

NIGERIA COMPONENT OF THE THREE COUNTRY [NIGERIA, UAE & UK] COMPARATIVE STUDY ON FIXING ILLICIT FINANCIAL FLOWS [IFFs]¹

SECTION 1

1. PROBLEM OF THE STUDY

1.0: Introduction and Rationale of the Study

The UAE and the UK are key financial jurisdictions with global economic and political relevance. Both states are very much connected to the economies of African states and they are indeed regarded as development partners to many African countries including Nigeria. There is a rich history of business connections between Nigeria and these target states and they share extensive, contemporary political and diplomatic relationships. Thus, the UAE and the UK offer excellent case studies in understanding the problem of illicit financial flows (IFF) from Nigeria. The banking and financial institutions as well as Designated Non-Financial Businesses and Professions (DNFBP) in the UAE and the UK are arguably of central importance to Nigeria's economic and financial fortunes. This is very much the case in terms of Nigeria's consumer behaviour in foreign banking, financial services, property investment and other international business transactions.² Big business and indeed the Nigerian wealthy elites invest heavily in financial deals in both countries. These include systematic and prolific participation in the acquisition of real property, corporate investments, shares ownership and transactions relating to tourism, entertainment, education and health services. In this manner, vast amounts of illicit wealth including corporate profits disappear into both the UAE and the UK never to meaningfully return to the benefit of Nigeria. Asset recovery is sometimes practically impossible despite the provisions of international laws. This is despite the impressive reputations maintained and enjoyed by both the UK and the UAE in the international system. These leading jurisdictions and Nigeria itself have an ever-increasing array of sophisticated domestic legal instruments. In

¹ Being country specific summary of the Fixing Nigeria's Illicit Financial Flows: A Critical Review of UK and UAE Policies, Laws and Practices in Financial and Professional Institutions, by Dr. Gbenga Oduntan and Dr. Iris Boussiakou

² Financial institutions in this work means any natural or legal person who conducts as a business one or series more of the following activities or operations for or on behalf of customers: 1. Acceptance of deposits and other repayable funds from the public.⁵⁹ 2. Lending.⁶⁰ 3. Financial leasing.⁶¹ 4. Money or value transfer services.⁶² 5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money). 6. Financial guarantees and commitments. 7. Trading in: (a) money market instruments (cheques, bills, certificates of deposit, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity future trading. 8. Participation in securities issues and the provision of financial services related to such issues. 9. Individual and collective portfolio management. 10. Safekeeping and administration of cash or liquid securities on behalf of other persons. 11. Otherwise investing, administering or managing funds or money on behalf of other persons. 12. Underwriting and placement of life insurance and other investment related insurance. 13.

addition, all three states are parties to some of the most impressive anticorruption and transparency treaties, conventions, standards and other soft laws.

The problem of IFF is a global phenomenon that particularly compounds and depletes the economic fortunes of developing states across the world in ways that ought to command the attention of law and development scholars. This problem is arguably under-discussed in multidisciplinary analysis. This study, however, concentrates on the manifestation of the IFF challenge in deliberately narrow confines. It focuses on a socio economic and critical legal analysis of the international money laundering and other IFF problems based on the triangular transactions linking Nigeria, the United Kingdom and the United Arab Emirates.

The central problem of this study, therefore, and its major opportunity of contribution to existing literature lies in its comprehensive identification and treatment of legitimate solutions to one of the most important global challenges of the 21st Century.

1.1: Significance of Study

The significance and usefulness of this study to Nigeria in the 21st Century are many but we will identify a few below. First, it will identify and focus on those industries and professionals that top the bill in attracting and enabling money laundering, grand corruption and illicit business in relation to Nigeria. Second it will expose the various techniques through which, perhaps the top quintile of Nigeria's illicit financial flows disappear into the black hole of institutions and investments in the UK and the UAE among others. Thirdly, the study will indicate what needs fixing in the anticorruption and general business regulatory environments in both the UK and the UAE as development partners of Nigeria as well as in Nigeria itself. Fourthly, the study will elaborate upon some of the shortcomings in international anti-IFF, policies and practice as well as the imperative changes needed in international laws and international relations to slow down, prevent and stop further flows.

1.2: Methodology of Research and Plan of Study

The methodology of this study is based on empirical research. The analysis in addition is influenced by critical legal theory as well as socio-legal theory. The adoption of socio-legal research method in this study involved interrogation of laws and policies as social phenomena.³ This methodology adopts the view that law and legal rules cannot be interpreted and understood in pure abstraction. Hence for a more robust framework from within which a clearer elucidation of the failings of the current national AML / CTF systems, both the socio-legal and critical legal treatment of the topic are germane. The national and sectoral nature of the analysis means that

³ See the following: R Wacks, *Philosophy of Law –A very short Introduction* (2ndedn, OUP 2014); A Riles, "New Agenda for the Cultural Study of Law: Taking on the Technicalities" (2005) 53 (3) *Buffalo Law Review* 973-1033.

patterns and cross-references involving the three concerned jurisdictions are constantly being utilised in elaborating the issues dictate the adoption of aspects of the comparative research method as well. The distinctions and relationships between developed and developing states in international relations are used in analysing various points and elaborating issues at various points.

1.3: Justification of the study

Vast movement of IFF from Nigeria to the UAE and the UK among other more developed states is an undeniable reality of contemporary international life. Nigeria currently, grossly underperforms economically and scores extremely low on development indicators. The country has weak state institutions, manifests capacity gaps for regulation and suffers considerable security challenges. The justification of the study therefore, rests on the need to arrest the massive financial bleeding of the country's resources that has afflicted its economic fortunes and prevented the country's ability to attain the Millennium Development Goals (MDGs) during the target period. The problems are escalating and increasing real poverty at an unprecedented level while also threatening the likelihood of attaining the Sustainable Development Goals (SDGs).⁴

1.4: Scope and Limitation of Study

The scope of this enquiry will include primarily the problem of domestic money laundering and grand corruption and the interactions between local and foreign actors in the target countries. Also of primary interest to the study are the contributions of multinationals and other big businesses to the IFF problem afflicting Nigeria among other developing states. The study will cover manifestation of IFF in both the private and public sectors but will lay emphasis on large companies in the formal sector. These will include corporations engaged in services, agriculture, hydrocarbons, mining, and manufacturing. The category of institutions of interest to this study will include national institutions, multinational corporations, banks, as well as legal and accounting firms that operate in several countries, including those, which are of Nigeria origin.

⁴ The Sustainable Development Goals are the internationally agreed blueprint to achieve a better and more sustainable future for all human populations. They address global challenges such as poverty, inequality, climate, environmental degradation, prosperity, and peace and justice. It is recognisable that the goals interconnect. In order to leave no one behind, the aim is to achieve each Goal and target by 2030. A/68/L.61 - GA takes action - Report of the Open Working Group on Sustainable Development Goals available at https://www.un.org/ga/search/view_doc.asp?symbol=A/68/L.61&Lang=E
Illicit Financial Flow Report of the High Level Panel on Illicit Financial Flows from Africa P. 2 Available at https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf accessed 05/04/2020.

SECTION 2

2. ILLICIT FINANCIAL FLOWS AND THE DAMAGE TO NIGERIA'S FINANCIAL AND ECONOMIC FORTUNES.

The section points at the difficulties surrounding the formulation of an internationally acceptable definition of the term illicit financial flows. We have concluded that although illegality is a crucial feature of illicit financial flows, it is not though the only attribute of the concept. Our conceptualisation includes concealment of earnings, tax evasion, financial secrecy, unequal contracts, tax evasion and the use of shell companies. In broad terms, the concept of illicit financial flows is to also include unlawful, ethical, illicit and other undesirable activities. IFF is a threat to sustainable development and one of the greatest contemporary challenges to global development.

The section concludes that while all these can be severely damaging to any economy, they have been particularly devastating to the Nigerian economy as well as those of other developing states. IFF has been one of the major causes of Nigeria's debt crisis and socioeconomic underdevelopment. In this context, IFF continues to undermine the rule of law, the financial integrity and the political stability of the country. IFFs manifestation in Nigeria is more easily discernible in the damaging and prevalent practices of bribery, corruption (particularly grand corruption) and money laundering. The section concludes that trade based forms of IFF are the most damaging aspects of IFF on Nigeria in economic terms.

It is notable that Nigerian PEPs have a penchant for choosing the UK and the UAE, particularly London and Dubai banks and financial institutions in their involvement in IFF. The UK and UAE therefore have a great responsibility for regulating, assessing and preventing illicit funds from Nigeria and other developing countries.

2.0: Conceptualization of the Scope of IFF.

There is no internationally agreed definition of the term illicit financial flows, yet a growing body of legal and political jurisprudence has been developed around it. The United Nations "Coherent Policies for Combatting Illicit Financial Flows" ("UN 2016(1) noted that that the term "illicit financial flows" (IFFs) is not defined in the international normative framework. It stated that IFFs are defined broadly as "all cross-border financial transfers, which contravene national or international laws." On the other hand, the World Bank helpfully defined IFF as:

"Money illegally earned, transferred, or used that crosses borders" is the most common definition of illicit financial flows (IFFs). IFFs reduce domestic resources and tax revenue needed to fund poverty-reducing programs and infrastructure in developing countries; accordingly, they are receiving growing attention as a key development challenge."

The United Nations Economic Commission for Africa (ECA) in its attempt to grapple with a definition of IFFs settled for a description of it as “money illegally earned, transferred or used”. A normative view of IFF goes beyond the legalistic view and includes all international flow of money, which is “illegally acquired, transferred or used, as well as similar legal but illegitimate (tax and trade) practices.”⁵ A convincing developmental approach will however, encompass the view that IFF is “international flow of money that has a negative impact on an economy when all direct and indirect effects in the context of the specific political economy of the society are taken into account.”⁶

Clearly therefore, developing states and their commercial interests enter into lopsided contracts with multinational corporations. The influence of such contracts and how they contribute to the issue of IFF can simply not be discounted away as if it is of little or no importance. For a country like Nigeria to make headway academic and doctrinal treatment will have to place unequal contracts well within the context of discussions about IFF.

Similar to unequal contracts, another restrictive account of the concept of IFF insists that transfers associated with tax *evasion* (which is illegal) without any doubt qualify as IFFs, while tax *avoidance* schemes (which is formally compliant with ‘the letter of law’) do not, even as the latter is perceptively unethical⁷. This study, however, follows the ‘broad’ approach adopted by the High Level Panel on Illicit Financial Flows from Africa which follows the argument that tax avoidance practices are indeed part and parcel of IFFs.⁸

Since Nigeria, attained independence in 1960, systemic tax evasion has been representative of the actions of the international businesses and MNCs operating within the country. The Nigerian Federal Inland Revenue Service recently calculated that the country loses \$15bn annually to tax evasion and that is after it has roughly doubled the tax base since 2015.⁹ For Nigeria the accruable taxes that disappear through both tax evasion and tax avoidance by multinationals is clearly one of the ‘greatest crimes’ of the 20th and 21st Centuries.

⁵LuckystarMiyandazi and Martin Ronceray *Understanding illicit financial flows and efforts to combat them in Europe and Africa* Discussion Paper No. 227 June 2018 (Maastricht: ECDPM) available at <https://ecdpm.org/wp-content/uploads/DP-227-Understanding-illicit-financial-flows-efforts-combat-Europe-Africa-June-2018.pdf> accessed 23 June 2020. p. 10.

⁶ Ibid

⁷ This appears to be the view of a World Bank study. World Bank (2016) *The World Bank Group’s Response to Illicit Financial Flows: A Stocktaking*, Board Report No. 104568 (Washington, DC: The World Bank), <http://documents.worldbank.org/curated/en/502341468179035132/pdf/104568-BR-SecM2016-0112-IDASecM2016-0071-IFC-SecM2016-00423-MIGA-SecM2016-0044-Box394878B-PUBLIC-disclosed-4-5-16.pdf> (accessed 2 February 2020). See also Forstater, M. (2018b) ‘Why Illicit Financial Flows and Multinational Tax Avoidance Are Not the Same Thing’, *ICTD, Institute for Development Studies*, 10 May, <http://www.ictd.ac/blog/why-illicit-financial-flows-and-multinational-tax-avoidance-are-not-the-same-thing/> (accessed on 2 May 2020).

⁸ AU/ECA, “Illicit Financial Flows IFF Report of the High Level Panel op.cit

⁹ Neil Munshi, “Nigeria grapples with formidable tax collection challenge”, *Financial Times* February 13 2020.

An ActionAid report highlighted this when it noted:

While the convoluted financial dealings of firms in the City of London might seem a world away from the poor communities that ActionAid works with in Nigeria, the sad reality is that multinational companies that use tax havens could be costing Nigerians dearly.

There is a school of thought which states that British companies are more adept at utilising tax havens and subsidiary devices than their closest competitors from the USA not minding whether the IMF or the FSI index definitions of tax haven is adopted.¹⁰

In sum;

“Tax avoidance in countries such as Uganda and Nigeria perpetuates and reinforces ‘resource colonialism.’ Resources are extracted from countries to the far greater benefit of Northern multinational companies with less financial benefit to the Southern countries who possess the resources”.¹¹

Nigeria is indeed buffeted from all sides by all areas of the IFF malaise and only a broad approach to the term will provide a meaningful basis for a study such as this. For this reason, we agree entirely with the view that:

A broad IFF agenda is a powerful engine for systemic change. It counters the tendency, inherent in legal specialism, towards fragmentation and duplication; fosters regulatory coordination across a range of interventions; and promotes policy interventions that have multiplier effects across the whole spectrum of IFFs.¹²

In essence, although an ‘umbrella’ definition of IFFs should be anchored in law, it must in a study like this also extend to ethics. Without the inclusion of ethical and even philosophical queries into a contemplation of the topic of IFF much of what is ‘illicit’ in the actions that cause great damage to a developing economy like Nigeria’s will be quite unfairly lost. For this reason, the definition of IFFs as *cross-border transfers of money or assets connected with some unlawful*

¹⁰ Evans, Galkina, Marriot et.al. See table on p.13.

¹¹ Evans, Galkina, Marriot et.al. p. 17. South Africa discovered a multinational corporation that had creatively avoided \$2 billion in taxes and was able to reclaim the tax that was avoided because of diligent tracing of the company’s ‘illicit’ activities across the globe. The firm had claimed that a large part of its business was conducted in the United Kingdom and Switzerland, both of which at the relevant points in time actually had lower corporate taxes. South African authorities’ investigation however, discovered that the UK and Swiss subsidiaries/branches were just fronts. There were only a handful of low-paid personnel in place. The minions conducted relatively junior responsibilities, and those offices did not handle any of the commodities in which the company actually dealt in. They could not even legally take title to the commodities the company in South Africa traded in. The South African transactions were creatively routed through the UK offices or Swiss offices to give the impression that those jurisdictions offices were critical to the business. See AU/ECA op.cit., p. 27.

¹² Musselli and Elisabeth Bürgi Bonanomi op.cit.

activity is very useful as a guide and probably even as a short ‘common denominator definition’.¹³

2.1: Illicit Trade Misinvoicing

Trade misinvoicing refers to the act of misrepresenting the price or quantity of imports or exports in order to hide or accumulate money in other jurisdictions. It is thus, a prime area of exploitation and a loophole commercial actors on the multinational stage adopt in their relations with vulnerable states. The motive could, for example, be to evade taxes, avoid customs duties, transfer a kickback or simply launder money. It often involves over and under-Invoicing of goods and services or multiple invoicing of goods and services. Other allied areas of serious concern to affected states include over- and under-shipment (i.e. short shipping) of goods and services; and falsely described goods and services, including the baffling phenomenon of phantom shipping.¹⁴

An UNCTAD study released in 2016 investigated and quantified the extent of trade misinvoicing in primary commodities in a sample of five resource-rich developing countries including Nigeria.¹⁵ The study significantly established that there has been longstanding, continuous and substantial export misinvoicing – both underinvoicing and overinvoicing – in the relationship between Nigeria and the UK. There is indeed evidence of a prevalent practice of export underinvoicing in the oil trade between Nigeria and UK. and some other major powers exhibits misinvoicing of both oil exports and imports.¹⁶

Apart from hydrocarbons, Nigeria also suffers trade misinvoicing of other commodities such as gold, and other precious metals. The mining companies and even artisanal businesses often do not report gold exports at all or do not report it in the right format.¹⁷ There are large hidden

¹³ Ibid; H. William Byrnes, J. Robert Munro, *Money Laundering, Asset Forfeiture and Recovery and Compliance -- A Global Guide*, (New York: Matthew Bender, 2020).

¹⁴ Rena S. Miller, James K. Jackson, Liana W. Rose, *Trade-Based Money Laundering: Overview and Policy Issues* (Library of Congress, Congressional Research Service, 2016) p. 1.

