

## **Secrecy order lifted on legal challenge to corrupt Nigerian oil deal**

**Crown Prosecution Service accused of failing to freeze  
corruptly obtained assets held in UK**

**Doubts whether UK asset seizure laws are adequate**

**PRESS RELEASE**

Friday 7 November 2014

The High Court has just lifted a secrecy order imposed on a 2013 legal challenge by The Corner House of a decision by the Crown Prosecution Service (CPS) *not* to freeze some \$215 million in alleged proceeds of crime from a corrupt Nigerian oil deal.

The funds arose from the sale of one of Nigeria's largest offshore oil concessions, known as OPL 245,<sup>1</sup> to subsidiaries of oil multinationals Royal Dutch Shell and ENI.

Police in the UK and magistrates in Italy are now formally investigating the deal.

Both companies deny any illegal conduct.

The OPL 245 concession was originally awarded in 1998 by the then Nigerian oil minister, Dan Etete, to Malabu Oil and Gas, a company that he set up and owns – in effect Etete awarded one of Nigeria's most lucrative oil blocks to himself.

In 2011, Shell and ENI paid \$1.1 billion, plus a signature bonus of \$200 million, to the Nigerian government for the concession. In a back-to-back deal negotiated by the Attorney General of Nigeria, the Nigerian government then undertook to transfer \$1.1 billion to Etete's company, Malabu. The deal effectively converted into money an asset that had been acquired by Malabu Oil and Gas in highly suspicious, possibly illegal, circumstances.

Shell and ENI deny paying any money to Malabu Oil and Gas. But they were aware and in agreement that the deal was for the benefit of Malabu.<sup>2</sup>

In 2011, a middleman acting for Malabu sued the company in the UK Commercial Court for fees he claimed he was owed for services rendered to Malabu in the sale of OPL 245. Pending the outcome of the case, the Court froze some \$215 million from the proceeds of the oil concession sale.

The Corner House, together with anti-corruption watchdog Global Witness and Re:Common, an Italian Non Government Organisation, and Dotun Oloko, a Nigerian anti-corruption campaigner, wrote to this Court raising concerns that the frozen funds were proceeds of crime. The group also requested the London Metropolitan Police's Proceeds of Corruption Unit (POCU) and the Italian authorities to investigate.

Although the police sought action under the Proceeds of Crime Act, the Crown Prosecution Service (CPS) declined to initiate proceedings. The Corner House therefore sought a judicial review of the CPS's decision, arguing that:

- the OPL 245 deal was corrupt and illegal under both Nigerian and UK law;
- it was likely, on the available evidence, that a substantial part of the monies paid to Malabu had been used to pay bribes; and
- the CPS's failure to act was unlawful.<sup>3</sup>

The application for permission to bring a judicial review of the CPS failure to act was held in secret, at the request of the CPS, because of the danger of "tipping off" those being investigated by the police.

In March 2014, the High Court refused permission to bring a judicial review because the CPS had assured the Court that it was still considering taking action.<sup>4</sup>

In July 2014, however, following the commercial court ruling in favour of the middleman, more than \$110 million of the suspect funds left the UK for Switzerland. The CPS did nothing to prevent the movement of this money.

By contrast, at the request of the Italian authorities, the funds were frozen in Switzerland. Only following a mutual legal assistance request from Italy did the UK authorities freeze a further \$80 million of the funds remaining in the UK.

Nicholas Hildyard of The Corner House said:

"The CPS had ample opportunity to restrain the funds. It was invited, requested and challenged to do so but failed to act. The money was restrained only because of the actions of the Italian authorities. If Italy was able to get the funds frozen, what stopped the UK in the first place?"

Key figures in Italian oil multinational ENI are now under formal investigation by magistrates in Milan for alleged corruption relating to the OPL 245 deal. The corporation's new CEO, Claudio Descalzi; his predecessor Paolo Scaroni; and its chief development, operations and technology officer, Roberto Casula, have all been named as suspects in the bribery investigation.<sup>5</sup>

Jamie Beagent of law firm Leigh Day, who acted for The Corner House in the judicial review proceedings, said:

“We are obviously pleased that the funds have finally been frozen and that an investigation is now taking place into this murky affair. It is only a shame that the UK authorities ducked their responsibilities in this regard and that it was left to the Italian authorities to pursue this matter with the appropriate rigour.”

