

**Tax Avoidance, Capital Flight and Poverty in Nigeria: The Unpatriotic
Collaboration of the Elite, the Multinational Corporations and the
Accountants: Some Evidence**

By

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Abstract

Nigeria loses several billions of dollars in tax revenues every year due to unreformed tax regimes and ineffective tax legislation that have aided tax avoidance and tax evasion by wealthy individuals, and local and multinational corporations (MNCs). The country loses US\$8 billion annually to capital flight in the upstream activities of the oil and gas industry. The Companies Act of 1968, the Institute of Chartered Accountants of Nigeria (ICAN) Act of 1965, the Association of National Accountants of Nigeria (ANAN) Act of 1993, Anti-money Laundering (Prohibition) Act of 2004, and the Economic and Financial Crime Commission Act of 2004 all placed the responsibility on the accountants and auditors to detect and report cases of financial corruption, tax avoidance, tax evasion and illegal capital flight to the regulators. However, despite the existence of these Acts, the accountants and auditors in Nigeria have chosen the path of selling various schemes of tax avoidance and illegal capital flight to wealthy individuals, local and multinational corporations, and they have also aided the ruling elite in looting the treasury and siphoning the looted funds to private accounts abroad. As a consequence, these local and trans-organized financial crimes and the collaborative roles of the accountants in these cases of financial corruption, the country has since independence faced acute shortage of revenues to finance infrastructure, essential public services and the critical development programmes geared to foster wealth redistribution. Financial corruption has further precipitated hunger, poverty, disease and dispossession among the Nigerians masses. Within the above context, this paper provides evidence of cases of tax avoidance, tax evasion, and illegal capital flight by wealthy individuals, the ruling elite, and local and multinational corporations. It also provides evidence of embezzlement, diversion of tax proceeds to private accounts, mismanagement of tax revenues by the officials of the Federal Inland Revenue Service (FIRS) in different parts of the country, and the antisocial and predatory roles of the accountants in these financial crimes. The paper is of the views that Nigeria needs to seriously restructure its tax systems, by putting in place effective tax legislation, which criminalizes tax avoidance, tax evasion, illegal capital flight and other trans-organized financial crimes. Moreover, strengthening international tax cooperation with the Nigerian tax regime and the consideration of the peculiar case of Nigeria when promoting trade liberalization policies by multilateral institutions, are all essential, if Nigeria is to meet the United Nations Millennium Development Goal of poverty eradication by the year 2015.

Keywords: Globalization, Tax Avoidance, Capital flight, Multinational corporations, Elite, Poverty

1. Introduction

Nigeria is the **eighth** highest producer of petroleum in the world, producing 2.1 million barrels of petroleum per day at an average price of US\$50–60 per barrel [BBC World News, 16 January 2006]. However, the recent rating by the World Bank places the country as the second poorest in the world [*The Guardian*, Friday 16 September 2005]. The reason for this paradox is **hardly** far-fetched. Between **1960, when Nigeria gained its independence**, and 1999, the country lost US\$521 billion **as a result of** theft by the ruling elite, and tax avoidance **and** tax evasion on the looted funds. **This led to** illegal capital flight **mainly** into some accountability and transparency-preaching European and American banks, and **the** purchase of properties in these **Western** countries [*Naijanet News*, 25 June 2005; *Vanguard*, 16 October 2005]. Either by design or default, successive **Nigerian governments since independence** have failed to pay any particular attention to the necessity of restructuring the nation's framework **for** both personal and corporate tax regimes [Mantu, 2005]. The country's tax legislation still remains colonial in nature, without much deliberate efforts **being made** by the successive rulers to revise it **on an ongoing basis** since independence [Mantu, 2005]. As a result, many wealthy individuals and corporate bodies do not pay taxes in Nigeria [Mantu, 2005]. Nigeria **therefore** loses several billions of dollars to tax avoidance and tax evasion through local and trans-organized crimes by wealthy individuals **as well as through** local and multinational corporations operating in the country [*This Day News*, 16 August 2005; *The Punch*, 12 October 2005; *Daily Independent*, 16 August 2005]. The country also loses US\$8 billion annually to capital flight in upstream activities of Nigeria's oil and gas industry through the procurement of **goods** and technical services from outside the country and other sharp practices of some multinational corporations (MNC) in collaboration with the erring Nigerian officials **in** the oil and gas industry [National Committee on Local Content Development in the upstream sector, 2003].

The problem has **increased in complexity due to** the unprofessional and sharp practices by the accountants **who, though their** statutory duties **require them to** detect and report these financial crimes to the regulators, have instead **opted** to continue accumulating their own private capital by devising and selling various schemes of tax avoidance and capital flight to the wealthy individuals, the ruling elite, **and the** local and multinational corporations, **despite the fact that these practices are directly opposed** to their statutory duties and professional claims. In this context, while the various professional Acts, statutory regulations and legislations put the responsibility of detecting and reporting cases of financial crimes (such as tax avoidance, tax evasion, trans-organized financial crime and illegal capital flight) on the accountants and auditors, the **available** evidence regarding the above financial crimes in the public domain in Nigeria continues to **implicate these** same accountants and auditors as collaborators **with** the wealthy individuals, **the** ruling elite, and **the** local and multinational corporations in perpetrating financial crime in Nigeria.

It is in the context of the above unreformed tax regime, ineffective tax legislation and financial crimes, being constantly perpetrated by wealthy Nigerians, the ruling elite, public officials and the local companies with the collaboration of accountants and auditors, **that** one must understand the seemingly exploitative roles of some MNCs and foreign capitalist elites. **It is apparent that this group of foreigners is converting Nigeria**

into a country known for mass financial crimes by collaborating with the corrupt, ruling Nigerian elite, wealthy individuals, public officials and employing the professional services of an army of erring accountants and auditors so as to continue to exploit the Nigerian economy with impunity. Such erring MNCs in Nigeria include Shell Petroleum, Chevron Nigeria Limited, Halliburton, Technit Cimimontubi Nigeria, Eagle Transport, Philips Oil Company, AGIP Oil Company to mention but a few [*The Punch*, 12 October, 2005, 8 September, 2005; *The Guardian*, 7 January, 2003, 4 March, 2004; *Vanguard*, 18 November, 2003]. These MNCs accept public subsidies – tax incentives, reserve additional bonus, export credit guarantees and all the benefits of the social infrastructure in Nigeria – but are unwilling to pay their share of duly assessed and democratically agreed taxes to the Federal Inland Revenue Service (FIRS) of Nigeria [*This Day News*, 16 August, 2005]. In addition, some of these MNCs, such as Chevron, Shell, and AGIP, adopt fraudulent means to obtain forcefully the above benefits of the Nigerian financial infrastructure from the government of Nigeria [*This Day* 18 August, 2005; *The Nigerian Guardian*, 15 July, 2002].

Moreover, the acclaimed trade liberalization enforced on Nigeria by the multilateral institutions such as the World Bank, the International Monetary Fund (IMF) and the World Trade Organization (WTO) (acting under the pressure being exerted by the MNCs) has had the effect of shifting the tax burden of the MNCs on to the local Nigerian consumers, who are already burdened with extreme poverty [*Business This Day*, 1 November, 2002; *The Guardian*, 2 November, 2002]. This imperial and exploitative trade liberalization has led to many financial incentives such as reserve additional bonus and tax exemptions being given to the oil companies in Nigeria. These companies have therefore been able to boost their capital flight and substantially reduce the amount of corporate taxes they end up paying to the Nigerian government, thus further shrinking the total revenues available to the Nigerian government for the provision of infrastructure, public services and necessary wealth redistribution [*The Guardian*, 4 March, 2004]. As a result, the government of Nigeria has not been able to tax adequately and collect appropriate corporate taxes from the elite and many MNCs operating in Nigeria since independence [Mantu, 2005]. As a consequence, since independence the Nigerian state has faced serious economic crises, debt burden and extreme poverty. The infrastructure is in a deplorable condition (Fafunwa, 2005)¹, educational system is in disarray (Obaji, 2005)² and the health system is in deplorable condition (Lambo, 2005)³.

The above analysis seems to suggest that for Nigeria to meet the target set for the United Nations' 2015 Millennium Development Goal for poverty eradication, the country must put in place a highly reformed tax regime, and necessary and effective legislation, which criminalize corruption, tax avoidance, tax evasion, trans-organized financial crime and all other forms of illegal capital flight. The country must have well trained incorruptible and efficient tax officials who are committed to their duties and the public interest rather than committed to their own private interests. The multilateral institutions, for their part, should seek to ensure the strengthening of international tax cooperation between Nigeria and its giant global trading partners, and this could remedy the current

¹ Professor Babatunde Aliyu Fafunwa was a former Minister of Education – see *The Guardian*, October 31, 2005.

² Mrs. Chinwe Obaji is the Minister of Education - see *The Punch*, October 19, 2005.

³ Professor Eytayo Lambo is the Minister of Health – see *The Guardian*, October 13, 2005.

imbalance between globalized businesses and the tax regime in Nigeria. Above all, Nigeria must regain the capacity to tax its citizens as well as businesses operating within its borders and use the revenues to finance infrastructure, essential public services and necessary wealth redistribution.

