Oil and Gas, Natural Resources, and Energy Journal

Volume 5 | Number 4

April 2020

The Battle for Oil: Fighting Through Corruption & Changing Socio-Economic Landscapes to Win over Africa's Biggest Giants

Modupe Adamolekun

Recommended Citation

Modupe Adamolekun, *The Battle for Oil: Fighting Through Corruption & Changing Socio-Economic Landscapes to Win over Africa's Biggest Giants*, 5 Oil & Gas, Nat. Resources & Energy J. 607 (2020), https://digitalcommons.law.ou.edu/onej/vol5/iss4/2

ONE J

Oil and Gas, Natural Resources, and Energy Journal

VOLUME 5 NUMBER 4

THE BATTLE FOR OIL: FIGHTING THROUGH CORRUPTION & CHANGING SOCIO-ECONOMIC LANDSCAPES TO WIN OVER AFRICA'S BIGGEST GIANTS

MODUPE ADAMOLEKUN[*]

Topic Introduction

For many years, economic scholars paid little attention to the future of Africa.[1] The continent was largely overlooked and wholly characterized with post-colonial perceptions of political unrest, corruption, religious bloodbaths, and civil strife.[2] With the passage of time however, nations soon discovered that Africa was deeply imbued with rich natural resources and possessed a huge potential for growth. For example, in 2018, Africa produced more than 78% of the world's platinum[3], 46% of the world's

---

* Modupe Adamolekun is a law student at the University of Oklahoma, College of Law and on track to graduate in May 2021. Prior to law school, she worked as an accountant and financial analyst for a few years. While in law school, Modupe held different leadership positions and was a recipient of multiple awards and scholarships. Modupe would like to dedicate this Comment to God first, and her family for being a strong pillar of support.

1. *Hopeless Africa*, THE ECONOMIST (May 11, 2013), https://www.economist.com/leaders/2000/05/11/hopeless-africa.

2. *See* Marieme Jamme, *Negative Perception Slow Africa's Development*, THE GUARDIAN (10 Dec. 2010), https://www.theguardian.com/global-development/poverty-matters/2010/dec/10/africa-postcolonial-perceptions (last visited Sept. 20, 2019).

3. U.S. Geological Survey, *Mineral Commodity Summaries 2019*, U.S. DEP'T OF THE INTERIOR, https://prd-wret.s3-us-west-2.amazonaws.com/assets/palladium/production/atoms/files/mcs2019_all.pdf (last visited Sept. 20, 2019).

diamond[4], and 19% of the world's gold.[5] Africa's oil, although only accounting for around 8.6% of the world's total production, has notably stood out among the plethora of Africa's natural resources, and caused a scurry of developed nations racing toward Africa, in what some interestingly labeled the "Second Scramble for Africa."[6]

With the need for African oil undeniable, Africa experienced an inflow of foreign direct investments ("FDI"), which in turn contributed to a revived economy throughout the continent. [7] This revived economy, along with improved healthcare and revamped infrastructure, created a renewed outlook on the once bleak prediction of Africa's future.[8] However, lurking behind the façade of outstretched arms and a revamped economy is a reality much too grim to ignore. The truth is that the fight for oil in Africa is intricately intertwined with corruption, and inextricably interwoven with manipulative conduct that continues to insulate many of Africa's tyrannical leaders.

---

4. *Production Statistics*, DIAMOND PRODUCERS ASS'N, https://diamondproducers.com/diamond-industry/productionstats/ (last visited Sep. 19, 2019).

5. *GFMS Gold Survey 2018*, THOMSON REUTERS, http://images.financial-risk-solutions.thomsonreuters.info/Web/ThomsonReutersFinancialRisk/%7B87eb3342-8e48-44af-937e-7ad3264c2199%7D_Gold_Survey_2018_Final_Version_-_GS18_-_Compressed-min.pdf (last visited Sept. 20, 2019).

6. *BP Statistical Review of World Energy 2019*, BRITISH PETROLEUM, https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/statistical-review/bp-stats-review-2019-full-report.pdf (last visited Sept. 20, 2019) [hereinafter BP Energy Stats]; *See*, Katy Marriott, *The 'Second Scramble' for Africa,* GEOGRAPHICAL (Nov. 20, 2014), http://geographical.co.uk/geopolitics/geopolitics/item/411-african-land-grab; Shantikumar V. Nair, *The Second Scramble For Africa*, HUFFPOST (Sept. 29, 2015), https://www.huffpost.com/entry/the-second-scramble-for-africa_b_8216990; *The New Scramble for Africa*, THE ECONOMIST (May 7, 2019), https://www.economist.com/leaders/2019/03/07/the-new-scramble-for-africa.

7. *See* Elizabeth Asiedu, *Foreign Direct Investment in Africa: The Role of Natural Resources, Market Size, Government Policy, Institutions and Political Instability,* WORLD ECONOMY (Jan. 10, 2006) https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1467-9701.2006.00758.x.

8. *Africa Rising – The Hopeful Continent*, THE ECONOMIST (Dec. 3, 2011), https://www.economist.com/leaders/2011/12/03/africa-rising; *see also* Sibusiso Sgwane, *Africa Is Not A Hopeless Continent,* HUFFPOST (Feb. 5, 2017), https://www.huffpost.com/entry/africa-is-not-a-hopeless_b_9166084; Fareed Zakaria, *Major World Economies Are Becoming Increasingly Isolationist. Except Those In Africa*, THE WASH. POST (Aug. 29, 2019), https://www.washingtonpost.com/opinions/major-world-economies-are-becoming-increasingly-isolationist-except-those-in-africa/2019/08/29/5501ec28-ca9d-11e9-a4f3-c081a126de70_story.html.

A deeper dive into the issues above is discussed in this comment, and broken down into four parts. Part I explores the history, discovery and scope of Africa's massive oil reserves, focusing on the largest oil producers in Sub Saharan Africa ("SSA"), a group made up of the top five African countries, which cumulatively contribute to around 70% of current oil production within Africa.[9]

Part II delves into the nature of the undertakings of the world's largest oil consumers in Africa, through International Oil Companies ("IOC"). Special focus will be on the United States and China, which together accounts for about 33% of the world's total oil consumption.[10]

Part III analyzes the misuse of investments and natural resource revenues in Africa. Specifically, this comment addresses the different types of corruptions, and African's perception of its wide spread nature. Furthermore, part III will link the battle for oil with the different vehicles of corruption used by Africa's leaders, and the consequences of corruption on Africa's economy like the deepening divide in Africa's socio-economic sphere.

Finally, Part IV unveils proposed solutions to combat corruptions. Initiatives such as the United States Foreign Corrupt Practices Act, and resolutions like UN Convention Against Corruption provide some ways to tackle the pandemic effect corruption has on the economy. Other solutions include leadership change, global corporate regulations and judicial accountability. These are avenues Africans could use to curtail the spread of corruption, and suppress the rapacious appetite of Africa's leaders.

Although this article is mainly focused on Africa, this paper will also examine the implications of Africa's oil industry practices in the American economy. Many African economies have a near total dependency on oil, thus any change in the oil industry, whether good or bad, inevitably reverberates not only to other industries, but also to other nations. This is why addressing corruption in Africa's oil and gas industry is especially important.

Although there are different articles on corruption in Africa, or African oil industry, there is a dearth of research papers with an in-depth discussion of how the two are linked, or the varied ways corruption is promulgated. Transparency in the oil industry is crucial because different IOCs transfer

---

9. BP Energy Stats, *supra* note 6, at 16.

10. *Id.*; *see also What Countries Are the Top Producers and Consumers of Oil?*, U.S. ENERGY INFO. ADMIN., https://www.eia.gov/tools/faqs/faq.php?id=709&t=6 (last visited Sept. 20, 2019).

funds to host governments in exchange for doing business in the host country. These funds should benefit the host country's inhabitants and propel economic development; however, this does not appear to be the case in Africa. This phenomenon is aptly known as the 'oil curse' where resource rich countries, are performing worse than their counterparts. Thus, this paper overall brings a much-needed outlook on the battle for oil, and fighting through corruption in Africa's socio-economic landscape.

II. History, Discovery & Scope Of African Oil Reserves

To fully understand the pervasiveness of corruption in many of Africa's oil rich countries, one must revisit the history and scope of oil in Africa. The focus of this article is on the top oil producing countries in SSA such as Nigeria, Angola, Algeria.[11] Although these countries share similarities in their approaches to oil governance, each country continues to grapple with its own unique set of challenges. Oil, for the purpose of this paper, includes shale oil, crude oil, condensates and natural gas liquids.

A. Identifying Africa's Largest Oil Producers

1. Nigeria

Nigeria is the largest oil and gas producer in SSA.[12] In 1956, inside Nigeria's Bayelsa state, Shell-BP discovered oil in commercial quantities at Oloibiri field.[13] The discovery catapulted Nigeria into the oil industry, and ended its agricultural-based economy. Shortly after, in 1958, the Oloibiri field came on stream and began producing 5,100 barrels per day.[14] In 1960, Nigeria extended to other foreign nations the exploration rights to adjoining states.[15] And more than a decade after the first oil production, Nigeria became a member of the Organization of the Petroleum Exporting Countries ("OPEC") in 1971.

---

11. BP Energy Stats, *supra* note 6, at 16.

12. *Nigeria*, U.S. ENERGY INFO. ADMIN., (May 23, 2016), https://www.eia.gov/beta/international/analysis.php?iso=NGA.

13. *History of the Nigerian Petroleum Industry*, NIGERIAN NAT'L PETROLEUM CO., https://www.nnpcgroup.com/NNPC-Business/Business-Information/Pages/Industry-History.aspx (last visited Oct. 20, 2019).

