

Prosecution of Fuel Subsidy Scam Suspects: Implication for the Fight against Corruption in Nigeria

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Abstract

This paper shall examine the political-economics of the fuel subsidy, the rationale for fuel subsidy regime, the reasons for the change in government policy towards full deregulation of the oil and gas downstream sector, the peculiar morass of the Nigerian type dubbed ‘Nigerian factor’ that has created a culture of inefficiency and corruption in fuel subsidy management. We shall contend that a seeming system failure pervades the entire Nigerian Oil and Gas Industry. There is system dislocation in appropriate determination of true and correct extent of claims adduced by the Oil marketers; in the unfortunate reality of our national failure that permits a almost comatose upstream operations which in fact necessitated fuel importation by a country blessed by nature with Oil and Gas; in the failure to ensure proper investigation and prosecution of fuel Subsidy thieves; in the very wrong approach adopted by EFCC and other relevant Agencies to wait until a presidential nod is secured before arrests, investigation and due prosecution of the fuel subsidy suspects could be initiated. The paper intends to consider challenges dogging the prosecution of the fuel subsidy scam suspects.

Nigerian Oil and Gas Industry and The Fuel Subsidy regime:

Nigeria is well endowed with crude oil and the associated gas. In 1988 Nigeria’s crude oil reserve was put at 16 billion barrels. It increased to 20.5 billion barrels. By 1997 it has risen to 22 billion barrels.¹ It has been stated that African natural gas reserves was estimated to be 420 trillion cubic feet (tcf) out of which Nigeria holds a staggering 256 trillion standard cubic feet². The Federal Ministry of Petroleum Resources in 2012 assessed the upstream production and stated that the Nation’s actual crude oil (+condensate) production rose to an average of 2.30 million barrels per day, consistently maintained above the budgeted production level of 2.30 million barrels per day and production sometimes reaching 2.5 million barrels per day.³ With regards to the downstream sector the official government figures indicate an improvement. The NNPC domestic refining contribution is said to have grown from a total of 795.72 million litres in 2009 to 1.14 billion litres as at August 2011. During the same period, domestic supply kerosene (HHK) supply grew from 408 million litres to 713 million litres.⁴

The subsidy regime has become a telling national indictment. Through its mis- management, government officials and their collaborators have by active connivance engender an institutionalization of waste, inefficiency and corruption. The subsidy regime has brought to light the ills of over-government and the over-regulation of even trade and commerce. It is however arguable whether the policy thrust for the subsidy was not on account of protecting our national patrimony, strengthening National security, ensuring equality in the pricing of oil products and even distribution of supply of oil products across Nigeria unaffected by cost of transportation /haulage. The apt and illustrative account of factors responsible for the subsidy regime is as follows:

Nigeria’s petroleum industry essentially involves the production of oil and gas by the NNPC in association with its various joint venture partners. Other exploration and development contracts include the production sharing arrangement and the increasingly used sole risk arrangement. Upon production, an allocated percentage of the NNPC’s share of crude is delivered to our refineries for refining into petroleum products. The oil majors and other independent producers lift their share of crude and dispose same as desired. Government officials determine the volume of crude supplied to the refineries for domestic utilization. Both the volume of crude oil allocated to the refineries and the aggregated output of refined petroleum products has failed to keep up with overall consumption. Both have declined drastically over the past couple of years. Meanwhile, demand for petroleum products has risen considerably in the same period and continues to rise. Crude is supplied to the refineries for onward transmission to the consumers and prices substantially lower than the cost of production. Government determines the prices. The pricing policy is reflective of political expediency rather than economic imperatives

¹ Oladini Oyejadejo “ Trends and Opportunities in Africa” Nigeria’s Oil and Gas Monthly, May 1998 pg.7

² See *ibid*.

³ See “The State Of the Nigeria Oil and Gas Industry”, being a text of the keynote address by the Honourable Minister of Petroleum Resources, Mrs Diezani Alison –Maduake at the Nigeria Oil and Gas Conference on Tuesday February 21, 2012.