¹⁵ The study not only confirmed the widely known dominance of oil as a primary commodity of Nigeria but it also highlights the position of the UK as a major trading partner of Nigeria in the oil sector. See UNCTAD, *Trade Misinvoicing in Primary Commodities in Developing Countries: The cases of Chile, Côte d'Ivoire, Nigeria, South Africa and Zambia* (UNCTAD/SUC/2016/2) 26 Dec 2016 p. 6. Available at https://unctad.org/en/PublicationsLibrary/suc2016d2_en.pdf accessed on 29 April 2020.

¹⁶ This is because Nigeria imports some of its oil back as imports after sending it out to foreign refineries. The results for oil imports show underinvoicing, suggesting undervaluation of oil imports and/ or smuggling of oil into the country.

¹⁷ Maya Forstater. 2018. “Illicit Financial Flows, Trade Misinvoicing, and Multinational Tax Avoidance: The Same or Different?” *CGD Policy Paper* Paper 123 March 2018 (Washington, DC: Center for Global Development). pp. 15, 15. In fact, various studies show that gold, silver, and platinum are the second largest source

margins in commodity trading which make them attractive to cross border-criminals, money launderers, bribe payers, bribe takers, and tax evaders.

2.2: Re invoicing techniques in IFF

There is the practice of re invoicing which is an accounting trick involving trading partners, who agree to trade at a certain price but record the transaction officially at a different price in order to shift money secretly across borders. Through this means alone over \$100 billion is drained from developing states annually amounting to about as much as all the foreign aid rich states give to poor states in economic aid. It is quite important to note that this is just one aspect of IFFs.¹⁸

2.2.1: Illicit Transfer Pricing.

Illicit abusive transfer pricing involves the manipulation and shifting of profits from one jurisdiction to another, usually from a higher-tax to a lower or even no-tax jurisdiction. Multinationals and some of their national counterparts in certain cases engage in various 'creative' schemes of cost inflation and transfer pricing by obfuscating their company structure and operations. Under these schemes, they orchestrate hundreds of subsidiaries and affiliates through which companies' profits are laundered through peculiar processes of transferring of prices. For instance, oil extracted from Nigeria can be sold, on paper, to a subsidiary or affiliate in another country before being brought back again, on paper, to Nigeria.¹⁹ Through such mechanisms, overall profit is retained within the group because the tax bill can be lower if sold to a subsidiary in a country with tax haven status. Transfer pricing can be utilised within the same company right from extraction, via transportation and refining to the final consumer.²⁰

Transfer pricing is illicit to the extent that it is a technique where trade mispricing is used to hide or disguise income generated from illegal activity.

2.3: Ensnared in the Web of Tax

Heading well into the third decade of the 21st century the UK with its spider's web of satellite jurisdictions along with major ex-colonisers such as France and a small number of other tax havens remain complicit in undermining the ability of Nigeria and indeed most other African

of alleged misinvoicing in Africa. Misinvoicing here might include shipping 50 kilograms of gold but only declaring 5kg.

<https://www.cgdev.org/publication/illicit-financial-flows-trade-misinvoicing-and-multinational-taxavoidance> accessed on 2 Aug 2020.

¹⁸Shaxson (2012) op.cit., p. 183.

¹⁹ Mel Evans, Anna Galkina, James Marriott, Mika Minio-Paluello, Sarah Shoraka and Kevin Smith Making A Killing: Oil Companies, Tax Avoidance and Subsidies: Platform Briefing (London, Platform, 2013) <https://platformlondon.org/wp-content/uploads/2013/02/MakingAKilling-LOWRES.pdf> accessed 05 May 2020. p. 12.

²⁰ Ibid p. 12.

governments to tax multinational companies.²¹ Nigeria is among the developing states severely affected by the global corporate tax system and by the actions of the UK in maintaining its web of corporate tax havens.²² Globally, \$500 billion in corporate tax is dodged each year. Indeed, in Africa alone, tax loopholes are a large part of the conservatively estimated US \$50 billion lost annually through illicit financial flows. Offshore jurisdictions are particularly used for fraudulent and grey area financial activities.²³

A disproportionate number of those jurisdictions are controlled by the UK (as we will come to see) and together they enable a scandalously large amount of questionable transactions and transfers.

The new Corporate Tax Haven Index identifies the most corrosive corporate tax havens in the world as the UK, the Netherlands and Switzerland. The UK with its network of overseas territories and crown dependencies is responsible for over a third of corporate tax avoidance risks. The current relationship of corporate tax exploitation quite ruthlessly undermines the ability of Nigerian governments to tax multinational companies operating in the country. As a result, the ordinary taxable Nigerian has to pay more taxes on personal income, on Value Added Tax (VAT) and on basic food items and services. This encourages an inversion of the tax burden whereby the most vulnerable in the Nigerian society ends up shouldering the biggest burden of taxation.

2.4: Bribery and corruption in context of money laundering and IFF

Bribery and corruption is a huge contributor to the IFF problem. Although bribery is just an aspect of IFF, it is one of the more dramatic and easily understood challenges developing countries experience. The story of bribery and corruption is rooted in grandcorruption and the egregious behaviour of dodgy and criminal PEPs and big business.²⁴ Any serious enquiry must therefore, closely interrogate this class of actors, their behaviour and their interactions with other

²¹ Rachel Etter-Phoya "How can Africa take action against corporate tax havenry? Solutions from the Corporate Tax Haven Index 2019", June 18, 2019 available at <https://www.taxjustice.net/2019/06/18/%ef%bb%bfhow-can-africa-take-action-against-corporate-tax-havenry-solutions-from-the-corporate-tax-haven-index-2019/> accessed 17 July 2019.

²² The influential Corporate Tax Haven Index compiled by the Tax Justice Network, reveals how the UK and a handful of other OECD countries are most responsible for the.

²³ Salomone Picciotto, *The International Crisis of Income Taxation: Combating Tax Havens, Capital Flight and Corruption*. In: 15th Commonwealth Law Conference, (2007) 2007-09-09 available at https://eprints.lancs.ac.uk/id/eprint/634/1/International_Crisis_of_Income_Taxation.pdf accessed 28/03/2020.

²⁴ Politically exposed persons (PEPs) include those individuals and personages that are entrusted with a prominent public function. They thereby tend to be at a higher risk for potential involvement in bribery and corruption by virtue of the position and/or influence they exercise. PEPs include senior government leaders and their families. Peter Kirechu, "Dubai's Vulnerability to Illicit Financial Flows" in Page and Vittori eds, *Dubai's Role In Facilitating Corruption And Global Illicit Financial Flows* (Washington D.C.: Carnegie Endowment for International Peace, 2020) pp. 55, 120.

foreign counterparts especially how they interface with financial institutions at home and IFIs.²⁵ It is estimated that between 20 and 40% of the US\$1-1.6 trillion of annual bribery funds, consists of bribery to public officials.²⁶ At least half of this is generated in developing states and some Nigerian scholars insist that Nigeria's share is one of the highest due to the prevalence of corruption in the country.

That a sizeable proportion of Nigerian PEPs exploit their privileged positions in government to engage in all aspects of grandcorruption is a matter of general commentary in academic literature.²⁷ Grandcorruption is one of the cogs in the wheel of IFF. Stuart defined grandcorruption as 'the misuse of public power by heads of states, ministers and senior officials for private pecuniary gain'. This definition is problematic because like a lot of mainstream views on the topic, it focusses just on public officials, leaving private sector corruption entirely uncovered.²⁸ Corruption at both the petty and grand levels is a widely recognised feature of developing countries.²⁹ The incidence of grand corruption involves multinationals, politicians and elites of the civil and military class. The connection between corruption in the developing world and the active involvement and perhaps cultivation of local actors by foreign elements has been poorly examined in literature.

Once money is generated through bribery and corruption, the next step in the negative value chain of action is for the money to be laundered. In this context, it is notable that Nigerian PEPs have a penchant for choosing the UK and the UAE particularly London and Dubai banks and financial institutions.

²⁵ The term politically exposed persons is used generally to include individuals who are 'public officials' or have been entrusted with prominent public functions in Nigeria and/or foreign countries and people/entities associated with them. As specified in the Central Bank of Nigeria (CBN) AML/ CFT Regulation 2009, examples of PEPs include but are not limited to : (i) Heads of State or government ; (ii) State Governors ; (iii) Local Government Chairmen ; (iv) Senior Politicians ; (v) Senior government officials ; (vi) Judicial or military officials ; (vii) Senior executives of state owned corporations ; (viii) Important political party officials ; (ix) Family members or close associates of PEPs ; and (x) Members of Royal Families. See further the Central Bank of Nigeria's Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) Risk Based Supervision (RBS) Framework, 2011. Available at accessed on <https://www.cbn.gov.ng/out/2012/ccd/cbn%20approved%20framework.pdf> 25 June 2020.

²⁶ A.Y. Shehu, "Nigeria and Recovered Loot", Thisday Feb 4 2018 p. 14

²⁷ See generally G. Oduntan, Tracing Noxious Funds. *International Trade and Business Law Review* XIII. (2010).

²⁸ George Moody-Stuart, Grand Corruption in Third World Development (Transparency International, 1994) 1. For a more holistic view see Nicholas Hildyard, *Corrupt but legal: Institutionalised corruption and development finance* (Counter Balance secretariat, 2016) pp 1-9, 11-13 available at accessed on <http://www.thecornerhouse.org.uk/sites/thecornerhouse.org.uk/files/Corrupt-but-Legal.pdf> 11 Jan 2021.

²⁹ See, Indira Carr, 'Corruption in Africa: Is The African Union Convention On Combating Corruption The Answer' (March 2007) *Journal of Business Law* 111, 123 and 124. See also, Susan Rose-Ackerman, *Corruption and Government* (Cambridge, Cambridge University Press, 1999) 27. Ministry of Foreign Affairs (Development Cooperation) of the Netherlands and Ministry of Foreign Affairs of Norway, 'The Global Programme against Corruption: Anti Corruption Toolkit "What is Corruption?" The Meaning of "Corruption" and a Survey of its most common forms' (Report, United Nations Global Programme against Corruption, 2004) 13.

It is therefore necessary to state that both the UK and UAE have a great responsibility for regulating, assessing and preventing illicit funds from Nigeria and other developing countries.

There is no doubt that offshore financial centres (particularly the ones in the UAE and the UK's Overseas Territories) must perform exceedingly better at introducing the transparency needed to strengthen their defences against money laundering by all forms of criminal actors.

However, two key problems persist: First, there is a perceptible lack of genuine interest and failure of political will in the major global financial centres to collaborate with developing states like Nigeria on the objective of strengthening the integrity of the *global* financial system. Second the local kleptomaniac classes in Nigeria are enabled by a considerable community of bankers, foreign lawyers, accountants, real estate agents and other corrupt elites who help in setting up fake companies and illegitimate investment vehicles. These compromised professionals help them to hide illicit profits, fund lavish lifestyles and invest in further criminality.³⁰

There are indications, however, that even those states that benefit from IFF are becoming aware of the damaging consequences of corruption and money laundering on the international system. They are also beginning to show understanding that all states share a mutual interest in reducing IFF. Indeed they do appear to accept that there is a burden on certain states such as the UK and the UAE to assist poorer states like Nigeria to combat and limit money laundering outflows.

The official position of the UK is effectively to admit that there are severe problems with its record in staving off money laundering and IFF but to say that its challenges in this area to be expected given its importance as an international financial centre.

Another view expressed as a defence is that although it is official policy that the UK is to be a hostile environment for money laundering "Finance is increasingly global, with money and assets moving quickly between jurisdictions, products and services".³¹ Similar defences have been advanced by the authorities in the UAE as we shall come to see in this study.

Given the systematic and extremely damaging effect the current situation has on countries like Nigeria, these explanations are not exactly convincing and will not suffice.

³⁰ Home Government, op.cit, p. 5.; See also the details of the following case *United States of America v The M/Y Galactica Star and others*, United States District Court Southern District of Texas Houston Division, Case 4:17-cv-02166 Document 1, Filed 14 July 2017, para 121, available through <https://www.pacer.gov/> "Inside U.S. Court papers indicting Alison-Madueke.

³¹ The National Crime Agency, "Money laundering and illicit finance" <https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/money-laundering-and-terrorist-financing> accessed 06/04/2020.

Self-preservation issues do make it appear as true that “Illicit financial flows are hard to stop.”³² A lot of movement has occurred on many fronts to combat illicit financial flows into the UK since at least 2013 and they are important developments. Reference is made here to the implementation of several recent legislation, which would have been on the wish list of any prosecutor in the 20th century and the significance of the existence of which today should not be underestimated. These include new powers to tackle illicit wealth, - Unexplained Wealth Orders (UWOs); New information sharing powers; Improvements to SARs and laws prescribing against corporate failure to prevent tax evasion.

The story of the international community’s response to the problem of money laundering cannot be meaningfully written without introducing the Financial Action Task Force (FATF). The FATF is the only truly global money laundering and terrorist financing watchdog. Operating as very prestigious inter-governmental body it sets international standards to prevent illegal activities that cause harm to national and international societies because of the abominable acts of money laundering. Leveraging on the acceptance of countries the FATF creates policies that generate positive changes through national legislative and regulatory reforms in the areas of transparency, anticorruption and anti-money laundering.

2.4.1: London and Dubai: the pull of PEP Grand Corruption

Nigeria’s current Vice President Yemi Osinbajo identified corruption especially grand corruption in the public finance space as perhaps the single most debilitating problem confronting Nigeria’s development efforts. Indeed, there cannot be any serious analysis of Nigerian economic crisis without fully analysing corruption.³³

The City of London has traditionally been the beating financial heart of the British Empire. When the empire declined, the City transformed itself from a hub operating the financial machinery of the Empire into a global financial centre. The City occupies a special place in the hearts and minds of the corrupt elite in the former colonies like Nigeria. There is significant evidence that London’s property market is a magnet and safe haven for stolen wealth. Transparency International has identified over £4.2 billion worth of properties in the UK bought by politicians and public officials with suspicious wealth.³⁴

³² Economist, “Dirty money: Illicit financial flows are hard to stop; They are even harder to measure”, *Economist Magazine* available at <https://www.economist.com/finance-and-economics/2019/01/31/illicit-financial-flows-are-hard-to-stop> accessed 12 August 2019.

³³ “VP identifies corruption as major problem of Nigerian economy” *Journal du Cameroun* 20.03.2018 <https://www.journalducameroun.com/en/vp-identifies-corruption-as-major-problem-of-nigerian-economy/> accessed 15/04/2020.

³⁴ Transparency International, *Faulty Towers: Understanding The Impact Of Overseas Corruption On The London Property Market* Steve Goodric ed. (London: Transparency International UK, 2017) pp. 4, 9, 63 available at <https://www.transparency.org.uk/faulty-towers/> accessed on 14/04/2020. See further the following Nigeria related tracing of wealth to UK properties: “EXCLUSIVE: Noose tightens around Alison-Madueke in UK, £18 million

2.4.2: High Profile Property deals and Luxurious Foreign Nests

Investment of stolen wealth into property deals is bread and butter for those who engage in corruption all over the world. The impression that excess money is best sunk into ‘brick and mortar’ has universal recognition. While there is nothing inherently wrong or even dangerous in well off societies having vibrant centres of global property investment value, such places must not however become Eldorado’s for thieves and economic robbers from home or abroad. It is therefore, important for us at this stage to interrogate the role of London and Dubai in arguably providing home for dodgy investments in their property sector. Plugging these holes based on an appreciation of the scale of the problem and a consideration of some of the nuances of the problem in the two different countries is *sine qua non* for stopping IFF.

2.4.2.1: Nigerian Cash purchasing Dubai Dessert Dreams

The sheer scale of the laundering of wealth by Nigerian PEPs into property markets globally would perhaps, never be known. Similarly exactly, how much of the proceeds of grand corruption derived from Nigeria is spent on properties in the UAE and the UK is a matter that perhaps cannot be precisely determined. Nevertheless, it is worthwhile for researchers to study this phenomenon not only because the practice is harmful to Nigeria but because it is also not in the long term interest of those countries that may have been encouraging or ignoring the practice.

In one astounding claim, Nigerian PEPs are said to be buying up entire units or floors in Dubai luxury properties. As one writer puts it “One client at the moment is looking at buying 27 apartments in Dubai, and they’re all \$450,000 each.”³⁵ Whether every allegation or report is true or not, it has become clear that the shores of London and Dubai have an enduring allure in attracting investment from the corrupt classes from Nigeria. It is indeed important to highlight the damage done to the economy of Nigeria by the race among its political and bureaucratic classes in their acquisition of foreign property investments portfolios. This abominable situation is created by PEPs and persons closely associated with them such as family friends and various other enablers.

property uncovered”, Premium Times, 27 August 2017, <https://www.premiumtimesng.com/news/headlines/241676-exclusive-noose-tightens-around-alison-madueke-uk-18-million-property-uncovered.html> accessed on 02 Jan 2021. “Fugitive Oil Tycoon Kola Aluko Admits Paying UK Rent For Alison-Madueke’s Mother”, Sahara Reporters, 1 November 2015, <http://saharareporters.com/2015/11/01/fugitive-oil-tycoon-kola-aluko-admits-paying-uk-rent-alison-madueke%E2%80%99s-mother> For other reportage on the UK investigation, see: “Inside the global hunt for Nigeria’s missing oil billions”, Daily Telegraph, 12 May 2016, <https://www.telegraph.co.uk/news/2016/05/12/inside-the-global-hunt-for-nigeriasmissing-oil-billions/> accessed on 02 Jan 2021.