14. *Id.*

15. *Id.*

Nigeria is known for its light and "sweet" (low sulfur) high grade quality of oil.[16] The country "produces probably the best quality of crude in abundance . . . ."[17] A lower level of sulfur in crude oil makes the oil cheaper and easier to refine, when compared with oil found in the Middle East, which may be "sticky."[18] Sticky oil is a characteristically viscous class of oil found in medium to heavy crudes.[19]

Nigeria's trade partners are largely in Europe and Asia.[20] The United States, once Nigeria's largest oil importer, no longer needed Nigerian oil after it discovered an abundance of shale oil in its own backyard.[21] Nigeria's economy is largely dependent on oil, with crude oil accounting for 76% of exports in 2017.[22] Surpassing its initial production, Nigeria produced around 672 million barrels in 2017, and currently has approximately around 30.1 billion barrels of proven oil reserves, with 30% located on shore, and 70% offshore.[23]

Nigeria's oil production and capacity may paint a thriving economic picture, but the country is not without its woes. The Oloibiri oil discovery has been both a blessing and a curse. Although Nigeria's 2017 oil exports made it the 49th largest export economy in the world, militant attacks and various forms of corruption, all contributed to Nigeria's rank as the 124th of 126 most complex economy.[24] An economy that is too complex to navigate is a deterrent for foreign investment. Different forms of corruption such as oil theft, infrastructure sabotage, and bribery are part of the various challenges surrounding Nigeria's business climate that contribute to the

---

16. *Africa's Oil & Gas Scene After the Boom: What Lies Ahead*, OXFORD ENERGY FORUM, https://www.oxfordenergy.org/wpcms/wp-content/uploads/2019/01/OEF-117.pdf?v=7516fd43adaa, (last visited Oct. 20, 2019) [hereinafter Oxford Energy Forum].

17. *Id*. at 10.

18. Chris Nwachukwu Okeke, *The Second Scramble for Africa's Oil and Mineral resources: Blessing or Curse*, 42 INT'L LAW 193, 200 (2008) [hereinafter, CN Okeke].

19. *See Types of Crude Oil,* U.S. ENVTL PROT. AGENCY, https://www.epa.gov/emergency-response/types-crude-oil (last visited Nov. 10, 2019).

20. *.Where Does Nigeria Export Crude Petroleum to*? (2017), THE OBSERVATORY OF ECON. COMPLEXITY, https://oec.world/en/visualize/tree_map/hs92/export/nga/show/2709/2017/ (last visited Oct. 20, 2019).

21. Oxford Energy Forum, *supra* note 16, at 13.

22. *Nigeria*, THE OBSERVATORY OF ECON. COMPLEXITY, https://oec.world/en/profile/country/nga/ (last visited Oct. 20, 2019) [hereinafter OEC Nigeria].

23. *Oil and Gas State of Play*, DELOITTE, (Nov. 2018), https://www2.deloitte.com/content/dam/Deloitte/xe/Documents/energy-resources/africa_oil_gas_state_of_play_Nov 2018.pdf [hereinafter Deloitte State of Play].

24. *See* OEC Nigeria, *supra* note 22.

nature of Nigeria's complex economy.[25] The last major foreign direct investment in Nigeria was in 2014.[26] The volatile oil industry, aging oil fields along with the scarcity of new FDI has exacerbated the steady decline of Nigeria's resources, falling 15% between 2010-17. [27]

2. Angola

Angola is SSA's second-largest oil producer.[28] In 1955, Angola discovered oil in its Kwanza (Cuanza) Basin.[29] Similarly to Nigeria, Angola also produces a 'sweet' quality of oil, and is a member of OPEC.[30] Angola has approximately 17.6 billion barrels of oil resources, with 95% located offshore, and many more offshore and deep-water oil projects slated to commence in the upcoming decade.[31]

China, India, and the United States are the top trading importers of Angola's crude oil.[32] China accounts for 67%, India 11%, and the U.S. 8.3%.[33] Angola's upstream sector, which mainly deals with exploration and production activities, dominates Angola's oil and gas industry, but its refining capacity in the midstream sector severely lags behind in consumer demand. Angola only has one refinery facility in Luanda with a capacity of 65,000 barrels per day, however, it currently produces fewer than 40,000 barrels per day.[34] Furthermore, Angola's top import in 2017 was refined petroleum, indicative of Angola's lack of refinery infrastructures. [35]

It is unsurprising that Angola is also an oil-dependent economy, and thus highly susceptible to oil price fluctuations. Much like its other SSA oil

---

25. *See* Oxford Energy Forum, *supra* note 16.

26. Deloitte State of Play, *supra* note 23.

27. *Id*.

28. *Angola – Oil and Gas*, EXPORT.GOV, (Aug. 22, 2019), https://www.export.gov/article?id=Angola-Oil-and-Gas.

29. *Background Reference: Angola*, U.S. ENERGY INFO. ADMIN. (June 7, 2019), https://www.eia.gov/beta/international/analysis_includes/countries_long/Angola/background.htm [hereinafter EIA Angola].

30. EXPORT.GOV, *supra* note 30; *see also*, *Angola Facts and Figures,* ORG. OF THE PETROLEUM EXPORTING COUNTRIES, https://www.opec.org/opec_web/en/about_us/147.htm (last visited Oct. 20, 2019) [hereinafter OPEC Angola].

31. Deloitte State of Play, *supra* note 23; EIA Angola, *supra* note 28.

32. EIA Angola, *supra* note 28.

33. *Where Does Angola Export Crude Oil to?*, THE OBSERVATORY OF ECON. COMPLEXITY, https://oec.world/en/visualize/tree_map/hs92/export/ago/show/2709/2017/ (last visited Oct. 20, 2019).

34. Deloitte State of Play, *supra* note 23.

35. *See Angola*, THE OBSERVATORY OF ECON. COMPLEXITY, https://oec.world/en/profile/country/ago/ (last visited Oct. 20, 2019) [hereinafter OEC Angola].

producing counterparts, Angola's economy was impacted by the 2014 oil crash, when the price of oil nosedived from a peak of $115 in June 2014 to a record low of $35 per barrel in February 2016.[36] With crude petroleum accounting for a bulk of its exports,[37] a negative slew of consequences, most notably, a lack of new FDI, flowed from the oil bust.[38] Because oil prices were discouragingly cheap, oil companies were not inclined to invest in Angola's oil and gas ("O&G") industry.

The Sociedade Nacional de Combustíveis de Angola ("Sonangol") is Angola's powerful state-owned oil company.[39] Sonangol is likely a key reason IOCs are hesitant to invest in Angola's oil industry.[40] Created in 1976, Sonangol controls Angola's O&G sector.[41] In November of 2017, Joao Lourenco displaced Jose Filomeno Dos Santos as president. Dos Santos held the presidency for thirty-eight years.[42] Sonangol's previous governance contributed to Angola's 2017 ranking as the 117th most complex economy. [43] Under the new governance by Lourenco, Sonangol underwent major leadership change.[44] Lourenco removed different relatives and subordinates of Dos Santos from key positions of power in an attempt to control the corruption and nepotism that had permeated Angola's government.[45] For example, Lourenco replaced Zenu Dos Santos from his position as the head of Sonangol.[46] Shortly after his displacement, Zenu was charged with corruption when he attempted to transfer $1.5 billion to a Swiss bank account. The money purportedly was part of a scheme to cover up fraudulent investment decisions.[47]

---

36. Kenneth Rogoff, *What's Behind the Drop in Oil Prices*?, WORLD ECON. FORUM, (Mar. 2, 2016) https://www.weforum.org/agenda/2016/03/what-s-behind-the-drop-in-oil-prices/.

37. OEC Angola, *supra* note 35.

38. Deloitte State of Play, *supra* note 23.

39. *Sonangol E.P.*, INST. OF EXP. & INT'L TRADE, http://www.angola.doingbusiness guide.co.uk/market-experts/sonangol-ep/, (last visited Oct. 20, 2019).

40. *Id.*

41. *See* Oxford Energy Forum, *supra* note 16.

42. Antonio Cascais, *Angola: The Fall of the Dos Santos Clan,* DEUTSCHE WELLE, https://www.dw.com/en/angola-the-fall-of-the-dos-santos-clan/a-45646757 (last visited Oct. 20, 2019).

43. OEC Angola, *supra* note 35.

44. Oxford Energy Forum, *supra* note 16.

45. *Id.*

46. *Id.*

47. *Id.*

3. Algeria

Right on Angola's heel is Algeria, another SSA key player. Algeria commercially discovered oil in 1956 through the Edjelleh and Hassi Messaoud oil fields.[48] Territorially, Algeria is the largest country in Africa and has been OPEC's largest member country, since joining in 1969.[49] Algeria's estimated 12.2 billion barrel of crude oil reserves, and six current active refineries, contributed to the country's ability to produce 618,000 barrels per day in 2018. [50]

Like its counterparts, Algeria is an oil-dependent economy because the country relies heavily on hydrocarbon production revenue.[51] Petroleum gas (42%), crude petroleum (34%), and refined petroleum (18%) all make up Algeria's top three 2017 exports, effectively making the O&G industry Algeria's economic backbone.[52] Trading destinations for Algeria's exports are Europe and Eurasia (57%), Western Hemisphere (21%) and Asia-Pacific regions (21%).[53]

Although Algeria is currently experiencing production stagnation, this region still has huge potential. Perhaps due to the Algeria's massive landmass, around two-thirds of prospective acreage is still underexplored or unexplored.[54]

Sonatrach, Algeria's state-owned hydrocarbon company, is the largest company in Africa and controls around 80% of hydrocarbon production.[55] Given the amount of underexplored areas in Algeria, Sonatrach has announced a focus on exploration and production activities of the upstream sector, which hopefully should also bolster new FDI for the country.[56]

---

48. *Algeria Facts and Figures,* ORG. OF THE PETROLEUM EXPORTING COUNTRIES, https://www.opec.org/opec_web/en/about_us/146.htm (last visited Oct. 20, 2019) [hereinafter OPEC Algeria].

49. *Id.*

50. *Algeria Executive Summary*, U.S. ENERGY INFO. ADMIN., (Mar. 25, 2019), https://www.eia.gov/beta/international/analysis.php?iso=DZA [hereinafter EIA Algeria].

51. *Id.*

52. *Algeria*, THE OBSERVATORY OF ECON. COMPLEXITY, https://oec.world/en/profile/country/dza/ (last visited Oct. 20, 2019) [hereinafter OEC Algeria]; *see also* OPEC Algeria, *supra* note 50.

53. EIA Algeria, *supra* note 50.

54. *Why Algeria*?, ALGERIA OIL & GAS SUMMIT 2019, https://www.algeria-summit.com (last visited Oct. 20, 2019).

55. *Algeria – Oil and Gas – Hydrocarbons,* INT'L TRADE ADMIN. (Jan. 31, 2019), https://www.trade.gov/knowledge-product/algeria-oil-and-gas-hydrocarbons.