⁴ *ibid*

and has the result that there is little prospect of private companies entering the business of refining and supplying of petroleum products to consumers in direct competition with the NNPC. Refined petroleum products are distributed via government communication channels to the various distribution and marketing concerns that sell the products on to the domestic¹

The shot-fall between the production output and domestic consumption has further been heightened with all the Nigerian refineries almost prostrate and comatose, government response was to put in place palliative measures such as granting oil players licenses to import petroleum products ; to put in place funds to augment the vagaries in between the landing costs and actual cost price of the products to arrive at politically determined retail price. Thus the government unwittingly enthroned the regime of subsidy and full regulation of the production, transportation, distribution and pricing of petroleum products with the attendant fissiparous tendencies of crises , disruption, diversion, false scarcity ,and non –availability of the products.

The government policy has not ensured efficiency in the management and control of the oil and gas sector. At best , the full regulation of the industry has ensured that enormous wealth is placed in the hands of the few oil industry players , has deepened the state of national insecurity, fuels poverty , increased the retail outlet prices of petroleum products above the nationally regulated prices, engender culture of corruptive impunity, inefficiency not aligned with the Pareto’s principle of allocative efficiency, promote crimes such as bunkering of oil products , pipe- line vandalization , kidnapping and piracy in the Niger- delta and the gulf of Guinea just off the Nigerian coast and as well threatening the full and due implementation of Nigeria’s annual budget .²

In some quarters the claims by the government justifying subsidy is fallacious.³ It is understandable that in an atmosphere that is unduly covert with little transparency , figures ,data, information about quantity of crude oil production , cost of production, true landing cost of imported petroleum products, the true national daily domestic consumption requirement , appropriate indices to determine the true retail pricing of petroleum products become inaccessible. Thus corruption which pervades the management of our oil industry is unnecessary if government ministry, parastatals and agencies in the oil industry act in the true spirit of the Freedom of Information Act.

The change in government policy to favour deregulation of the upstream and downstream sectors of the Oil industry was predicated on the perceived corruption in the management of the subsidy funds. The government finally agreed that the full regulation of the oil industry has become an albatross when the government attempted to remove the subsidy on the petroleum products as one major plank of full government regulation. It is to be noted that prior to 2012 , the government had commenced a subtle unbundling of its investment in the Oil and Gas industry.⁴

The change in policy to discontinue subsidy payment on PMS (Petrol) among other plan in the deregulation of the oil and gas sector even though good and expedient, the abrupt manner in which the subsidy removal on PMS was announced and sought to be foisted on the citizenry left much to be desired . For a government that has failed to secure minimal comfort for majority of its citizens it smacked of insensitivity, arrogance, and poor understanding of the psychological tolerance level of the people to have removed subsidy on PMS in January 1st 2012. The fall-out of that removal was the gale of opposition that cut across the civil society groups, political parties, celebrities, the press, business class, professional bodies , religious groups , the Labour and ordinary Nigerian plebeian . The vociferous campaigns and popular mass rallies held in Lagos and many other state capitals saw the government reducing the retail pump price for PMS which was put at N150 .00 K reverted to N97.00k . Before the January 1st. 2012 hike in petrol price , the pump price was N67.00k.

Previous Administrations had thought without much creative imagination that increasing the pump price would solve the plethora of ills bedeviling the management of the downstream sector without as much as embarking on serious audit of the subsidy regime. However it does not take an expert to deduce that without addressing the problems confronting the Nigerian Upstream sector the incessant and recurring need to hike the fuel pump price to reduce government ever burgeoning subsidy payment outflows to the importers and marketers of petroleum products especially the PMS would not cease. The upstream sector has challenges of the militancy

¹ Remi Okunola , “The Privatization Option” Nigeria’s Oil and Gas Monthly May 1998 pg. 33

² Report credited to the International Energy Agency claims that wide spread theft of crude oil has cost the country 7 billion US dollars in 2012 alone. And that crude oil production dropped to its lowest level in two years in October 2012 to about 1.95 million barrels per day. to See The Nation Wednesday 14 ,2012 pg. 2

³ According to the main opposition political party , A.C.N. : “ in a statements after statements, we told the president that there is no subsidy on fuel, and that what the government claims to be subsidizing are corruption and inefficiency. We quoted informed analysts, who proved –with facts and figures- that the average true price of a litre of fuel is N34.03 k . We suggested ways in which the government can truly deregulate the sector without inflicting untold hardship on Nigerians.” See The Nation Wednesday April 25 , 2012

⁴ Total deregulation and removal of subsidy payment was effected in respect of diesel long before 2012. The policy was again carried into effect in respect of kerosene in July 29 ,2009 following a presidential directive of that date.

and restiveness in the Niger-delta, pipeline vandalization, crude oil theft on a massive scale, refineries that are comatose or performing below installed capacity, inadequate infrastructural installation to keep the refineries upbeat and working in line with global minimal standard among other sundry challenges.