The paper is further divided into seven sections which outline how the above goals are to be accomplished. Section 2 implicates the theory of global capitalism and its impact on tax avoidance, tax evasion, capital flight and the resulting national debt burden, poverty of the masses and hence underdevelopment in most developing countries. Section 3 reviews a number of studies that have examined the impact of tax avoidance, tax evasion and capital flight on the economies of selected countries. Section 4 examines the theory of global capitalism and the literature review to determine the underlying reason behind the failure of wealthy individuals, private and public companies and MNCs operating in Nigeria to pay taxes. The section argues that lack of adequate taxation framework; ineffective tax legislation; the corrupt attitudes of the ruling elite, public officials and wealthy individuals; and the capitalistic ambition of the Western economic powers made evident through various exploitative trade agreements imposed on Nigeria through the developed world dominated institutions such as the World Bank, the IMF and the WTO are all responsible for the inability of the Nigerian government to generate adequate revenue that could have financed infrastructure development, public services and wealth redistribution since independence. Section 5 examines within the above context, the collaboration of the MNCs with the ruling elite and the public officials to continue to perpetrate in Nigeria sharp practices, which include tax avoidance, tax evasion and illegal capital flight. As all the above sharp practices cannot be easily carried out in Nigeria without the advice and assistance of some professionals, such as lawyers and accountants, section 6 specifically examines the connections and collaborative roles of the accountants and auditors in providing to the wealthy individuals, the ruling elite, private and public companies and MNCs in Nigeria various schemes designed to facilitate tax avoidance, tax evasion and illegal capital flight. Section 7 concludes the paper by briefly discussing all the above evidence and their implications on the aspiration of the Nigerian government to meet the target for the United Nations' Millennium Development Goal for poverty eradication in the country by 2015.

2. Understanding Global Capitalism, Tax Avoidance and Poverty in Developing Countries

The purpose of leadership in governance in any nation is for the leaders to tap into the available economic resources of the nation, put in place appropriate mechanisms to assess and collect direct and indirect personal and corporate taxes and make use of the economic resources and revenues from taxes to lead the nation towards economic prosperity. This environment of economic prosperity would guarantee gainful employment for all categories of the people in the country and open the doors to peace and harmony for all the citizens. The nation's economic resources and revenues from taxes would therefore have to be available to provide infrastructure, essential public services and the necessary wealth redistribution [Tax Justice Network, 2005].

However, under the weight of liberalist critiques, the state's role in the economic sphere is severely restricted [Sikka and Willmott, 1995]. With the exception of a

diminishing sector of public utilities, the modern state lacks its own means of production [Mitchell et al., 1996]. It is therefore **incumbent** upon the private sector to generate the wealth necessary to provide public services, including education, social security, health and defence [Habermas, 1976; Offe, 1985]. The ability of the private sector to generate the necessary wealth depends **in part** on the **existence** of economic resources, effective legislation, **and** tax reform regimes to duly and democratically assess and collect **the required** taxation from wealthy individuals, **and the** local and multinational corporations. **Above all**, ethical conduct, integrity and transparency on the part of the agency entrusted with the responsibility of assessing and **in particular of** collecting taxes are essential for the success of the above national exercise. Even where all the above essential conditions have been met, and the necessary wealth generated by the private sector, the ability of the government to make use of the generated wealth to provide infrastructure, essential public services and necessary wealth redistribution, much still depends on the country's ruling **elite's** dedication, patriotism, degree of accountability and transparency and **level** of moral commitment to public interest, all of which in turn depends on the country's political culture. As Omowa [2005] puts it:

Poverty eradication goes beyond programme formulation, and mere promises; adequate resources should definitely be available and transparently utilized; as only governments of dedicated, patriotic and incorruptible leaders are capable of implementing a sustainable programme of poverty eradication
[Emphasis added. *Daily Champion*, 19 October, 2005].

In the above context, in any society where the ruling elite **is** strongly committed to making some concessions to public interest, every effort will be made by **this influential group** to direct the greater part of the economic resources of the nation towards achieving the above goals. On the other hand, in the capitalist society where the executive power has a thousand 'golden' links with big businesses and professionals (such as accountants and lawyers) there **is** always **a tendency on the part** of the executives and professionals **to protect** private **rather than** public interests. Hence, there is widespread concern that the private and public servants' drive for responsive and accountable **leaders in government and the corporate world has** been replaced with a perverted sense of self-interest [Oputa, 2004].

As a consequence, if the citizens, private and public companies, and MNCs operating in a country feel strongly attached to a particular regime and its policy processes **because they believe** that its processes and institutions work well, we might expect them to be less likely to break its laws in the process of pursuing its benefits (including payment of direct and indirect personal and corporate taxation) [Hamm, 1986]. On the other hand, if the citizens, private and public companies and MNCs regard the current regime as corrupt and wasteful, they might feel that the ends of politics justify the means, and pursue corporate and government benefits with little regard to legality of influence (which includes **a refusal to pay** duly assessed and democratically agreed direct and indirect personal and corporate taxes). As Johnston [1986: 137] puts it,

Citizens who perceive incompetence or wrongdoing in government are likely to feel less political trust, less confidence in their political efficacy and a reluctance to support the costs of worthwhile public endeavours such as paying duly assessed direct and indirect taxation.

Moreover, in a society with popular customs which create obligations or standards of conduct contrary to the ones prescribed by law (as is the case in most developing capitalist societies), it is generally expected that such a society will display blatant evidence of fraud and corruption and hence the ruling elite will be found wanting in the provision of infrastructure and the necessary public services as well as wealth redistribution nationwide [Ndubizu, 1994].

In addition to the above internal dynamics in developing countries, the willingness of the governments, particularly in developing countries, to make use of the wealth generated by the private sector to provide infrastructure and essential public services and also to fund the necessary wealth redistribution has been further undermined by some external dynamics such as the impact of the acclaimed globalization [Tax Justice Network, 2005]. In this context, proponents of globalization in the developed world portray globalization as the only engine of growth and development for all countries (developed and developing) [Gosovic, 2000]. As a result, in advanced capitalist countries, the advance of capitalist development is accompanied by the dilution of the discourses of democracy, accountability and fairness. Major functions of the state have been appropriated by “private” organizations predominantly concerned with the welfare of capital, whilst the state’s participation in many social arenas has been reduced to that of organizer, co-coordinator and legitimizer [Sikka, 2001]. Therefore, in order to achieve the main objectives of capital accumulation for the developed capitalist state, private organizations (such as the MNCs, companies headed by individual members of the capitalist elite, and transnational accounting firms) go beyond their borders, in most cases to developing countries, in search of additional capital [Lenin, 1947]. On arrival at their targeted territory, particularly one within a developing economy, the foreign elite with the full backing of their home governments, align first and foremost with the local elite who are already serving the interests of certain colonial and global capitalists at the local level and thus, continue to serve as stooges for international exploitation [Petras et al. 1981]. The foreign and local elite, though still in the minority when combined, become in most cases powerful and influential enough to continue to sway the local ruling elite’s socioeconomic and political policies towards international mobility of capital by criminalizing business cultures, compromising policymakers, contaminating institutions and subverting due process, by being, for example, heavily involved in tax avoidance, tax evasion and illegal capital flight.

Ideally, if developing countries are to benefit from the acclaimed globalization, policymakers and governments in developing countries must have the capacity to assess and tax adequately their citizens as well as businesses (local and foreign) operating within their borders and to use the wealth generated to finance infrastructure, essential public services and the necessary wealth distribution slated to prevent hunger, disease and poverty. In addition, trade agreements between developed and developing countries must incorporate some measure of democracy, fairness and transparency, of which the developed countries preach globally. Developing countries must have effective legislation which criminalizes the offenders irrespective of their socioeconomic and political affiliations or country of origin. Further, the legislative efforts of the developing countries must be backed and supported by similar legislation coming out of the developed world. This legislation would seek not only to discourage citizens of the developed world and MNCs from perpetrating tax avoidance in their offshore operations

and illegal capital flight from foreign countries, especially from the fragile developing economies, where they operate their businesses, but the legislation would also criminalize these activities [American Secretary of State, Powell, 2004]. Above all, the political directorate, organizations or private agents charged with the responsibility of assessing and collecting various taxes must operate in the public interest and with the highest levels of integrity, ethical conduct and transparency.

On the other hand, the ruling elite in most developing countries who claimed to have put legislation in place to criminalize tax avoidance and illegal capital flight are paradoxically the same people who circumvent the same law by avoiding tax payments, looting the treasury and perpetrating capital flight by siphoning their countries' financial resources to safe havens abroad, where the tax rate is minimal or zero-rated. It is noteworthy, however, that the governments of the developed capitalist world claim to be the watchdogs of their counterparts in developing world and have been taking to task the leaders of the developing countries regarding the need for accountability and transparency in their activities, and yet because of the pressure from their MNCs and individual capitalists these leaders from the developed world seem to have also become unaccountable and in transparent in their own activities towards these same developing countries. This is because the developed capitalist world has now found itself in the uncomfortable position of having to defend the course of democracy, accountability and transparency in developing countries, while at the same time competing for capital inflows from these same developing countries into their respective developed capitalist economies, a process which conflicts with the acclaimed moral values of the developed world (democracy, accountability and transparency), which these powers advocate globally [Mitchell et al., 1998]. As a result, the political pressure from the developed world dominated and monopolized institutions such as the World Bank, the IMF and the WTO for developing countries to liberalize their trade regimes has led to a dwindling of revenues from trade taxes, such as taxes on imports and exports, and has consequently aggravated capital flight mainly from developing countries. As the Tax Justice Network [2005] observes:

Unable to increase the relatively low revenue yields from direct taxation because of capital flight and tax avoidance, poorer countries have switched the tax burden on to consumers through sales tax.