56. *Id.*

4. Other Players

Apart from the top three oil producing countries in Africa, there are many other established and rising players. For example, Egypt is the largest producer of oil in Africa outside of OPEC, and Egypt boasts a long history of involvement in Africa's O&G industry. [57] Egypt's key location in Africa, plays a vital role in the transportation of oil and other resources between continents.[58] "The Suez Canal is an important transit route for oil and liquified natural gas (LNG) shipment traveling northbound from the Persian Gulf to Europe and North America, and for shipment traveling southbound from North Africa and from countries along the Mediterranean Sea to Asia."[59]

Further examples include Libya, which lies east of Egypt. Libya holds Africa's largest crude oil reserves, which currently accounts for 38% of the continent's total.[60] Many of these players are still battling with their own struggles. For example, Egypt's oil consumption severely outpaces its oil production.[61] This gap is partly due to aging oil fields, inadequate infrastructure and a lack of new oil discoveries.[62] Libya, on the other hand, is ridden with civil unrest and a tumultuous trading relationship with the United States.[63]

II. Undertakings of the World's Largest Oil Consumers in Africa

The world undeniably has a need for oil. Many by-products from crude oil such as gasoline, diesel fuel, heating oil, and jet fuel, are used as energy to fuel our daily lives.[64] In this context, perhaps it is not surprising that the world's largest oil consumers are the United States and China, who

---

57. *Egypt Overview*, U.S. ENERGY INFO. ADMIN. (Mar. 24, 2018), https://www.eia.gov/beta/international/analysis.php?iso=EGY [hereinafter EIA Egypt]

58. *Id.*

59. *Id.*

60. *Libya Overview*, U.S. ENERGY INFO. ADMIN. (Nov. 19, 2015), https://www.eia.gov/beta/international/analysis.php?iso=LBY (last visited Oct. 20, 2019) [hereinafter EIA Libya].

61. EIA Egypt, *supra* note 57.

62. *Id.*

63. EIA Libya *supra* note 60.

64. *Oil: Crude and Petroleum Products Explained,* U.S. ENERGY INFO. ADMIN., (May 23, 2019), https://www.eia.gov/energyexplained/oil-and-petroleum-products/ (last visited Oct. 20, 2019) (illustrating that crude oil by-products are used to fuel airplanes, cars, trucks, and heat homes etc.)

cumulatively account for 33% of the world's total oil consumption.[65] China's 1.44 billion inhabitants represents 19% of the world's population according to the latest United Nations survey.[66] The United States, though nowhere near as populous as China, has an extraordinary high use of petroleum products from crude oil. Petroleum remains the biggest U.S. energy source. "In 2018, U.S. petroleum consumption averaged about 20.50 million barrels per day (b/d), which included about 1.2 million b/d of biofuels."[67] Specifically, in the petroleum product sector, consumption of motor gasoline accounted for 45%.[68] Given the large demand for oil, the United States (historically), and China (more recently) have spearheaded multiple FDI projects in Africa.

A. The Role of FDI and International Oil Companies

The concept of foreign direct investments is fairly common. "Foreign direct investment is when a company owns another company in a different country . . . [w]ith FDI, foreign companies are directly involved with day-to-day operations in the other country."[69] In terms of FDI inflow to Africa, the continent still has a long way to go, because when compared with the rest of the world, Africa's FDI lags.[70] Nevertheless, according to the United Nations Conference on Trade and Development ("UNCTAD"), through 2017, the United States is the third largest investor in Africa (preceded by France and Netherlands), while China is the fifth largest investor in Africa.[71]

Economists and scholars have advanced different theories behind what drives FDI inflows to Africa. One theory combines three factors: Ownership, Location, and Internalization.[72] Ownership answers the "why"

---

65. *What Countries Are the Top Producers and Consumers of Oil?*, *supra* note 10.

66. *Population*, UNITED NATIONS https://www.un.org/en/sections/issues-depth/population/index.html (last visited Oct. 20, 2019).

67. *Oil: Crude and Petroleum Products Explained - Use of Oil,* U.S. ENERGY INFO. ADMIN., (Oct. 3, 2019), https://www.eia.gov/energyexplained/oil-and-petroleum-products/use-of-oil.php (last visited April. 26, 2020).

68. *Id.*

69. *What is Foreign Direct Investment?,* ECONOMY, https://www.ecnmy.org/learn/your-world/globalization/foreign-direct-investment/ (last visited Nov. 10, 2019).

70. Edward Marandu, et al., *An Analysis of Trends in Foreign Direct Investment Inflows to Africa*, 10 INT'L J. BUS. ADMIN. 20, 29 (2018) [hereinafter Marandu FDI Trend].

71. *Foreign Direct Investment to Africa Defies Global Slump, Rises 11%* , UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=2109 (last visited Nov. 10, 2019).

72. Marandu FDI Trend, *supra* note 70, at 20.

question, and speaks to the benefit a corporation gets by owning a special asset like a brand or technical knowledge.[73] Location answers the "where" question, and addresses the advantage one gets from setting economic activities in a place due to natural characteristics.[74] Finally, internalization determines the "how" question, and is the benefit a corporation gets from undertaking a business activity in-house, instead of leaving it to the market.[75] Together, these three factors make it desirable to undertake FDI, and as such, it is not surprising that much of Africa's FDI is concentrated in resource-rich countries, and located primarily in the extractive sector.[76] In Africa, the top five oil producing countries on average account for 47% of the FDI inflow from 1990 – 2016.[77] Historically, extractive sectors are the main recipients of FDI, with oil and petroleum as the main drivers. Recently, other sectors like tertiary services have gained increasing importance in the flow of FDI.[78]

1. China

Though China is the fifth largest investor in Africa, it has not always been so. China's aggressive move into Africa was due to China's unprecedented demand for oil, combined with the global response to the 9/11 attack on the United States.[79] The attack prompted China to re-evaluate its dependence in the Middle East for oil (nearly 60% in 2001) by looking for outside sources.[80] China's frontrunners into Africa were IOCs, namely China National Petroleum Corporation ("CNPC") and Sinopec.[81] Sinopec is a state-owned oil and gas company and was ranked second in 2019 Fortune Global 500 list, while CNPC, also a state-owned corporation, was ranked 4th on the list.[82] Thus, China's foreign policy in Africa is largely shaped by its IOC's actions in deal making.

---

73. *Id.* at 22.
74. *Id.*
75. *Id.*
76. *Id.* at 20.
77. *Id.* at 28.
78. *Id.*
79. *China's Energy Footprint in Africa*, INST. OF DEVELOPING ECONS. JAPAN EXTERNAL TRADE ORG., https://www.ide.go.jp/English/Data/Africa_file/Manualreport/cia_07.html (last visited Nov. 10, 2019) [hereinafter IDE-JETRO Energy Footprint].
80. *Id.*
81. *Id.*
82. *China National Petroleum*, FORTUNE, https://fortune.com/global500/2019/china-national-petroleum/ (last visited Nov. 10, 2019).

China's entrance into Africa was not altruistic, yet it's entrance into Africa was positively received by many of the continent's leaders, partly because China's entrance coincided with African leader's business objectives. For example, China's interest in Nigeria's aligned with Nigeria's then president, Olusegun Obasanjo', "Look-East policy."[83] The Look-East policy signified the start of the alliance between Africa and Asia. [84]The inception of the Look-East policy resulted from the reports that Western companies unfairly mistreated Nigerian companies.

Because China's renewed venture into Africa is for oil exploitation, its impact is concentrated in Africa's largest oil-producing countries. However, China continues to build a diplomatic relationship with the rest of Africa as well. This renewed interest is marked with the creation of the Forum on China-Africa Cooperation ("FOCAC"), which is an avenue that reflects China's foreign policy in Africa.[85] FOCAC meetings are held every three years, and the first of these meetings was held in Beijing on October, 2000. [86] Over 800 officials from both China and 44 African countries attended the first meeting.[87] The next meeting in 2003, was held in Ethiopia, and attended by more than 70 government ministers from China, and 44 African countries.

The China-Africa meetings were concomitant with different trade deals. For example, key outcomes from the 2006 FOCAC meeting was the establishment of China-Africa Development Fund, a deal valued at $5 billion, to encourage further Chinese investments in Africa.[88] Because China was a late entry in Africa's oil trade, China had to be creative in its approach by offering unique benefits not already provided by its western counterparts. For example, other China trade deals with Africa targeted debt relief, political "non-interference" approach in Africa's internal policies, support for Africa in global forums, and competitive military deals etc.[89] These deals and negotiations contributed to the notion that China

---

83. IDE-JETRO Energy Footprint, *supra* note 79.

84. Omolade Adunbi & Howard Stein, *The Political Economy of China's Investment in Nigeria: Prometheus or Leviathan?,* https://www.aeaweb.org/conference/2019/preliminary/paper/RBfbBGFE (last visited Jan. 26, 2020) (prepared for the Association for Evolutionary Ecomics Panel "The Political Economy of State Capitalism").

85. *The Role of FOCAC*, INST. OF DEVELOPING ECONS. JAPAN EXTERNAL TRADE ORG., https://www.ide.go.jp/English/Data/Africa_file/Manualreport/cia_04.html (last visited Nov. 10, 2019) [hereinafter IDE-JETRO FOCAC]

86. *Id*.

87. *Id.*

88. *Id*.

89. *Id*.

viewed African countries as peers, and not as nations incapable of self-governance.

Unsurprisingly, most China and Africa trade relationship are oil-backed transactions. For instance, in 2004, Angola delivered to China 10,000 barrels per day of crude oil in exchange for Chinese loan in the amount of $2 billion repayable over 17 years at a low 1.5% interest rate.[90] In 2005, China's Ex-Im Bank agreed to help finance Nigeria's construction of power stations for approximately $300 million, and in exchange, CNPC secured a deal to purchase 30,000 barrels of crude oil a day for one year.[91] Many of the China-Africa deals involve infrastructure agreements, and the infrastructure construction has contributed to China's influence in Africa in both diplomatic and political operations. [92] "China's role on the African continent has been defined by the financing of more than 3,000, largely critical, infrastructure projects." [93]

China's overall trade relationship with Africa stands in stark contrast to that of United States. "China [does] not view itself as superior but rather as a partner."[94] In contrast, many have criticized the U.S. relationship with Africa for its interventionist approach.[95] And others have noted that the U.S. views Africa as a continent in need of saving and thus the U.S. trade deals with Africa comes with political and/or economic conditions.[96] "The West introduced stringent conditionalities in economic cooperation among nations in order to realize their objective." [97] China's hands-off approach in Africa's internal affairs, likely indicates that China is not supporting many of Africa's corrupt government regime.[98]

---

90. IDE-JETRO Energy Footprint, *supra* note 79.

91. *Id*.