The major gain of the agitation that greeted the January 2012 hike in the fuel pump price is the awareness and deluge of information released into the public domain of theft of subsidy funds; the mismanagement of same; want of accountability in its disbursement ; want of due process in the award of payment; as well, the failure of those who should provide answers wavering and seeming unsure when rallied with posers on subsidy regime.

It came to public consciousness that unregistered companies were importing petroleum products and getting paid staggering sums for supplying nothing. The country woke up to the knowledge that there is so much discrepancies between what was considered a total daily national domestic consumption and the actual daily national domestic consumption requirement for Nigeria. It became very clear that some public officials and their collaborators through active connivance or deliberate omission, whether through their allies or proxies individuals and corporations had been feeding fat on the fuel subsidy funds. It came to light that the approved appropriated spending limits had been so jettisoned to the extent that the amount appropriated in the budget as the subsidy fund was a fly in a tea cup : a small percentage of what the importers were either duly paid or legitimately expected by the books as outstanding for payment under the subsidy regime. It was definite that the government must react to issues raised on the heels of these mouth-gaping revelations.

LEGISLATIVE AND EXECUTIVE INTERVENTION IN THE FUEL SUBSIDY CRISIS.

Despite the unfortunate bribery scandal involving the chairman of the House Of Representatives' Ad hoc Committee on Subsidy Management, a most proactive exercise on the side of the government organ to address the crisis which the fuel subsidy scandal portends for Nigeria was the commendable step taken by the House Of Representatives to enquire and dig deep into the management of the fuel subsidy fund vis-a-vis the structures in place to ensure sustainability. The report of the committee in our assessment qualifies as the most comprehensive, with far reaching implication for prudent management of the subsidy regime. The recommendations contained in the submitted Report were approved by the House of Representatives as part of its oversight functioning.¹ Of great relevance is the report to this paper as it confirms the presence of abuses in the management of the fuel subsidy. Thus following on the heels of the committee's report the following recommendation were approved:

- a) *The Committee finds that domestic consumption level for 2011 is put at 31.5 million liters per day . Agreeing to a marginal increment of 1.5 million liters per day in the 2012, a 33million liters benchmark is estimated for domestic consumption requirement. In the first quarter of 2012 and for the purpose of maintaining the strategic reserve an additional 7 million liters is recommended bringing the total allowable daily domestic requirement to 40 million liters and that quantity is the total ordering limit for the PPPRA in the first quarter of 2012. However, in the subsequent quarters, 33 million liters per day is recommended as national domestic requirement.*
- b) *The report finds as adequate the 450,000bpd crude oil allocation to NNPC to refine so as to derive the forty million liters of PMS and ten Million liters of HHK daily consumption requirement for the country. The House of Representatives believes that the requirement can be achieved through SWAP arrangement, outright sale of the 450,000 bpd or through partial sale of the excess from the local refining capacity of 53%. The house reasoned that there is no reason for the government to grant subsidy importation to any marketer.*
- c) *The NNPC is to refund to the federation account, the sum of N310,414,963,613(Three hundred and ten billion, four hundred and fourteen million, Nine hundred and sixty-three thousand ,six hundred and thirty three naira only.) paid to it illegally as subsidy for kerosene despite the presidential directive of July 29th 2009 removing subsidy on that product.*
- d) *The committee realizes that NNPC is inefficient and corruption thrives in its operations .So it was recommended that the corporation be restructured for greater efficiency and transparency. It also advises for the passage of comprehensive Petroleum Industry Bill. The committee recommends that a thorough (financial and operational) audit of the NNPC should be done directly by the House of Representatives to determine the solvency of the corporation in the light of several claims of indebtedness and demand for payment against the Corporation by individuals, corporate bodies and governments agencies.*
- e) *NNPC is directed to stop deductions not captured in the appropriation Act before remittance to the Federation Accounts. And over deductions above the PPPRA approvals for 2011. Investigation should be carried out on deductions for years 2009 – 2010.*
- f) *The recommendation details the need to prosecute the management and Board of the NNPC for sundry*

¹ 29 recommendations were approved.