This seems to suggest that the problems confronting the developing world may have continued to be undermined by certain internal and external forces which subtly challenge their determination to raise adequate revenues to provide infrastructure and public services; to finance wealth redistribution and other basic amenities; and to fight poverty and economic depredation in their respective environments. The Jamaican Financial Secretary, Collin Bullock [2005], confirms the militating effects of these internal and external dynamics in the case of Jamaica:

Outright tax avoidance and a propensity of Jamaicans not to pay their taxes weakens the ability of Jamaican government to provide necessary social and economic services and has undermined the achievement of the country's Millennium Development Goals (MDGs). Also public vigilance and support for integrity of the public finances is therefore to be welcomed, and public financial managers have to be committed to transparency and efficiency in the use of public resources. Even where there is good governance, achievement of MDGs is

likely to be derailed by resource constraint related to aid, debt forgiveness and world trade reform inimical to developing countries.
[The Jamaican Sunday Observer, 9 October, 2005].

The Tax Justice Network [2005] also highlights the crucial impacts of the external dynamics stating that:

The problems that capital flight, tax avoidance and tax competition pose for poorer countries have been further exacerbated by what appears to have been a failure on the part of the multilateral institutions to pay sufficient attention to the implications for the tax regimes of developing countries when promoting trade liberalization [Tax Justice Network, 2005].

As a consequence, capital flight and tax avoidance by the elite and the MNCs have been responsible for underinvestment in infrastructure, education and health services in South Asia and sub-Saharan Africa [Tax Justice Network, 2005]. Subordinating private power to the public interest has proved more rewarding for the MNCs than the public in most developing countries. Unchecked MNC power particularly in developing countries has failed to produce economic regeneration, gainful employment, cleaner environments, better sanitation, the eradication of avoidable poverty, and ethical behaviour and corporate responsibility in their operations in most developing countries, particularly the multinational oil companies in Nigeria [CNN News, 2002]. The mission statements of these MNCs proclaim high ideals, but practice is all too often not in keeping with the ideals touted, and financial statements are manipulated and questionable [Sikka, 2005]. The MNCs in developing countries are shrinking the tax base and the impact on social investment is immediate. These corporations are happy to accept public subsidies, tax incentives, export credit guarantees, reserve additional bonus and all the benefits of the social infrastructure these cost developing countries huge sums of money, but these corporations are unwilling to pay their share of duly assessed and democratically agreed taxes [Sikka, 2005].

The above antisocial and predatory behaviour of the elite and MNCs cannot be easily perpetrated in any nation or economy without the advice, collaboration, or at the very least, connivance of some professionals such as lawyers, bankers and accountants, who, acting in violation of their statutory duties to the public, provide their professional services to wealthy individuals, the ruling elite, private and public companies and MNCs by assisting them to transfer the illicit wealth gained to the licit sector, thereby removing any possible criminal links associated with the wealth acquired [Drug Salvation, 2002]. Of all these professionals, it is the accountants who have the knowledge and professional expertise to plan and create environments of tax injustice within any commercial and legal environment [Tax Justice Network, 2005]. As Mitchell et al. [1996] also noted:

It is the accountants, amongst others, who are knowledgeable of the world's financial systems. It is the accountants who are able to create and manipulate the complex transactions which make it difficult to identify and trace the origins and the ultimate destiny of the illicit funds or, when acting as auditors, are reluctant to reveal and report such activity.
[Emphasis added].

Accountants have increasingly organized themselves into transnational companies or partnerships, largely driven by the need to be able to audit their transnational client

companies mostly in developing countries and through that relationship, to sell to their clients different tax avoidance schemes in return for high professional fees. As Mitchell and Sikka [2005] observe “Armies of accountants and lawyers devise tax avoidance schemes and exploit the archaic ‘domicile’ and ‘residence’ laws to enable companies to avoid paying taxes in their environment of operations. Paradoxically, the same groups then advise governments and demand special tax concession for the same companies”.

3. Review of Prior Studies

In recent times an effort has been made to analyse some critical issues such as tax avoidance; illegal tax shelters; illegal capital flight by wealthy individuals, local companies and MNCs; and the antisocial roles of some professionals, particularly accountants and auditors in these predatory cultures. Also under review were the resulting loss of revenue and the creation of unnecessary poverty, unemployment, hunger, diseases and dispossession particularly in developing economies [*The Accountant*, March 2005; Mitchell and Sikka 2005; The US Government Accountability Office, 2005; The Tax Injustice Network, 2005].

The US Senate permanent subcommittee on investigations, for example, has been examining actions taken by professional firms, including accounting firms, to promote abusive tax shelters. The outcome of the investigation showed that abusive tax shelters were being mass marketed by major accounting firms and as a consequence the US government was losing billions of dollars. It was estimated that 114 of the Fortune 500 companies and 4,400 individuals in the Internal Revenue Services (IRS) database had obtained tax shelter services from an accounting firm, resulting in an estimated tax revenue loss to the US Treasury of some \$32 billion [US Government Accountability Office, 2005]. Between 1998 and 2003 alone, 61 companies in the Fortune 500 group obtained tax shelter services from their external auditors, resulting in a \$3.4 billion loss of potential tax revenue to the US government [US Government Accountability Office, 2005]. Of that \$3.4 billion, \$1.8 billion fell into tax shelter categories which the IRS considers to be abusive. Even though the US Public Company Accounting Oversight Board has voted in favour of new rules which would severely limit the tax services that audit firms are allowed to provide to their clients, thereby reducing the problem of tax shelters, it remains to be seen if the power of capital of these powerful audit firms can be curtailed. This is pertinent as a partner in an accounting firm recently stated that “No matter what legislation is in place, the accountants and lawyers will find a way around it. Rules are rules, but rules are meant to be broken [Tax Justice Network, 2005]. Thus Sikka [2005] concludes that what ordinary people regard as antisocial and corrupt is a matter of pride in accounting firms. But the creation which the accountants regard with ‘pride’ results in unnecessary debt burden, poverty, and dispossession, particularly in developing countries [Tax Justice Network, 2005].

Enron’s published accounts showed a net income of \$2.3 billion for the period 1996–99, but for tax purposes it claimed to have experienced a loss of \$3 billion thereby avoiding the payment of any taxes for the period under review. For the year 2000, Enron reported a taxable income of \$3.1 billion, but for tax purposes the same company claimed

to have made a loss of \$4.6 billion, a calculation now disputed by the US Inland Revenue Services [Mitchell and Sikka, 2005].

More than 60 percent of the largest and most profitable US companies, boasting pre-tax profits of \$1.1 trillion, did not pay any federal taxes for 1996 through 2000 [US General Accountability Office, 2004]. A US government report showed that because of tax avoidance contractors located in tax havens always had a cost advantage over their domestic competitors and thus there was no possibility of fair competition because these companies used the social infrastructure without paying for it [US General Accountability Office, 2004].

In the People's Republic of China, the tax authorities investigated 9,465 MNCs and found that almost 90 percent of these MNCs have been using exploitative transfer pricing to avoid paying taxes [China People's Daily, 25 November, 2004].

Hove [1986] argues that the accounting systems and practices used by the international accounting firms in the developing countries are not designed to disclose information that could enable the respective host governments of developing countries to detect the use of unfair transfer pricing techniques, especially for taxation purposes. These practices allow the MNCs to employ exploitative transfer pricing to underprice the scarce resources in the developing countries and in so doing, they avoid paying the required taxation on their extraction activities in most developing countries. These practices have led to acute revenue shortages for most governments of developing countries thereby denying those leaders the opportunity of using their own resources to meet the challenge of providing basic infrastructure, education, health and security for their own people.

Girvan [1971] and Manley [1980] both lamented on the exploitative practices of the bauxite corporations in Jamaica which used exploitative transfer pricing to underprice Jamaican bauxite. The result has been that these corporations have avoided paying taxation due to the Jamaican authorities, thereby denying the Jamaican government the opportunity to collect adequate revenue to provide infrastructure, health, education and security to the Jamaican people.

Davies [2002], in a paper delivered at a conference of Caribbean tax administrators held in Jamaica, lambasted some transnational and local auditing firms operating in Jamaica, which he claimed have been helping companies to cheat their stockholders. He further argued that there was substantial work to be done to redeem the trust that the authorities have lost in auditors. The relationship between revenue agents, the tax system, and the auditing community is not what it used to be [The Sunday Observer, 28 July, 2002].

