

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

May 8, 2024

The Honorable Merrick Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, D.C. 20530-2001

We write to urge the Department of Justice (DOJ) to reopen a Foreign Corrupt Practices Act (FCPA) investigation into Shell and Eni regarding their 2011 purchase of the rights to Oil Prospecting License (OPL) 245, one of Nigeria's most lucrative oilfields. Available evidence implicates both companies in a scheme that resulted in the payment of \$1.1 billion in bribes to Nigerian government officials, including then-President Goodluck Jonathan. Shell and Eni, both registered with the U.S. Securities and Exchange Commission (SEC), continue to profit from the deal in violation of the FCPA.

Allegations of corruption surrounding OPL 245 began in 1998, when Dan Etete, a convicted money launderer and Nigeria's former oil minister during the military dictatorship of General Sani Abacha, awarded the OPL 245 license to Malabu Oil & Gas, a company whose principal shareholders were revealed to be Etete himself and the son of General Abacha. The rights to OPL 245 continued to be marred with corruption,¹ and in 2000, Malabu's share registry was changed to reflect a 50% shareholding by Pecos Energy, a company secretly controlled by then-President Obasanjo and his Vice President. Malabu's license was revoked in 2001 but restored in 2006, with evidence suggesting that bribes paid to then-Attorney General Bayo Ojo played a key role in that decision.

Shell and Eni then purchased the license from Malabu in 2011 for \$1.3 billion with knowledge that a portion of the proceeds would be used to bribe numerous Nigerian officials, including then-President Goodluck Jonathan. Hundreds of millions of dollars passed through various Nigerian shell companies linked to Aliyu Abubakar, a businessman known in his country as "Mr. Corruption."² Then-President Goodluck Jonathan was said to have pocketed some \$200 million from the sale, and the former Attorney General involved in the 2006 reinstatement of Malabu's license also purportedly received a sizeable payout.³ Other funds would later be traced to the purchase of real estate in the U.S., Dubai, Brazil, and Switzerland, as well as luxury vehicles and gems.

The harm to the Nigerian people, however, would continue to be felt beyond the immediate payment of bribes, with experts alleging that the country lost \$6 billion in estimated future revenue—double the size of Nigeria's annual health and education budget.⁴

In 2013, there was sufficient evidence for the Federal Bureau of Investigation (FBI) and the DOJ to open a money laundering investigation into the deal, which was followed by an FCPA investigation. In 2019, the

¹ See Katsouris, Christina, "Shell's New Nigerian Crisis," *Energy Intelligence*, Nov. 15, 2017, <http://www.energyintel.com/0000017b-a7d3-de4c-a17b-e7d35e6e0000>.

² See Global Witness, "Court Refuses to Unfreeze Funds from 'Smash and Grab' Raid on Nigerian Oil Block," Dec. 15, 2015, www.globalwitness.org/en/press-releases/court-refuses-unfreeze-funds-smash-and-grab-raid-nigerian-oil-block/.

³ See Adamolekun, Ronald, "How Nigeria's Ex-Attorney General Bayo Ojo Received \$10 Million from Malabu Largesse," *Premium Times*, Oct. 4, 2021, www.premiumtimesng.com/news/headlines/488114-how-nigerias-ex-attorney-general-bayo-ojo-received-10-million-from-malabu-largesse.html.

⁴ See Global Witness, "Take the Future: Shell's Scandalous Deal for Nigeria's Oil," 26, November 2018, www.globalwitness.org/en/campaigns/oil-gas-and-mining/take-the-future/.

DOJ notified Eni that the U.S. had closed the inquiries in light of Italy's own prosecution of the case, **yet it noted that the file could be reopened if circumstances changed.**

In a decision that has since been widely scrutinized due to concerns of impropriety and political interference, an Italian court subsequently acquitted Shell and Eni in 2021 and 2022, respectively. Soon after, a review conducted by U.S. and German representatives to the Organization for Economic Co-operation and Development (OECD) Working Group on Bribery found Italy to be noncompliant with the legal obligations of the Convention. The Working Group cited this case, in particular, in its judgment, expressing "extreme concern" over the court's "systematic rejection" of evidence.⁵

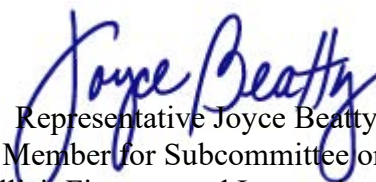
Shell and Eni continue to profit from their exploitation of the OPL 245 deal, and Eni has contested the Nigerian government's decision to delay the conversion of their Oil Prospecting License to an Oil Mining License for OPL 245. Eni's legal challenge, filed at the International Centre for Settlement of Investor Disputes (ICSID) and based upon the corruptly acquired prospecting license and related Resolution Agreement, as well as the use of the original contract in arbitration proceedings, constitutes further violation of the FCPA. The ICSID proceedings are currently suspended until May 23, 2024, with the agreement of the parties, suggesting that a settlement is being negotiated. Allegations have been made in the Nigerian press of further corruption relating to a settlement.⁶

The United States has consistently demonstrated global leadership in the fight against foreign bribery, with the FCPA serving as model legislation for countries around the world. The reopening of this case would further illustrate the U.S.' commitment to "aggressively pursue foreign bribery cases," as stated in the U.S. Strategy on Countering Corruption⁷ and reaffirm its pledge to fully implement the OECD Anti-Bribery Convention. We urge you to leverage this potent anti-corruption law to address the issues in this case and to send a powerful message that the United States stands vigilant in its pursuit of corporate crime around the globe.

Sincerely,



Representative Maxine Waters
Ranking Member
Committee on Financial Services



Representative Joyce Beatty
Ranking Member for Subcommittee on National
Security, Illicit Finance, and International Financial
Institutions

CC:

Gary Gensler, Chairman, Securities and Exchange Commission (SEC)
The Honorable Patrick McHenry, Chairman, Committee on Financial Services

⁵ See OECD, "Phase 4 Report: Italy," Oct. 13, 2022, www.oecd.org/daf/anti-bribery/italy-phase-4-report.pdf.

⁶ See "Tinubu screws Nigeria over in Paris, returns OPL 245 ownership to Shell-Eni after cornering lucrative onshore assets to nephew Wale's Oando", Peoples Gazette, 11 April 2024, <https://gazettengr.com/exclusive-tinubu-screws-nigeria-over-in-paris-returns-opl-245-ownership-to-shell-eni-after-cornering-lucrative-onshore-assets-to-nephew-wales-oando/>

⁷ See The White House, "United States Strategy on Countering Corruption," Dec. 6, 2021, <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>.