- infractions committed in respect of overpayment of N285.098 billion approved for PPPRA for 2011; Subsidy deductions for kerosene in defiance of presidential directive; illegal granting of price differential of crude oil price per barrel to NNPC to the tune of N108.648 Billion from 2009-2011.*
- g) Under the petroleum subsidy fund scheme importers especially NNPC should be mandated to patronize Nigerian flagged vessels so far they meet required safety and seaworthiness in line with the global standard.*
 - h) PPPRA paid to itself from the PSF account the sum of N156.455 billion in 2009, N 155,824 billion in 2010 and N312,279 billion in 2011 , in excess of the approved administrative charges ordinarily due to it. The illegal payments should be recovered and paid back into the PSF and all officials involved in the infractions to be investigated and prosecuted.*
 - i) All staff of PPPRA and DPR found involved in processing of applications by importers and verification, confirmation of payment for imported products by importers and NNPC should be investigated/ prosecuted by EFCC and ICPC for Negligence ,Collusion and Fraud.*
 - j) Reorganization of the Ministry of Petroleum Resources is recommended with two ministers for upstream and downstream sectors of the industry.*
 - k) The report is to the effect that in the template being used by PPPRA in computing and paying PSF is found full of in-built prices for wastages and inefficiencies. The template is recommended for revision.*
 - l) The PPPRA 's margin of error on the payment template of +/-10% is recommended to be reduced to +/-5%.*
 - m) PPPRA is mandated to provide the Nigerian Navy and NIMASA advance copies of allocation and vessel arrival notification documents to enable The Navy to monitor, track and interdict any erring vessel seeking to avoid Naval certification.*
 - n) Committee noted and makes recommendation against the practice whereby PPPRA as regulator in the downstream sector is under the supervision of the Ministry of Petroleum Resources whose minister is also the Chairman of the Board of NNPC a major importer is anathema to the principles of check and balances and international best practices. Therefore the regulatory capacity of PPPRA is recommended to be strengthened and the National Assembly is enjoined to commence process to make PPPRA an autonomous body.*
 - o) PPPRA IS mandated to publish performance assessment reports of all companies involved in PSF Scheme within two weeks of the adoption of the committee's report. ¹*

The report of the Ad hoc committee on subsidy management we believe was a good step to douse the agitation in the minds of Nigerians. It is a House of representatives' oversight intervention to address the yearnings of the average Nigerian for probity, accountability and transparency to permeate the delivery of services by Government Organs, Agencies and Parastatals. The report and the recommendations stand as one bold initiative to arrest the morass and infractions that pervaded the subsidy scheme and considering the depth and comprehensive nature of the report one is not surprise that attempts were made to discredit it by interests entrenched in the industry to the detriment of the country.

EXECUTIVE OFFICIAL RESPONSE

At best the Government official response to the fuel subsidy scandal is an embarrassing half hearted outcry , ill motivated to douse the public indignation over the colossal waste and scandalous revelations that came on the heel of the fuel crisis in January 2012. The prosecution of the major suspects has been a sham , the momentum has been thwarted or deliberately slowed suggesting collusion and official protection at the highest levels of government. It is unfortunate that the prosecution of the fuel subsidy scam suspects have not been undertaken with the seriousness it deserved. The initiative to arrest, investigate, arraign and prosecute efficiently those found involved cannot gravitate unless there is presidential nods/or approval. This put paid to the touted independence and autonomy of the EFCC and ICPC .

However, government through the Ministry of Petroleum Resources thought it wise to invite the EFCC into the PPPRA and NNPC to look into the Management of Petroleum products subsidies and prosecute anyone found culpable. As well it set into motion the reform process of the Nigerian Oil industry by setting up five major Committees. ² The Special PIB Task Force to revise the Petroleum Industry Bill and to facilitate its