³⁵ Syed Ali, *Dubai: Gilded Cage* (New Haven, CT: Yale University Press, 2010), p. 31. Anecdotal evidence shows that the number of such transactions has reduced under the current Nigerian administrations anticorruption reforms. This of course is not to say that such level of corrupt purchases may not return in the absence of successful and systemic changes towards transparency government

2.4.2.2: Nigeria's loot and the Faulty Towers of London

It is also important to look at the manifestation of this phenomenon of dodgy PEP property investments as it relates to London. It is recognisable that the scale of PEP ownership of properties in the UK and London in particular is significant. TI-UK and Thomson Reuters conducted an extensive study of foreign ownership of London properties in December 2016. The study revealed that 44,022 land titles in London are owned by overseas companies. The study also highlighted the involvement of tax havens by revealing that 91 per cent of the property titles were registered in secrecy havens.²⁹ The UK's Overseas Territories and Crown Dependencies were specifically revealed as the most common secrecy jurisdictions in which the property titles are incorporated. Indeed up to a third of companies used to hold London property were registered in the British Virgin Islands (BVI).³⁶ This perhaps raises the possibility that the UK through 'incestuous jurisdictional collusion' with its vassal states together orchestrate an international properties market for money launderers. The ongoing situation is highly profitable to the UK and the secrecy havens but deadly serious in its deleterious effects on dozens of developing states including, of course, the Nigerian state.

This noticeable spike in ownership of London properties apparently is within the period after mid 2014 when \$22.1 billion was transferred out of Nigeria as both local and foreign investors panicked over Nigeria's flagging economy and important national elections in 2015. Wealthy Nigerians mostly PEPs sought to protect their assets from currency devaluation and the uncertainties of a new regime.³⁷ Whether massive investments in London properties accounted for it or not, this phenomenal transfer from Nigeria is said to have "dealt a blow to Africa's largest economy from which it has yet to fully recover. These series of unfortunate economic and political conditions has thrust Nigeria into a lengthy recession followed by a lingering period of economic stagnation".³⁸

Especially in relation to UK purchases, the forensic awareness of Nigerian PEPs is very high. They and their enablers and handlers often effectively disguise their purchases and put strategies in place to make it difficult for investigators to see who owns what among the Nigerian PEPs in the UK. Despite this, we have by virtue of several database records and engagements with the CSOs that have been dutifully tracking this area of studies been able to draw up a list of Nigerian PEP linked properties in the UK.

³⁶ TI (2018) op.cit., p. 11; Transparency International UK, Corruption on Your Doorstep (February 2015) <http://www.transparency.org.uk/publications/corruption-on-your-doorstep/> 31

³⁷ Page op.cit., p. 26.

³⁸ Ibid.

2.5: PEP Grand corruption: Professional Enablers and the Enabling Environment

Although literature on the topic makes use of differing terminology such as controller, Service providers,³⁹ facilitators,⁴⁰ experts⁴¹ and enabler this study will adopt a preference for the ‘enabler’ terminology.⁴² It is important to adopt a wide conceptualisation of enablers because these class of professionals who practice in many fields are engaged in full spectrum enabling and therefore can be involved in one, or all, stages of the money laundering cycle (i.e. placement, layering and integration).

For want of an exhaustive field of those who fit into this term, the suggestion in this study is that enabling professions would include those who perform work in banks, estate agencies and lawyers. Others are facilitative staff, officers and practitioners among the DNFBPs. This includes: a) Casino workers b) Real estate agents. c) Dealers in precious metals. d) Dealers in precious stones. e) Lawyers, notaries, other independent legal professionals and accountants – this refers to sole practitioners, partners or employed professionals within professional firms.⁴³

Enablers generally are accountants, lawyers, notaries and/or other service providers; Trust and Company Service Providers (TCSPs); bankers; Money Value Transfer Providers; brokers; fiscal specialists or tax advisors; dealers in precious metals or stones; bank owners or insiders; payment processor owners or insiders; and electronic and cryptocurrency exchanger owners or insiders. They would typically be engaged in consulting and advising; registering and maintaining companies or other legal entities; serving as nominees for companies and accounts; providing false documentation; comingling legal and illegal proceeds; placing and moving illicit cash;

³⁹ Those who provide services to criminals and organised crime groups by laundering the proceeds of their illegal activities.

⁴⁰ Those who technically very rarely get involved in the proceeds-generating illegal activities but who from a vantage distance have as their main purpose the facilitation of money laundering.

⁴¹ This may generally refer to the professionals who provide expertise in the disguise of the nature, source, location, ownership, control, origin and/or destination of funds in order to avoid detection.

⁴² Enablers are more colloquially seen as the professional money launderer. They have been described as ‘associates’ who are: “of all colours and of all nationalities, local and foreign; they range from French ‘Mr Coconuts’ to super chic Chinese ladies; from home grown bankers and company secretaries to Lebanese businessmen. What they have in common are international bank accounts and very close friends at the very top of political elites in Kenya, Nigeria, Zambia, Mozambique, Mali, Liberia and a seventh country, the identity of which will be revealed in the near future”. Theophilus Abbah, “Nigeria Vultures of Steel: Where corruption is the system”, in *The Associates: Handling business for the kleptocrats* (A ZAM / AIPC production) p. 1. Available at https://www.zammagazine.com/images/pdf/The_Associates_AIPCZAM.pdf accessed 19 April 2020.

⁴³ FATF Professional Money Laundering FATF, (Paris, FATF Secretariat, 2018) p. 10: available at <http://www.fatf-gafi.org/media/fatf/documents/Professional-Money-Laundering.pdf> accessed 21 April 2020; See glossary of terms in FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, (Paris, FATF Secretariat, 2019) p. 116 available at <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf> accessed 21 April 2020. Note also the separate treatment of the various terminology in the analysis found in Abbah, op.cit., p. 52.

purchasing assets; obtaining financing; identifying investment opportunities; indirectly purchasing and holding assets; orchestrating lawsuits; and recruiting and managing money mules. They are in essence “The associates: handling business for the kleptocrats”.⁴⁴

The general aim of the enabler is to facilitate dastardly acts of corruption and to conceal their criminal origin and if possible their destination(s).

2.5.1: The Madam’s Case:

Only with a well-oiled system of professional enablers and a pervasive enabling environment on both sides, could the thieving story of Diezani Alison-Madueke, otherwise known as “the Madam” or sometimes “Madam D”, even be possible. As the oil minister of Nigeria between 2010 and 2015, she also ran the Nigerian National Petroleum Company (NNPC) until 2015. Nigerian authorities have since successfully seized about 56 houses, Superyachts and luxury apartments around the globe, which are among assets that have been linked to her.⁴⁵ Audits by accountants KPMG and PwC, for example, were alleged to have revealed that \$18bn went missing from Nigeria’s oil fund during an 18-month window between 2012 and 2013.⁴⁶ The UK’s National Crime Agency however, noticed how the oil minister spent much of her time in office in London, not Nigeria.

2.5.2: The Malabu Case – OPL 245 Oil Deal:

The hands of enablers are all over the OPL245 case (discussed above and in more detail below) which allegedly allowed a former oil minister Dan Etete to effectively award an oil block to

⁴⁴ Ibid. Nominee are persons, partnerships or companies entrusted to hold and administer shares or other property as the registered legal owner on behalf of the real owner (beneficial owner). The nominee is the legal owner in name only whereas the beneficial owner holds an equitable interest in the specified shares. Nominee directors for example are individuals who have no other connection to a firm other than to serve as professional proxies for a company’s actual controlling interests.

⁴⁵ Tony Orilade/Aishah Gambari, “Diezani Alison-Madueke: What an Appetite!” EFCC Website, <https://efccnigeria.org/efcc/news/2706-diezani-alison-madueke-what-an-appetite> accessed 15/04/2020;

Sky News, “Nigerian court seizes 56 houses linked to ex-oil minister Diezani Alison-Madueke”, Thursday 12 October 2017 14:10, UK <https://news.sky.com/story/nigerian-court-seizes-56-houses-linked-to-ex-oil-minister-diezani-alison-madueke-11077348> accessed 15/04/2020; Sahara Reporters, “Court Orders Forfeiture Of Diezani Alison-Madueke’s \$37.5m Banana Island Property” available at <http://saharareporters.com/2017/07/19/court-orders-forfeiture-diezani-alison-maduekes-375m-banana-island-property> accessed on 15/04/2020. For the USA dimensions of the assets seizures and investigations see *United States of America, v. The M/Y Galactica Star Case 4:17-cv-02166 Document 1 Filed in TXSD on 07/14/17* available at <https://star.worldbank.org/corruption-cases/sites/corruption-cases/files/DOJ-Galactica-Complaint.pdf> accessed 03 Jan 2021; Samuel Rubinfeld “U.S. Seeks \$144 Million in Laundered Nigerian Oil Funds” *Risk & Compliance Journal*. Jul 14, 2017 available at [https://star.worldbank.org/corruption-cases/sites/corruption-cases/files/U.S.%20Seeks%20\\$144%20Million%20in%20Laundered%20Nigerian%20Oil%20Funds%20-%20Risk%20&%20Compliance%20Journal.pdf](https://star.worldbank.org/corruption-cases/sites/corruption-cases/files/U.S.%20Seeks%20$144%20Million%20in%20Laundered%20Nigerian%20Oil%20Funds%20-%20Risk%20&%20Compliance%20Journal.pdf) accessed on 03 Jan 2021.

⁴⁶ A defensive release of the report by the administration she served under curiously shows that the NNPC ‘overpaid’ the state, but still owes \$1.48 bln. Felix Onuah, “Audit of Nigeria’s NNPC shows it overpaid state, but still owes” Reuters Intel April 27, 2015 available at <https://www.reuters.com/article/nigeria-corruption/audit-of-nigerias-nnpc-shows-it-overpaid-state-but-still-owes-idUSL8N0XO4V020150427> accessed 15/04/2020.

himself. The usual enabling services were rendered at various stages allowing *Placement* of \$1.1bn payment for purchase of an oil block by the companies Shell and Eni into Federal Republic of Nigeria account with JP Morgan Chase Bank, London. A further placement of \$800m was made into private bank accounts controlled by Etete. Then there was the layering of \$466m creatively transferred *between bureaux de changes*, and converted into cash. Furthermore, there was dramatic and systematic help with purchases of private jets, supercars, real estate, shotguns among other luxuries.⁴⁷ This case (discussed severally below) shows the relative ease through which the local or national corrupt elites interact and engage with the international bourgeois in the facilitation of grand corruption and a significant part of IFF.⁴⁸

2.5.3: The Abacha Funds:

It is important to draw attention to the services of enablers in moving the Abacha funds. Billions were shifted to the UK and from thereon to banks and financial institutions in France, Germany, Switzerland and the US and a few other jurisdictions. The crass crudeness of PEP grand corruption in Nigeria was described by General Abacha's son Mohammed Abacha when interrogated by lawyers for the British, and he gave colourful descriptions of how between members of his family, their bankers and the Central bank, "bags, cartons and trucks" were used to ferry monies out of Nigeria and into offshore accounts.⁴⁹

The involvement of local and foreign enablers over the last many decades has worsened Nigeria's IFF problem. This international mischief requires collaborative and indeed global attention. Effective reporting of suspected money laundering and other aspects of IFF is greatly dependent on professional intermediaries, both in the financial and non-financial sectors. The prevalence of the problem is not due to the total absence of rules in this area as many professions already have due diligence and reporting obligations under the Anti-Money Laundering Directive in the EU, the Proceeds of Crime Act 2002 & Criminal Finances Act in the UK,⁵⁰ Proceeds of Crime (Money Laundering) Act in Canada⁵¹ and many others. Clearly therefore,

⁴⁷ Please note that the ensuing criminal prosecutions in this particular case are about bribery and money laundering. JP Morgan would however, argue that its decisions are entirely legal. The Presidency, Presidential Advisory Committee Against Corruption, Declaration And Report Of The Conference On Promoting International Co-Operation In Combating Illicit Financial Flows And Enhancing Asset Recovery To Foster Sustainable Development 5 –7 June 2017 State House Banquet Hall, Abuja FCT Nigeria.

⁴⁸ *United States of America v. Shell Nigeria Exploration and Production Company Ltd*, Deferred Prosecution Agreement, Southern District of Texas, Houston Division, 1 November 2010 <https://shellandenitrial.org/wp-content/uploads/2018/07/shell-dpa.pdf>; *United States of America v. Snamprogetti Netherlands BV*, Deferred Prosecution Agreement, Southern District of Texas, Houston Division, 7 July 2010 Case 4:10-cr-00460 Document 3 Filed in TXSD on 07/07/10 Criminal No. H-10-460 Page 1 of 44 available at <https://shellandenitrial.org/wp-content/uploads/2018/07/snamprogetti-dpa.pdf> accessed 03 Jan 2021. See also the Shell and Eni on Trial Website available at <https://shellandenitrial.org/other-jurisdictions-documents/> 04 Jan 2021.

⁴⁹ Abbahop.cit., p. 52.

⁵⁰ The Criminal Finances Act 2017 (c. 22). This Act of Parliament amends the Proceeds of Crime Act 2002 to expand the provisions for confiscating funds to deal with terrorist property and proceeds of tax evasion.

⁵¹ Proceeds of Crime (Money Laundering) and Terrorist Financing Act. 2000, c. 17, s. 1; 2001, c. 41, s. 48.

when a kleptocrat loots his country and shifts the looted wealth offshore, the banks, accountants, and law firms that assist him are just as guilty as the kleptocrat.

The major challenge to punishment for enablers is that key professional sectors operate within client confidentiality and legal privilege obligations and rules that are easy to exploit. Since the 2003 revisions to the Forty Recommendations of FATF which implemented the G8s ‘Gatekeeper initiative’,⁵² lawyers among other key professionals have been identified as ‘gatekeepers’ to the international financial and business markets and held liable for disclosing client breaches of AML/CFT rules.⁵³

Confidentiality and due diligence requirements need further harmonisation across jurisdictions and practice is too varied. The International Ethics Standards Board for Accountants does not even mention confidentiality in its Handbook of Code of Ethics, and other sectors have near non-existent harmonised expectations on this issue. In the case of the legal profession, lawyer-client privilege continues to be generously protected by laws such as the European Convention of Human Rights (1950), and there is no harmonisation outside competition law.

Overall, legal reform is needed in all three countries to set clearer rules and procedures in relation to client confidentiality and professional privileges. This would enhance the functioning of AML framework in various sectors.⁵⁴

2.6: Context of IFF damage within an emerging consensus for change

The devastation wrecked on fragile systems like Nigeria by IFF is one of the untold stories of international injustice. IFF has directly and indirectly wrecked severe damage on the country and on its peoples both at home and in the diaspora. Africa lost about US\$854 billion through IFF over a period of roughly four decades (that is between the years of 1970-2008). This corresponds

⁵² The idea of including the professions into the AML regulatory regime was first mooted at the political level by a G8 summit held in 1999 in Moscow. Ministerial Conference of the G-8 Countries on Combating Transnational Organized Crime - Communique, *Fed. Am. Scientists* 32 (Oct. 20, 1999), <https://fas.org/irp/news/1999/10/991020-crime-rus.htm> [<https://perma.cc/RS9B-DA77>]. Delphine Nougayrède, “Anti-Money Laundering and Lawyer Regulation: The Response Of The Professions” Vol. 43 *Fordham International Law Journal* No 2 p. 325.

⁵³ Louis Forget, Vida ŠemeHočevan, *Financial Intelligence Units: An Overview* (Washington: The IMF, 2004) p. 35. See also Bolaji Owasanoye, *Role of Lawyers in the Fight against Corruption in Nigeria* available at <http://saharareporters.com/2016/08/22/role-lawyers-fight-against-corruption-nigeria-bolaji-owasanoye> accessed on 20-02-2020.