Global MNCs such as Boeing, Caterpillar, Coca-Cola, Daimler Chrysler, Eastman, ExxonMobil, General Motors, Kodak, Intel, Microsoft and others have skeletal companies in offshore havens to enable them to escape their tax obligations in the environment of their legitimate operations [Mitehell and Sikka, 2005]. The professional advice regarding tax avoidance, tax evasion and capital flight which has precipitated the national debt burden, hunger, disease, and poverty in most developing countries is rendered by the major accounting firms, who are the auditors of these MNCs. The above theory and literature are further utilized to better understand the main theme of this investigation, which is to uncover the genesis of the failure of wealthy individuals, local companies and MNCs to pay taxes in Nigeria.

4. Tax Us If You Can: The Challenges of Tax Collection in Nigeria.

The ability of any government to generate adequate revenue to meet the demands of infrastructure, essential public services and the necessary wealth redistribution depends on the political structure; the type of society; and the perception of the citizens and businesses operating within the borders of the country of governance by the ruling elite. In this context, in a society where the ruling elite are viewed as committed to some concession to public interest, this suggests that the government would have a well restructured framework of resources generation, allocation and distribution, well reformed tax regime, effective tax legislation that criminalizes tax avoidance, tax evasion and illegal capital flight. In addition, there would be dedicated and transparent tax collectors, who render their services in the public interest and professionally dedicated accountants and auditors who detect and report any cases of tax avoidance, tax evasion and any illegal capital flight to the regulators. With the above framework as a base, the ruling elite will have the moral courage to negotiate for adequate capacity to assess and tax democratically every citizen and corporation operating within the country's borders. Without having to resort to force, every citizen, including members of the elite, and business leaders operating within the country's borders would be enthusiastic and willing to contribute their share of democratically assessed and agreed taxes in exchange for which the government would provide the required infrastructure and public services; and spearhead strategies and programmes for wealth redistribution.

Nigeria is a capitalist society where the executive power has a thousand 'golden' links with big businesses and professionals (such as accountants and lawyers). This capitalistic linkage has got consequences, namely, the pursuit of selfish capitalistic interest against hope of any concession to public interest by wealthy individuals, the ruling elite and even public officials. As a consequence, since independence successive governments in collaboration with professionals such as accountants have been plundering the rich resources of the country. Infrastructural development has not been their focus, neither has any specific attempt been made either to generate revenue through direct or indirect taxes or to secure payment of taxes on the looted funds [*Daily Independent*, 18 May, 2005; Oputa, 2004]. Either by design or default, successive governments of Nigeria have refused to pay any particular attention to the question of restructuring the tax framework of the country. The existing legislation is weak and ineffective. For over ten years, staff of the Internal Revenue Service (IFRS) were not encouraged or directed to participate in any training programmes [Director of FIRS, 2005]. As a result, taxation as a source of government revenue has not been a major point of interest for successive ruling elite groups in Nigeria since independence [*The Guardian*, 5 October, 2005]. In fact, the elite themselves pay taxes only if these payments are deducted from their salaries. Some members of the elite contesting for top political positions in the country such as president, senator, member of the House of Representatives, minister of government, governor or chairman of local government have in the past been accused of not meeting their civic obligations of paying their taxes on income and property⁴ regularly. Also, those who are not employed in public institutions

⁴ During the 1979 elections, a presidential candidate of the Nigerian Peoples Party (NPP) was dragged to

pay no taxes. This category of unemployed Nigerians and the elite only pay for fake tax clearance certificates when they are bidding on government contracts or when they are about to contest for top political positions in the country [The Punch, March 8, 2006]. A valid tax compliance certificate is a requirement in both of these instances [Mantu, 2005].

Yet, while it has been estimated that taxes account for about 25 percent of the total revenue of the Federal Government, the government rarely realizes more than 10 percent of its collectable taxes in the country [The Guardian, 5 October, 2005]. Of the approximately 10 percent collected, almost 50 percent is lost every year due to diversion to private accounts, embezzlement and mismanagement of tax revenue by the officials (mainly accountants) at the FIRS [The Punch, 22 June, 2004]. This suggests that for all practical purposes the government of Nigeria may be realizing no more than 5 percent of its collectable tax revenue annually.

The unreformed tax laws, inefficient legislation and ineptitude on the part of successive governments to pay sufficient attention to the necessity of generating adequate revenue from taxation have also been evident in corporate Nigeria, where many of the companies have not been paying the appropriate taxation based on the huge profits they make every year. Many of the government officials, agencies and representatives at the FIRS, the Board of Customs and Excise, Immigration and other agencies have been compromising their professional standards, ethical conduct and integrity by collaborating with wealthy individuals and corporate Nigeria to continue to deny the government huge sums in tax revenues. For example, it is the elite at the Nigerian Board of Customs and Excise who aid the MNCs in Nigeria to import raw materials without paying appropriate custom duties for these importations. It is the elite at the Nigerian customs who cover up for the MNCs when they bring in outdated technology or contraband goods on which they pay little or no import duties and paradoxically declare as new to the Federal Government so as to claim high capital allowances, thereby paying little or no taxes at all. It is the elite at the Nigerian Board of Customs and Excise who assess the production output of the MNCs and conceal the duly assessed duties payable by these corporations, while they quietly collect huge sums of money from these corporations in return for their disservice to their own nation. It is the elite at the Nigerian immigration services who aid the MNCs to defraud the Federal Government of Nigeria by exceeding their allotted expatriate quotas, and in return, these members of the elite group in the immigration services are compensated by the corrupt MNCs [The Punch, 5 November, 2005].

The MNCs and other foreign capitalist elites operating within the borders of the country have been capitalizing on the loopholes in the taxation regime; the lack of effective tax legislation and the consequent delinquent behaviour of wealthy individuals and corporate Nigeria regarding the payment of taxes; and also the tendency of various government agencies, tax officials and accountants to collaborate with these MNCs in their efforts to avoid paying taxes on the huge annual profits they all make in Nigeria.

These corporations are employing armies of accountants and lawyers to help them devise tax avoidance and capital flight schemes. In some cases, these corporations pay the staff of the FIRS (who seem more committed to the accumulation of their private capital than to the accumulation of national wealth), to reduce their tax liability to the country substantially [see the case of Halliburton, 2004]. These corporations sometimes fire any of their employees, local or expatriate, who refuse to bribe an identified erring Nigerian

court for an alleged delinquency in paying taxes in a country he intended to lead.

official who could help them either to reduce their tax liability illegally or secure government contracts [*This Day News*, 22 February, 2004]. This situation has over the years resulted in the loss of large sums of money to tax evasion and tax avoidance and consequently leads to substantial illegal capital flight especially among the MNCs.

Moreover, MNCs continue to press their home governments to exert pressure on the host governments to enter into trade agreements that could continue to force Nigeria to pass the burden of its taxation on to the Nigerian consumers, through various tax exemption schemes and other benefits. As the MNCs continue to dodge paying taxes, the Nigerian government's capacity to assess and collect appropriate taxes on their activities continues to weaken. The trend is particularly evident among the oil companies operating in Nigeria [Obaseki, 2002]. In this context, the acclaimed multilateral institutions such as the World Bank, the IMF and the WTO have all become modern instruments at the disposal of the developed countries, home of the MNCs operating in Nigeria. Their role is to continue to position the economy of the developed capitalist world in such a way that their growth is at the expense of the fragile Nigerian economy [Duke, 2002]. These institutions (the IMF, the World Bank and the WTO) have been championing the course of trade agreements that could continue to put the Nigerian economy in a permanent position of dependency [Odash, 2002; Hall, 2005]. While these MNCs enjoy various benefits from the Nigerian government, they have all been unwilling to contribute to the development of Nigeria, especially in the very region where they carry out their operating activities [*The Punch*, 12 October, 2005]. As Daniel Igbrude [2005], Speaker of Delta State House of Assembly in Nigeria, noted:

The Oil companies operating in Niger Delta are not concerned with the development of the area. They are only concerned with the profit they make, they do not identify with the development and aspiration of the people
[Emphasis added. *The Punch*, 12 October, 2005]

With the backing of their home governments in the developed world and the collaboration of the ruling elite in Nigeria, most oil companies operating in Nigeria have been able to get away with huge illegal capital flight, tax avoidance, tax evasion and the conning of successive ruling governments in Nigeria in order to obtain illegal benefits and tax exemptions [*This Day News*, 18 August, 2005]. The ruling elite in Nigeria are therefore still serving the interests of international agents of exploitation, and thereby increasing socioeconomic and political problems in the country.

It is the above culpability of the wealthy individual Nigerians, the ruling elite, the collaborative roles of the various government agencies and officials and the anti-social and predatory roles of the accountants and auditors in tax avoidance, tax evasion and illegal capital flight that have become the ingredients at the disposal of the foreign elite and MNCs in their refusal to pay democratically assessed taxation on the huge profits made in Nigeria, while continuing to enjoy various benefits of the Nigerian infrastructure, the evidence of which is next discussed.