¹ Subsidy probe Report see THE NATION of Wednesday 25th April 2012. Pg. 2-3

² In the words of the Honourable Minister of Petroleum Resources: "Ladies and Gentlemen, there is undoubtedly a need for change and we must rise to the challenges ! This, I believe , should set the tone and indeed the theme for this conference .At this Conference this year, we are called to assess our actions and commitments, to hold them up against the measuring pole of reality and give account to the faith reposed in us, by all key stakeholders in the industry –Investors, financiers, Employees, Host communities, and the public at large. As such, we must all sign –up to elimination of waste in the Oil and Gas sector , whether by eliminating gas flaring , by preventing pipe-line vandalization or by restoring the decaying infrastructure in the downstream. We need to open the gates to the true reform and fix the inefficiencies in our sector,open the gates to

passage into Law. The committee is headed by Senator Udoma Udo Udoma. Another Committee is that of PIB Technical Committee to draft a new petroleum Industry Bill. It is chaired by Engineer Osten Olorunisola. The third Committee is the Special Task Force On Governance And Controls in the NNPC and other Parastatals, headed by Mr Dotun Suleiman. The committee is saddled with the responsibility of reviewing all existing controls within these parastatals and develop a new Corporate governance Code for ensuring full transparency, good governance and global best practices across the sector. The Petroleum Revenue Special Task Force is a major committee headed by Mallam Nuhu Ribadu. The Committee is to review, verify and validate the collection of all revenues, specifically the outstanding taxes, royalties etc due and payable to the Federal Government of Nigeria; and the last of the Committee but not the least is the National Refineries Special Task Force. It is headed by Dr Kalu Idika Kalu with the alternate chairman in the person of Mallam Yusuf Alli.

How well the committees shall commend themselves to the reform task of the Nigerian Oil Industry is futuristic. But if what transpired on the occasion of the presentation of the report of the Nuhu Ribadu's committee is anything to go by, it is doubtful whether we are out of the wood yet. The morass in the Oil sector may still continue.

Criminal Culpability of Fuel Subsidy Scam Suspects:

Our treatment on the culpability of the subsidy scam suspect admits of limitation: we are not empowered to pass judgement on parties without the facility of considering evidence tendered and well considered establishing facts of culpability beyond reasonable doubt. At best we may attempt to look at whether a prima facie case could be made out against the suspects. Our preliminary outburst allied with the constitutional guarantees on the sanctity of the innocence of the Accused until factual establishment of constituents of the crime are proved and the court pronounced the accused guilty.

It is paramount to consider the nature of infractions committed by the individuals and Corporate bodies alleged to have engaged in outright theft of the petroleum subsidy funds; the products diversion; omission to arrest or prevent the commission of clear infractions against the financial interest of the federal Republic of Nigeria. Some of the infractions involved the payment of huge sums to non-existent companies; somewhat a clear breach of all the tenets of due process on procurement and supplies and a violation of the corporate governance ethics. We have cases of Individuals receiving various sums for petroleum products not even imported not to say delivered to PPPRA. The various instances are listed of the acts or omissions amounting to criminal infractions for which criminal and civil proceedings may attend against.

A crime can be defined as any act or omission against which the public law proscribes or prescribes as the case may be respectively and the infractions of which entails criminal proceeding demanding the proof of facts beyond reasonable doubts visited by punitive sanctions which may be ordered by a competent court with jurisdiction after conviction is gained by the State prosecution. We are mindful of the basic pillar of criminal justice administration which is well enshrined by the Nigerian Constitution, to wit :

No person shall be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law."¹

The criminal nature of an act or omission can only be considered with reference to the provision of a written law and the decisions of the courts touching on the provisions of a written law. An act or omission no matter how morally reprehensible is not a crime unless the provision for it is found in a written law.²

Thus from the circumstances of the poor management of petroleum subsidy fund can be gleaned certain offences for which a prima facie case may be made out/ established under the Criminal Code Act, EFCC Act and ICPC Act.

Official Corruption- public official inviting Bribes ; on account of own actions³;

Official Corruption- person giving bribes, etc on account of action of public officials⁴ ; Official Corruption – persons inviting bribes etc., on account of actions of public officials⁵; Public Officers interested in contracts⁶; false claims by officials⁷ ;

Abuse of office⁸ ; stealing ¹;

transparency and to accountability and to most certainly open the gates to greater investments into the sector to generate prosperity for all stakeholders. These challenges are not new but it is our job as leaders to fix them and the time to act is now... " see The Nation Tuesday , February 28 ,2012 .

¹ See section 36 (8) of 1999 Nigerian Constitution.