92. Panos Mourdoukoutas, *How China Beats America and Europe in Africa*, FORBES (Oct. 24, 2019) https://www.forbes.com/sites/panosmourdoukoutas/2019/10/24/how-china-beats-america-and-europe-in-africa/#6f6bb4ba6937 (comparing China's strategies in Africa to the U.S. and Europe).

93. .Witney Schneidman & Joel Wiegert, *Competing in Africa: China, the European Union, and the United States*, BROOKINGS (April 16, 2018) https://www.brookings.edu/blog/africa-in-focus/2018/04/16/competing-in-africa-china-the-european-union-and-the-united-states/ [hereinafter Brookings].

94. CN Okeke, *supra* note 18, at 199.

95. IDE-JETRO Energy Footprint, *supra* note 79.

96. *See* Ruth Gordon, *The Environmental Implications of China's Engagement with Sub-Saharan Africa*, 42 ENVTL. L. REP. 11-109 (Dec. 2012).

97. CN Okeke, *supra* note 18, at 195.

98. *See* Gordon, *supra* note 96, at 11-113.

China's involvement with Africa is however, not without its criticisms. Because China's FDI in Africa is centered in Africa's top oil producing countries, and most notably in the extractive sectors, there are different environmental implications. Chinese oil companies are not bound by the same environmental restrictions as the United States, therefore, China could comparatively give less concern to environmental implications. The international community have continuously raised concerns about China's inadvertent contribution to human rights issues, poor labor conditions, and environmental degradation.[99] Even China's debt relief program in Africa is under attack leading many countries to question its sustainability and its potential crippling effects.[100] Despite these criticisms however, there is no doubt that China's involvement in Africa through its FDI programs indicates a long-term commitment to the continent.

2. The United States of America

United States' interest in Africa is complex. To fully understand U.S. relationship with Africa, a separate look at this country's interesting history with oil and foreign policy in the global stage is warranted. The U.S. first experienced the black gold rush in the mid 1800s at the time of the industrial revolution.[101] Though coal was initially the main source of energy, tables inevitably turned with the extraction of oil in Pennsylvania in 1861, and the U.S. first exported shipment to London.[102] With more than 200 by products of oil in the market by the early 1900s, U.S. established its prowess and was responsible for more than 85% of the world's crude oil production.[103] Henry Ford's invention of Model T car in 1908, and the beginning of World War I and II further promulgated U.S. oil production.[104] Domestically, Americans consumed refined motor fuel, while internationally, oil fueled ships, land vehicles, and planes provided an energy source for warfare.[105] "Oil thus became a key component in the exercise of American hegemony over a relatively prosperous world order,

99. *Id.* at 11-114
100. *Id.*
101. *Timeline: Oil Dependence and U.S. Foreign Policy*, COUNCIL ON FOREIGN RELATIONS, https://www.cfr.org/timeline/oil-dependence-and-us-foreign-policy (last visited Nov. 10, 2019) [hereinafter CFR Timeline].
102. *Id.* at 2.
103. *Id.* at 3.
104. *Id.* at 4–6.
105. *Id.*

after an era in which an unstable balance of power produced two world wars sandwiched around a global depression." [106]

However, though the U.S. commanded most of the world's crude oil production, the combination of America's massive domestic demand, war supply demand, and bleak survey reports of U.S. remaining oil supplies, triggered American oil security fears, and prompted the United States to look to outside sources for oil.[107] "In 1947, the United States became a net-importer of oil for the first time." [108] Further threatening America's dominance in oil production and oil security fear, were discoveries of oil in other areas of the world, most notably, Saudi Arabia.[109]

The discovery of oil in Saudi Arabia, and other Arab nations were indicative of U.S. foreign policy centered on securing its oil future. "[W]ith concerns growing about the diminishing U.S. oil production capacity, President Franklin Roosevelt declare[d] Saudi oil vital to U.S. security and provide[d] financial support." [110] The U.S. also aided in Iran's effort in 1953 to overthrow then Prime Minister Mohammad Mossadeq.[111]And just a year later, the new Iranian government agreed to an arrangement where mainly U.S. companies managed Iran's oil industry. [112]

The combination of multiple oil discoveries along with U.S. massive domestic oil production caused a proliferation of oil in the markets. Because of the overabundance of oil, the U.S. slashed oil prices and created import caps to better control oil prices.[113] However, this move only protected U.S. markets, and Arab nations that depended heavily on oil revenue were left with growing frustrations. This led to the creation of OPEC.[114] Though OPEC gained little attention at its inception, the organization quickly expanded to include not only Arab nations, but other African countries as well. The growth in OPEC size contributed to its power and control of world's oil market. "By the end of 1970s,

106. Tyler Priest, *The Dilemmas of Oil Empire*, 99 JOURNAL OF AMERICAN HISTORY 236 (2012).
107. CFR Timeline, *supra* note 101 at 6–7.
108. Priest, *supra* note 124 at 239.
109. CFR Timeline, *supra* note 101.
110. *Id*. at 13.
111. *Id*. at 136.
112. *Id.*
113. *Id.* at 18.
114. *Id.* at 19.

international oil companies [had] unfettered access to just 7 percent of the world's oil reserves, down from 85 percent in the 1960s." [115]

Further display of OPEC's power and exposure of U.S. fragility in the oil industry occurred with the 1973 oil embargo, after the U.S. supported Israel in the Yom Kippur War.[116] Arab nations retaliated against the U.S. by blocking oil shipments. "More than the embargo itself, however, U.S. policy and consumer responses to it created 'panic at the pump' and inflamed the crisis at home."[117] The oil shortage in this period caused an increase in crude oil prices, which sparked U.S. drilling explorations in foreign nations such as West Africa.[118] Thus, this period coincided with many oil discoveries made in Africa. Years later, with the 9/11 attack on U.S. soil, U.S. sought to reduce its dependence on Middle Eastern oil, and protect against supply disruptions. "[T]he U.S. Department of Defense established a new unified Africa Command to safeguard growing oil production in West Africa and counter Chinese design[s] on African mineral resources."[119]

Today, U.S.–Africa trade and investment relationship are centered on the African Growth and Opportunity Act ("AGOA").[120] The Act, renewed in 2015 to extend through 2025,[121] gives exports from countries in SSA preferential access to U.S. markets. [122] AGOA currently has forty participating African countries.[123] For African countries to receive AGOA benefits however, compliance with certain pre-set condition are necessary. For example, "[t]he country must be making progress toward a market-based economy, . . . elimination of trade barriers and systems to combat corruption, and protection of worker's rights." [124] Furthermore, "AGOA has had a mixed legacy, given its goal of growing Africa's export markets rather than building two-way trade and investment partnerships."[125] Also, crude petroleum remains the dominant product traded between the U.S. and

115. *Id.* at 21.
116. *Id.* at 20–25
117. Priest, *supra* note 106 at 242.
118. *Id*. at 243.
119. *Id*. at 246.
120. *Africa,* OFFICE OF THE U.S. TRADE REPS., https://ustr.gov/countries-regions/africa (last visited Nov. 10, 2019) (providing basic information on the United States and Africa Trade) [hereinafter USTR].
121. *Id.*
122. Brookings, *supra* note 93.
123. USTR, *supra* note 120.
124. Brookings, *supra* note 93.
125. *Id.*

Africa "with 69 percent share of overall AGOA imports."[126] Thus, because of the limited concentration of trade, very few countries and sectors in Africa are able to meaningfully utilize the benefits of AGOA as a whole.

Trade between the U.S. and Africa has undergone a significant change in recent years due to the discovery of shale oil in the U.S. As a result of the oil discovery, the U.S. lifted a 40-year oil export ban put in place in the 1970s, after OPEC's oil embargo against the U.S.[127] Not long after, the U.S. reclaimed its once lost independence and dominance in the oil industry.[128] After the U.S. mass production of shale, U.S. crude oil imports from Africa took a significant plunge. "Crude oil exports from Africa to the United States have fallen from a high of 2.4 million barrels a day in 2007 to 0.29 million barrels a day in 2014, which represents an 87.7 percent decline."[129] The impact of the shale oil discovery and subsequent reduction in Africa's oil export to the U.S. has reverberated in Africa's oil-dependent economy. Though China and other countries have filled the gaping hole the U.S. left, many African countries are still in search of a stable customer base.[130]

Despite the reduction in African crude oil imports to the U.S., America's investments in Africa are still significant. For example, U.S. FDI in 2017 alone was $5.8 billion in Nigeria and $1.7 billion in Ghana.[131] Although a lion chunk of America's reduction of trade and investment in Africa is due to shale energy boom, another underlying and long recurring reason is the constant battle against corruption in Africa's economy.

III. Corruption and Misuse of Investment and Natural Resource Revenues In Africa

Although one would naturally expect the benefits of foreign investments and revenue from Africa's massive oil reserves to flow down to its inhabitants, history indicates otherwise. Thus, there is a growing

126. USTR, *supra* note 120.

127. *U.S. Spending Bill Lifts 40-year Ban on Crude Oil Exports,* BBC NEWS, (Dec. 18, 2015) https://www.bbc.com/news/business-35136831.

128. CFR Timeline, *supra* note 101.

129. Nancy E. Brune, *The Impact of the U.S. Shale Boom in Africa,* JOURNAL OF INT'L AFFAIRS (Jan. 1, 2016) https://jia.sipa.columbia.edu/impact-u-s-shale-boom-africa.

130. *Id*.

131. *Nigeria,* OFFICE OF THE U.S. TRADE REPS., https://ustr.gov/countries-regions/africa/west-africa/nigeria (last visited Nov. 10, 2019); *Ghana*, OFFICE OF THE U.S. TRADE REPS., https://ustr.gov/countries-regions/africa/west-africa/ghana (last visited Nov. 10, 2019).

resentment of many African citizens against government leadership. "According to some estimates, . . . Africa is the only world region where sustained economic growth in the coming years will not result in meaningful poverty reduction; on the contrary, poverty is projected to rise."[132] And corruption continues to impede the efforts of bringing Africa out of poverty.

According to the Corruption Perception Index ("CPI"), a leading global indicator of public sector corruption, countries in SSA displayed the highest levels of corruption.[133] The CPI included rankings for 180 of the 195 countries in the world.[134] On the list, Libya ranked 170 out of 180, Angola ranked 166 out of 180, Nigeria ranked 144 out of 180, while Algeria and Egypt tied for 105th out of 180 countries.