5. The Collaboration of the Multinational Corporations

Since independence, many MNCs particularly oil companies have been operating in different parts of Nigeria, where they make huge profits every year. These oil companies

include AGIP, Chevron, Eagle Transport, Elf, Halliburton, Mobil, Pan Ocean, Philips Oil Company, Shell Petroleum, Technit Cimimontubi Nigeria, Texaco and others. All these companies have their head offices in developed countries, in some cases in their countries of origin. These companies may not be deriving their main revenues from their respective head offices, but the governments of the countries where their head offices are located require them to file and pay personal and corporation taxes at the end of every trading period [CNN News, 11 November, 2005]. Their respective home governments particularly the American Congress have been mounting pressure on these oil companies (whose chief executive officers earn on an average \$8 million per annum) to do everything possible to reduce the price of petroleum in America in light of the huge profits they declare every year [CNN News, 11 November, 2005]. The above stipulations from the American government are being made despite the fact that these companies have been using the huge revenues they realize in foreign countries such as Nigeria to contribute to developmental projects in their respective countries of origin such as the control of environmental pollution and provision of modern infrastructure; and public services and wealth redistribution [see the case of Shell and the UK, *Financial Times*, 1997]. It is therefore paradoxical that these same oil companies which accept public subsidies, tax incentives, export credit guarantees, reserve additional bonus and all the benefits of the social infrastructure from the government of Nigeria have been unwilling to pay their share of duly assessed and democratically agreed taxes to the FIRS in Nigeria [see the cases of Chevron, 2005; Shell, 2005; Halliburton, 2005]. These same oil companies have also conned successive Nigerian governments into granting them illegitimate reserve additional bonus which increases illegal capital flight [see the cases of AGIP and Shell, 2004]. Of even greater concern is the observation that these same oil companies have been consistently implicated in cases of environmental pollution in their areas of operation in Nigeria, and yet they remain unwilling to cooperate with the regulators and the government of Nigeria in investigating the alleged implications [*The Punch*, 7 November, 2005]. They have also refused to contribute substantially to any project relating to the control of environmental pollution in their respective areas of operation [*The Punch*, 12 October, 2005]. These multinational oil companies have also been heavily involved in various other sharp practices: criminalizing the Nigerian business culture; compromising Nigerian policymakers; contaminating the Nigerian institutions; and subverting the country's due process [*The Guardian*, October 18, 2005].

In 2003, for example, of the \$4.8 billion worth of joint venture contracts approved by the Nigerian National Petroleum Corporation (NNPC), only \$674 million representing 14 percent, were awarded to the local contractors, while \$4.2 billion representing 86 percent were awarded to the above MNCs [NNPC Joint Venture, 2003]. This trend was again evidenced in the 2004 allocation for integrity to the Joint Venture Partners. Of the total \$54 billion allocated, AGIP was allotted \$54 million; Chevron, \$121 million; Elf, \$26 million; Mobil, \$56 million; Pan Ocean, \$5.9 million; Shell, \$117 million; and Texaco \$22 million [NNPC Joint Venture, 2004]. Once again, the local companies received very low percentages of the total allocation. However, when the Senate Committee on Petroleum Resources called upon all these MNCs to produce their inspection certificates to certify the integrity of their facilities and which would also justify the huge allocations requested and granted to their respective companies by the Nigerian government, some of these companies, such as Chevron, failed to produce

satisfactory documentation to support the millions of dollars allocated. In the specific case of Chevron, the allocation was \$121 million. Apparently, some of the oil companies thought that they could proceed to the Senate Committee on Petroleum Resources and merely show them the figure without duly explaining how it was arrived at, as was customary in the past, especially during the military administration. In fact, one of the representatives of the oil companies even questioned the rationale of the Senate Committee's demand for certificates and documents to support the allocation, as this was not previously a requirement. Some of the MNCs only sent their Nigerian representatives who could not even explain the contents of the documents they were presenting to the Senate Committee on Petroleum Resources, while the expatriates who actually computed the allocated amount failed to appear before the Senate Committee [Senate Committee on Petroleum Resources, 2004].

The investigations carried out by the Senate Committee on Petroleum Resources into the allocations made to each oil company revealed many fraudulent practices in the process of calculating the allocations demanded by and granted to many of the MNCs [Senate Committee on Petroleum Resources, 2004]. The Senate investigation revealed that under the operating expenses of some of the Joint Venture Partners, some multinational oil companies used the same workers paid under the Joint Venture in production sharing contracts [Senate Committee on Petroleum Resources, 2004]. Some MNCs also made allocations for expatriates to be brought in for jobs Nigerians could perform. As Senator Oyifo [2004] argued, such instances of capital flight were no longer acceptable.

However, the fact that these important investigations were not carried out by the Senate Committee on Petroleum Resources in order to certify the request submitted by each oil company prior to the allocation being approved is further testimony to the corrupt attitudes embedded in the Nigerian political system. This is because some of these erring MNCs may have bribed some erring government officials and even some members of the Senate before even presenting their fraudulent allocation requests to the Senate Committee on Petroleum Resources.

Despite these questionable allocations to the MNCs, which have led to huge illegal capital flight from the poor Nigerian economy, these corporations are still unwilling to pay duly assessed and democratically agreed corporation taxes on the huge profits they make from their exploitative exploration of oil in Nigeria. The cases which follow provide evidence of tax avoidance, tax evasion and illegal capital flight by erring MNCs, a trend which has had devastating consequences on the Nigerian economy and created unnecessary poverty, hunger and dispossession among the Nigerian masses

Case 1 – Shell International Petroleum Maatschappij BV (SIPM)

Based on the operating activities of Shell Petroleum in Nigeria in 2003, the FIRS served Shell International Petroleum Maatschappij (SIPM) with a tax assessment notice indicating its tax liability of N2.5 billion (US\$17,857,142.86)⁵ payable to the Federal Government of Nigeria for the assessment year 2003. In its response to the FIRS

⁵ The Nigerian currency is Naira with symbol N and the amount of Naira in this paper has been converted to the US\$ using the exchange rate of N140 = US\$1

assessment, SIPM, the number one multinational oil company in Nigeria, which drills oil in Nigeria's Niger Delta and also enjoys all the benefits of the Nigerian taxpayers' infrastructure, claimed that it was not liable to pay taxes in Nigeria. The insistence of the FIRS that SIPM was indeed liable to pay taxes in Nigeria led the SIPM to file an appeal to the FIRS' Appeals Commissioner, challenging the assessment sent to SIPM. However, the Appeal Commissioner ruled that SIPM was liable to pay taxes for its operating activities in Nigeria for the assessment year in question. Dissatisfied with the ruling of the Appeals Commissioner, the SIPM appealed to the Federal High Court. However, the Federal High Court also upheld the findings of the Appeals Commissioner. The failure of SIPM to get what it deemed a favourable judgment from either the Appeals Commissioner or the Federal High Court led the corporation to submit yet another appeal, this time to the Court of Appeal. Once again, the corporation lost the appeal as the Court of Appeal ruled in favour of the FIRS, reaffirming that SIPM was indeed liable for tax payments for its operating activities in Nigeria in 2003. These consistent rulings against SIPM forced them to appeal to the highest court in Nigeria, the Supreme Court. Their ultimate goal was to stop the FIRS from collecting the democratically assessed taxes of N2.5 billion (US\$17,857,142.86) that could deny the Nigerian masses provision of basic amenities such as good drinking water and electricity. However, before the ruling of the Supreme Court was made public, SIPM, which had up to that point adamantly declared that it was not liable to pay taxes in Nigeria, suddenly communicated its desire to resolve the matter with FIRS out of court [*The Punch*, 12 October, 2005]. The corporation was no doubt acting on the advice of its legal team.

The failed legal battle is not the only negative issue clouding SIPM's operations in Nigeria because the corporation has continuously been implicated in instances of environmental pollution in its area of operations in the country [*The Punch*, 17 November, 2005]. For example, a ruling by the Nigerian Court on Friday February 24, 2006, for the SIPM to compensate the people of the Niger Delta with total sum of US\$1.5 billion for polluting the area was rejected by SPIM. SPIM claimed that there was no evidence to suggest that SPIM was responsible for Oil spillage in the area (BBC World News, February 24, 2006). SIPM has refused to comply with the payment as required by the land use charge law for its office complex in Lagos State, despite repeated warnings from the state government [*The Guardian*, August 11, 2005]. SIPM has also continued to be implicated in vicious cycles of violence and corruption in Nigeria [*Nigeria World News*, 14 June, 2005; *This Day News*, 4 November, 2005]. All these predatory attitudes of SIPM, a multinational oil company from the transparency-preaching, developed Western world which demands accountability, have contributed to the bane of the national indebtedness, corruption and poverty in Nigeria and hence the inability of the Nigerian government to provide infrastructure, essential public services and the necessary wealth redistribution to the Nigerian people. Yet, the accountability and transparency-preaching authority in the United Kingdom (UK), home country of SIPM, seems not to see any reasons why SIPM should be sanctioned for its trans-organized crimes and predatory culture evident in its operational practices in Nigeria.