² Aoko v. Fagbemi [1961] 1 All NLR 400, Alimi Akanni V. State

³ S. 98 of the Criminal Code Act

⁴ S. 98A of the Criminal Code Act

⁵ S. 98 B of the Criminal Code Act

⁶ S .101 of the criminal Code Act

⁷ S 103 Of the criminal Code Act

⁸ S. 104 of the Criminal Code Act

stealing funds held under a direction²;
stealing by persons in public service³;
stealing by directors and officers of companies⁴;
obtaining by false pretences⁵;
obtaining execution of security by false pretences⁶;
cheating⁷;
conspiracy to defraud⁸;
false statement by officials of companies⁹;
fraudulent false accounting¹⁰;
false accounting by public officer¹¹;
forgery¹²;
uttering false documents and counterfeit seals¹³;
uttering cancelled and exhausted documents¹⁴;
procuring execution of documents by false pretences¹⁵.

Under the EFCC Act, relevant provisions are those touching on offences appertaining to public officers; retention of proceeds of a criminal conduct. Offences in relation to economic and financial crimes and penalties are contained in Sections 15 (1) (2) (3) , Section 16 and Section 17 (1) (a) (b) (c) and (d). In section 15 of the EFCC Act it is provided:

Any public officer who , in the discharge of his duty under this Act , presents to another who is to take a decision thereon or do any other act in relation thereto gives information which is false in any material particular , commits an offence under this Act and the onus shall be on him to prove that such information was supplied to him by another person and that he exercised all diligence to prevent the commission of the offence having regard to the nature of his functions in that capacity and in all the circumstances.

Section 17 (1) :

Any person who , without lawful authority

- (a) Engages in the acquisition ,possession or use of property knowing at the time of its acquisition ,possession or use that such property was derived from any offence referred to in this Section , or*
- (b) Engages in the management ,organization or transfer of financing of any of the offences under this Act ;or*
- (c) Engages in the conversion or transfer of property knowing that such property is derived from any offence under this Act ;or*
- (d) Engages in the concealment or disguise of the true nature , source , location , disposition , movement, rights with respect to or ownership of property knowing that such property is derived from any offence referred to in this section, commits an offence under this Act and is liable on conviction to the penalties provided in sub-section (2) of this section .*

Sub-section (2) provides :

The penalties for offences under subsection (1) of this section shall be imprisonment for a term not less than fifteen years and not exceeding twenty- five years.

The offences under the ICPC Act such as offences of giving or accepting gratification through agent¹⁶;

¹ S. 382 of the Criminal Code Act

² S. 385 of the Criminal Code Act

³ S. 390(5) Of the Criminal Code Act

⁴ S. 390 (7)of the Criminal Code Act

⁵ S.419 of the Criminal Code Act

⁶ S. 420 of the Criminal Code Act

⁷ S. 421 of the Criminal Code Act

⁸ SS. 422 of the Criminal Code Act

⁹ S. 436 of the Criminal Code Act

¹⁰ S. 438 of the Criminal code Act

¹¹ S. 439 of the Criminal Code Act

¹² S. 465 of the Criminal Code Act

¹³ S. 468 of the Criminal Code Act

¹⁴ S. 469 of the Criminal Code Act

¹⁵ S. 471 of the Criminal Code Act

¹⁶ Section 9 (1) (a)(b) of the ICPC Act provides : ‘Any person who corruptly –(a) gives ,confers or procures any property or benefit of any kind to ,on or for a public officer or to , on or for any other person; or (b) promises or offers ,procure or attempt to procure any property or benefit of any kind to, on or for a public officer or any other person ,or account of any such act ,omission, favour or disfavor to be done or shown by the public officer is guilty of an offence of official corruption

Fraudulent acquisition of property¹; making false statement or return²; may be relevant to capture some of the infractions perpetrated in the course of mis-managing the Petroleum Subsidy fund.

Challenges in way of Prosecuting the Fuel Subsidy Scam Suspects:

It goes without equivocation that EFCC is the state agency expected or saddled with the responsibility of ensuring the prosecution of the fuel subsidy scam suspects. However, it is our recommendation that the prosecution of high profile scams involving government agencies, their officials, and their collaborators should not be wholly left to the EFCC to prosecute. Sometimes inter-agencies collaboration can be engineered mainly to relieve the EFCC of the immense burden it currently shoulders for which its efficiency has been strained .

It is sad that the supposed autonomy of the EFCC is seemingly compromised. Executive interference in the conduct of initiating investigation and prosecution of high profile suspects is not good for the rule of law and the deepening process for our wobbling democracy.