The pervasive nature of corruption in Africa has affected the public perception on the possibilities for its eradication. Afrobarometer, a non-partisan research network, conducted a public attitude survey on corruption with a nationally represented survey sample of African citizens.[135] Thirty-six African countries were surveyed and key findings revealed that indeed Africans are not oblivious to the wide-spread corruption that has become a part of everyday life.[136]The most popular reason why people do not report corruption was "fear of the consequences (34%) and the expectation that nothing will be done (14%).[137]

Further, many responders of the Afrobarometer surveys show corruption has increased, and, among the types of elected or state officials viewed to be corrupt, the police were most often cited.[138] For instance, "45% of respondents say 'most' or 'all' police are involved in corruption… government officials (38%) . . . judges and magistrates (34%), . . . officials in the Presidency (31%) . . . ."[139]

---

132. Oxford Energy Forum, *supra* note 16, at 27.

133. *Corruptions Perceptions Index 2018*, TRANSPARENCY INTERNATIONAL, https://www.transparency.org/files/content/pages/CPI_2018_Executive_Summary_EN.pdf (last visited Nov. 10, 2019).

134. *Id*.

135. Thomas Isbell, *Efficacy for fighting corruption: Evidence from 36 African countries*, AFROBAROMETER (July 3, 2017) https://afrobarometer.org/sites/default/files/publications/Documents%20de%20politiques/ab_r6_policypaperno41_efficacy_for_fighting_corruption.pdf.

136. *Id.*

137. *Id*.

138. *Id.* at 2

139. *Id.*

African countries' rankings and survey reports indicate the breadth and scope of corruption and shows that urgent change is necessary to set the African economy back on the correct course. Indeed, even though most of corruption is unreported, a majority of Africans (54%) still believe that ordinary people can fight corruption.[140]

A. Corruption Overview

There are many different definitions of corruptions. Because of corruption's wide scope, one definition does not seem to fully capture its essence. For example, Merriam-Webster Dictionary defines corruption as a "dishonest or illegal behavior especially by powerful people."[141] Transparency International, a leading independent, non-governmental organization that created the CPI, defines corruption as "the abuse of entrusted power for private gain." [142] The United Nations defined corruption as an "insidious plague that has a wide range of corrosive effects on societies."[143] Others have defined corruption to be "the diversion of public resources to non-public purposes." [144] The reality is there are different varieties and typologies of corruption. And the impact of corruption not only "corrodes the social fabric of society,"[145] it also creates a "distrustful and apathetic public."[146]

Scholars have advanced different theories on corruption, one of which includes four subtypes: (1) cost-reducing corruption; (2) cost-enhancing corruption; (3) benefit-reducing corruption; and (4) benefit-enhancing corruption.[147] In all of these scenarios, corrupt individuals look for ways to

---

140. *Id.* at 1.

141. *Corruption*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/corruption (last visited Nov. 10, 2019).

142. *.How Do You Define Corruption?,* TRANSPARENCY INT'L, https://www.transparency.org/what-is-corruption#define (last visited Nov. 10, 2019); *see also* Overview, TRANSPARENCY INT'L, https://www.transparency.org/whoweare/organisation (last visited Nov. 10, 2019)

143. *United Nations Convention Against Corruption*, UNITED NATIONS OFFICE ON DRUGS AND CRIME, https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf (last visited Jan. 26, 2020) [Hereinafter The UN Convention].

144. John Mukum Mbaku, *International Law and the Fight Against Bureaucratic Corruption in Africa*, 33 ARIZ. J. INT'L & COMP. LAW 661, 667 (2016).

145. *What is Corruption: What Are the Costs of Corruption?,* TRANSPARENCY INT'L https://www.transparency.org/what-is-corruption#costs-of-corruption (last visited Nov. 10, 2019).

146. *Id.*

147. Mbaku, *supra* note 144, at 676 (examining a 1989 American Journal of Economics and Sociology article written by Professor M. Shahid Alam).

extract extra income for themselves. A cost-reducing type of corruption "is a specific scheme developed by business bureaucrats to enhance their ability to extract extralegal income from business enterprises"[148] In this scheme, bureaucrats looks for ways to enhance and maximize its profits by reducing the cost of government activities on a particular enterprise.[149] For example, the bureaucrat can "reduce or eliminate the tax owed the state by a business enterprise."[150] The bureaucrat rewards the civil servant doing the leg work, and the cost saved through the illegal tax scheme, is then shared among those who were involved.[151]

Corruption in a cost-enhancing structure thrives where "there is excess demand for a public good or services and the government is unwilling or unable to increase supply." [152] In this scenario, due to what is effectively a perpetual shortage, a corrupt individual will extort extra payments from the public seeking access to the goods or services.[153] Another type of example on this structure is where bureaucrats illegally levy extra taxes on a person's property.[154] When the person is unable to pay the extra taxes, the bureaucrat will seize the property for his personal use.[155]

A benefit-enhancing corruption involves government agency transfer of resources to the public, through administered programs, i.e. scholarship funds.[156] In this scheme, individuals who oversee these government programs can "illegally transfer more resources to a beneficiary than the [beneficiary] is entitled to receive." [157] Here, the overseer profits by allowing the recipient to exaggerate his actual needs, allowing the two to share in the portion of the overpayment.[158]

In a benefit-reducing corruption, "civil servants seeking ways to enrich themselves can illegally appropriate government benefits that are due other citizens and make them their own.[159]This type of corruption is quite pervasive in African countries.[160] To use the scholarship fund scenario as an

148. *Id*.
149. *Id*.
150. *Id*.
151. *Id*.
152. *Id*. at 11.
153. *Id*.
154. *Id*.
155. *Id*.
156. *Id*.
157. *Id*.
158. *Id*. at 11–12.
159. *Id.*
160. *Id.*

example again, overseers of this program can delay the disbursement of the scholarship by placing the money in a local or foreign bank to bear interest, and then appropriate the interest earned for individual use.[161] Similarly, "the head of a military battalion may steal some of the supplies and equipment allocated to his unit and sell them in the open market, and keep the proceeds for himself."[162]

B. Linking the Battle for Oil to the Different Vehicles of Corruption

Within the different typologies of corruption, there are varied means by which corruption is carried out: money laundering, nepotism, bribery, abuse of power for private gain, patronage, siphoning of public funds, etc.[163] The proliferation of these types of corruption did not occur overnight. Corruption was once so deeply ingrained in the fabric of society, that its existence was deemed perfectly normal and was just another facet of doing business. Today, this standard cannot continue to be the case.

Corruption perpetuates poverty in Africa's O&G industry, because many of the benefits derived from oil never trickle down to ordinary citizens. This is a reason why, despite the sheer amount of Africa's natural resources, poverty is expected to rise.[164] Instead, the oil revenues continue to enrich the so-called leaders and governmental actors. Thus, the elimination of corruption in Africa's O&G industry must be targeted. Eradication of corruption in Africa's oil industry if possible, will be noticeable in other sectors and other nations, because the economy of many African nation revolves around oil, and many African nations have international partners.

The battle against corruption is not just limited to Africa. Developed countries and international companies with activities abroad also frequently play a role. In fact, corruption was openly supported through business practices. For example, "[p]rior to 1977 it was not unlawful for U.S. companies to offer bribes to secure foreign contracts."[165] Also, until 1999, certain "bribes paid abroad were technically tax deductible for German companies . . . ." [166] Even today, a large portion of the illicit money received by African government officials and leaders, "tend[s] to end up in

161. *Id.*

162. *Id.*

163. *See* Mbaku, *supra* note 144; *see generally* Oxford Energy Forum, *supra* note 16.

164. Oxford Energy Forum, *supra* note 16, at 27.

165. Miller Seumas, *Corruption,* THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY, https://plato.stanford.edu/entries/corruption/#VariCorr (last visited Nov. 10, 2019).

166. *Siemens: Corruption Made in Germany,* TRANSPARENCY INT'L, https://www.transparency.org/news/feature/25_corruption_scandals#Siemens (last visited Dec. 17, 2019).

offshore accounts in countries such as Switzerland, or is invested in real property in the developed countries." [167]

Over time, the U.S. and several European countries have implemented different programs meant to tackle corruption. For example, in 1977, Congress enacted the Foreign Corrupt Practices Act ("FCPA"), "making it unlawful for certain classes of persons and entities to make payments to foreign government officials to assist in obtaining or retaining business."[168] In addition, Britain updated its Bribery Act in 2010, to enhance Britain's law on bribery. The Bribery Act is "among the strictest legislation internationally on bribery."[169] This is partly because Britain's Bribery Act employs a strict liability law."[170] As a result of this, on the day Britain implemented the Act, "stock prices fell for companies doing business in high-corruption countries . . . ."[171]

Corruption acts and programs have had their fair share of successes. For example, in 2017 Halliburton agreed to pay a $29.2 million fine related to payments made to a local Angolan company in exchange for winning oil-field contracts.[172] In 2013, the U.S. Securities Exchange Commission ("SEC") charged Weatherford International, a Swiss-based oilfield service company, with bribery and inappropriate spending on foreign officials in order to win Middle East and African business.[173] In 2010, Royal Dutch Shell was part of an SEC sweep to crack down on international public companies engaged in corruption abroad.[174] Shell International Exploration and Production agreed to pay over $18 million when it violated the FCPA by making illegal payments to Nigerian Custom Services to gain preferential treatments related to its projects.[175] Yet, despite SEC's actions

167. Mbaku, *supra* note 144, at 722.

168. *Foreign Corrupt Practices Act*, THE U.S. DEP'T OF JUSTICE, https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act (last visited Dec. 17, 2019).

169. *The Bribery Act*, TRANSPARENCY INT'L UK, https://www.transparency.org.uk/our-work/business-integrity/bribery-act/ (last visited Dec. 17, 2019).

170. *Id*.

171. Rose Jacobs, *How to Fight Corruption–And Why We Should*, CHICAGOBOOTHREVIEW (May 20, 2019), https://review.chicagobooth.edu/economics/2019/article/how-fight-corruption-and-why-we-should.

172. *SEC Enforcement Actions: FCPA Cases*, U.S. SEC.AND EXCH. COMM'N https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml (last visited Dec. 17, 2019).