Case 2 – Chevron Nigeria Limited

The FIRS had debited Chevron Nigeria Limited with treasury receipts No. PP036337 and No. F00133, for the amounts of \$224,000,000 and \$483,586 being petroleum taxes owed by Chevron to the government of Nigeria for its operating activities for the 1997 and 1999 assessment years respectively. However, a special consultant (ABZ Nigeria Limited), appointed by the FIRS to audit the accounts of Chevron, revealed that Chevron, the third largest oil producer in Nigeria, had not paid the total amount due to the FIRS, since receiving these receipts [The ABZ Consultant Report, 2005]. Following the detection by the consultant of Chevron's failure to pay the total amount and various other sharp practices, Chevron was referred to the Economic and Financial Crimes Commission (EFCC) and the House of Representatives Committee on Petroleum by the FIRS. After their respective investigations of Chevron's sharp practices, the EFCC charged Chevron with an 11-point allegation of tax evasion, while the House of Representatives Committee on Petroleum Resources carried out further investigations on tax evasion within this multinational oil company Chevron [This Day News, 8 September, 2005]. When Chevron was contacted regarding its 1997 and 1999 tax liabilities to the FIRS, its Nigerian Controller of Finance, Mr. Olaniran Fashanu (who is possibly a member of either the Institute of Chartered Accountants of Nigeria (ICAN) or the Association of National Accountants of Nigeria (ANAN), and who understands the financial activities of Chevron better than anybody else), disowned the total 1997 and 1999 tax liabilities, claiming that Chevron did not know the basis of the said receipts No. PP036337 and No. F00133 [This Day News, 8 September, 2005]. He further claimed that those receipts were not filed with Chevron's documents.

Further investigations by ABZ Nigeria Limited revealed that while Chevron claimed that it had incurred expenditure to the tune of \$25.5 million for the development of the communities which hosted the company in 2002, such expenditure was not reflected anywhere in Chevron's audited accounts for the year in question [Chevron Audited Accounts, 2002]. Chevron was also accused of deceiving the President of Nigeria into approving its collection of \$52.81 million outstanding cash call in 1998, a claim which the company's Financial Controller also denied. Despite the huge profits Chevron makes annually on its production activities in Nigeria, this MNC has refused to comply with the payment requirements of the land use charge law in respect of its office in Lagos State in Nigeria. The state governor has as a result threatened to seal off the area in question in the event of any continued defiance of the State's land law by Chevron [The Guardian, 11 August, 2002].

Even though Chevron, through its Nigerian Financial Controller, denied all these allegations of tax avoidance and tax evasion, which may have resulted in illegal capital flight and other fraudulent practices and fuelled corruption in Nigeria, Chevron is now under intensive investigations by Nigeria's EFCC because of these series of allegations. It therefore remains to be seen whether or not Chevron can be given a complete and clean bill of health in respect of its series of questionable activities in Nigeria, especially in light of the accusation made by Amnesty International that Chevron's actions feed violence and corruption in Nigeria, and the recent acknowledgement by Chevron itself, that the amount of money it is spending on community assistance programmes in the Niger Delta has largely contributed to fuelling violence and corruption in the area [This Day News, 4 November, 2005; Vanguard, 10 May, 2005]. Despite all the above financial crimes in its operating activities in Nigeria, Chevron, an MNC from the USA, a

country globally known as **staunch apostle** of accountability and transparency, is yet to face any investigation in its home country, **if it ever will**, for its multifarious trans-organized financial crimes in Nigeria. **The irony evident in this situation is that** the acclaimed USA Foreign Corrupt Practices Act of 1976 **criminalizes cross-border** financial corruption by a US company.

Case 3 – Halliburton - Oil Servicing and Engineering Company

Independent audit investigations into the accounts and operating activities of the oil giant, Halliburton, have revealed that between 2001 and 2002 the company paid sums amounting to \$2.4 million in bribes to Nigerian tax officials to secure cover for tax evasion [*This Day News*, 22 February, 2004]. On interrogation by **the EFCC in Nigeria**, the US oil giant, Halliburton, admitted that its officials paid \$2.4 million **in exchange for** obtaining tax favours **and receiving** tax cuts from its liabilities **totalling** more than N2 billion (US\$14,285,714.20). In 2004 and **prior to** the completion of any further investigations, Halliburton quickly paid the sum of \$2.9 million **into** the coffers of the Federal Government, **this being what it considered** to be its self-assessed outstanding obligations to the Nigerian government. Such an unexpected gesture **on the part of** Halliburton **raised** suspicion **within** the FIRS, which **promptly** requested further audit and investigations **of all the accounting books of Halliburton**. However, when asked to surrender its **taxation** books to the FIRS for audit and further investigations, Halliburton failed to comply [*The Punch*, 5 January, 2005]. It was only after the imposition of debt/judgment assessment on the company that Halliburton was forced to surrender its **taxation** books for further audit and investigations [*The Punch*, 5 January, 2005]. The outcome of **the imposed** audit and investigations revealed **that Halliburton was liable for** additional tax **payments** to the government of Nigeria **and as a consequence**, the FIRS has recovered a total amount of \$6,686,380 and N136,970,372 (US\$978,359.80) from Halliburton [*This Day News*, 16 August, 2005].

Apart from the scam of tax avoidance and tax evasion, the audit and investigations revealed that Halliburton had also been heavily involved in various other cases of firming up corruption, **particularly** through graft, in its operating activities in Nigeria [*Daily Independent*, 17 February, 2004; *This Day News*, 16 August, 2005]. Consequent **to** these mounting scandals, the United States-based Federal **Bureau of Investigation (FBI)** and the Nigerian-based EFCC are **now** jointly investigating an alleged payment of over \$100 million by Halliburton to bribe Nigerian oil ministry officials and **the** payment of another \$200 million to bribe **other** government officials [*Daily Independent*, 17 February, 2004]. Moreover, investigators in Nigeria have also found Halliburton negligent **in** the disappearance of two radioactive sources from Nigeria in 2002 [*The Punch*, 5 January, 2005]. **In view of Halliburton's** graft practices in Nigeria, the Federal Government of Nigeria in a circular reference number SGF/OP/1/S.3/V/T/23 claimed that as **of** September 24, 2004 it had banned Halliburton Energy Services from handling any contracts in Nigeria [*The Punch*, 5 January, 2005]. However, it remains to be seen if such **a ban will ever hold** in Nigeria against a giant company from the USA, **a company** whose benefits from graft practices in Nigeria help to smooth the path **for** American capitalist development, **especially since the executive power in Nigeria has 'golden' links with big businesses such as Halliburton**. **What is even more important is** the fact that the American

government sees its role as aiding US businesses abroad, not tarnishing their image. Nevertheless, these various cases of tax avoidance, tax evasion and illegal concealment of huge amounts of profit by the US-based Halliburton have contributed to the failure of government to provide the masses of Nigerians with the essential infrastructure and public services and to redistribute wealth equitably, thus contributing to the poverty of over 70 percent of the Nigerian people.

Case 4 – AGIP Petroleum Nigeria Limited

As the companies claimed that there were growing oil reserves in Nigeria during the 1990s, foreign oil companies were granted tax exemptions. In the case of the tax exemption granted to AGIP, a dispute broke out between the Auditors appointed by the Department of Petroleum Resources and AGIP, when the audit and investigations began questioning the veracity of the reserves claimed by AGIP and for which the company had already collected \$200 million in tax exemption from the Federal Government of Nigeria [Dow Jones Business News, 2004].

Moreover, with the intervention of the Senate Committee on Finance and Nigeria's EFCC, audit and investigations of the accounts of AGIP Petroleum revealed a further tax liability of \$57,797,805.49 payable to the Government of Nigeria. This has to date not been recovered from AGIP Petroleum [Daily Independent, 16 August, 2005]. These huge amounts of money have probably disappeared in illegal capital flight from Nigeria, while many Nigerians, particularly those people in the area of AGIP's exploration in Nigeria, continue to live in extreme poverty and Nigeria remains underdeveloped. However, audit investigations revealed that some of these multinational oil companies, such as AGIP and Shell Petroleum, have used fraudulent means to obtain tax exemptions from the government of Nigeria.

Case 5 – Others

Special independent audit investigations by a consultant appointed by the FIRS and the threat by Nigeria's EFCC have led to the discovery and subsequent recovery of huge amounts of additional tax liabilities from many MNCs. Their accountants and auditors had helped them to conceal these amounts and they had therefore claimed to have no tax liability to the government of Nigeria. The FIRS recovered \$1,302,253 from Philip Oil Company; N5,711,459 (US\$40,796) from Eagle Transport; and \$464,204 from Technit Cimimontubi Nigeria.

Moreover, the Federal High Court has directed the Mobil Oil Company to pay N1.4 billion (US\$10 million) compensation to three communities whose marine environment was devastated on January 12, 1999 following an oil spillage traced to a leaking pipe at Mobil's operations in Idoho. Multinational oil corporations in Nigeria have always relied on the support of the corrupt officials and the elite in Nigeria when damages occur in the areas where they operate and they are reluctant to compensate the communities. In fact, Mobil Oil has appealed against the judgment of the Federal High Court. Once more, it remains to be seen if the corrupt nature of the Nigerian society would help Mobil to succeed in its appeal and not force it to take responsibility for polluting the environment even though Mobil's role in this instance of environmental pollution in these

communities has been confirmed. Will Mobil be allowed to continue to use millions of dollars obtained from these polluted communities to contribute to the project of environmental control in its home country?