⁵⁴ This was the conclusion of those who commissioned a consultation “Assessing compatibility of AML obligations with sector-specific obligations in the accountancy, real estate and legal sectors” in the Transparency International in 2018. Ilkka Penttinen, “Consultancy notice – Assessing compatibility of AML obligations with sector-specific obligations in the accountancy, real estate and legal sectors”, Transparency International Website 3 May, 2018 available at <https://transparency.eu/consultancy-privilege/> accessed on 20-02-2020.

to a yearly average loss of about US\$22 billion.⁵⁵ In fact, this damaging trend has been steadily escalating. In the last decade, the annual average loss has increased to US\$50 billion, in comparison to what was a yearly average of only US\$9 billion for the period 1970-1999 (Ibid).⁵⁶ The loss would have increased in the last couple of years. If this huge drainage out of Africa were entirely curtailed it will most probably save enough to reduce or entirely remove the additional \$93 billion a year deficit that Sub-Saharan Africa require to address infrastructural needs.⁵⁷

Exact calculations of the extent of damage are notoriously difficult due to differences in measurement standards and methods. Various authors have tried to illuminate the prevalence of IFF in Africa and other parts of the developing world using a cacophony of statistical records. The influential Thabo Mbeki report, of 2018 put Africa's losses at between \$50 to \$60 billion per year, with Nigeria accounting for 30 per cent of the amount.⁵⁸ Therefore, Nigeria may be losing

⁵⁵ 12. D. Kar, D. Cartwright-Smith, and A. Hollingshead, *The absorption of illicit financial flows from Developing Countries: 2002-2006*, (Washington DC, Global Financial Integrity, 2010). Available at http://gfintegrity.org/storage/gfip/documents/reports/gfi_africareport_web.pdf accessed 19 July 2020.

⁵⁶ Akere Muna estimates that Africa's annual losses through IFF are in the region of \$50-80 billion. See Keynote Address by Akere T. Muna Conference on Promoting International Co-Operation in Combating Illicit Financial Flows and Enhancing Asset Recovery to Foster Sustainable Development in Presidential In The Presidency, Presidential Advisory Committee Against Corruption, Declaration And Report Of The Conference On Promoting International Co-Operation In Combating Illicit Financial Flows And Enhancing Asset Recovery To Foster Sustainable Development 5 –7 June 2017 State House Banquet Hall, Abuja FCT Nigeria p. 9.

⁵⁷ AfDB, *African Economic Outlook 2018*, (Abidjan: African Development Bank 2018) p. 70 available at https://www.brookings.edu/wp-content/uploads/2016/07/AGIFinancingAfricanInfrastructure_FinalWebv2.pdf accessed on 31 Aug 2020; See also Jeffrey Gutman, Amadou Sy, Soumya Chattopadhyay "FINANCING AFRICAN INFRASTRUCTURE Can the World Deliver?" March 2015 p. 11 available at https://www.brookings.edu/wp-content/uploads/2016/07/AGIFinancingAfricanInfrastructure_FinalWebv2.pdf accessed on 31st July 2020. AfDB, *African Economic Outlook 2018*, (Abidjan: African Development Bank 2018) p. 70 available at https://www.brookings.edu/wp-content/uploads/2016/07/AGIFinancingAfricanInfrastructure_FinalWebv2.pdf accessed on 31 Aug 2020.

⁵⁸ The Report stems from a study implemented under the Panel chaired by H. E. Thabo Mbeki, former President of the Republic of South Africa, and comprised nine other members both from within and outside the continent. These developments arose from the 4th Joint Annual Meeting of the AU/ECA Conference of Ministers of Finance, Planning and Economic Development which adopted Resolution 886 mandating the establishment of a High Level Panel on Illicit Financial Flows from Africa in cognisance of the obvious and detrimental effects of IFFs on Africa. AU/ECA, "Illicit Financial Flows IFF Report of the High Level Panel on Illicit Financial Flows from Africa" Commissioned by the AU/ECA Conference of Ministers of Finance, Planning and Economic Development pp. 2, Pp 34, 79. 93, available at https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf accessed 03/04/2020.

between \$15 and \$18 billion every year to illicit financial flows.⁵⁹ In fact, some accounts argue that Nigeria alone and not the whole of Africa loses up to \$50bn yearly.⁶⁰ At any rate, many other estimates argue that African states collectively leak IFF to the tune of approximately US \$60-100 billion each year.⁶¹ Some reports say more than double this figure is lost by Africa annually. Some reputable researchers insist that over the last 50 years, Africa is estimated to have lost much in excess of \$1 trillion in illicit financial flows.⁶² According to most estimates IFF losses far outstrip foreign direct investments and development assistance.

SECTION 3

3. IFF: THE NIGERIAN SOCIOLEGAL AND REGULATORY CONTEXTS.

This section finds that there are significant shortcomings in Nigeria's constitutional provisions, domestic laws and treaty obligations that contribute to the country's susceptibility to the problem of IFF. Notably the country has experienced restricted development due to political instability, inadequate infrastructure and poor macroeconomic management among other reasons. Corruption particularly has over time had adverse and damaging effects on the socioeconomic structure of Nigeria. The chapter argues that the most debilitating damage to Nigeria by IFF has been the damage caused to its administration of the justice sector. Institutions within the administration of justice sector have suffered from underperformance or even worse perverse performance. State institutions have been severely weakened in their ability to combat corruption and illicit financial flows.

The section reveals that there are ample national, state and local legislation, standards and ethical rules and practices, which ordinarily should prevent the current high rate of corruption and IFF activities. However, the absence of effective implementation and enforcement of

⁵⁹ Nigeria Extractive Industries Transparency Initiative (NEITI), *Averting Illicit Financial Flows in Nigeria's Extractive Industries*, available at <https://www.neiti.gov.ng/index.php/media-center/news/459-nigeria-loses-between-15-to-18-billion-to-illicit-financial-flows>.

⁶⁰ Segun Olaniyi, "Nigeria loses \$50bn to illegal financial flows yearly, says Cislac" available at <https://guardian.ng/business-services/nigeria-loses-50bn-to-illegal-financial-flows-yearly-says-cislac/> accessed 03/04/2020; Nigeria Records \$50bn Loss Annually To Illegal Financial Flows; Economic Confidential, "Nigeria Records \$50bn Loss Annually To Illegal Financial Flows" September 6, 2018 available at <https://economicconfidential.com/2018/09/nigeria-50bn-illegal-financial-flows/> accessed 03/04/2020. It must be noted however, that other authorities appear to claim that this is an Africa wide figure. See for instance, AU/ECA, Ibid pp. 2, 13, 79 and 86 available at https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf accessed 03/04/2020.

⁶¹

⁶² AU/ECA, p. 13; Kar, Dev, and Devon Cartwright-Smith op.cit., and Kar, Dev, and Brian Leblanc (2013). *Illicit Financial Flows from Developing Countries: 2002– 2011*. Washington, DC: Global Financial Integrity.

national laws ensure the continuance of IFF in Nigeria's relations with other states that practise predatory capitalism.

The section argues that the widespread practice of acquisition of both offshore accounts and foreign luxury properties by prominent public officers/PEPs (often times surprisingly under original names) is because of a pervading disrespect for the rule of law. The practice manifests the ruling elite's lack of political will to combat corruption and tolerance by successive governments of abuse of official power and functions.

There are a large number of regulatory bodies with jurisdiction over corruption crimes in Nigeria. The section establishes that multinational corporations operating in Nigeria must exercise due care in relation to how their business operate, to ensure that they are not in violation of the country's extant laws particularly those of a financial and economic nature including AML/CTF crimes.

The section finds that although IFF is facilitated by rampant PEP corruption there are laws in place which mandate suspect PEPs under investigation to reveal the sources of their wealth including those they may have transferred abroad.

The section notes that Nigeria has a specific problem with both domestic and foreign professional enablers of IFF. The chapter identifies many unethical practices among professionals in various relevant fields and shows how such professionals render all kinds of illegitimate assistance to those involved in IFF. The chapter points out significant concerns surrounding the interpretation of professional rules on financial disclosure for Nigerian legal practitioners.

3.0: Nigeria: A socio-legal history of high-level corruption perception.

Nigeria is a constitutional democracy and a federal republic.⁶³ Nigeria has an estimated 160 million people and is Africa's most populous country. The country is considered very oil-rich, but has been hobbled since its independence by political instability, corruption, inadequate infrastructure, and poor macroeconomic management. Its relevant international commitments include membership of some leading sub-regional, regional and international organisations. International law is an important source of Nigerian law and Nigeria is a state party to the Vienna Convention on the Law of Treaties (1969) and an active participant in the international community. International treaties have the force of law once domesticated under section 12 of the Nigerian constitution.⁶⁴ It is a founding member of the Economic Community of West

⁶³ See S. 1 Constitution of the Federal Republic of Nigeria as amended 1999 See also C Mwalimu, *The Nigerian Legal System* (Vol 2, Private law Peter Lang 2009); O. Oyewo, *Constitutional Law in Nigeria* (Kluwer Law International, 2013).

⁶⁴ EB Omoregie, "Implementation of Treaties in Nigeria: Constitutional Provisions, Federalism Imperative, and the Subsidiarity Principle" (International Conference on Public Policy, Milan, July 2015).

African States (ECOWAS)⁶⁵ from which it derives its active membership of The Inter-Governmental Action Group against Money Laundering in West Africa (GIABA)⁶⁶ and the African Union (AU). Nigeria is a party to certain leading treaties and conventions which are crucial to understanding the imperative to combat IFF (see further Table 13). It is a state party to the 1988 UN Drug Convention; International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999);⁶⁷ United Nations Convention against Transnational Organized Crime (UNTOC) (2003);⁶⁸ the African Union Convention on Preventing and Combating Corruption (2003);⁶⁹ the United Nations Convention on Corruption (UNCAC)⁷⁰ and the Arms Trade Treaty (2014).⁷¹

The major regulatory agencies and institutions created over the decades with direct oversight over issues and matters related to various aspects of IFFs include the following:

⁶⁵ Established on May 28 1975 via the treaty of Lagos, ECOWAS is a 15-member regional group with an aim and mandate of promoting economic integration in all fields of activity of the constituting member states. The member states are Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Sierra Leone, Senegal and Togo. This body is considered one of the pillars of the African Economic Community, ECOWAS was set up to foster the ideal of collective self-sufficiency for the region it represents. As a trading union, it was created to and has largely been satisfying the purpose of creation of a single, large trading bloc through economic cooperation. For information and materials about ECOWAS see <https://www.ecowas.int/> accessed 03/04/2020.

⁶⁶ The Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) was established on 10th December 1999 by the ECOWAS. It is a specialized institution of ECOWAS with the responsibility for strengthening the capacity of member states towards the prevention and control of money laundering and terrorist financing in the region. Its focus thus, is to protect West African economies and financial systems against Money Laundering. In January 2006, the mandate and Statutes of GIABA were revised to reflect and take cognisance of the growing link between Money Laundering and Terrorist Financing and Counter- Financing of Terrorism. GIABA is designed to function as a Financial Action Task Force-Style Regional Body (FSRB) that fully adheres to the FATF 40 + 9 Recommendations. The creation of GIABA is a major response and contribution of ECOWAS to the fight against money laundering. Information and Materials relating to GIABA is available at <https://www.giaba.org/> accessed 03/04/2020.

⁶⁷ United Nations, UNTS, vol. 2178, p. 197; Resolution A/RES/54/109; depositary notifications C.N.327.2000.TREATIES-12 of 30 May 2000 (rectification of the original text of the Convention).

⁶⁸ UNTS 2225 (p.209).

⁶⁹ *African Union Convention on Preventing and Combating Corruption*, adopted on 11 July 2003 (entered into force 5 August 2006) ('*AU Convention*'). This instrument has received impressively high acceptance among African states signed by 41 out of 53 African Union Member States, of which only 24 have actually ratified it. Ratifying states as at 2009 are: Algeria, Burkina Faso, Burundi, Comoros, Congo, Ethiopia, Ghana, Kenya, Libya, Lesotho, Liberia, Madagascar, Mali, Mozambique, Namibia, Nigeria, Niger, Rwanda, South Africa, Senegal, Tanzania, Uganda, Zambia, and, Zimbabwe.

⁷⁰ *United Nations Convention against Corruption*, opened for signature 31 October 2003, UNTS, (entered into force 14 December 2005) ('*UNCAC*'). See, <<http://www.un.org>> accessed 05/04/2020.

⁷¹ UNTS, vol. 3013. Signed: Open for signature from 3 June 2013, Parties: 105, Signatories: 130 Effective: 24 December 2014.

- Federal Ministry of Finance, Budget and National Planning (est. in 1957).⁷²
- Central Bank of Nigeria (CBN) (est. 1958).⁷³
- Economic and Financial Crime Commission (est. 2003)⁷⁴
- Independent Corrupt Practices and other related Commission (established 2000)⁷⁵
- Federal Inland Revenue Service (FIRS) (est. 1943)⁷⁶
- Nigeria Custom Service (NCS) (est. 1891)⁷⁷
- Nigeria Drug Law Enforcement Agency (NDLEA) (est. 1990)⁷⁸
- Nigeria Extractive Industry Transparency Initiative (NEITI)⁷⁹
- Nigeria's Code of Conduct Bureau (NCCB) (est. in 1979)⁸⁰
- Special Control Unit against Money Laundering (SCUML) (est. 2005)⁸¹
- Nigerian Financial Intelligence Unit (NFIU) (est. in 2004)⁸²
- Nigeria Police Service (NPS) (est. 1930)⁸³

These organisations focus on different but complementary areas of regulation, which, put together ought to reduce the space for local actors, who initiate, perpetrate and facilitate aggressive and illegal activities. Between these institutions and agencies, the detection, apprehension and prosecution of bribe givers and takers, money launderers, oil bunkerers, smugglers, corporate tax evaders, international drug dealers, and all those that have the funds to corrupt many players, including and especially those in governments should be taken care off. Their individual and collective failure is the reason why Nigeria is one of the hardest hit states in the world with IFF problems.

⁷² Information and materials about the Federal Ministry of Finance, Budget and National Planning is available at <https://www.finance.gov.ng/#/>

⁷³ Information and materials about the CBN is available at <https://www.cbn.gov.ng/>

⁷⁴ Information and materials about the EFCC is available at <https://efccnigeria.org/efcc/>

⁷⁵ Information and materials about the ICPC is available at <https://icpc.gov.ng/>

⁷⁶ Information and materials about the FIRS is available at <https://www.firs.gov.ng/AboutUs/FIRSProfile>

⁷⁷ Information and materials about the NCS is available at <https://customs.gov.ng/>

⁷⁸ Information and materials about the NDLEA is available at <https://ndlea.gov.ng/about-ndlea/history-of-ndlea/>

⁷⁹ Information and materials about NEITI is available at <https://eiti.org/nigeria>

⁸⁰ Information and materials about the CCB is available at <http://ccb.gov.ng/>

⁸¹ Information and materials about SCUML is available at <https://www.scuml.org/>

⁸² Information and materials about NFIU is available at <https://www.nfiu.gov.ng/>

⁸³ Information and materials about NPF is available at <https://www.npf.gov.ng/>

3.0.1: The Socio-Economic Damage of IFF: Security Implications.

Corruption has over time created all kinds of damage to the socio-economic makeup of Nigeria. At this stage of affairs perhaps, the most severe damage to Nigeria's interests as a corporate entity is in the area of security and safety systems. Corruption very quickly destroyed national institutions that the country relies on in ordering its national business particularly the three arms of government (executive, legislature and judiciary). Perhaps the most debilitating damage to the society has been the damage caused to its administration of justice sector.

Underperformance if not perverse performance now afflicts all the institutions involved in administration of the justice sector. This includes institutions within the purview of the Ministry of Justice, paramilitary organisations, law enforcement institutions, anti-corruption agencies, professional bodies, the military, intelligence services, judicial and quasi-judicial bodies. Corruption now impedes very severely the rule of law, due process, procedural fairness and all aspects of the machinery of justice in Nigeria.⁸⁴ As a result, and based on cumulative effects of colonialism, military rule and mediocre democratic administrations, Nigerian life is fast approaching the Hobbesian state of nature where life is short nasty and brutish. The institutions that can and should come to its aid are severely weakened by the long-term effects of corruption and IFF.

Corruption impedes the ability of the vital institutions of the state to fight back when there are threats to life and security. This leads to societal insecurity, which in turn worsens vulnerability to corruption. Groups in the Sahel affiliated with Al-Qaeda in the Islamic Maghreb have provided training, financing and support to Boko Haram in Nigeria. Even though there are no elaborate and recent, publicly available data that has looked at the way in which ransom payments made in the Sahel or Nigeria enter and flow through financial systems, it is clear from the volume and scale of the kidnapping for ransom phenomena that ransom payments may have worked their way into Western banking institutions as part of IFF.⁸⁵

At the same time, the proliferating criminal groups in the Sahel have been copying Boko Haram's financing and attack methods.⁸⁶ Other damaging attributes arising out of corruption and underdevelopment include maritime piracy, armed robbery and perhaps the world's most severe malaria problem.⁸⁷

⁸⁴ Oduntan, G. "Prescriptive strategies to combat corruption within the administration of justice sector in Nigeria", *Journal of Money Laundering Control*, 20 (2017) No. 1 pp. 35-37 and 48.

⁸⁵ See OECD (2018), op.cit. p. 67.

⁸⁶ OECD (2018), op.cit. 44; T. Reitano, P. Knoope and I. Ustinoff (2016), Final Review of the CT Sahel Project, 2011-16, European Commission, Brussels; FATF-GIABA-GABAC (2016), Terrorist Financing in West and Central Africa, FATF, Paris pp. 1-3 www.fatf-gafi.org/publications/methodsandtrends/documents/terrorist-financing-west-central-africa.html accessed 03/04/2020.

