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Will Nigeria Take Another Bite?

Thursday, August 4, 2011 At 7:08AM



By Marcus Cohen, David Elesinmogun & Obumneme Egwuatu

The penalty for paying bribes in Nigeria may increase following demands from a Nigerian NGO that the Nigerian government seek its share of the recent anti-graft bounty. *Maybe...*

Multi-million dollar FCPA settlements based on bribery of Nigerian government officials have become commonplace in recent years, but only a tiny fraction of those penalty dollars are assessed by the Nigerian government. In fact, the total amount of fines levied by the Economic and Financial Crimes Commission (EFCC), the body charged with prosecuting corruption cases in Nigeria, equates to less than 4% of the total penalties fines imposed by the United States, Germany, and the United Kingdom. (See the "Corruption Penalty Comparison Chart" below.)

But should corporations that have already doled out tens of millions to the U.S. Department of Justice for violations of the Foreign Corrupt Practices Act (FCPA) really be concerned that the EFCC is going to take another bite?

The Nigerian people are the most direct victims of corrupt payments by foreign corporations. In a recent statement, the Socio-Economic Rights and Accountability Project (SERAP), a non-profit Nigerian NGO, noted that bribery by foreign corporations "has caused immense damage and devastation to the economy and to institutions of governance, and directly undermined the full and effective enjoyment of internationally recognized human rights, especially economic, social and cultural rights by the citizens.

To redress this disparity, SERAP petitioned the EFCC on August 2 to ensure that multinational corporations pay commensurate damages to the Nigerian people for the foreign bribery committed

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in the country. Specifically, SERAP's petition demands that the EFCC "urgently take steps to seek adequate damages and compensation against multinational corporations who have been found guilty in the US of committing foreign bribery in Nigeria and to take all necessary steps to effectively bring to justice the Nigerian officials complicit in such cases of bribery." However, fears that the EFCC will suddenly seek millions in penalties from corporations that have already settled with the DOJ may be premature.

Apart from the public remonstrations of SERAP, there has been little outcry in Nigeria for bribery penalty parity. The issue has gained little attention from either Nigerian government officials or in the press; which may be based on shrewd political and economic considerations. Many Nigerians, both those serving in public office as well as those on the street, may not want to pursue multinational corporations already dinged for FCPA violations. The underlying concern being that additional penalty demands by the EFCC may scare off foreign companies willing to invest in Nigeria. Halliburton and Siemens continue to have a significant business presence in Nigeria, notwithstanding imposition of colossal penalties by the U.S, Germany, and Nigeria. However, other multinational corporations may not stomach additional fines.

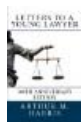
SERAP eloquently avers that the penalty disparity violates the fundamental provisions of the United Nations Convention against Corruption, ratified by Nigeria seven years ago. Article 35 of the Convention provides that persons who have suffered damage as a result of an act of corruption have the right to adequate damages and compensation. However, simply because the Nigerian government has the right to seek damages does not equate to a political wiliness to do so. Further penalization of multinational companies may lead to corporate flight – the resulting loss of jobs ultimately, *if unintentionally*, punishing the Nigerian people.

Corruption Penalty Comparison Chart

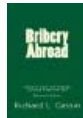
Multinational Corp	Non-Nigerian Penalty Amt.	Nigerian Penalty Amt.
Siemens AG	\$800M (US) & €796M (DE)	\$46M
Halliburton/KBR	\$727M (US)	\$35M
Snamprogetti/ENI SpA	\$365M (US)	\$32.5M
JGC Corp	\$218.8M (US)	\$28.5M
Royal Dutch Shell	\$48.2M (US)	\$10M
Technip SA	\$338M (US)	\$0
Panalpina	\$82M (US)	\$0
Pride International	\$56.1M (US)	\$0



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by Richard L. Cassin



The Foreign Corrupt Practices Act of 1977: With Lay Person's Guide to FCPA and Federal Sentencing Guidelines - Chapter 8, Part B
by U.S. Government

Willbros International	\$41M (US)	\$0
Tidewater Inc	\$20.6M (US)	\$0
Shell Nigerian Exploration	\$18M (US)	\$0
MW Kellogg (KBR)	£7M (UK)	\$0
Noble Corp	\$8.1M (US)	\$0
Total Penalty Amt:	\$3.87B	\$152M

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