The instances of tax avoidance, tax evasion and illegal capital flight that have contributed to the impoverishment of the Nigerian economy cannot be successfully planned and executed by wealthy individuals, the ruling elite and the MNCs in Nigeria without the input of some unpatriotic professionals, particularly accountants, who help to devise diverse schemes for tax avoidance and illegal capital flight, the evidence of which I will now provide.

6. The Accountants' Unpatriotic Collaboration

The Institute of Chartered Accountants of Nigeria (ICAN) Act of 1965, the Association of National Accountants of Nigeria (ANAN) Act of 1993, the Companies Act of 1968, the Anti-money Laundering (Prohibition) Act of 2004, and the Economic and Financial Crime Commission Act of 2004, all combined to place on accountants and auditors the responsibility to detect and report to the regulators cases of tax avoidance, tax evasion and illegal capital flight. However, the predatory nature of accountants in Nigeria has been well documented as they have a tendency to pursue their own capitalist self-interests rather than defend the nation's public interest [*The Guardian*, 26 October, 2003, 8 May, 2002; *The Punch*, 23 November, 2005]. The corrupt attitudes of the accountants in Nigeria who collude with company directors to present false financial statements have been continuing unabated [Shanusi, 2004; Ribadu, 2004]. The assistance provided by the Nigerian chartered accountants to wealthy individuals, the ruling elite, local companies and MNCs to siphon abroad money looted in Nigeria illegally has received sharp criticisms from both Presidents of the two recognized professional accounting bodies in Nigeria, ICAN and ANAN [Aloba, 2002; Iwok, 2005]. The unethical and sharp practices by Nigerian accountants and auditors who aid wealthy individuals, the ruling elite, private and public companies and MNCs to devise various schemes of tax avoidance, tax evasion and illegal capital flight have also received sharp criticisms from the Nigerian President, Obasanjo who noted:

You have been blamed for your failure to report frauds. You have come under suspicion for colluding with those who defraud the nation. You have failed to punish with necessary determination those amongst you who helped to conceal fraud. It is some of you who help tax evaders

[Emphasis added. *The Money Report and Guide*, 1 November, 2002:1]

Criticisms targetting chartered accountants in Nigeria especially for their apparent contribution to the economic woes of the country were recently re-echoed by the Lagos State Governor, Ahmed Tinunbu, when he received in his office the delegation of members of the veteran Institute of Chartered Accountants of Nigeria (ICAN). As the Governor observed:

It is the members of the Institute of Chartered Accountants of Nigeria who collaborate with the Federal Government to undermine the nation's fiscal policies by refusing to speak out against contraventions of the law. By refusing to speak out against any contraventions of the law, the association (ICAN) has failed the nation

[Emphasis added. *This Day News*, 10 November, 2005].

Paradoxically, the same President of Nigeria with whom it was alleged that ICAN has colluded with, has in many occasions criticized the ICAN and its members for their professional misconduct. The President has particularly challenged the ICAN and its members to decide on how to restore the lost faith in the profession, against the background of numerous allegations of financial corruption levelled against them [The Money Report and Guide, 1 November, 2002; *Daily Times*, 20 February, 2004].

It is a paradox that accountants who prepare the entire financial statements of a company and are therefore quite knowledgeable regarding all the financial transactions contained in these financial statements, and that external auditors, who audit and certify the prepared financial statements as 'true' and 'fair', could thereafter claim that they are both unaware of any malpractices such as tax avoidance, tax evasion and any illegal capital flight, that may later be detected in the audited financial statements. As the President of ANAN [2005] notes:

It is the duty of accountants to act independently when they are approached to act against the interest of the state. There is no way money could be siphoned or stolen from the public account without the knowledge of accountants

[Emphasis added. *The Punch*, 23 November, 2005]

In the above context, many of the schemes of tax avoidance, tax evasion and illegal capital flight developed and utilized by the AGIP Oil Company, Halliburton, Chevron, Shell and others, which have contributed a great deal to the national debt burden and poverty in Nigeria, would not have been successfully carried out without the professional advice and collaboration of the respective external auditors of these companies, and with the full knowledge and connivance of their respective financial controllers and other accountants. The external auditors and the financial controller of Chevron were quite aware of the fact that the total amount that the company (Chevron) claimed to have spent on community welfare was quite different from the amount that was reported in the company's financial statement for the same period. It was the financial controllers, accountants and auditors of the Halliburton Group, AGIP Oil Company, Philips Oil Company Limited, Tecnit Cimimontubi Nigeria Limited, and Eagle Transport Limited, who used their professional skills and expertise to assist these erring multinational oil companies to conceal and deny the total tax liability of \$77 million owed to the Nigerian government [*This Day News*, 16 August, 2005; *Daily Independent*, 16 August, 2005]. It was the Nigerian Financial Controller of Chevron, Mr. Olaniran Fashanu (presumably a member of one of the two recognized professional bodies, ICAN or ANAN), who, on behalf of the erring multinational oil company to which he was employed, openly denied the authenticity of his own Nigerian government tax agency, FIRS, by pretending to have no prior knowledge of the treasury receipt numbered PP036337 dated August 14, 1997 for a total tax liability of \$22.4 million owed to the government of Nigeria by Chevron Nigeria Limited [*The Punch*, 8 September, 2005]. It was this same Financial Controller, Mr. Olaniran Fashanu, who, with the blessings of some external auditors, masterminded the scheme designed to deceive the President of Nigeria into approving its collection of \$52.815 million outstanding cash call in 1998.

There was a glaring case of a contentious expenditure of \$25.5 million, which came to light as a result of investigations carried out by the consulting firm, ABZ Nigeria

Limited. Chevron claimed to have spent that amount for the development of communities in its area of operation, but that amount was not reflected anywhere in the company's audited accounts for that particular year. The only answer the Financial Controller could give was that "it was one of the most bizarre of all allegations". In other words, Chevron's Nigerian Financial Controller, Mr. Olaniran Fashanu, could not provide further clarifications as to the main reasons why such a huge expenditure was not reflected in the audited financial statement already declared "true and fair" by the external auditors. This questionable professional action on the part of Chevron's Financial Controller, Mr. Olaniran Fashanu, in the corrupt financial dealings between Chevron and the Nigerian authorities, is indicative of the bizarre, corrupt, unprofessional and unethical behaviour of many Nigerian professionals, particularly accountants who (for the protection of their personal capitalistic interest), have been collaborating with many erring MNCs and other foreign capitalist elites to continue to exploit their own country, Nigeria. The high incidence of tax avoidance, tax evasion, capital flight and other financial atrocities being perpetrated by Chevron Texaco against the government and people of Nigeria, probably led one of the company's Nigerian accountants, Samuel Ogidan, to embezzle the sum of \$445,000 in traveller's cheques from the company. He fled the country for the US where he was caught at Detroit Airport with an undeclared sum of \$60,000 in his possession [Nigeria World, 6 February, 2004].

It is hard to convince even a lay person that the financial controller, accountants and auditors at Halliburton were unaware of the financial crimes involving payment of the bribes amounting to \$2.4 million to Nigerian tax officials in order to secure cover for tax evasion by Halliburton. It seems evident that it was on the professional advice of the financial controller, the accountants and with the knowledge of the auditors that the company decided to offer such bribes which contravened legislation in both its home country and Nigeria. Such a bribe may even have been offered by someone who was well respected and who held a high status within the company.

Moreover, the illegal capital flight perpetrated by the successive Nigerian governments and the ruling elite and which amounts to some \$512 billion cannot be easily perpetrated without the knowledge, collaboration, or at the very least, connivance of the financial controllers, accountants-general, the auditor-general, accountants and their respective ministers of finance some of whom are members of the two professional bodies, ICAN and ANAN.

The report of the audit recently carried out at the FIRS provided yet additional evidence of the implication of accountants in tax avoidance and tax evasion schemes and in the general mismanagement of tax revenues at the FIRS. According to the 2003 Auditors' Report of FIRS, the estimated 10 percent deemed collectable tax revenues by the FIRS continues to be embezzled, directed into private accounts and generally mismanaged mainly by accountants at the FIRS. For example, a total sum of N603,938.75 million (\$4,831,506.03) representing tax revenues collected, which, it is claimed, was remitted to the Central Bank of Nigeria (CBN) by accountants at the FIRS, through seven designated banks, cannot be traced to any Central Bank account by the Auditor-General [Daily Independent, 24 January, 2003]. Another sum of N754.14 million (US\$5,386,714.86), which the accountants at the FIRS claimed to have paid into the Stamp Duties Account with the Central Bank, Abuja, could not be traced by the auditors, even though the management claimed that the funds were transferred to the Federation

Pool Account. Credit advances were neither issued nor made available by the CBN headquarters in respect of all the transfers to confirm the actual account into which the money was allegedly transferred. Another sum of N165.28 million (US\$1,180,571.43) in tax remittances, which it is claimed was paid by some designated banks into the local accounts of the Area Tax Office at Ilupeju, Lagos, being maintained at the CBN, could not be traced in the CBN bank statement.