⁸⁷ OECD (2018), op.cit. pp. 69, 79.

3.1: Nigeria and Corruption in the Oil and Gas Sector.

Nigeria is the world's thirteenth-largest oil producer and with 187 trillion cubic feet of available gas, it has the seventh largest Gas reserves. Nigeria is the largest oil producer in Africa. It holds the largest natural gas reserves on the continent and was the world's fifth-largest exporter of liquefied natural gas (LNG) in 2018. In fact, oil is the main driver of the country's prosperity and hydrocarbons are the epicentre of its economy and the source of nearly all its export revenue.⁸⁸ The country's non-oil revenue comprises only 3.4% of GDP, which is one of the lowest in the world. The International Monetary Fund (IMF) projects that Nigeria's crude oil and natural gas exports receipts in 2018 was \$55 billion representing a \$23 billion increase than in 2016. The country's recent growth in export revenue, is attributed to the rebound in global crude oil prices, which has improved Nigeria's fiscal position. However, Nigeria's fiscal deficit remained flat at 4% of its gross domestic product (GDP) because of significant increases in capital expenditures and persistently low non-oil revenue collection, in spite of improvements to the country's tax administration.⁸⁹

Yet the more staggering statistics is that the International Energy Agency (IEA) estimated that oil theft in Nigeria amounted to 150 000 b/d. This means that there is an estimated loss of over USD 5 billion per year.⁹⁰ Oil theft with the active participation of transnational organised-crime groups and its financial proceeds dissipated abroad through IFF's are thus, a major aspect of its unfortunate interaction with the international community. Corruption and instability in the oil-producing Niger Delta also act as constraints on oil output and economic growth. Plugging these particular areas of loss is estimated to be able to completely cure infrastructural funding deficiencies such as electricity energy insecurity by 2030.⁹¹

⁸⁸ At its peak in 2012, Nigeria exported over 2 million barrels per day (b/d). This amounted to an average daily value of USD 178 million. In that year for instance oil resources accounted for more than one-half of Nigeria's GDP, about 85% of government revenues and over 90% of exports. See Gboyega et al. (2011) opcit. p. 19. Nature and scale of the flow: estimates of the total scale of oil lost to illicit activity differ vastly – from 100 000 barrels per day (b/d) to 250 000 barrels per day – valued at approximately USD 3-8 billion per year. See Katsouris and Sayne, op.cit; EIA, "Country Analysis Executive Summary: Nigeria", Independent Statistics and Analysis U.S. Energy Information Administration website June 25, 2020 available at https://www.eia.gov/international/content/analysis/countries_long/Nigeria/NigeriaCAXS_2020.pdf accessed on 06 September 2020.

⁸⁹ International Monetary Fund, 2019 Article IV Consultation, IMF Country Report no. 19/92. 3 International Monetary Fund, 2019 Article IV Consultation, IMF Country Report no. 19/92.

⁹⁰ International Energy Agency (IEA), *Africa Energy Outlook: A Focus on Energy Prospects in Sub-Saharan Africa - World Energy Outlook Special Report* (Paris: IEA/OECD Publishing, 2014) p. 14 available at <https://www.icafrica.org/fileadmin/documents/Knowledge/Energy/AfricaEnergyOutlook-IEA.pdf> accessed on 07 Sept 2020.

⁹¹ OECD (2018), p. 86; IEA (2014), A UNODC Report in 2014 suggests that the major international markets for stolen Nigerian oil are China, Democratic People's Republic of Korea, Israel and South Africa. Other countries identified as possible destinations in another Chatham House study on the problem include the United States, several

By far the most symptomatic aspects of Nigerian industry corruption and the one with the greatest impact on its extractive sector economy is in its oil sector. Nigerian oil theft is notoriously cash-based, and bulk cash smuggling is common. Low-level employees often prefer to be paid in cash. Executives and senior operators usually quickly transform their illicit cash into the purchase of luxury goods or property both at home and abroad. Largely because of the high volume of illicit revenue raised through oil theft the primary money laundering vehicles are local and international bankers, lawyers and accountants and real estate agents.⁹²

3.2: Grand Corruption and a fantastically corrupt Ruling Class.

Apart from corruption in the oil sector, grand corruption has literally run amok in Nigeria since the mid-1970s till the present. This has been as a result of colonial legacies, neo colonialist strategies, internal contradictions of capital among other reasons. The Nigerian government has been listed repeatedly by international agencies as being corrupt. Transparency International in 2000 indicated that Nigeria was the most corrupt country in the world.⁹³ By 2011, the situation had improved drastically but Nigeria was still ranked 143 out of 182 countries in Transparency International's Corruption Perceptions Index.⁹⁴ In 2012, the country's corruption index was marked as 139 out of 176 countries.⁹⁵ By 2018, Nigeria had slipped 4 spaces below. Although hotly contested by the Nigerian government, Nigeria has continued to slip in recent rankings based on corruption perception. The country fell from 144th to 146th on the pecking order of the 2019 Transparency International's Corruption Perception Index. By so doing it fell by 26 points, a minus of one when compared to its score in 2018. The rankings are based on the transparency perception of Nigerians on the Immigration (Service), the Custom, the National Assembly, the judiciary, ease of doing business, getting employment, gaining admission, he index examined the lack of compliance for the rule of law, public procurement and disregard for extant law in the country, especially the Freedom of Information Act (FOI).⁹⁶

West African countries, Brazil, Singapore, Thailand, Indonesia and the Balkans. See Katsouris and Sayne, op.cit p. x. It is notable that infrastructure deficiencies are just a question of insufficient funds. Even if the money is available, there is still an issue of contractors and political figures looting allocated funds and leading, of course, to the well-known problem of abandoned and uncompleted roads and other building projects. There are also other wider questions such as what influences affect decisions regarding what infrastructure gets built and for whom?

⁹²Katsouris, and Sayne op.cit. p. 38.

⁹³ Ibid.

⁹⁴ Corruption Perceptions Index (2011), Transparency International available at <http://cpi.transparency.org/cpi2011/results/> and accessed on 10 May 2012.

⁹⁵ Transparency International, Corruption Perception Index (2012) available at <http://cpi.transparency.org/cpi2012/results/> and accessed 20 May, 2013

⁹⁶ÁdámFöldes and Maggie Murphy, Beneficial Ownership: How To Find The Real Owners of Secret Companies A guide for journalists and civil society in Ghana, Kenya & Nigeria available at https://images.transparencycdn.org/images/2017_Report_BeneficialOwnershipRealOwners_English.pdf accessed on 07 Sept 2020; Yusuf Akinpelu "Explainer: How Transparency International assessed Nigeria's corruption level *Premium Times* 28, January 2020 available at <https://www.premiumtimesng.com/news/headlines/374623-explainer-how-transparency-international-assessed-nigerias-corruption-level.html> accessed on 08 September 2020.

An estimated two hundred and seventy (270) billion US Dollars, proceeds from oil sales between 1960 and 2004, are said to remain unaccountable until date.⁹⁷ Sani Abacha the late Nigerian Military President who died in 1999 is suspected to have plundered between \$4 and \$16 billion. The tracing and repatriation of his stolen wealth will for a long time be the benchmark upon which international cooperation in the tracing of stolen funds will be measured.

Over the last 20 years and ever since civilian rule returned to Nigeria in 1999, only US\$ 3,3 billion out of the likely dozens of billions of dollars stashed away by the Abacha family has been recovered. Yet there are disturbing accusations of non-reinvestment into much needed developmental projects and even re-looting by succeeding generations of bureaucrats and PEPs.⁹⁸

3.3: Aspects of the Nigerian Legal System and the Prohibition of Corruption and IFF.

It is quite important to consider the major features of Nigerian law relating to IFF with emphasis on political corruption as well as money laundering. It has for instance, been established that grand corruption by the elite classes and the investment of stolen wealth in foreign properties particularly in London and Dubai is a massive problem for Nigeria. It is important to consider the major features of Nigerian law in relation to corruption and particularly AML legislation. The following subsections will thus, highlight some of the key areas of Nigeria's legal regime, which has been developed against the main mischief of corruption that has ravaged the country such as the prohibition of official corruption, operation of foreign accounts and the duty to declare Assets.

There are enough reasons for us to start from the *a priori* position that Nigeria has a host of national, state and local legislation, standards, ethical rules and practices, which ordinarily should prevent the current high rate of corruption and IFF activities. This is because of the sheer number of available laws, socio-legal structures and institutions that are available domestically

⁹⁷ The erstwhile chair of the ICPC, Nuhu Ribadu addressing the Nigerian Senate admitted that public funds, running into hundreds of millions of dollars, have been corruptly acquired in just seven years. As an example he cited the case of the governor of Abia State stating that: 'We have established a prima facie case of conspiracy, stealing, corruption and abuse of office, forgery and money laundering against the governor, ...Governor Kalu used the following companies and enterprises belonging to himself, his mother, daughter, wife, brother in looting the Abia state treasury and building his business empire. We noted that the governor used his position in channeling states and local government funds in excess of \$25 billion Naira [about \$200 million]'. See, Gilbert da Costa, 'Nigerian State Governors Face Corruption Indictment' Voice of America (online), 28 September 2006 <<http://www.voanews.com/english/2006-09-28-voa34.cfm>> accessed 05/04/2020. For the case law see *FRN V. Orji Uzor Kalu & Ors* FCA/ABJ/CR/56/07 and *Kalu v. Federal Republic Of Nigeria And Others* (SC.215/2012)[2016] NGSC 34 (18 March 2016).

⁹⁸ Abbah, op.cit., p. 53.

for Nigeria. Indeed, if existing Nigerian laws were applied and diligently enforced, much of what the country experiences in IFF abuse would simply not exist.

3.3.1: Constitutional Provisions and the Code of Conduct Regime

It is arguable that if there is one country that should not have the problem of PEPs engaging in maintenance of foreign bank accounts and investment in undeclared foreign real property that country should be Nigeria. This is because there are perhaps very few countries in the world with constitutional provisions that directly prohibit the practice of public officials having foreign bank accounts.

Provisions linked to the Nigerian constitution also prescribe compulsory asset declaration laws by virtue of which properties owned anywhere including in foreign countries should be publicly declared. The constitution prescribes a "Code of Conduct for Public Officers" which is contained in the Fifth Schedule to the constitution and a Code of Conduct Bureau was established as a Federal Executive body by virtue of Section 153 of the Constitution. To create an enabling environment for its important tasks this constitutional provision is backed up by the instrument of an Act enacted to provide for the establishment of the Code of Conduct Bureau and Tribunal in order to deal with complaints of corruption by public servants for the breaches of its provisions.⁹⁹ This law was created to establish, maintain and sustain public morality in the conduct of government organizations and to ensure that public officers are of good behaviour and comply with the highest quality of public morality and accountability (Section 2). If all were well with the country, the code of conduct regime would have prevented dubious, improper and illegitimate acquisition of properties of any kind in the first place. Moreover it is often the case that such properties are held under the name of proxies. The provisions of the Act are arguably direct antidotes to much of what fuels PEP-IFF.

The Nigerian constitution in fact prohibits a very wide range of senior public officers from opening and/or operating a foreign bank account. The apparent mischief that this provision attempts to cure is that of grand corruption.

3.3.1.1: *Voluntary Offshore Assets Regularization Scheme established in 2018.*

The current President of Nigeria Muhammadu Buhari's administration in 2018 signed an Executive Order 008 on Voluntary Offshore Assets Regularization Scheme (VOARS). This Executive Order was aimed at encouraging voluntary declaration of offshore assets and combating money laundering and tax evasion.¹⁰⁰

⁹⁹Code of Conduct Bureau and Tribunal Act, Chapter 58 LFN 1990. Available at https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Nigeria_Code%20of%20Conduct%20Bureau%20and%20Tribunal%20Act_1991_en.pdf accessed on 24 May 2020.

¹⁰⁰ Signed by the President of the Federal Republic of Nigeria on 8 October 2018 (Effective Date). The scheme was implemented by the Office of Attorney General/ Minister of Justice, through the VOARS Facility established in

Potentially thousands of high-net worth Nigerian nationals having properties in the UAE and UK fell under the purview of this scheme and may have been attracted by the condition of paying a onetime 35 percent levy on the value of the declared assets. The offer lasted for a period of twelve months from the effective date. It is important to highlight that apart from the exclusion relating to those currently charged for crimes; this scheme does not remove the effects of non-compliance with the constitutional requirement of declaration of assets by public officials contained in section 12 of the Fifth Schedule on Code of Conduct and public officials. It arguably actually creates a further legal jeopardy for PEPs and public officials who may have surreptitiously acquired foreign property without declaration.

3.3.2: Reporting Duties under the MLPA, 2011 and CBN AML/CFT Regulation, 2009 regimes.

The Money laundering Prohibition Act (MLPA) 2012 provides comprehensive provisions to prohibit the laundering of the proceeds of crimes or any illegal act. It is directed therefore, at tracing, finding, freezing and possibly forfeiting among other things money and properties that have been acquired through illegal or prohibited means. The intent is to prevent corrupt persons from legitimising proceeds from their criminal activities. The Act creates synergy between important national institutions and requires their inputs in the fight against corruption. These include:

- (a) The Central Bank of Nigeria;
- (b) The Nigerian Customs Service;
- (c) The Nigerian Securities and Exchange Commission;
- (d) The National Drug Law Enforcement Agency;
- (e) the Bureau of Public Procurement (BPP);
- (f) The Economic and Financial Crimes Commission;
- (g) The Corporate Affairs Commission;
- (h) The Federal High Court.

This Act expanded upon the scope of the previous Money Laundering (Prohibition) Act 2004 (“the 2004 Act”) to the extent that it does not only target Financial Institutions involved in cash transactions, but also Designated Non-Financial Institutions (“DNFIs”) involved in cash transactions. The Act makes some important contributions to the domestic regime against money laundering. It spells out several core offences and penalties. These include prohibition of money laundering,¹⁰¹ punishment of concealment and retention of properties obtained through money

Switzerland. See Standard Chartered Bank GB, “Nigerian tax amnesty”, available at <https://av.sc.com/corp-en/content/docs/nigeria-tax-amnesty-factsheet.pdf> accessed on 24 May 2020.

¹⁰¹ In Section 1 for instance it prohibits individuals and corporate bodies from making or accepting cash payment in excess of (a) N5,000,000.00 or its equivalent, in the case of an individual or (b) N10,000,000.00 or its equivalent in the case of a body corporate respectively unless the transaction in question is made through a financial institution. A person found guilty of the offence may be banned indefinitely or for a period from exercising the profession that provided him the opportunity to commit the offence. The consideration behind the thresholds is based on the assumption that an amount in excess of N5, 00,000.00 or N10, 000,000.00 is a significant sum of money that may

laundering,¹⁰² obstruction of investigation, conspiracy, aiding and abetting money laundering. Section 19 of the Act provides for liability of the management and employees of corporate organisations where there is proof that a crime was committed on the instigation or with the connivance, knowledge or any neglect attributable to a director, manager, secretary or other similar officer of the body corporate or any person purporting to act in that capacity. A body corporate convicted of an offence under this Act, may be wound up by order of court and all its assets and properties forfeited to the Federal Government. Section 12(1) of the Act, provides that where there is evidence of conspiracy between the owner of funds and the institution (financial or non-financial) criminal proceedings may be brought for all offences against the directors and employees involved.

The Act imposes some legal duties on private persons and corporate bodies and their employees. The duties are set out below:

3.3.2.1 The Duty of Reporting

The Act under Section 2(1) requires corporate bodies and individuals to report to the Central Bank and the Securities and Exchange Commission any international transfer of funds or securities in excess of USD 10,000. In practice similar report must also be made by the Nigerian Customs Service and all these reports must be forwarded to the NFIU on a weekly basis.¹⁰³ These are all very useful rules that should aid the detection of crimes and should inhibit the ability of offenders to engage in reckless or systematic money laundering. Transactions concerning significant property purchases and the practice of IFF often involves local banks. If

have to be explained. There is however, the problem that Nigeria remains a cash based economy and the number of such transactions that will raise the flag would continue to be so large as to be impractical.

¹⁰² Section 14 (1) (a) provides that any person who converts or transfers resources or property derived from illicit dealings in narcotic drugs or other crime or illegal act with the aim of concealing or disguising its illegal origin to evade the legal consequences of his action commits an offence. Section 14 (1) (b) on the other hand prohibits any act aimed at collaborating by and with any person in concealing or disguising the illegal nature of properties or resources obtained through money laundering. This is a very fundamental provision of the Act as the possibilities of committing other offences proscribed by this Act depend largely upon successful concealment. Section 16 of the Act proscribes retention of the proceeds of a criminal conduct with the knowledge that their source is prohibited. Again, like other forms of offences created in the preceding laws, guilty knowledge is a required ingredient for conviction.