We observed a penchant by EFCC to arraign suspects upon a charge sheet detailing innumerable counts sometimes totaling over 100 counts! One is at a loss whether someone at the EFCC desires to fuel public adulation on the gallery. Such practice is apart from being a most unprofessional one; also runs counter to the rule against duplicity. It only clutters the line of presentation of evidence and makes rooms for the defence to hide behind technicalities, while also defeating the purpose of the timely conclusion of the trial.

It is expected that in prosecuting high profile suspects the need for adequate preparation cannot be over-emphasized. The suspects in such cases are well entrenched with bags of ill - gotten wealth to fight dirty and rough. They engaged the services of the best legal luminaries. Therefore it behooves the prosecuting agency to dwell on those offences in which the chances of success are over 70 percent. Where the chances of earning a conviction is 55 percent for the prosecution against 45 percent for the Accused, the State should refrain from prosecuting the accused since in the course of trial the nitty- gritty of adversarial trial will certainly throw up loopholes and the doubts so generated must become resolved in favour of the Accused. Criminal trials are expensive business. Therefore needless prosecution of offences in reaction to public outcry when such cases lack strong evidential quality and where the ingredients of the offence cannot be established on the totality of the evidence available then it makes economic and legal sense not to prosecute. What we expect from the EFCC is quality of effort culminating in successful conviction of accused persons in deserving cases.

The EFCC has not performed to the reasonable expectation of the public as far as the prosecution of the Suspects involved in fuel subsidy scam is concerned. None of the twenty-five major oil marketing companies allegedly involved in the Fuel subsidy Scam have had their prosecution commenced.³

We are particularly concerned at the tardiness, the levity and the unprofessional approach of the EFCC in preparing its cases. Cases are won on the strength of uncontroverted evidence; situation where the agency rushes to court without having tied the loose ends of investigation is uncalled for and an assault to the intelligent public.⁴

and shall on conviction be liable to imprisonment for seven years (7)”

¹ Section 12 of the ICPC Act states : *Any person who being employed in the public service knowingly acquires or holds , directly ,otherwise than as a member of a registered joint stock company consisting of more than twenty (20) persons , private interest in any contract, agreement or investment emanating from or connected with the department or office in which he is employed or which is made on account of the public service ,is guilty of an offence , and shall on conviction be liable to imprisonment for seven (7) years .*

² Section 16 of the ICPC Act provides : *Any person who, being an officer charged with the receipt , custody, use or management of any part of the public revenue or property, knowingly furnishes any false statement or return in respect of any money or property received by him or entrusted to his care ,or of any balance of money or property in his possession or under his control, is guilty of an offence, and shall on conviction be liable to seven years imprisonment.*

³ Al Minnur Resources Limited, Brilla Energy Limited, Caades Oil and Gas Limited , Capital Oil and Gas Industry Limited ,Capital Oil PLC , Ceoti Limited, Conoil PLC , Downstream Energy Source Limited, Eterna PLC, Eurafic Oil and Gas Ltd. Heyden Petroleum, Lumen Skies Ltd., Majoje Investment Ltd. , Master Energy Oil and Gas Ltd. , Matrix Energy Ltd., Menol Oil and Gas Ltd., Mob International Services MRS Oil and Gas PLC, Nasaman Oil Services Ltd., Naticel Petroleum Limited, Ocean Energy Trading Services Ltd., Pinnacle ContractORS Ltd., - Sifax Oil and Gas Company, Tonique Oil Services Ltd., Top Oil and Gas Development Company Ltd. see The Guardian , Thursday, August 23, 2012.

⁴ See Obi Mbamalu , “ Oil Subsidy Scam: EFCC and The Withdrawal Of Charges Against Oil Marketers” The Guardian , Tuesday September 4, 2012. On the occasion of 2012 International Anti-Corruption Day the chairman of EFCC identified is a major challenge in effective prosecution of Criminal Suspects was quoted to have said : “Criminal Procedure rather than the Judiciary should be blamed for the problem of slow pace of trial of corruption cases..” see The Punch , Tuesday , December 11, 2011 .pg.14

Remedies against the Fuel Subsidy Scam Suspects:

1) Forfeiture of property:

Forfeiture of Property after conviction:

Under Section 19(1) of the EFCC Act , a person convicted of an offence under the EFCC Act shall forfeit to the Federal Government:

- a. *All assets and properties which may or are the subject of an interim order of the court after an attachment as specified under S. 25 of the Act.*
- b. *Any asset or property confiscated, or derived from the proceeds the person obtained, directly or indirectly, as a result of such offence not already disclosed in the Assets Declaration form specified in form A of the schedule to the Act or not falling under paragraph (a) of this section*
- c. *Any of the person's property or instrumentalities used in any manner to commit or to facilitate the commission of such offence not already disclosed in the or not falling under paragraph (a) of this subsection.*

Sub- section(2):

The court in imposing a sentence on any person under this section, shall order in addition to other sentence imposed pursuant to section II of this Act, that the person forfeit to the federal government all properties described in subsection (ii) of this section.