At the Kano office, tax revenues amounting to N580.83 million (US\$4,148,785.72), collected between January and December 2002, and which had allegedly been remitted to the CBN, Abuja, could not be traced to the CBN Statement of Accounts for that office [Auditor General's Report, 2003]. At the Lagos Island Area Tax Office, the auditors observed that arrears of income taxes owed by companies and totalling N20.44 million (US\$146,000) for the 1997 to 2002 assessment periods remained uncollected as at the time of the audit inspection in July 2003. At the Makurdi Benue State Tax Office, N78.12 million (US\$558,000) in company income tax arrears, owed by 234 companies, for the assessment periods 1997 to 2002, remained uncollected, while N37.24 million (US\$226,000) in education tax arrears remained outstanding against 205 companies in the state.

Various commercial banks designated for tax collection on behalf of the FIRS were also patterning the fraudulent activities and financial corruption at the FIRS by deliberately withholding tax proceeds for several months before remitting these revenues to the Central Bank, ostensibly for purposes of business transactions. For example, the auditors observed that the sum of N772.04 million (US\$5,514,571.43) collected by some banks on behalf of the local VAT office in Wuse, Abuja, was delayed for up to 178 days thereby yielding interest for the banks before being paid over to the Central Bank. Similarly, at the Stamp Duties Office in Abuja, another sum of N17.15 million (US\$122,800) was collected by designated banks and the money delayed in the banks' vaults for up to 49 days before it was remitted to the Central Bank. However, the responsible banks have refused to pay penalties totalling N222, 862.00 (US\$1591.87) on the fund.

Contracts were awarded by the accountants at the FIRS headquarters for the supply of items of furniture for amounts totalling N51.75 million (US\$369,642.82) between January 2001 and June 2002. However, when the contract prices were compared with the current market prices as at October 30, 2002, and a mark-up of 30 percent added, it was observed that the contract prices were grossly inflated by some N31.69 million (US\$226,357.14). Contracts were also awarded to six contractors for the sum of N14.49 million (US\$103,500) to cover the cost of renovating and furnishing five area tax offices in Lagos, and a local VAT office in Kano. It was also observed that the contract prices of items of furniture supplied were inflated by some N4.95 million (US\$35,357.14). A total sum of N48.33 million (US\$345,214.86) was spent by the FIRS on the purchase of some vehicles, but it was observed that the 5 percent withholding tax of N2.41 million (US\$17,214.28) which is due to the Federal Government was not deducted and remitted as required by FIRS circular 9902 of January 1, 1999. Also, various tax deductions, estimated at over N5 million (US\$35,714.28), which were made between January 2000 and December 2001 by the accountants and accounting officers from the salaries of staff members of the FIRS, were not remitted to the Federal Government⁶.

⁶ For all the above cases of fraud and corruption, see the Auditor General's Report, 2003.

These cases of tax avoidance and tax evasion by the ruling elite in addition to the huge amounts of money concealed by the MNCs in Nigeria with the aid and collaborative efforts of their respective Nigerian financial controllers, accountants, and auditors have led to significant illegal capital flight from the poor Nigerian economy. As a consequence, the country's infrastructure and essential public services are inadequate and the process of wealth redistribution progresses at a slow pace. This predatory culture of the wealthy individuals, the ruling elite, and the local and multinational corporations coupled with the input of the local accountants who collaborate with them has created unnecessary national debt burden and mass poverty in Nigeria. With the unreformed tax regime, ineffective tax legislation the collaborative tendency and the consequence inability of the government to adequately tax and collect appropriate taxes from the wealthy individuals, the ruling elite and the MNC, it remains to be seen if Nigeria will be able to meet its commitment to poverty eradication. That is, if the country would be able to meet the United Nations Millennium Development Goal, which has as its target poverty eradication in all developing countries by 2015.

7. Summary and Discussion

This paper has adopted the theory of global capitalism and poverty to examine the roles of wealthy individuals, the ruling elite, the local and multinational corporations and their connections with professionals such as accountants in creating unnecessary poverty, hunger and dispossession among the Nigerian masses. Nigeria is considered a rich country. However, 70 percent of its people still live below the poverty level prescribed by the United Nations. In doing so, the theory linked the sociopolitical history of Nigeria with the capitalistic culture, where corruption seems to have been embedded in the fabric of the society, especially among the ruling elite, who have 'golden' links with big businesses and professionals such as accountants and lawyers. As this type of sociopolitical culture also has an impact on the economic development of a society, Nigeria, despite its abundant supply of resources, has paradoxically been facing serious economic problems since its independence from Britain in 1960.

The ruling elite, who are popularly elected with the promise of judiciously making use of the resources of the country, put in place tax regimes and legislation that could create the necessary wealth for the provision and development of infrastructure, public services and the smooth flow of wealth redistribution in the country. However, the ruling elite have chosen the path of individual capital accumulation and capital flight that has continued to support Western developed economies to the detriment of the sociopolitical and economic development of Nigeria. Successive ruling elite groups have, by design or default, failed to reform the tax systems and legislation since independence. As a consequence, successive governments since independence hardly realize 10 percent of its collectable direct and indirect taxes. Besides, the evidence suggests that substantial portions of the collected taxes are again embezzled, transferred to private accounts or mismanaged mostly by accountants at the FIRS. Paradoxically, the accountants and auditors whom the government has entrusted with the responsibility of detecting and reporting cases of tax avoidance, tax evasion and illegal capital flight to the regulators, have become collaborators who assist in perpetrating these financial crimes. As a consequence, accountants and auditors have been turning a blind eye to glaring cases of

tax avoidance, tax evasion and illegal capital flight in Nigeria. In some cases, accountants and auditors have even been selling various schemes designed to facilitate these financial crimes to wealthy individuals, the ruling elite, and the local and multinational corporations.

It is the unreformed tax regime, ineffective tax legislation, and the consequent corruption coupled with the failure of the wealthy individuals, the ruling elite and the local companies to pay democratically agreed taxes, and the collaborative stance of the officials of the FIRS, the accountants and auditors that seem to have paved the way for some erring MNCs and other foreign elite to transform Nigeria into a society which breeds corruption. These corporations (mainly from transparency-preaching developed Western countries such as USA and the UK) are vigorously pursuing the accumulation of their respective capital in Nigeria while the level of poverty in the country continues to escalate. However, while these corporations enjoy the Nigerian taxpayers' infrastructure, public services and many other benefits such as tax exemption and additional reserve bonus from the government of Nigeria, they have been unwilling to contribute to the development of Nigeria by paying any democratically agreed taxes on the huge profits they make on their operating activities in Nigeria.

As a consequence many of the MNCs such as Chevron Oil Company, Shell Oil Company, the American-based Halliburton and AGIP Oil Company have been implicated in various fraudulent practices and financial crimes: tax avoidance, tax evasion and illegal capital flight. These companies have deceived the communities in their areas of operation by claiming that they have spent substantial amounts on community development. However, close audit examinations of their respective financial statements revealed that such expenditures were not reflected in their audited financial statements. These multinational oil companies have deceived successive governments of Nigeria by claiming benefits and tax exemptions to which they are not entitled. These corporations have been contributing billions of dollars obtained from their operations in Nigeria towards the control of environmental pollution projects in their respective developed home countries, but they have been reluctant to compensate many Nigerians who have been left without a source of income as their agricultural lands have suffered damage from the environmental pollution caused by the operating activities of these MNCs. They have also been reluctant to cooperate with the Nigerian regulators in investigating their alleged implications in environmental pollution and other sharp practices in Nigeria, even when the available evidence seems to confirm the allegations.

As a consequence of these predatory attitudes of the MNCs, which have been aided by the corrupt attitude of the wealthy individuals, the ruling elite and the Nigerian public service officials, significant amounts of Nigerian wealth have been transferred legally and illegally by these corporations to their home countries. Such illegal capital flight continues to contribute to the state of poverty and dispossession among millions of Nigerians. The absence of a global policy framework for discouraging capital flight and aggressive tax avoidance by the MNCs has left the Nigerian-based tax regimes floundering, and the MNCs continue to take advantage of this situation by avoiding payment of duly assessed and democratically agreed taxes on their profits.

Professional ethics dictate that Nigerian accountants and auditors make use of the available regulations and legislations to report suspected cases of tax avoidance, tax evasion and illegal capital flight to the regulators, but these accountants and auditors have

also chosen to pattern the behaviour of international businesses by pursuing the accumulation of their respective private capital in contravention of their statutory duties and general claim of supporting the public interest of Nigerians. In order to achieve this goal of capital accumulation, Nigerian accountants have helped erring wealthy individuals, the ruling elite, local and multinational corporations to loot and siphon Nigerian money abroad where it is deposited in some erring foreign banks in mostly transparency-preaching developed Western countries where they also acquire assets. Nigerian accountants have also sold their professional services to develop various schemes of tax avoidance, tax evasion and illegal capital flight to wealthy individuals, the ruling elite, and many local and multinational corporations operating in Nigeria.

The above analyses seem to suggest that if Nigeria is to meet the United Nations Millennium Goal of poverty eradication by 2015, the government of Nigeria must pay serious attention to the above internal and external forces currently militating against the achievement of the target set by the United Nations for Nigeria.

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