

The Honorable Merrick Garland
Attorney General of the United States
US Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530-2001

22 May 2023

Dear Attorney General Merrick Garland,

We write to urge the US Department of Justice to reopen a Foreign Corrupt Practices Act case involving two companies, Eni and Shell, which are alleged to have paid bribes in Nigeria.

The case involves an acquisition in 2011 by Eni and Shell of the rights to the OPL 245 offshore oilfield, one of Nigeria's richest oil blocks. Experts have alleged that about US\$1.1 billion of the US\$1.3 billion deal was transferred through government accounts to bribe members of then-President Goodluck Jonathan's administration. The US began investigating the alleged violation in 2013, but closed its investigation in 2019 because Italian authorities were moving ahead with their own.

Then, in a move that shocked the international community given the substantial evidence of wrongdoing, Italian authorities acquitted both companies in 2021 and 2022. This is unfortunately part of a pattern in Italy. The 2022 Phase 4 review of the OECD Working Group on Bribery,¹ conducted by the representatives of the US and Germany, found that the country is no longer in compliance with its international legal obligations under the Convention, specifically citing this case.

Furthermore, Transparency International's *Exporting Corruption 2022* report,² using a series of metrics to assess the effectiveness of laws against foreign bribery in leading export countries, found Italy to be a "limited enforcement" country. The report found "a lack of training of investigators to investigate this kind of offense; [extended] length of the legislative process and judicial proceedings; and inadequate complaints mechanisms and whistleblower protections. Five of the seven cases concluded during the period were acquittals (or reclassified), suggesting a serious weakness with enforcement."

The US, in contrast, was found to be one of only two "active enforcement" countries. We therefore turn to the US to take up the case.

¹ OECD Anti-Bribery Convention, *Italy's Phase 4 Monitoring Report* (18 October 2022). Available at: <https://www.oecd.org/corruption/italy-oecdanti-briberyconvention.htm>

² Transparency International, *Exporting Corruption 2022: Assessing Enforcement of the OECD Anti-Bribery Convention* (11 October 2022). Available at: <https://www.transparency.org/en/publications/exporting-corruption-2022>

While there is a five-year statute of limitations on foreign bribery cases, Eni and Shell seem to have continued to violate the Foreign Corrupt Practices Act. In 2018, Eni applied to convert its Oil Prospecting License to an Oil Mining License, using the original agreement in question. It has since continued to use the decision to appeal to the International Centre for Investment Disputes when the Nigerian government refused to allow the licensing while the corruption cases were being heard. The US must reopen its investigation to prevent Eni and Shell from ever using the corrupt 2011 deal to inform any future decisions.

During the recent US-led Summit for Democracy and in the US Strategy on Countering Corruption, the Biden Administration repeatedly voiced its commitment to combatting transnational corruption. This case is an opportunity for the US to provide the promised leadership in the fight against corruption and promote the rule of law.

We at Transparency International applaud the US's continued efforts to enforce its law against foreign bribery, and urge you to proceed with a full-fledged criminal procedure concerning the conduct of Eni and Shell for such alleged grand corruption. As you assess the case, we would be happy to provide expertise from our experts and partners. We remain available as a resource for these essential efforts.

Thank you for your consideration.

Sincerely,



Gary Kalman

Executive Director
Transparency International U.S.



Daniel Eriksson

Chief Executive Officer
Transparency International