173. *Id.*

174. *SEC Charges Seven Oil Services and Freight Forwarding Companies for Widespread Bribery of Customs Officials*, U.S. SEC.AND EXCH. COMM'N https://www.sec.gov/news/press/2010/2010-214.htm (last visited Dec. 17, 2019).

175. *Id.*

to control corruption, the battle is far yet to be over. Different corruption scandals continue in Africa's O&G industry, sometimes with multinational companies right at the center of it all.

1. The OPL 245 Scandal—Shell, Eni, and JPMorgan Chase Bank

Royal Dutch Shell, ranked third in the 2019 Fortune Global 500 list, is an international oil company that has established its dominance in production, exploration and refining of oil and other natural gases.[176] Eni, an Italian company, is also an oil-producing supermajor with activities that includes exploration, refinery and marketing etc.[177] JPMorgan Chase & Co. ("Chase") is a financial institution headquartered in the U.S. with a history that spans over 200 years.[178] Currently, Chase operates globally in more than 60 countries worldwide, including Nigeria. [179]

In 2018, JPMorgan Chase became involved in an ongoing, high-profile lawsuit along with Shell and Eni, over an oil block sale ("OPL 245") in Nigeria made in 2011.[180] The Nigerian government filed a lawsuit implicating Shell and Eni for perpetrating a scheme to pay over $1 billion for an offshore oil block license.[181] Owners of the license will have authority for oil exploration and other activities in the area. The money allegedly never reached the Nigerian government. "The companies agree the payment was made, but disagree[d] about whether those funds then went to bribes."[182] According to the Nigerian government, the oil block payment were instead made to Dan Etete, a convicted money launderer. "Internal Shell emails, leaked to the press in 2017, reveal that senior executives knew the massive payment for the oil block would go to

176. *Who We Are*, SHELL, https://www.shell.com/about-us/who-we-are.html (last visited Dec. 17, 2019); see also *Royal Dutch Shell*, FORTUNE, https://fortune.com/global500/2019/royal-dutch-shell (last visited Dec. 17, 2019).

177. *How We Work,* ENI, https://www.eni.com/en_IT/company/company-profile/how-we-work.page (last visited Dec. 17, 2019)

178. *About Us*, J.P.MORGAN, https://www.jpmorgan.com/country/US/en/about (last visited Dec. 17, 2019).

179. *Going Global,* J.P.MORGAN, https://www.jpmorgan.com/country/US/en/jpmorgan/about/history/month/dec (last visited Dec. 17, 2019).

180. Emily Flitter, *JPMorgan's Role in Nigerian Oil Deal Has Come Back to Haunt It*, N.Y. TIMES (Mar. 28, 2019), https://www.nytimes.com/2019/03/28/business/jpmorgan-nigeria.html.

181. *Id.*

182. Kelly Giblom, et al., *Shell, Eni Officials Named in $1 Billion Nigeria Lawsuit*, BLOOMBERG (May 7, 2019), https://www.bloomberg.com/news/articles/2019-05-07/shell-eni-executives-named-in-1-billion-nigeria-bribery-suit.

Etete . . . ."[183] Not surprisingly, Nigeria then separately implicated Chase in the lawsuit for negligently carrying out the wire transfers.

Shell and Eni paid the initial $1.1 billion to a Chase bank account in London, and soon after payments were made, Nigerian officials instructed Chase to transfer the money to a Swiss bank account.[184] Chase transferred the money from its London branch, but the money was promptly returned, after the Swiss Bank cited compliance reasons due to the large amount.[185] Failing in its first attempt, Nigerian officials instructed Chase to send the money to a bank in Lebanon instead.[186] The Lebanese bank also rejected the payment due to a suspicion that the transfer was a money laundering attempt.[187] Finally, Chase was again instructed to transfer the money, this time back to Nigeria, and into bank accounts owned by Etete.[188] The final transfer was successful.

In the ongoing lawsuit, the Nigerian government claimed that the rejection of the prior transfers should have been a clear red flag deterring Chase from making the final transaction, regardless of what its instructions were.[189] Indeed, Chase flagged the transfers as suspicious to British regulators, however, the British regulators warned Chase that though the transfers were approved by the British government, that did not mean that Chase would be "legally off the hook if problems with the transfers later arose . . . ."[190] This lawsuit is currently ongoing in Italy, and if the verdict is favorable to Nigeria, the country will have the opportunity to appropriately utilize the lost oil revenues for its people.

2. The Riggs Bank Scandal

Another example of corruption that has plagued Africa's O&G industry is illustrated by the Riggs Bank ("Riggs") scandals that rocked the financial industry in the early 2000s. Riggs Bank, before its acquisition by the PNC Financial Services Group, operated out of Washington D.C., across the street from U.S. Treasury department, for more than 100 years.[191] At its

183. *Introduction*, SHELL AND ENI ON TRIAL, https://shellandenitrial.org/intro/ (last visited Dec. 17, 2019).
184. Flitter, *supra* note 180.
185. *Id*.
186. *Id.*
187. *Id*.
188. *Id.*
189. *Id.*
190. *Id.* (quoting London court filings)
191. Elliot Carter, *Riggs Bank Was "The Bank of Presidents"* ARCHITECT OF THE CAPITAL (Sept. 4, 2016), https://architectofthecapital.org/posts/2016/8/27/riggs-bank.

prime, Riggs boasted an impressive clientele. "More than 20 U.S. Presidents (ranging from Lincoln to Nixon) banked at Riggs . . . ."[192] Eventually, Riggs Bank's dubious dealings with questionable international political leaders, and its complacency in being a willing participant in fraud and money laundering led to the bank's downfall.[193]

Before Riggs' financial decline, Teodoro Obiang Nguema Mbasogo ("Obiang"), President of Equatorial Guinea ("E.G.") for over forty years, opened different accounts at Riggs in 1995.[194] E.G. is one of Africa's rising players in the oil industry. Revenue from the O&G industry accounts for 60% of E.G.'s GDP, and 86% of E.G.'s exports back in 2015.[195] Obiang's account with Riggs operated from 1995-2004 and amassed around $700 million in oil revenues before its closing.[196]

The oil revenues in Obiang's account were likely deposited from different IOCs that invested in E.G. such as ExxonMobil, Chevron, and Marathon Oil.[197] "President Obiang and his close relatives maintained signatory authority over many of the Riggs accounts and had complete discretion over the use of those funds."[198] It is highly doubtful that the money in Riggs account and others like it ever benefited the people of E.G.

The SEC and the U.S. Senate Permanent Subcommittee on Investigation launched a full inquiry into Riggs' activities in connection to the bank's dealings with E.G. and other countries such as Chile, and Saudi Arabia.[199] In relation to Riggs dealings with E.G., the Senate investigation report showed the extent of the illicit use of the Riggs funds. Riggs assisted Obiang in opening up a shell company in the Bahamas, and Riggs accepted $3 million in cash deposits from the account.[200] The Senate investigation report further revealed that Riggs had ignored the accusations of corruption and human rights violation within Obiang's presidency. Instead, in a period of two years, Riggs accepted a total of $13 million in cash for E.G., in

---

192. *Id.*

193. *Id.*

194. Alex Vines, et. al, *Well Oiled: Oil and Human Rights in Equatorial Guinea,* HUMAN RIGHTS WATCH (July 9, 2009) https://www.hrw.org/sites/default/files/reports/bhr0709web_0.pdf.

195. *Equatorial Guinea*, U.S. ENERGY INFO. ADMIN, (Dec. 2017), https://www.eia.gov/beta/international/analysis.php?iso=GNQ.

196. Vines, et. al, *supra* note 194, at 21.

197. *Id*. at 18.

198. *Id*. at 21. (citing U.S. Senate Permanent Subcommittee on Investigation's 2004 report on Money Laundering and Foreign Corruption).

199. *Id*. at 24–25

200. *Id*. at 23.

"unopened plastic-wrapped bundles."[201] This action definitely aligns with SEC's statement that indeed, one of "the most obvious form of corrupt payment is large amounts of cash."[202]

Furthermore, the Senate Investigation team also revealed that six IOC made significant payments to E.G. in the forms of scholarships.[203] For example, Chevron Corporation provided $150,000 each year between 2001 and 2004 for student training expenses; Hess made $1.9 million to fund E.G.'s students studying in U.S. and Canada; and from 2003 to 2007, Devon Energy paid $200,000 per year towards E.G.'s educational training.[204] The total amount of scholarships made to E.G. amounted to over $4 million.[205]

Whether any of the scholarship money or other funds from the Riggs accounts actually benefitted the people of E.G. given the unacceptable use of funds, is highly doubtful. For example, the reputation of President Obiang's son, Teodorin Nguema Obiang ("Teodorin"), has been marred by different corruption scandals due to his ostentatious lifestyle funded by the oil revenue. Teodorin purchased luxury homes in multiple locations including South Africa and Los Angeles.[206] Public records for the L.A. home showed that it was worth around $35 million.[207]

Eventually, Riggs pleaded guilty to different criminal charges and violation of the U.S. Bank Secrecy Act and was fined $16 million.[208] The $16 million fine was in addition to an earlier civil fine of $25 million, along with different requirements imposed by the U.S. Federal Reserved aimed at improving Riggs internal controls and risk management.[209] After Riggs was acquired by PNC Financial group, its international work with political leaders was shut down, and its former headquarters went up for sale.[210] The E.G. government on the other hand, is still struggling to be freed from the strong grip of corruption in its economy.

---

201. *Id.*
202. Mbaku, *supra* note 144, at 725.
203. Vines, et. al, *supra* note 194, at 29.
204. *Id.* at 29–31.
205. *Id.*
206. *Id*. at 34–35.
207. *Id.*
208. *Id*. at 24–25.
209. *Id*.
210. Jonathan O'Connell, *Former Riggs Bank Headquarters Near White House Goes Up for Sale,* WASH. POST, (Dec. 6, 2013) https://www.washingtonpost.com/business/capitalbusiness/former-riggs-bank-headquarters-near-white-house-goes-up-for-sale/2013/12/06/f5802e0e-56cb-11e3-835d-e7173847c7cc_story.html.