The EFCC Act defined the term: “proceeds” to mean any property derived or obtained, directly or indirectly through the commission of an offence under the Act.

Foreign assets may be the subject of forfeiture. The property subject to forfeiture are defined under Section 23 of EFCC Act.

b) Disposal of forfeited property:

This is made upon a final order pursuant to this section, the Secretary to the EFCC shall take steps to dispose of the property concerned by sale or otherwise and where the property is sold, the proceeds shall be paid into the Consolidation Revenue Fund of the Federation.¹

c) Seizure of property:

Property which is subject to forfeiture may be seized by the commission where the seizure is incidental to an arrest or search and the property is liable to forfeiture upon process issued by the court upon application by the EFCC in line with the prescribed rules.

d) Full refund/ restitution of amount the subject of the criminal infractions:

Under section 270(1) Criminal Procedure Act. Where any person is convicted of having stolen property, the court convicting him may order that such property or a part thereof be restored to the person who appears to be the owner thereof, either on payment or without payment by the owner to the person in whose possession such property or a part thereof then is, of any sum named in such order.

e) Freezing Order on Banks or other financial institutions:

This Order is made upon the application to the Federal High Court by the Chairman of the EFCC where he is satisfied that the money in the account of any person arrested under the Act is made through the commission of any offence under the Act. The Application for the freezing Order is made to the Federal High Court for power to issue or instruct a bank examiner or such other appropriate regulatory authority to issue an order as specified in form B of the schedule to this Act, addressed to the manager of the bank or any person in control of the financial institution where the account is or believed by him to be held or the Head Office of the or other financial institution to freeze the account.²

f) Fine: It includes any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction.³

In respect of the fuel subsidy suspects punitive fines in the realm of millions should be ordered by the court.⁴

i) Costs: The court may order any person convicted before it, of an offence to pay to the prosecutor in addition to any penalty imposed such reasonable costs as the Court may deem fit.⁵

¹ Section 30 (2) of the EFCC Act , see also Section 263 (2) of CPA

² Section 33(1) of the EFCC Act

³ See the definition section 2 of the CPA .

⁴ According to the research conducted by Margaret Gordon and Daniel Glaser on the effectiveness of fines. It was find that offenders who were fined were less likely to commit new crimes than those who received a jail sentence. See “ The Use and Effects of Financial Penalties in Municipal courts” Criminology 29 (1991): 651 – 76. Referred to by Joseph Senna and Larry Siegel “ Introduction to Criminal Justice” West Publishing Company St Paul, M. N. U.S.A (1996) 7th ed. Pg. 585.

⁵ Section 255 (1) of CPA

Dismissal of the public officers found culpable:

It is appropriate to cause the dismissal of public officers found to have committed infractions of serious economic sabotage to the economy of Nigeria. This is a civil remedy.

Imprisonment terms:

Custodial sentence to varying terms of imprisonment is a common criminal sanction. It is a good just dessert to demonstrate the public odium to which the convict had descended. In the case of the fuel subsidy scam suspects, a long prison sentence is just and proper to express public opprobrium to the acts of damning economic sabotage and untold hardship which the various criminal infractions committed in the management of Petroleum Subsidy Fund portend for the country and the citizens.

CONCLUSION

We have attempted in the course of this paper to consider the structure and management of the Nigerian Oil and Gas with special reference to the Petroleum Subsidy regime as it has been operated at a colossal loss to the country as waste, inefficiency and sabotage has left prostrate a sector which at the moment account for more 50 percent of Gross Domestic Product. The prosecution of fuel Subsidy Scam Suspects have been almost non-existent. We do not want to believe that the prosecution of the subsidy scam suspects is another huge joke but is the reality not confirming the truism that in Nigeria prosecuting high profile cases of corruption is an anomaly? Only the time will tell.