¹⁰³ All banks and other financial institutions operating in Nigeria are periodically reminded by the CBN of the need to ensure full compliance with customer identification requirements in line with Section 3 of Money Laundering Prohibition Act, 2004. Note for instance CBN KYC Directive, 2001 and KYC Manual, 2003. Accordingly, banks and other financial institutions are required to render effective money laundering (ML) returns to the Nigerian Financial Intelligence Unit (NFIU) through prescribed templates. Where customers fail to cooperate with the banks/institutions, such institutions are required to suspend further transaction on the client's account(s) until full compliance is achieved. See for instance, CBN, Circular To Banks And Other Financial Institutions Compliance with Know Your Customer (KYC) Requirements and Banks Weekly Money Laundering Reports to the NFIU Using XML Schema Template BSD/DIR/GEN/CIR/VOL.1/015 November 8, 2007 available at [https://www.cbn.gov.ng/OUT/CIRCULARS/BS/2007/COMPLIANCE%20WITH%20KNOW%20YOUR%20CUSTOMER%20\(KYC\)%20REQUIREMENTS%20AND%20BANKS%20WEEKLY%20MONEY%20LAUNDERING%20REPORTS%20TO%20THE%20NFIU%20USING%20XML%20SCHEMA%20TEMPLATE.PDF](https://www.cbn.gov.ng/OUT/CIRCULARS/BS/2007/COMPLIANCE%20WITH%20KNOW%20YOUR%20CUSTOMER%20(KYC)%20REQUIREMENTS%20AND%20BANKS%20WEEKLY%20MONEY%20LAUNDERING%20REPORTS%20TO%20THE%20NFIU%20USING%20XML%20SCHEMA%20TEMPLATE.PDF) accessed on 10 September 2020.

Nigerian banks and other financial institution perform their functions with due diligence much of IFF damage to Nigeria would have been avoided. The transfer of funds usually requires banks that essentially facilitate money laundering. The problem is that enablers working within the financial sector often opt to ignore pertinent legislation, rules, standards and ethics making it easier for money launderers to escape detection and sanctions. Thus, for instance, the requirement in the Money Laundering (Prohibition) Act, 2012 (as amended) that Nigerian financial institutions must notify the Central Bank of Nigeria of all foreign transfers above the sum of \$10,000 is perhaps one of the threshold rules designed to prevent surreptitious transactions that has for long been effectively breached in practice.

3.3.3.2: The Duty of Documentation/Identification of Customers (KYC).

Know your Clients/Customers (KYC) is another requirement on financial institutions and DNFI imposed by Section 3 of the Act. Before entering into a business relationship with clients, institutions have an obligation to collect certain particulars about their clients. Where a financial Institution suspects that transactions are being made with the proceeds of a crime or that an illegal act has occurred, it has a duty to obtain identification of the customers involved notwithstanding the transaction value may be less than \$5000.

3.3.3.3: Special Surveillance on Suspicious Transactions.

Individuals, financial institutions DNFI and other concerned persons are obliged to file suspicious transaction reports if they suspect funds are the proceeds of corruption or other crimes. Where transactions of an unjustifiable or unreasonable frequency is shrouded in unusual circumstances, lack an economic justification or a lawful objective, the institution (financial or non-financial) must within 7 days do the following:

- a) Draw up a written report of the transaction,
- b) Take appropriate steps to prevent laundering,
- c) Provide the commission with a copy of the report.

3.3.3.4: The CBN AML/CFT Regulations.

The National Assembly and state Assemblies have the power to create legislation and regulatory bodies to regulate financial services. The Central bank of Nigeria was created with powers to make subsidiary legislation to govern financial services in Nigeria.¹⁰⁴ The CBN releases AML/CFT Regulations on a periodical basis. A couple of such regulations will be discussed here for illustration purposes and to show progression. The CBN AML/CFT Regulations 2009 (as amended) established stringent requirements for record-keeping and reporting by designated

¹⁰⁴ Sections 1 to 7, Constitution of the Federal Republic of Nigeria amended 1999.

non-financial institutions, businesses and professions, banks and other financial institutions.¹⁰⁵ Relevant provisions target identification of the source, volume and movement of currency and other monetary instruments transported or transmitted into or out of Nigeria, or deposited in financial institutions in the country. Certain returns listed in AML/CFT Regulation, 2009 (as amended) require that reports be made to the CBN (AML/CFT Office in Financial Policy and Regulation Department) and the Nigerian Financial Intelligence Unit (NFIU); to properly identify persons conducting transactions and to maintain a paper trail by keeping appropriate records of their financial transactions. The idea is that should the need arise, these records will enable law enforcement and regulatory agencies to pursue investigations of criminal, tax and regulatory violations, and provide useful evidence in prosecuting money laundering, financial crimes and other IFF.¹⁰⁶

For a long time now and certainly since, the 2013 Regulations financial institutions have been obliged to “render monthly returns on all transactions with PEPs to the CBN [Central Bank] and NFIU [intelligence unit].”¹⁰⁷ If they fail to do so, they would be breaching aforementioned money laundering laws particularly Section 15 (2).

The CBN issued a new AML/CFT sanctions regime in 2018.¹⁰⁸ The regime outlined even tougher sanctions against financial institutions and their top officials for money laundering infractions. It outlines 48 required AML/CFT actions for banks and other financial institutions. Where a concerned financial institution fails to comply with at least 31 out of the 48 listed requirements, both the financial institution, as well as directors and senior management, will receive sanctions. The minimum fines range from N500,000 to N1.2 million on board members or senior management and N1 million to N20 million on deposit money banks.

¹⁰⁵ Federal Republic of Nigeria, Central Bank of Nigeria (Anti-Money Laundering and Combating the Financing of Terrorism in Banks and Other Financial Institutions) Regulations, 2013, Part III, Section 9, <https://www.cbn.gov.ng/out/2014/fprd/aml%20act%202013.pdf>.

¹⁰⁶ Federal Republic of Nigeria, Central Bank of Nigeria (Anti-Money Laundering and Combating the Financing of Terrorism in Banks and Other Financial Institutions) Regulations, 2013, Part III, Section 9, <https://www.cbn.gov.ng/out/2014/fprd/aml%20act%202013.pdf>.

¹⁰⁷ Federal Republic of Nigeria, Central Bank of Nigeria (Anti-Money Laundering and Combating the Financing of Terrorism in Banks and Other Financial Institutions) Regulations, 2013, Part III, Section 9, <https://www.cbn.gov.ng/out/2014/fprd/aml%20act%202013.pdf>.

¹⁰⁸ CBN Anti-Money Laundering and Combating the Financing of Terrorism (Administrative Sanctions) Regulations, 2018.

3.4: Investigatory Powers under the Economic and Financial Crimes Commission (Establishment) Act 2002.

There are a fair number of regulatory bodies with jurisdiction over corruption crimes in Nigeria and we have highlighted them above. However, it is necessary to discuss the Economic and Financial Crimes Commission (EFCC or the Commission) and its activities. The EFCC was established by an Act of parliament in 2002.¹⁰⁹ The EFCC Act came into force on the 14th December 2002. The Act established the EFCC as the overarching body designated with the primary responsibility of investigating and prosecuting economic crimes and bringing perpetrators of such crimes within the ambit of the law. Section 7 of the Act confers special powers on the EFCC to enforce the provisions of other criminal laws including a. The Money Laundering Act; b. The Advanced Fee Fraud and Other Related Offences Act; c. The Failed Banks (Recovery of Debt and Financial Malpractices in Banks) Act; d. The Banks and other Financial Institutions Act; e. Miscellaneous Offences Act; f. Any other law or regulation relating to economic and financial crimes including the Criminal Code¹¹⁰ and Penal Code.¹¹¹

3.5: Investigatory Powers under the Corrupt Practices, And Other Related Offences Act, 2000.

The Corrupt Practices and Other Related Offences Act Cap C31, Laws of the Federation of Nigeria 2004 established the Independent Corrupt Practices Commission (ICPC), which is one of the major anti-corruption agencies in Nigeria. The ICPC Act generally prohibits the various perceived acts of corrupt practices arising from interactions or transactions involving public/government officers and the public or private individuals. The basic thrust of the Act is prohibition of corrupt practices and bribery the essential elements of which are: giving or receiving a thing of value to influence an official act. The various offences punishable under the sections include wilful giving and receipt of gratification and bribery to influence a public duty,¹¹² fraudulent acquisition and receipt of properties,¹¹³ deliberate frustration of investigation by the anti-corruption commission (ICPC),¹¹⁴ making of false returns, making of false or misleading statement to the Anti-Corruption Commission, attempts, conspiracies and abetments of the offences under the Act.

¹⁰⁹ Economic and Financial Crimes Commission (Establishment) Act, LFN 2004 available at [http://www.nigerialaw.org/Economic%20And%20Financial%20Crimes%20Commission%20\(Establishment\)%20Act.htm](http://www.nigerialaw.org/Economic%20And%20Financial%20Crimes%20Commission%20(Establishment)%20Act.htm).

¹¹⁰ Nigeria: Criminal Code Cap C38 LFN 2004.

¹¹¹ Penal Code (Northern States) Federal Provisions Act (No. 25 of 1960).

¹¹² Note that gratification here does not need to be in cash alone but also includes non-tangible effects such as conferment of dignity, employment and forbearance, office and employment among other things.

¹¹³ Fraudulent acquisition of property. 12. Any person who, being employed in the public service, knowingly acquires or holds, directly or indirectly, otherwise than as a member of a registered joint stock company consisting of more than twenty (20) persons, a private interest in any contract, agreement or investment emanating from or connected with the department or office in which he is employed or which is made on account of the public service, is guilty of an offence, and shall on conviction be liable to imprisonment for seven (7) years..

¹¹⁴ To be guilty under this particular provision, there must be a proof of knowledge and the intention to conceal or frustrate investigations by the enforcement agencies.

Upon a competent request from the ICPC, requested persons may have to set out information on all their sources of income, earnings, gifts or other assets for such period as may be required. Very importantly, banks and financial institutions or any person who is in any manner or to any extent responsible for their management and control may be required to furnish copies of any or all accounts documents and records relating to any person to whom a notice may be issued by the ICPC.

Public officers may bring themselves under investigation by overt or even covert manifestation of living above their means. Section 44 (2) of the ICPC Act has a significant provision which stipulate that: “Where . . . any public officer . . . owns, possesses, controls or holds any interest in any property which is excessive, having regard to his present or past emoluments and all other relevant circumstances, the [Independent Corruption Practices and Other Related Offenses Commission] Chairman may by written direction require him to furnish a statement on oath or affirmation explaining how he was able to own possess, control or hold such excess”.

3.6: Enablers and Professional collaborators in Nigeria.

It remains to highlight the role played by professional enablers. Unethical practitioners among Nigerian professionals render all kinds of illegitimate assistance to those involved in IFF. Like their professional colleagues in foreign lands, these professionals continue to midwife many hundreds of shady deals that allow much of money laundering and IFF to take place. Nigerian lawyers can be used as a springboard for discussions in this area.

In Nigeria, the rules governing gatekeepers may be gleaned from The Money Laundering (Prohibition) Act 2011 and the Prevention of Terrorism Act (PTA) 2011/2013. Specific progress was made after the creation of the Special Control Unit against Money Laundering (SCUML), which was established to monitor, supervise and regulate the activities of certain professional actors classified as Designated Non Financial Institutions (DNFIs). Section 25 of Money Laundering (Prohibition) Act non-exhaustively defines DNFIs as

“dealers in jewellery, cars and luxury goods, precious stones and metals, real estate, estate developers, estate surveyors and valuers, estate agents, chartered accountants, audit firms, tax consultants, clearing and settlement companies, hotels, casinos, supermarkets, dealers in mechanized farming equipment and machineries, practitioners of mechanized farming, NGOS or such other businesses as the Federal Ministry of Trade and Investment or appropriate regulatory authorities may from time to time designate”.

SCUML works in close cooperation with the EFCC and the NFIU, but falls under the purview and reports to the Federal Ministry of Industry, Trade & Investment. All suspicious transaction reports (STRs) are to be filed with the NFIU which is required to analyse the STRs. DNFIs on

the other hand make currency transaction reports to SCUML) and DNFI's are to report cash transactions exceeding USD1,000 to SCUML.¹¹⁵

SECTION 3.

4. COMBATING IFF: IMPERATIVE CONSIDERATIONS AND ALTERNATIVE FUTURES.

This section takes a holistic view of the doctrinal and socio-legal analysis engaged in over the preceding chapters. In consonance with the wide conceptualization of IFF adopted in this study, arguments and recommendations are made over a wide range of areas particularly in prevention of money laundering, redressing unequal contracts, asset recovery, recovery of tax proceeds as well as recovering possession and control of natural resources.

In essence, this section is not only analytical but represents our prescriptive recommendations. The section builds upon the finding that both the UAE and the UK are international financial centres with global economic and political significance that maintain a strong financial connection to the economy and development of Nigeria. The section reiterates the deleterious effects of observable patterns of illicit investment of Nigerian elite groups in financial institutions in both countries such as the acquisition of real property, and other corporate investments. The section shows that there are acute difficulties surrounding investigations and asset recovery between the countries involving billions of dollars of stolen wealth that is transferred to both the UAE and the UK where asset recovery is nearly practically impossible. Despite many pertinent anticorruption and transparency treaties, conventions, standards and other soft laws, the problem of IFF will not abate without further cooperation and implementation of drastic measures. The section tackles prevention and elimination of IFF practises through a series of strategies. Nigeria's economic future and the country's ability to attain the Sustainable Development Goals (SDGs). Significant levels of poverty and economic deprivation would increase and Nigeria would struggle to achieve the Sustainable Development Goals if the current levels of IFF practises between the countries continue or increases.

4.0: IFF a 50 billion dollar sink hole: Tracking, stopping and getting it.

The major contributors to IFF from Nigeria include: (a) proceeds from commercial tax evasions, (b) proceeds from various illicit activities engaged in by corporations and business ventures, (c)

¹¹⁵ Implementation Review Group Tenth session Vienna, 27–29 May 2019 Item 2 of the provisional agenda* Review of implementation of the United Nations Convention against Corruption Executive summary: Nigeria Note by the Secretariat. CAC/COSP/IRG/2019/CRP.6. Available at <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/27-29May2019/V1903720e.pdf> accessed on 26 June 2020.

proceeds derived from criminal activities, and (d) the generation and receipt of bribery and corruption especially grand corruption. We do not accept the premise that the ‘umbrella’ definition of IFFs should be anchored in law, rather than ethics, so as to give precise and objective contours to what constitutes ‘illicit flows’. Rooting the definition of IFF in “ethics” however raises the question - whose ethics? When flows are cross boundary, which “ethical” system prevails? Capitalism has its own “ethical” system and they are different. This study takes the *prima facie* position that ‘ethical’ connotes an objective identification of what is “right” and what is “wrong”. Hence Nick Hildyard correctly argues against: “lawful, routine, accepted practices that decay, debase or otherwise deteriorate the political processes through which society as a whole might reach a view as to what constitutes “the good society”.”¹¹⁶ Since this book is written for the benefit of Nigeria and Africa by extension this then raises the question what sort of society do we want for a developing state? At the very least, we would suggest that “ethical” from the positions of a developing state like Nigeria would include support for the: the collective good over private gain?

The better definition of IFFs is therefore, one that see it as *cross-border transfers of money or assets connected with some unlawful and/or unethical activity*.

The IFF curtailment agenda deserves special treatment in the context of Nigeria and its relations with the UAE and UK.¹¹⁷

Nigeria’s political commitment to taming the IFF scourge in the context of contemporary international relations and using linkage politics is demonstrated in its leadership role (as a co-sponsor, within the Group of 77) in ensuring the passage of a UN General Assembly (UNGA) Resolution on Promotion of International Cooperation to Combat Illicit Financial Flows in Order to Foster Sustainable Developments.¹¹⁸

4.1: Review and Assessment of the Performance of National and Institutional Stakeholders.

Nigeria has taken some notable and progressive steps in addressing the IFF problem worthy of mention.¹¹⁹ These include entering into a fair number of Mutual Legal Assistance in Criminal

¹¹⁶ Nicholas Hildyard, *Corrupt but legal: Institutionalised corruption and development finance* (Counter Balance secretariat, 2016) available at <http://www.thecornerhouse.org.uk/sites/thecornerhouse.org.uk/files/Corrupt-but-Legal.pdf> 11 Jan 2021.

¹¹⁷ This study therefore borrows from the methodology and broad pragmatic approach of **Irene Musselli and Elisabeth Bürgi Bonanomi**’s study (in Musselli and Bonanomi’s op.cit., et seq.) as well as an adaptive approach of the Report of the High Level Panel on Illicit Financial Flows from Africa.

¹¹⁸ Resolution A/RES/72/207 of 21 October 2019.