IV. Forward Looking View and Proposed Solutions to Combat Corruption

Indeed, Africa has a plethora of resources and a huge potential for growth; however, until the spread of corruption is successfully contained, progress will lag. It is important to fight corruption because of its burdensome cost on the economy. The bottom line is that countries and companies engaged in corruption, pay more. The cost can be in the form of fines levied by the SEC or other regulatory bodies, or through delays by companies because of their increased caution in evaluating deals with corrupt countries, or it can be in the form of missing benefits for Africans.[211] According to a 2015 report from the United Nations Economic Commissions for Africa, "African countries have lost more than $1 trillion in official payments since the 1970s through bribery of government officials . . . other illicit practices . . . ." [212] And more than 75% of the missing payment can be linked to some activities in the O&G sector. [213]

It is clear that corruption is a lose-lose scenario for all parties involved, thus combatting corruption should not be left to African nations alone. To tame this beast, all hands must be on deck, at the same time. As a result, proposed solutions to combat corruption are different depending on which actor is involved. Solutions can be viewed through the lenses of IOCs and multinational companies, partner countries, African youths, and judicial independence. If one actor/side were to act alone, the effects of those actions would be minimal and would likely be counteracted by actions from other actors. Instead, there should be a collaborative effort by all parties in Africa's O&G economy.

A. Different Actors and Their Roles in Curtailing the Spread of Corruption

1. International Oil Companies and Multinational Companies

Connections between oil production and human rights abuses and corruption is not uncommon. For example, in *Wiwa v. Royal Dutch Petroleum Co*, Ken Saro-Wiwa led a non-violent movement to protest the social and ecological effect of Shell's activities in his Ogoni community in Nigeria. In response to the opposition, Shell allegedly aided the Nigerian police in military attacks to quell the opposition. In the end, Wiwa and his team were arrested, tortured, and ultimately hanged.[214] Plaintiffs in the

211. Jacobs, *supra* note 171.
212. *Id.*
213. *Id.*
214. Wiwa v. Royal Dutch Petroleum Co., 226 F.3d 88, 92 (2d Cir. 2000).

Wiwa case were Nigerian emigres who were next of kin to the victims.[215] They sought damages from Shell under the Racketeering Influenced and Corrupt Organizations Act, the Alien Torts Claims Act, and international law and treaties. [216] At the height of the controversy, Shell remained complacent and chose to be a bystander instead of intervening on behalf of Wiwa or his team, despite Shell's huge influence in the Ogoni community.[217] Implicit in the Wiwa complaints filed was that from the death of Wiwa and his team, Shell stood to benefit.

First, in order for IOCs and multinational companies to fight corruptions and other cases like Wiwa, all companies must be more forthcoming and transparent with their overseas activities. Complacency is no longer an option. Corruption thrives in the dark, so the more light shed on companies' international activities, the more likely its accountability. Second, companies should implement anti-corruption programs. And if such programs are already in place, the companies should publish their follow up mechanisms.[218]

With regard to country transparency, a detailed country level disclosure from companies (IOCs in particular) for all their international activities will ensure clarity and honesty in the companies reported reveune.[219] The more transparent IOCs are, the more African citizens will be able to hold their leaders accountable for the way oil revenues are being spent and disbursed. For example, President Obiang's dictator-like governance survived off of oil riches from E.G. Additionally, the Riggs Scandal and the payments made to the Riggs account were misused for so long partly because of the lack of transparency.

Disclosure is not just limited to revenues, but should also entail contract transparency as well. For example, the aforementioned 'scholarship payments' made to E.G. by national companies were all part of a contract those companies signed with the E.G. government.[220] The extent of the use of the scholarship money as well as the names of students who benefited

---

215. *Id.*

216. *Id.* at 93

217. *See generally* Martin-Joe Ezeudu, *Revisiting corporate violations of human rights in Nigeria's Niger Delta region: Canvassing the potential role of the International Criminal Court*, 11 AFRICAN HUMAN RIGHTS L.J. 23, 35 (2011), http://www.scielo.org.za/pdf/ahrlj/v11n1/03.pdf.

218. *Promoting Revenue Transparency: 2011 Report on Oil and Gas Companies*, TRANSPARENCY INT'L (Feb. 27, 2011) https://issuu.com/transparencyinternational/docs/prt2011?backgroundColor=%2523222222. [hereinafter TI Revenue Transparency].

219. *Id.*

220. Vines, et. al, *supra* note 194, at 29.

should be available to the public to ensure that the money is not a front for bribes, because scholarship funds can easily be manipulated in a benefit-enhancing or benefit-reducing type of corruption. [221]

To further this vision of transparency and disclosure, some IOCs are a member of the Extractive Industries Transparency Initiatives ("EITI"). EITI was launched in 2002, and is the "global standard to promote the open and accountable management of oil, gas and mineral resources."[222] This means that EITI encourages disclosures of all oil and gas payments made to the government or received by government. EITI data covers the location of natural resources, from revenue collection, revenue allocation, and extends to the point where the revenues are converted to public benefit.[223] So far, 52 countries have implemented the EITI standard, including many of Africa's largest O&G producers.[224]

EITI's main focus is the public access to information which would hopefully foster debate and discussion in the public sphere; however, there is still room for growth as some data required by the EITI could be expanded.[225] According to Transparency International, a recommendation to combat corruption is for IOCs to have a more detailed disclosure (country by country) of operating reserves and production data, as well as income statements. [226] Providing this information should thoroughly address issues related to revenue transparency.

Regarding the second point, IOCs and national companies should implement anti-corruption programs, and if already in place, progress made with such programs should be disclosed.[227] Having an anticorruption program will ensure that combatting corruption is a primary goal of senior executives and employees in international companies. By actively maintaining an anti-corruption program, companies will be able to more accurately comply with their own standards. The anti-corruption programs should not only include companies' policy and stance on corruption, but should also include management systems created for reporting incidents.[228]

---

221. *See* Mbaku, *supra* note 144.

222. *Who We Are*, EITI, https://eiti.org/who-we-are (last visited Dec. 17, 2019).

223. *Id*.

224. *The Global Standard for the Good Governance of Oil, Gas and Mineral Resources,* EXTRACTIVE INDUS. TRANSPARENCY INITIATIVE, https://eiti.org/files/documents/eiti_fact sheet_en_09.2019.pdf (last visited Dec. 17, 2019).

225. *Id*.

226. TI Revenue Transparency, *supra* note 218 at 6.

227. *Id.*

228. *Id.*

Performance and the number of reported incidents should also be monitored and evaluated by company leaders.

Overall, the role IOCs and national companies play is crucial. "One of the most important foreign suppliers of corruption in the continent is the multinational company, which is seeking to influence public officials in order to have access to either government contract or conduct."[229] This is also evident via the various SEC takedowns of multinational companies who violated the FCPA. Thus, because of the crucial role IOCs and multinational companies play through their activities abroad, these companies' full cooperation is needed in order to curtail the spread of corruption in Africa's O&G industry.

2. Partner Countries

President Obiang wrote the following in his book: "discovery of oil in Equatorial Guinea . . . have completely changed the attitude of many of our partners . . . Suddenly, they have become more permissive." [230] This quote is not the only indicator that partner countries are increasingly turning a blind eye to allegations of corruption and human right violations suspected of African leaders, due to the economies of the oil industry. Many accused violators elude justice by fleeing to neighboring African countries or international communities.

The United Nations General Assembly recognized the dangers complacency in addressing corruption in partner countries poses, and thus formed the United Nations Convention against Corruption ("UN Convention"). The UN Convention was a "global response to a global problem" that was predicated on international consensus.[231] The UN Convention's treaty was enforceable in 2005 and as of 2019 included over 180 participating countries known as State Parties.[232] The treaty "addresses the cross-border nature of corruption with provisions on international cooperation and on the return of the proceeds of corruption."[233] The UN Convention addresses five main areas: cooperation at an international level,

---

229. Mbaku, *supra* note 144, at 743.
230. Vines, et. al, *supra* note 194, at 87 (citing President Obiang's book *My Life For My People*).
231. Hannes Hechler, et. al, *UNCAC in a Nutshell 2019*, U4 ANTI-CORRUPTION RESOURCE CENTER https://www.u4.no/publications/uncac-in-a-nutshell-2019 (last visited Jan. 26, 2020).
232. *Id.*
233. *Id.*

asset recovery, preventative measures, technical assistance and information exchange. [234]

In addressing asset recovery measures, the UN Convention recognized the role that other particularly developed countries, have in inadvertently aiding the continuation of corruption. Often times, suspected corrupt leaders and human right violators who have looted their countries resources, 'invest' those resources in foreign economies. This investment is done either by buying assets in developed countries, or by storing their illicit gains in offshore accounts. "[M]any of the top-level African civil servants and political elites who engage in grand corruption in African countries often use the United States, the European Union, and various offshore banking locations (especially in Switzerland) as the preferred destination for their ill-gotten gains."[235] Furthermore, reports have shown that "as much as 30% of African financial wealth is estimated to be held offshore, costing an estimated $14bn (£10bn) in lost tax revenues every year."[236] The UN Convention recognized the role all countries play in fighting international corruption and thus included provisions for the extradition of suspected criminals and the return of looted assets. [237]

The UN Convention is a step in the right direction, however, it is not without its limitations. The UN Convention contains many non-mandatory provisions.[238] These provisions, coupled with loose norms and terms, have resulted in the UN Convention's restrained ability to influence the legal systems of its signatories.[239] As a result, some countries are using the UN Convention as a way to avert criticism. By being a participating member of the UN Convention, countries placate the investor communities and others alike, while actually doing little to implement the UN Convention's provisions.[240] Implementing a higher level of scrutiny regarding each country's review and implementation process against corruption may go a long way in correcting some of UN Convention's weaknesses. [241] The bottom line is that there must be an effective sanction in place for those in

234. The UN Convention, *supra* note 143.
235. Mbaku, Fight Against Bureaucratic Corruption, *supra* note 144 at 715.
236. Anton du Plessis, *Corruption in Africa Violate Human Rights. Why Do We Tolerate It?* THE GUARDIAN (Sept. 16, 2016), https://www.theguardian.com/global-development/2016/sep/16/corruption-africa-violates-human-rights-fuels-radicalism-why-do-we-tolerate-it.
237. The UN Convention, *supra* note 143 at 30.
238. Hechler, et. al,, *supra* note 231 at 22-23.
239. *Id*.
240. *Id.*
241. *Id.*

violation of the UN Convention's provisions to limit corruption in the international forum.