The Corner House, Global Witness and Re:Common are writing to the Chair of the UK Parliament’s Public Accounts Committee (PAC), Margaret Hodge MP, informing the Committee of their concerns and requesting that the Committee consider undertaking an inquiry into whether or not the existing UK legislation on restraining proceeds of crime is fit for purpose. The PAC released in March 2014 a highly critical report on confiscation orders, highlighting the CPS failure to recover assets deemed proceeds of crime.<sup>6</sup>

A Home Office assessment of current legislation, undertaken by Michael Beloff QC, is widely understood to be critical of it. The Home Office has refused to release Beloff’s report to The Corner House.

## **ENDS**

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## **NOTES**

<sup>1</sup> Oil Prospecting Licence (OPL) 245 is a massive (1,958 square kilometre) and potentially highly lucrative oil block in Nigeria. It encompasses two deepwater fields, Zabazaba and Etan, at depths of between 1,500 and 2,000 metres respectively in the offshore waters in the Gulf of Guinea. The field is estimated to hold up to 9.23 billion barrels of crude oil, equivalent to nearly one quarter of Nigeria’s total proven reserves, according to industry figures.

<sup>2</sup> For further information about the OP 245 oil deal, *see* Global Witness:

- “The curious case of Nigerian oil block – OPL245”  
13th June 2013  
[http://www.globalwitness.org/sites/default/files/library/The%20case%20of%20Nigerian%20oil%20block%20OPL245\\_0.pdf](http://www.globalwitness.org/sites/default/files/library/The%20case%20of%20Nigerian%20oil%20block%20OPL245_0.pdf)
- “Global Witness comment in relation to Nigerian OPL-245 oil deal”  
17th July 2013  
<http://www.globalwitness.org/library/global-witness-comment-relation-nigerian-opl-245-oil-deal>

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- “Shell’s Nigeria investments at risk from corruption scandal, investors warned”  
19th May 2014  
<http://www.globalwitness.org/library/shell%E2%80%99s-nigeria-investments-risk-corruption-scandal-investors-warned>
  - “Time to stop the airbrushing: reaction to latest Eni corruption investigation needs investigating itself”  
19<sup>th</sup> September 2014  
<http://www.globalwitness.org/blog/time-to-stop-the-airbrushing-reaction-to-latest-eni-corruption-investigation-needs-investigating-itself/>

<sup>3</sup> See: **Witness Statement of Nicholas Hildyard, The Corner House**, 10<sup>th</sup> December 2013  
<http://www.thecornerhouse.org.uk/sites/thecornerhouse.org.uk/files/Hildyard%20Statement%20as%20filed%2010.12.13.pdf>

**Grounds for judicial review**, 10<sup>th</sup> December 2013  
<http://www.thecornerhouse.org.uk/sites/thecornerhouse.org.uk/files/Grounds.pdf>

<sup>4</sup> **Judgment** of Lord Justice Moses and Mr Justice Mitting, 18<sup>th</sup> March 2014  
<http://www.thecornerhouse.org.uk/sites/thecornerhouse.org.uk/files/Moses%20Judgement.pdf>

<sup>5</sup> “Ten questions for ENI about OPL-245 – but will we ever know the answers?”  
<http://www.recommon.org/eng/ten-questions-eni-opl-245-will-ever-know-answers/>

“\$190m frozen in UK and Switzerland in OL 245 bribery case as ENI CEO is named as suspect”, 11 September 2014  
<http://www.recommon.org/eng/190m-frozen-uk-switzerland-opl-245-bribery-case-eni-ceo-named-suspect/>

<sup>6</sup> Public Accounts Committee, 49<sup>th</sup> report, Confiscation Orders, March 2014  
<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubacc/942/94202.htm>  
<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubacc/942/942.pdf>