¹¹⁹ UNGA, Battle against Corruption Vital to 2030 Agenda, General Assembly President Tells High-level Commemoration of Anti-Corruption Treaty’s Adoption: Secretary-General Highlights Convention’s Near-Global

Matters treaties with the UK, the UAE and many other countries (See table 13).¹²⁰ The proposed law, on Mutual Legal Assistance in Criminal Matters between Nigeria and Other Foreign Countries, (Senate Bill 224, 2017) will be of much utility to anticorruption campaigners and regulatory bodies. These laws will all help to facilitate the identification, tracing, freezing, restraining, recovery, forfeiture and confiscation of proceeds, property and other instrumentalities of crime. The adoption of the first National Anti-corruption Strategy (NACS) by the Federal Executive Council on July 5, 2017 is again of significance and importance to curtailing IFF.¹²¹ Whilst the NACS is not completely perfect, the effort of drawing one up at this stage of Nigeria's development undoubtedly provides better insight as well as opportunities for a coordination and guidance for all sectors and stakeholders in the fight against corruption.¹²²

4.2: Critique of the Performance of the Central Banks.

The Central banks of the countries surveyed in this study all share a part in the blame for the failure of their systems in preventing systemic IFF. For example, with the host of irregularities that must have accompanied the acquisition of over 800 properties in Dubai mostly by Nigerian PEPs as revealed in the Sandcastles' data as well as the significant London properties we detailed (both in tables 6 and 7), it can only be concluded that the CBN is not performing its supervisory tasks to the sufficient standard. Its failure of regulatory oversight relating to transactions involving PEPs is legendary in proportions. The CBN played a direct role in allowing the pilfering of over 5 Billion Naira by the Abacha military regime.¹²³ The CBN would therefore, need to take a more effective approach with targeted measures not only to negotiate instruments but also to engage in better monitoring of financial transactions of PEPs and other businesspersons. Looking at what we have discovered so far, the CBN has not satisfactorily established and performed its supervisory functions not only over banks particularly in the case

Acceptance, Hails Money-Laundering Efforts of Nigeria, Tunisia. General Assembly Seventy-second Session, High-level Debate, AM & PM Meetings GA/12017 23 May 2018 available at <https://www.un.org/press/en/2018/ga12017.doc.htm> accessed on 20 Jun 2020.

¹²⁰ The Treaty between the Government of the United States of America and the Federal Republic of Nigeria on Mutual Legal Assistance in Criminal Matters, signed at Washington on September 13, 1989. Ex. Rept. 106-24.

¹²¹ Fatima Waziri – Azi, An Evaluation Of The Nigerian National Anti-Corruption Strategy Vol. 5 *European Journal of Research in Social Sciences* No. 5, 2017 pp 1,2 and 9; available at <https://www.idpublications.org/wp-content/uploads/2017/09/Full-Paper-AN-EVALUATION-OF-THE-NIGERIAN-NATIONAL-ANTI-CORRUPTION-STRATEGY.pdf> accessed 20 June 2020. Other recent and notable initiatives include the Open Contracting Data Standard (OCDS); Open Government Partnership (OGP); Extractive Industries Transparency Initiative (EITI); Beneficial Ownership; Justice Sector Reform; Public Service Reforms; Tax Reform; Illicit Financial Flows (TSA, cash less policy, Anti- money; laundering/counter terrorism financing etc.); Anti-Corruption and Transparency Unit (ACTU); Convention on Business Integrity Initiative; Ease of doing business executive orders; Petroleum Industry Reforms; Budget Transparency Initiatives and the recent CGRS ratings.

¹²² Waziri – Azi, *ibid* p. 9.

¹²³ See Abbah *op.cit.* p. 52.

of certain types of customers (e.g., non-resident or offshore customers, PEPs but there are also shortcomings in oversight in relation to Private Investment Companies (PIC), MNCs and shell companies; offshore entities; cash-intensive businesses and import or export companies). The CBN must do better particularly in its role as an assessor of the adequacy of financial institution's systems to manage the risks associated with senior local/foreign political figures, but it must do better in instilling an expectation of probity among corporate management and their ability to implement effective risk-based due diligence, monitoring and reporting systems. If this were in place, KBR and Haliburton cases would not have occurred in the way they happened leading to the high fines that accrued only to the USA via the FCPA actions.

It is imperative that the CBN and the Ministry of Justice must ensure the prosecution of financial institutions that violate anti -corruption laws. The imposition of sanctions against banks including prosecution of their employees together with the institution is an essential part of creating a better-disciplined national financial system that is less susceptible to mischief from within and without.

The journey to a full grant of autonomy to the NFIU is not yet complete although credit is due to the country's authority for the implementation of the Nigeria Financial Intelligence Unit Act 2018, which established the NFIU as an independent entity.¹²⁴

4.3: Review and Assessment of International Commitments.

The existence of many sophisticated international agreements, Memorandum of Understandings (MOUs), various forms of soft law are crucial for the financial health of Nigeria especially in addressing IFF. These international commitments complement the many relevant national laws we have highlighted including the more recent specialist legislation such as the Nigeria Financial Intelligence Agency Establishment Act (NFIA) and the Proceeds of Crime Bill.¹²⁵ It will be important for scholars to continue interrogating how the domestic and the international legal regimes complement each other. It is in this light that we must consider the broad outlines of international agreement and consider whether put together they can help achieve the noble aim of African nations to substantially tackle illicit financial flows by 2030, and eliminate safe havens that create incentives for foreign transfer of stolen assets.¹²⁶ The general regime of international

Previously the NFIU was established through Section 1(2) (c) of the Economic and Financial Crimes Commission (EFCC) Act.

¹²⁵ NASS, Bill Tracker: Proceeds of Crime Management Agency (Establishment) Bill, 2019 available at <https://www.nassnig.org/documents/bill/10450> accessed 20 June 2020.

¹²⁶ The Addis Ababa Action Agenda on financing for development calls for redoubling efforts to substantially reduce IFFs by 2030. It invites the "appropriate international institutions and regional organizations to publish estimates of the volume and composition of illicit financial flows." See UNCTAD, "Defining, estimating and disseminating statistics on illicit financial flows in Africa" available to <https://unctad.org/en/Pages/Statistics/UNDA-Project-1819Y.aspx> accessed on 20 June 2020.

cooperation against IFF that applies to and between Nigeria, the UAE and UK are identified in the table below. It shows that much progress has been made in anti-corruption law. The table also shows that there is a plethora of international legal instruments that establish the obligation of the three countries to address IFF challenge. The three countries thus, have areas of strengths upon which further strategic international cooperation can be built. Some of these treaties are bilateral and others bind the three together as parties in a larger multilateral arrangement.

Apart from anticorruption treaties, it is perhaps important to highlight the remarkable web of existing treaty obligations with respect to criminal justice between and among the three states. The importance of the existence of these sort of treaties cannot be overstated. They are predominantly recent and signify very good relations between the countries. Put together they indicate the potentials for much more spectacular levels of cooperation on criminal justice matters than we are witnessing. The punishment for convicts of corruption offences should be routine.

The fact that there are existing MLAs, as well as extradition and prisoner transfer treaties between Nigeria and the UK and UAE *inter se* place the countries in a good place to collaborate meaningfully in dealing with high profile anticorruption cases. There have been a few outstanding successes and prominent cases in practice upon which further good legal reform and future practice may be based (e.g. Dan Etete).¹²⁷ Extradition remains a highly useful mechanism for governments and Nigeria must do its best not only to retain the treaties it has presently but most work to develop even more.

4.4: Strategies for Combatting Trade based Money Laundering.

Grievous damage has been occasioned on the Nigerian state and its economy by multinationals through trade-based money laundering (TBML) and other IFF. At the nadir of this practice has been international oil companies that have made themselves adept at perverting the course of Nigeria's national life. It is particularly incumbent on the United Kingdom to press for changes in its multinationals operating in Nigeria to make positive change and end the era of economic and political mischief in their investment practice with the country. For instance, it has for long been known that the effective lobbying by oil companies is a large aspect of the stalled progress of the Petroleum Industry Bill (PIB) for nearly 20 years now because "the oil majors have been particularly vocal on potentially losing tax exemptions as a result of this law". Shell for instance claims that "the proposed PIB Joint Venture terms are not competitive when compared with other oil producing countries."¹²⁸

¹²⁷ See footnote 95, 455 and our discussion in 5.2: The Malabu Case – OPL 245 Oil Deal.

¹²⁸ Evans, Galkina, Marriot et.al. p. 16; Nigeria's PIB not competitive – Shell on: November 19, 2012 "Nigeria's PIB not competitive – Shell", Sweet Crude Reports, 19, November 2012 <http://sweetcrudereports.com/2012/11/19/nigerias-pib-not-competitive-shell/>

Radical changes will at any rate, be necessary. Particularly because of the importance of oil to its economy, Nigeria must complete the process of the implementation of the Petroleum Industry Bill. Fortunately, Nigeria, along with states like Senegal, Tunisia and Angola have begun to address their IFF through transfer pricing by establishing separate transfer pricing units within their revenue collection agencies to enable auditing and the investigation of taxes paid by multinationals. This development is key towards reduction of leakages in this manner. Other identifiable areas of necessary change that countries like Nigeria should pay more attention to include issues such as permanent establishment, capital gains, fees for technical services, transfer pricing and the absence of anti-abuse clauses when signing Double Taxation Agreement (DTA) giving their dependence on source-based taxation.¹²⁹

Nigeria needs to pay more attention to organisations like African Tax Administration Forum (ATAF).¹³⁰ Through its active technical assistance programme this body helped African countries recoup about US\$ 160 million of tax revenues just in between 2015-2018. Changes to legislation will be key.¹³¹

Nigeria should consider adopting new South Africa style like tax regulations, allowing for transfer pricing reporting ‘country-by-country’ in order to help the government understand how large multinational companies shift profits between their subsidiaries to avoid taxes.¹³² The requirement of Country-by-Country reporting (CbCr), would affect consolidated Multinational groups with a substantial turnover threshold to make such submissions.

4.5: Multinationals Enterprises and the Law: Imperative Considerations.

Although at least 33 percent of world trade takes place within the context of multinational enterprises, the law and regulation of their activities is in dire need of change in the promotion of transparency.¹³³ Tax fraud on nations is one of the larger percentages of International IFF leakage. The reason for that is quite plainly the recklessness in accounting rules of corporations.¹³⁴ Even with the onset of EITI and its Nigerian equivalent – NEITI, it is altogether

¹²⁹Miyandazi and Martin Roncerayop.cit., p. 23

¹³⁰ Established in 2008. This organisation represents an African viewpoint on tax matters at the UN Committee of Experts on International Cooperation in Tax Matters and at the OECD Ibid p. 30.

¹³¹ Tax Analysts. 2018. African Countries Nowhere Near Meeting BEPS Minimum Standards. <https://www.taxnotes.com/worldwide-tax-daily/base-erosion-and-profit-shifting-beps/african-countriesnowhere-near-meeting-beps-minimum-standards/2018/02/16/26wrdr?highlight=ATAF>.

¹³² See for instance PKF South Africa. 2018. Country-by-country reporting and transfer pricing. 23 November 2017. <http://www.pkf.co.za/news/2017/country-by-country-reporting-and-transfer-pricing/>
Tax Analysts. 2018. African Countries Nowhere Near Meeting BEPS Minimum Standards. <https://www.taxnotes.com/worldwide-tax-daily/base-erosion-and-profit-shifting-beps/african-countriesnowhere-near-meeting-beps-minimum-standards/2018/02/16/26wrdr?highlight=ATAF>.

¹³³ Nick Shaxson, “Over a third of world trade happens inside multinational corporations” Tax Justice Network website available at <https://www.taxjustice.net/2019/04/09/over-a-third-or-more-of-world-trade-happens-inside-multinational-corporations/> April 9, 2019.

¹³⁴Shaxson (2012) opcit., p. 221.

too easy for MNEs to manoeuvre the true picture of their company accounts particularly their corporate annual reports. A corporation may publish an Africa wide profit accounts without showing separate national accounts. Thus, we can have the incredulous position where the citizens “in a country where a multinational operates cannot tell from these reports even *whether* that corporations operates there, let alone where it does, its level of activity, its profits, its local employment , or its tax payments”¹³⁵ Country-by-country accounting requirements is therefore a *sine qua non* of arresting IFF’s through MNC operations and this is very much an imperative for the entire African region.

4.5.1: Oil Companies

Averting IFF in Nigeria’s extractive industries whether between the three countries under review or generally would require special attention to the oil sector. Bribery, corruption, illegal resource exploitation, and tax evasion are the main channels of IFFs especially in relation to Nigeria- UK relationship in the country’s extractive industries. Much more damage is done to Nigeria’s financial interest by other countries as well.¹³⁶ Indeed Nigeria’s oil and gas sector contributes 92.9 per cent of the total amount of IFFs the country records yearly through companies and persons operating in the highly porous yet important sector.¹³⁷ In stolen crude oil deals alone Nigeria suffered more than \$12 billion in losses to the US between 2011 and 2014. Another \$3 billion was lost to China and \$839.5 million to Norway in the same period. The damage done from within by bureaucratic mischief is very significant as well. Unfortunately, there is also under-reporting of production volumes and oil lifting by the NNPC and Department of Petroleum Resources (DPR).¹³⁸

4.6: Streamlining and improving identification details of Beneficial Owners.

One of the key challenges at the global level in addressing IFF relates to the difficulties in establishing and linking beneficial ownership. This is particularly because of poor access to country-by-country reporting data on beneficial ownership. There is much to celebrate in the UKs recent adoption of beneficial ownership laws allowing much transparency over properties and corporate structures. As noted in Chapter 5 it is unfortunate that the UK has not introduced its new progressive beneficial ownership transparency regime to its overseas territories. There is therefore a need for increased transparency in the ownership of companies within the constellation of British tax jurisdictions around the world. With wider adoption of the beneficial ownership disclosure regimes, valuable information would be freely shared enabling law

¹³⁵ p. 222

¹³⁶ NEITI, “Averting Illicit Financial Flows in Nigeria’s Extractive Industry” *Occasional Paper Series* 4 (March 1, 2019); Bassey Udo, “NEITI identifies enablers of illicit financial flows in Nigeria’s extractive industries” *Premium Times* March 7, 2019 available at <https://www.premiumtimesng.com/news/top-news/318163-neiti-identifies-enablers-of-illicit-financial-flows-in-nigerias-extractive-industries.html> accessed on 10 July 2020.

¹³⁷ Chineme Okafor, NEITI: Oil Sector Accounts for 92.9% of Illicit Financial Flows in Nigeria Annually *This Day* February 27, 2019 available at [neiti-oil-sector-accounts-for-92-9-of-illicit-financial-flows-in-nigeria-annually](https://www.thisdaylive.com/articles/neiti-oil-sector-accounts-for-92-9-of-illicit-financial-flows-in-nigeria-annually/) accessed on 10 July 2020.

¹³⁸

enforcement to do their job. Beneficial ownership increases contract transparency and very importantly improves upon international cooperation over the issue of IFF. The new rules will certainly help – but they are also easily circumvented and it must be expected that there will be attempts to do so. For example, Ibori’s companies were all in the name of cronies and it is highly unlikely that they would ever have declared that they were holding assets on Ibori’s behalf.

4.7: Expansion of Electronic Verification Systems.

Other commendable capabilities of Nigeria currently include Know Your Customer (KYC) policies, the cashless policy and the advanced biometric banking system -Bank Verification Number (BVN).¹³⁹ To begin with the BVN technology allows for the possibility of development of a common KYC system for financial institutions. Although there are some critical views the introduction of the BVN in 2017 has at least, anecdotally been seen as a success.¹⁴⁰ Some experts have persuasively recommended that the BVN system should be extended to the Federal Inland Revenue Service (FIRS) and even insurance companies.¹⁴¹ Indeed, modern electronic resources are an imperative in dealing with IFF in the 21st Century.

4.8: Streamlining and improving methods for moving money around.

The way and manner in which the wealthy and resourceful from Nigeria have been able to move stupendous amounts of monies around the world has relied on a certain level of permissiveness by the recipient countries. The apparent laxities defy not only the normal rules of international finance but also those of national banking laws in all states concerned.

Thus, changes must be recommended towards more conservative banking practices. The UAE and UK particularly must bring themselves in line with their own national banking, real estate and corporate laws from which they often allow companies and highly privileged individuals to depart. Given the systematic abuses that are manifest in the experience of Nigeria the UAE and UK as development partners must adopt much stricter controls in relation to moving capital around.

¹³⁹ Bank Verification Number (BVN) scheme involves identifying an individual based on physiological or behavioural attributes, such as fingerprint, signature and others. The CBN, in furtherance of its mandate to develop, enhance and establish the security of the electronic payments systems in Nigeria released the “Regulatory Framework for Bank Verification Number (BVN) Operations and Watch-List for the Nigerian Banking Industry”. See directive to all deposit money banks, Switches, mobile money operators, payment terminal service providers, payment solution service providers, Nigerian Financial System BPS/DIR/GEN/CIR/04/010. Available at <https://www.cbn.gov.ng/Out/2017/BPSD/Circular%20on%20the%20Regulatory%20Framework%20for%20BVN%20%20Watchlist%20for%20Nigerian%20Financial%20System.pdf> accessed 14 July 2020.