International instruments alone, such as the UN Convention, will not suffice in combatting corruption issues in Africa. Neighboring partner countries in Africa also have their roles to play. In recognition of this, the Africa Union Convention on Preventing and Combating Corruption ("AU Convention") was implemented in 2006. [242] The AU Convention listed concerns about the "negative effects of corruption and impunity on the political, economic, social and cultural stability of African States . . . ."[243] One of AU Convention's objectives is to "prevent, detect, and punish, and eradicate corruption and related offences in the public and private sectors." [244] In effect, the AU Convention criminalizes acts such as illicit enrichment, money laundering, foreign bribery, and urges transparency in the management and conduction of public affairs. [245]

Over 40 countries have ratified and consented to the provisions of the AU Convention. [246] The AU Convention suffers similar woes that plagues much of the UN Convention. In addition, honest tracking and accurate enforcement of the AU Convention's provisions are more complex because much of its participating members are personally entrenched in corruption. Nevertheless, both the AU and UN Convention are great indicators that minimizing corruption is not a war that can be fought alone. Instead, battling corruption takes a coordinated effort from domestic and international allies.

3. African Youths

The gargantuan number of Africa's youth cannot be ignored. The 2015 United Nations estimates stated that there were 1.2 billion youth in

242. African Union Convention on Preventing and Combating Corruption, July 11, 2003, 43 I.L.M. 5, https://au.int/sites/default/files/treaties/36382-treaty-0028_-_african_union_convention_on_preventing_and_combating_corruption_e.pdf.

243. *Id.* at 2.

244. *Id*. at 5.

245. *See generally id.* (Article 6 discusses illicit enrichment, Article 8 tackles money laundering, Article 11 encourages prevention of bribes, and Article 12 indicates a commitment to transparency).

246. *List of Countries Which Have Signed, Ratified /Acceded to The Africa Union Convention on Preventing and Combatting Corruption*, AFRICAN UNION, (Oct. 29, 2019) https://au.int/sites/default/files/treaties/36382-sl-AFRICAN%20UNION%20CONVENTION%20ON%20PREVENTING%20AND%20COMBATING%20CORRUPTION%20%281%29.pdf.

Africa.[247] Rephrased, African youth alone, aged 15-24, represents approximately 17% of the world's population.[248] This number will continue to grow. By 2055, the 2015 estimate of Africa's youth is expected to more than double.[249] Statistics show that by 2030, youth of working age in Africa will amount to 375 million people—the combined population of U.S. and Canada. [250]

While African youth population is an indicator of opportunities and new talents to come, Africa's youth population in light of the continent's current political and socio-economic status, poses many risk and challenges. The oil industry in Nigeria, Angola, Algeria, and others are undoubtedly controlled by politicians. For example, there are many state-controlled companies in Africa, like Sonangol, that were created to manage the country's vast oil supply. Yet, despite the large number of African youths, the youth are widely underrepresented in Africa's governance.

"[T]he average age of an African president is 62, while the median age of Africa's population is 19.5." [251] Former president of Zimbabwe, Robert Mugabe, was the oldest President in Africa at the age of 94.[252] He held the presidency for 37 years before his replacement came to power.[253] Northwest of Zimbabwe lies Cameroon, whose current President is Paul Biya, age 86.[254] Biya has been in power since 1982.[255] Many of Africa's nations are democratic on paper, yet in reality, many leaders abuse power. Corruption and shady tactics are implicit in the tenure of many of these leaders as they 'win' their re-election year after year.

---

247. *Youth Empowerment*, OFFICE OF THE SPECIAL ADVISER ON AFRICA, https://www.un.org/en/africa/osaa/peace/youth.shtml (last visited Jan. 26, 2020).

248. *Id.*

249. .Mohamed Yahya, *Africa Defining Challenge*, UNITED NATIONS DEVELOPMENT PROGRAMME (Aug. 7, 2017), https://www.africa.undp.org/content/rba/en/home/blog/2017/8/7/africa_defining_challenge.html.

250. Landre Signe, *Africa Youth Leadership: Building Local Leaders to Solve Global Challenges*, BROOKINGS (Mar. 27, 2019), https://www.brookings.edu/blog/africa-in-focus/2019/03/27/africa-youth-leadership-building-local-leaders-to-solve-global-challenges/

251. Yahya, *supra* note 249.

252. Sebastiane Ebatamehi, *The 15 Oldest Presidents in Africa 2018*, THE AFRICAN EXPONENT (Oct. 20, 2018), https://www.africanexponent.com/post/9292-africa-a-young-continent-with-old-leaders.

253. *Id.*

254. AFP, *World's Oldest Leaders*, THE EAST AFRICAN (July 25, 2019), https://www.theeastafrican.co.ke/news/world/Worlds-oldest-leaders/4552918-5210226-114msumz/index.html.

255. *Id.*

Power consumes and power corrupts. The hesitation of Africa's leaders to step away from the helm of leadership is further indication of the intoxicating effects absolute power has on the mind. Africa's aging leaders continue to make decisions, while its fledging youth are forced to live with the consequences.[256] Because of the pervasiveness of corruption in the African economy, today's African youths must reckon with the reality of corruption being a normal occurrence in almost every facet of life. A change is needed, because governance in Africa cannot be left alone to its current leaders.

In order to combat the spread of corruption in Africa's O&G industry, Africa's youths must assume a more active role in the political process of their respective countries. The younger generation can contribute to the strengthening of democracy in Africa's governing bodies. There must be an inclusion of youth, even at the presidential level. "Policy makers forget that youth are the backbone of any socioeconomic and political development."[257]

The wheels of change are already set in motion. For example, youth led movements such as Senegal's Y'en a marre, and Burkina Faso's Balai Citoyen, are prime indicators of African youth's ability to reinforce constitutional accountability in its leaders. [258] Youth led movements have quickly become a beacon of hope for many of Africa's younger generations, partly because of the movement's effects and ability to correct the poverty-stricken image of Africa. "These civil society movements are a breath of fresh air compared to the drab and essentially interchangeable political classes." [259]

There are many African youth initiatives. For example, there are initiatives like Africa for Africa Youths in Action and Africa Youth Initiative Network that work to prioritize the needs of African youth, and correct the detrimental effect of some governmental policies.[260] However, African countries must not only create and maintain programs for its youth

---

256. Signe, *supra* note 250.

257. Busani Bafana, *African Youth Demand a Seat at the Table,* AFRICA RENEWAL (July 2018) https://www.un.org/africarenewal/magazine/april-2018-july-2018/african-youth-demand-seat-table.

258. Signe, *supra* note 250.

259. Hamidou Anne,*Young African: Reinventing Politics*, U.N. EDUCATIONAL, SCIENTIFIC AND CULTURAL ORG., https://en.unesco.org/courier/2018-2/young-africans-reinventing-politics (last visited Jan. 26, 2020).

260. *See About Us*, AFRICA FOR AFRICA, https://africaforafrica.org/about/about (last visited Jan. 26, 2020); *see also* Steve R. *AYINET Use of Funds,* AFRICAN YOUTH INITIATIVE NETWORK https://africanyouthinitiative.org/about-us/

leaders, it must also utilize the talents already available in many of these initiatives. It is not enough to create an initiative that sparks dialogue, these initiatives must be taken to the next level. There must be intentional steps taken to tap into the talent pool of many African youth leaders, and integrate them into governmental institutions. Power must be pried open from the close-fisted hands of Africa's entrenched leaders; the current governmental body should give room for fresh ideas.

4. Judicial Independence

Judicial independence is the ability of courts and legal actors to make decisions and perform their duties outside the influence of others.[261] While defining judicial independence is relatively simple in theory, achieving judicial independence in reality is more complex. Across the SSA, undue influence in the judicial system is widespread. "[T]he type of judicial independence that is widely considered both the most important and the most difficult to achieve is independence from other governmental actors."[262] This seems to be the case especially in Africa, because several of its suspected corrupt leaders continue to evade judicial reprimand. Phrases like "why pay a lawyer when you can buy a judge" are not uncommon, and has effectively made the practice of law laughable in some areas. [263] Simply put, the justice system cannot be another tool controlled by corrupt elites.

Achieving judicial independence in the SSA to fight against corruption is especially important yet very difficult. Across the SSA, African courts often encounter undue interference, many of which takes place informally.[264] For instance, interference with justice systems takes the form of verbal or physical threats against judges, biased judges' appointment, bribery, retaliatory attacks against judges, intimidations, influence pedaling, and abuse of court procedures. [265] Another major reason that impedes the stride toward judicial independence in Africa is the antiquated colonial design

---

261. David S. Law, *Judicial Independence*, ENCYCLOPAEDIA BRITANNICA, https://www.britannica.com/topic/judicial-independence (last visited Jan. 26, 2020).

262. *Id.*

263. Herbert A. Igbanugo, *The Rule of Law, Judicial Corruption, and the Need for Drastic Judicial Reform in Sub-Saharan Africa's Nation*, AMERICAN BAR ASSOCIATION (Nov. 8, 2018) https://www.americanbar.org/groups/international_law/publications/international_law_news/2013/summer/the_rule_of_law_judicial_corruption_need_for_drastic_judicial_reform_sub_saharan_africas_nation/.

264. Charlotte Heyl, *The Judiciary and the Rule of Law in Africa*, OXFORD RESEARCH ENCYCOLPEDIAS, https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1352 (last visited Jan. 26, 2020).

265. *Id.*; *see also* Igbanugo, *supra* note 263.

flaw in African government, where the president has power over the appointment, promotion and removal of judges.[266] One approach to mitigate this is to "institute a council of judicial personnel who are solely responsible for the selection and appointment of judges", instead of vesting the power solely in the executive branch.[267]

Without the coordinated efforts of the justice system to hold leaders accountable, corruption in Africa will continue to thrive. It is the right time for a judicial reform to take place across justice systems in Africa. Judges must be empowered to make impartial decisions free from undue influence from politics and other government branches. The role of Africa's justice system in the fight against corruption is simply too sacrosanct to be ignored.

Conclusion

The O&G discoveries in Africa launched Africa into the limelight, and contributed to the continent's display of power on the world stage. However, corruption in the O&G sector continues to threaten progress in Africa. Although corruption in this industry might seem like an isolated event, reality differs. O&G practices in Africa have wide-reaching effects in other nations as well as other sectors. This is why there must be a concerted effort from all parties involved to eliminate corruption.

266. Carmel Rickard, *Crucial Meeting on Judicial Independence in Africa: June 2 - 6, 2019*, AFRICAN LEGAL INFO. INST. (May 23, 2019) https://africanlii.org/article/20190523/crucial-meeting-judicial-independence-africa-june-2-6-2019.

267. Igbanugo, *supra* note 263.