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# The Shell and Eni Corruption Saga in Nigeria

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A Human Rights Issue

Presented By

Adwoa

Kontoh

Yeboah

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# The Background

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- In 2011, the Nigerian government assigned Oil Prospecting Licence (OPL245) to Eni and Shell for US\$ 1.3 billion including a US\$ 200 million signature bonus.
- More than US\$ 1 billion of the payment was transferred by the government to a company called Malabu, which was controlled by former oil minister and convicted money launderer, Dan Etete.

# The Background

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- Eni and Shell have denied that they knew the money would go to Malabu.
- Leaked emails however show that companies knew that the payment would ultimately flow from Malabu to Dan Etete and other public officials.
- Many countries including Nigeria and Italy have brought international corruption charges against the companies and some of the officials in the scandal.

# The Prosecution

- The Nigerian Prosecution
- The Italian Prosecution

# The Nigerian Prosecution

- The Nigerian Economic Financial Crimes Commission (EFCC) has brought corruption charges before the High Court in Abuja against Eni and Shell accusing them of conspiring to commit official corruption contrary to section 9 of the Corrupt Practices and Other Related Offences Act, 2000.
- The EFCC has also charged former Ministers Mohammed Adoke and Dan Etete with official corruption as well.
- EFCC has secured a court order returning the oil block, OPL 245 to the Nigerian government pending trial.

# The Italian Prosecution

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- Prosecutors in Milan allege that Shell and Eni paid almost \$1.1 billion into an escrow account for the Nigerian government, from which about \$800 million was later transferred to the Nigerian accounts of Malabu to be distributed as payoffs.
- 11 people apart from the two companies are being charged for alleged international corruption. These include 4 senior Shell executives 5 current and former Eni executives and former minister Dan Etete.

# The Resource Curse

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- Nigeria has depended on crude oil resources as a revenue base to effectuate 80% of the developmental agenda of the nation since it was first discovered in 1956 at Oloibiri in the Niger Delta.
- More than 50 years after the first oil was produced, Nigeria is facing economic recession largely due to corruption.

# The Resource Curse

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- According to Navi Pillay, the High Commissioner for human rights, the money stolen through corruption every year is enough to feed the world's hungry 80 times over.
- She also stated that from 2000 to 2009, developing countries lost \$8.44 trillion to illicit financial flows – equivalent to 10 times more than the foreign aid they received.
- Currently, majority of the Nigerians live in extreme poverty with over 50% living on less than \$1 dollar a day.

The  
Human Rights  
Case

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# HUMAN RIGHTS ISSUE?

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- To establish whether a State is responsible for a wrongful act regarding the commission of Human Rights violations, the following factors must be considered.
- A) establish what corrupt act is involved
- B) Identify the perpetrators
- C) Identify the state's human rights obligations
- D) Identify the victims
- E) Identify the harm

# The Corrupt Act

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- The Corrupt Act in this case is both active and passive bribery.
- Section 9 of the Corrupt Practices and Other Related Offences Act, 2000 of Nigeria provides that any person who gives any kind of benefit to a public officer in order to obtain a contract, licence or gain any advantage from the public officer is guilty of an offence and liable to imprisonment for 7 years upon conviction.
- Section 10 of the same Act further provides that the public officer in discharge of his official duties who receives this advantage or benefit is also liable upon conviction to a 7 years term of imprisonment.

# Perpetrators/ State actors

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- Eni and Shell and executives of both companies
- Ex president of Nigeria Goodluck Jonathan
- Former Oil Minister Dan Etete ( although he was not a public official during the bribery, he was acting in partnership with government officials)
- Former Nigerian Justice Minister Mohammed Adoke
- And other unnamed actors which the Nigerian EFCC is currently investigating in order to expose

# Nigeria's ESCR Human Rights Obligations

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- In relation to Nigeria, Economic, social and cultural rights exist on three different but interconnected levels — international, regional and national.
- International level- International Covenant on Economic, Social and Cultural Rights (ICESCR).
- Regional level - African Charter on Human and Peoples' Rights (African Charter)
- National level- In Nigeria, economic, social and cultural rights are also recognised under chapter II of the 1999 Constitution as Fundamental Objectives and directive Principles of State Policy (DPSP)

# Nigeria's Human Rights Obligations

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- Nigeria is a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR).
- Nigeria acceded to the ICESCR on 29<sup>th</sup> July, 1993.
- It is an International human rights treaty, which creates a legally binding international obligation on those States that have agreed to be bound by the standards contained in it.
- The Covenant is monitored by the Committee on Economic, Social and Cultural Rights

# Nigeria's Human Rights Obligations

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- States' obligations under ICESCR are achieved through the following :
- **Right to fulfil** – Adopt appropriate measures towards the full realization of the right
- **Right to protect** – Prevent others from interfering with the enjoyment of the right
- **Right to respect:** Refrain from interfering with the enjoyment of the right

# Nigeria's Human Rights Obligations

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- Economic, social and cultural rights to be fulfilled under the ICESCR. They include:
  - The Right to an adequate standard of living (right to food and to be free from hunger, housing, and clothing) – Article 11
  - The right to health – Article 12
  - The right to education (right to free and compulsory basic education and higher education progressively made free of charge) – Art. 13

# Current status of ESCR in Nigeria.

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- According to Global Witness, about five million people across Nigeria face starvation and one in ten children do not live to see their fifth birthday
- The Islamist insurgency ( Boko Haram) has also fueled a humanitarian crisis that has displaced as many as 7 million people.
- According to the United Nations, meeting the needs of Nigeria's 180 million citizens is going to get more difficult because Nigeria's population is expected to more than double by mid-century.

# Nigeria's Human Rights Obligations

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- Art. 2(1) of the ICESCR requires states “**to take steps**” to the “**maximum of their available resources**” with a view to achieving progressively the respect, protection and fulfilment of the economic, social and cultural rights of its citizens.

# Nigeria's Human Rights Obligations

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- Taking steps include:
- Formulating strategies and plans, incorporating indicators and time-bound targets, which should be realistic, achievable and designed to assess progress in the realization of these rights;
- Adopting the necessary laws and policies, and making adequate funds available to put the plans and strategies into practice;

# Maximum of available resources

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- In light of the Eni and Shell corruption scandal, where over US\$ 1 billion meant for the Nigerian people went into the pockets of public officials, can Nigeria be said to be meeting its obligations under the ICESCR to utilize the maximum of its resources for the protection, prevention and fulfilment of the ESCR of the Nigerian people?

# Committee on Economic, Social and Cultural Rights

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- Article 16 and 17 requires states to prepare reports every five years on the situation of ESCR in their country, which are then reviewed by the CESCR (mechanism for monitoring state parties fulfilment of their obligations under the ICESCR)
- CESCR then releases concluding observations which highlight the achievements and difficulties made in fulfilling ESCR, and then makes recommendations.

# What more can be done

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- Robust corporate anti-corruption policies and practices
- Global implementation of the Cardin-Lugar anti-corruption provision
- Disclosure of the beneficial owners of companies
- Transparency

# Conclusion

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- According to Navi Pillay, the United Nations High Commissioner for Human Rights ‘ Corruption kills. The money stolen through corruption every year is enough to feed the world’s hungry 80 times over. Nearly 870 million people go to bed hungry every night, many of them children; corruption denies them their right to food, and in some cases, their right to life. A human rights- based approach to anti- corruption responds to the people’s resounding call for a social, political and economic order that delivers on the promises of ‘ freedom from fear or want’.

THANK YOU

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THANK YOU