONAL ASSEMBLY:**

1. The National Assembly should desist from and avoid manipulating the award of electricity contracts or cite projects in their constituencies under the guise of "Constituency Project."
2. The National Assembly should publish and ensure the full implementation of the recommendations of the report of the two-day Power Sector Workshop held on February 6th - 8th 2017.
3. The National Assembly should publish and widely circulate the report of Joint House-Senate Ad Hoc Committee on Labour and Power Sector stakeholders on 2016 increase on Electricity Tariff.
4. The National Assembly should commission experts to begin a review of the Electric Power Sector Reforms Act of 2005.
5. The National Assembly should publish widely and release the reports of all power sector-related probes to the Federal Government and Civil Society Organizations for necessary advocacies and prosecution by relevant agencies.

## **RECOMMENDATIONS AND (ADDITIONAL NOTES) TO STATE GOVERNMENTS:**

1. The 36 state governments should wake up to their rights, duties and obligations under the Constitution of the Federal Republic of Nigeria relating to the power sector by working to promote and ensure access to regular and uninterrupted electricity supply for all residents within their states.
2. The 36 state governments have been abdicating the duties to the power sector, bearing in mind that Power is an item on the Concurrent Legislative List under the Nigerian Constitution 1999 (as amended). The Nigerian constitution provides for electricity regulation under items 13 and 14 of the Second Schedule, Part II, Concurrent Legislative List to the extent that: The National Assembly may make laws for the Federation or any part thereof with respect to-(a) electricity and the establishment of electric power stations; (b) the generation and transmission of electricity in or to any part of the Federation and from one State to another State.
3. A potential challenge in the sector is that, by virtue of paragraph 14, State Governments in Nigeria are at liberty to engage in licensing and regulation of electricity as provided by the Constitution. Item 14 states that: A House of Assembly may make laws for the State with respect to – (a) electricity and the establishment in that State of electric power stations; (b) the generation, transmission and distribution of electricity to areas not covered by a national grid system within that State; and (c) the establishment within that State of any authority for the promotion and management of electric power stations established by the State.
4. Power to regulate captive electricity generation should ordinarily vest in the State Governments. State Governments should challenge all unconstitutional provisions in the EPSRA and regulation including Captive Power Generation.



5. The 36 state governments should begin the setting-up of State Electricity Regulatory Commissions. Eg. Lagos State Electricity Regulatory Commission ('LASERC'), Ogun State Electricity Regulatory Commission ('OGSERC'), Kano State Electricity Regulatory Commission ('KASERC'), etc to license private companies to engage in off-grid electricity generation, transmission and distribution including renewable electricity, captive electricity generation, rural electrification and others.
6. The 36 state governments should vigorously pursue the objective of Rural Electrification Act as State Electricity Subject. The Rural Electrification Act also established an agency, to be known as the Rural Electrification Agency (REA). The REA administers the Rural Electrification Fund (REF), a designated fund to provide, promote and support rural electrification programmes. Rural electricity is off-grid, and comes squarely within the ambit of regulatory purviews of the State Governments in Nigeria.
7. The report concludes that vesting Rural Electrification Agency (REA), Rural Electrification Fund (REF), and Rural Electrification Project (REP) in the hands of the Federal Government is patently unconstitutional. The 36 state governments should sue the Federal Government to challenge this infraction of the Nigerian Constitution 1999 (as amended). Rural electrification is off-grid and comes under the legislative competence of State governments. An attempt to bring 'off-grid' subject within 'National-Grid' is tantamount to what the writer had referred to in another piece as "National Greed."

## PART NINE

### CONCLUSION

Before launching a campaign for eradicating corruption, it is important to analyse the interests of various stakeholders. Political economy issues cannot, and should not be ignored. The vulnerabilities of consumers and the masses are such that the beneficiaries of corruption will most likely continue to have upper hands unless strategic steps are taken to reverse the trends, as indicated above.

Plans need to be ready, and resources committed, for institutionalization of anti-corruption strategies outlined above for the Nigerian power sector to thrive, as some of these initiatives and strategies have proved successful in other jurisdictions<sup>54</sup> as useful tool or methods for successfully fighting and/or eliminating corruption in the power sector. To be successful, relevant and credible non-state actors like Civil Society Organisations must play active and critical roles.

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<sup>54</sup> Ibid, at pages 145-146.

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