¹⁴⁰ Esoimeme, Ehi, “A Critical Analysis of the Bank Verification Number Project introduced by the Central Bank of Nigeria” *SSRN Electronic Journal*, 2015.

¹⁴¹ See suggestions of Andrew Nevin at the Session Three: Holding IFF Facilitators And Intermediaries Accountable in the Presidency (Presidential Advisory Committee Against Corruption), p. 41.

4.9: Desirable changes to the General Regime of International Anticorruption Law

4.9.1: Tax Islands, Secrecy Jurisdictions.

This study has so far revealed some of the direct and indirect secrecy policies in the financial systems of both the UAE and the UK that contribute to Nigeria's IFF problem. Although both the UAE and UK make a lot of effort to posture themselves as open and transparent financial systems, the truth is that both countries are well within the top quintile of the banking secrecy jurisdiction league table. The UAE is now ranked tenth in the 2020 Financial Secrecy Index; while the UK's current position is 12th on the 2020 Financial Secrecy Index. It is important to consider how the UK's position is further enhanced through its position at the core of a global web of closely associated secrecy jurisdictions. They include: Cayman (number 1), British Virgin Islands (number 9), Guernsey (number 11) and Jersey (number 16) feature in the top twenty. This suggests that the UK could be an even bigger problem to Nigeria as an IFF enabling nation that the UAE¹⁴² The banking systems of both states therefore provide an interconnected criminogenic environment for states like Nigeria in the global system. The environment thus, created has been systematically exploited for decades by various IFF actors across the globe.

4.9.2: Introduction of an International Beneficial Ownership Register to end the Shell Game.

If we are going to solve corruption, everyone must know who they are doing business with and which corporations are doing business in their country. There has to be an end to the current complex and poorly regulated system in many countries, which allows anonymity in the creation and ownership of corporations.¹⁴³

The trust exemption currently attached to the UK beneficial ownership regime is inimical to transparency and should therefore, be removed.

It is necessary to internationalise and expand the beneficial ownership regime by creating a global register of owners and beneficiaries of corporations. Such a registry will best have unique identifiers for each company, its formation information and all data about its directing and operating hands. This would further address the challenge posed by IFF in international commercial transactions and international trade. It will drastically reduce money laundering internationally and would assist investigations and regulatory bodies in tracking illegally owned assets. Knowing the owners and beneficiaries of corporate investments and vehicles would lower the cost of compliance and due diligence for all kinds of commercial ventures and companies

¹⁴² Tax Justice Network, Financial Secrecy 2020 Index Narrative Report on the United Kingdom <https://fsi.taxjustice.net/PDF/UnitedKingdom.pdf> accessed 21 July 2020.

¹⁴³ Tom Townsend and Jose Marin, "Stop the Shell Game", *The Observer: News and Views from Organisations in the Civil Society Coalition Observing the UNCAC COSP8* Issue 2, 18 December 2019. P. 1. This study thus notes with satisfaction the recent implementation of a group to ensure that all Business ownership data is released openly see <https://www.openownership.org>.

and it will boost tax compliance and the tax receipts accruable particularly to countries in the developing world.¹⁴⁴

4.9.3: Holding IFF Enablers, Facilitators and Intermediaries Accountable.

This study has established that the corruption and IFF afflicting Nigeria has many facilitators. It is indeed the case that only few of those complicit in the long chain of organized criminality of IFF get the deserved attention. The state of play in international banking and finance such as was exposed in the Malabu scandal discussed earlier shows that the network of enablers over a single transaction may reside in several countries at a time. The professionals involved in some complex transactions may act appropriately by flagging off concerns whereas others would not be diligent or may inadvertently assist IFF. These intermediaries and handmaidens of IFF exist in all three countries reviewed. The discussions surrounding the movement of the Abacha millions out of Nigeria is a veritable tale of the complicity between Nigerian bankers and their foreign corresponding and counterpart partners, not to mention an endless stream of lawyers, accountants etc. Enablers and facilitators exist in many professions but are found to have been prominent in the banking, property and legal professions. Other enablers may include brokers, trust experts, commercial actors, financial institutions, auditors and accountants.¹⁴⁵

Nigerian investigators of IFF must therefore, be to be holistic in their identification of suspects and in drawing up an effective dragnet over offenders.

4.9.4: Expert monitoring of politically exposed persons (PEPs) and their luxury property investments.

Although PEP corruption does less damage in economic terms than trade based IFF, it perhaps does more damage to societal morals. In many cases also, trade based illicit financial activities like tax evasion and implementation of unequal contracts would require PEP complicity.¹⁴⁶ For this reason, grand corruption is perhaps the worst form of corruption a country can have. This study finds that PEP corruption is found in Nigeria, the UAE and the UK. PEPs in all three countries assist in the facilitation of IFF from Nigeria. Inevitably, Nigeria must therefore, take the task of addressing this challenge as an existential crisis. To begin with when PEP's are

¹⁴⁴ Ibid.

¹⁴⁵ For a long list of enablers in other criminal enterprises involved in IFF see Todorov, Shentov and Stoianovop.cit., p. 9.

¹⁴⁶ The cyclical causation of corruption between business and grand corruption of PEPs is well described in Ackerman's article. He wrote: "Firms also pay to affect the terms of contracts and of the future regulatory environment. Even when a firm's managers believe that it has a strong chance of winning an honest competition, they may bribe if that is the accepted method of doing business in spite of laws to the contrary. The risks of both legal sanctions and reputational damage are judged low enough to justify payoffs." Susan Rose-Ackerman, "'Grand' corruption and the ethics of global business", vol. 26 *Journal of Banking & Finance* (2002) 1891; see also Susan Rose-Ackerman, "Democracy and 'grand' corruption", *International Social Science Journal* 48(149):365 – 380.

arrested, investigated or prosecuted, it is important that their intermediaries, handlers and enablers should face similar treatment.¹⁴⁷

A comprehensive list of Nigerian PEPs should be generated annually. This data should be shared with its development partners, particularly the UAE, and the UK. The task of tracing the foreign investment practices of Nigerian PEPs in this way will have to take on a historical perspective. For instance, a former military governor of Ogun State (between 1987–1990)—is identifiable as owning up to six properties with a total purchase price of over \$2 million.¹⁴⁸

4.10: The problem of PEP Investor visas and migration.

Investor visas are an increasing fact of international life and a favourite migration tool of the elite classes of many African and other developing states. African investors in foreign lands should in fact be encouraged to ensure that Africans are not excluded from the normal occurrences and advantages of international commercial life, however, investors from Africa should be monitored to ensure that they are not mostly PEPs who are seeking to legitimise an escape route for their stolen wealth. Accordingly, an appropriately enhanced monitoring regime is needed for countries like the UAE and UK investor or allied visa application schemes. The United Kingdom (UK) has already been identified among others like Spain, Hungary, Latvia, Portugal as the top 6 EU jurisdictions that have granted the highest numbers of golden visas – above 10,000 each – to investors and their families.¹⁴⁹

The UAE equivalent under the ‘Long-term Residence Visas in the UAE’ route remains exceptionally worrisome from a due diligence point of view. We will discuss below how immigration is already part of the enticement for dodgy property investments. In 2019, the UAE implemented a new expansive system for long-term residence visas, which enables foreigners to live, work and study in the UAE without the need of a national sponsor and with 100 per cent ownership of their business on the UAE’s mainland. Such visas are issued for 5 or 10 year periods after which they are automatically renewed.¹⁵⁰

Like the legal framework in the UK at least till 2018, the UAE’s equivalent of the golden visa has little or no convincing procedures that ensure that the Immigration and Borders Service

¹⁴⁷ The Presidency Presidential Advisory Committee Against Corruption, The Federal Ministry Of Justice & Ministry Of Foreign Affairs Conference On Promoting International Co-Operation In Combating Illicit Financial Flows And Enhancing Asset Recovery To Foster Sustainable Development 5 – 7 June 2017 State house banquet Hall, Abuja – Nigeria.

¹⁴⁸ At least one of those properties, a villa, was alleged to have been bought in January 2003, while this Governor was still in office. See Page opcit., p. 14

¹⁴⁹ Laure Brillaud and Maïra Martini, Transparency International and Global Witness, *European Getaway Inside The Murky World Of Golden Visas* (London: 2018) p. 3 Available at http://transparency.eu/wp-content/uploads/2018/10/REPORT-European-Getaway-Inside-the-Murky-World-of-Golden-Visas_web.pdf accessed on 17 May 2020.

¹⁵⁰ The United Arab Emirates' Government portal, Long-term residence visas in the UAE available at <https://u.ae/en/information-and-services/visa-and-emirates-id/residence-visa/long-term-residence-visas-in-the-uae> accessed on 17 05 2020.

conduct due diligence on applicants or effectively evaluate whether and to what extent applicants are politically exposed persons (PEPs).¹⁵¹

4. 11: Nigeria Specific Solutions: Role of Civil Society and other Pressure Groups.

There is an obvious and continuous role of guardianship of ethics for NGOs and CSOs, government officials, media, and academics in Nigeria, the UAE and the UK. These sectors have to push for the greatest changes at the national level in their respective countries. Fortunately, in Nigeria, there is a long-standing tradition of activism and lobbying for the development of anticorruption policies and legislation.¹⁵² The role of corruption, tax evasion and money laundering and other IFF in fueling the poverty, terrorism, underdevelopment and the spread of all kinds of misery in many countries is enough justification for the interest of NGOs/CSOs in addressing these issues.¹⁵³ IFF affect economic justice and lowers the observance of human rights standards and practice. They stifle domestic resource mobilisation, undermine government accountability and stability, and fuel economic inequality.¹⁵⁴ Thus, for instance, our recommendations remains that most national existing professional ethics codes for the legal, accountancy and real estate sectors should ideally also make provisions specifically for 'international ethical considerations'. The job of advocacy through recommendation and spearheading of such campaigns is well suited for NGOs/CSOs.

Nigerian NGOs/CSOs like HEDA have correctly been pushing a progressive agenda against cross-border corruption and IFF. There is also a push to widen the mandate and competence of the International Criminal Court (ICC) to cover cross border financial crimes and perhaps to recognise grand corruption as one of the 'crimes against humanity' under the Rome statute. There is in fact evidence to suggest that, in certain cases, corruption may take the form of a crime against humanity.¹⁵⁵ This view has fortunately caught the attention of the Nigerian government

¹⁵¹ Transparency International UK, "Gold rush: Investment visas and corrupt capital flows into the UK", October 2015. Retrieved from: [transparency.org.uk/publications/goldrush-investment-visas-and-corrupt-capital-flows-into-the-uk](https://www.transparency.org.uk/publications/goldrush-investment-visas-and-corrupt-capital-flows-into-the-uk); Transparency International UK, 2015 and David Pegg, "The 'golden visa' deal: 'We have in effect been selling off British citizenship to the rich'", The Guardian (web), 4 July 2017. Retrieved from: [theguardian.com/uk-news/2017/jul/04/golden-visa-immigration-deal-british-citizenship-home-office](https://www.theguardian.com/uk-news/2017/jul/04/golden-visa-immigration-deal-british-citizenship-home-office). Cf. SEF, Manual De Autorização de Residência para atividade de Investimento (ARI), 1 September 2017. Retrieved from: sef.pt/pt/Documents/Manual_ARI_2017.pdf.

¹⁵² An account of the domestication process for necessary treaties in Nigeria goes: "Intense advocacy by stakeholders is needed at this stage to bring the particular convention to the front burner. Treaties signed by the country have been known to remain inactivated for up to ten years." Transparency International (TI), "Anticorruption Conventions In Africa: What Civil Society Can Do To Make Them Work" available at https://agora-parl.org/sites/default/files/ti-undp-iss_-_anti-corruption_conventions_in_africa_-_en_-_pace.pdf accessed 19 June 2020.

¹⁵³ Badré *ibid*.

¹⁵⁴ Raymond W. Baker, "Curtailling Illicit Financial Flows a Human Rights Imperative", Thomson Reuters Foundation 30 April 2013 available at <http://news.trust.org/item/20130430114538-5y8aj/> accessed 06/04/2020.

¹⁵⁵ Ilias Bantekas, "Corruption as an International Crime and Crime against Humanity: An Outline of Supplementary Criminal Justice Policies", *Journal of International Criminal Justice*, Volume 4, Issue 3, July 2006, p. 466.

and Nigeria's Attorney General and Minister of Justice demanded at the ICC's Assembly of State Party Congress in November 2017 for the inclusion of grand corruption as a 'crime against humanity'.¹⁵⁶ In the area of business and corporate corruption there is good leadership displayed by CSOs like the Convention on Business Integrity (CBI) that aim to influence the behaviour of systems and institutions through the wide publication of ratings and rankings performed on them.¹⁵⁷ Initiatives like this will enable more transparent, consistent and predictable transactions that populace will benefit from. As a result, IFF repelling behaviour is encouraged through the methodology and integrity of devices like the Corporate Governance Rating System (CGRS) for listed companies in Nigeria established by the CBI in partnership with The Nigerian Stock Exchange (NSE).¹⁵⁸

Currently the desirable levels of joint up thinking and cooperative approach between and among the NGOs/CSOs in Nigeria and the UK on IFF issues is in its infancy. As a result of various misunderstandings and under appreciation of the scale of the IFF problem, NGOs and CSOs in all countries through their inaction are somewhat responsible in their own way for the continuance of the unwholesome situation.

4.11.1: Diaspora communities as arrowheads of resistance to IFF in host states.

There is a special place for Nigerians in the diaspora or 'Naijasporans' in addressing IFF. Nationals of developing states in the diaspora could help victim countries map the scope of looted funds by coming up with information on: where assets are located; which assets are worth following; recovery mechanisms; and the best professionals to use. This particular recommendation has become the arrowhead of a series of recently concluded high profile conferences on the topic of tracing stolen funds and asset recovery in Nigeria, the UAE and the UK. Indeed the first attempts at organising a network of volunteer investigators and researchers from the ranks of attendees of a troika of conferences under the tracing Noxious Funds academic movement has emerged. Research groups involving Africans in the Diaspora and their counterparts in the UK have kicked off. Participants aim at engaging in further specialist anticorruption activities including monthly online joint tracking illicit assets and investment training sessions.¹⁵⁹

¹⁵⁶Comrae Issa Aremu, Some Notes On Common Questions In The Fight Against Corruption Paper delivered at a Training Workshop On Anti-Corruption Monitoring And Reporting Organised by Human & Environmental Development Agenda (HEDA) Wednesday March 21, 2018 Rock View Hotel Royale, Abuja p.1.

¹⁵⁷CBI was launched in 1997 to empower business transactions in and within Nigeria against corruption and corrupt practices. The vision is to alter the idea that Nigerian businesses are fraudulent and to foster the sort of international relationships that will produce meaningful exchanges. CBI established The Code of Business Integrity which spells out minimum standards for business integrity in Nigeria. Information and materials about the CBI Initiative are available at <https://www.connectingbusiness.org/> See above Chapter 6.1: and footnotes 715 and 719.

¹⁵⁸ PGS, Advisors International, "Corporate Governance Rating System" CGRS Website available at <https://www.cbinigeria.com/wp-content/uploads/2020/06/methodology.pdf> accessed 10 July 2020.

¹⁵⁹ See the communique of the following conferences: Strategies and Techniques for whistle-blowing & Tracing Property Purchased and investments from Proceeds of Bribery and Corruption transferred to the west and tax havens organised by university of Kent and the MacArthur foundation with the corner house; global witness and human and

Nigerians in diaspora are uniquely placed to note when visitors and public figures from Nigeria have been living beyond their means, or when they are expending unexplained wealth on luxurious good, properties, cars or other high end purchases.

4.11.2: The Imperative of a special Tripartite Cooperation: Institutional cooperation, Training and Operations

There continues to be significant gaps in international cooperation between Nigeria, the UAE and UK on money laundering, foreign corruption and other areas of IFF activity. Areas of acute failure include the exploitation of extractive industries such as the smuggling of precious metals.¹⁶⁰ The many instances of high profile bribery, corruption and money laundering scandals, involving PEPs and companies and other enablers in the three countries is significant and consequential. We therefore, recommend bespoke cooperation in anti-corruption law and practice between Nigeria, the UAE and the UK especially in the area of IFF and asset recovery. The study so far has revealed a high degree of bilateral and multilateral obligations under treaties and international law relating to these states and upon which much basis exist for further excellent cooperation. With adequate political will the three countries can indeed introduce a special regime of tripartite cooperation specifically to combat TBML and other IFF. Tripartite cooperation will be particularly useful in dismantling systemic manifestation of IFF.

Apart from creating new platforms, there are other areas of bilateral cooperation that Nigeria would benefit from with respect to each of the countries. For instance, Nigerian investigators including journalists and CSOs would benefit from easier access to company registration records and beneficial ownership details of properties in the UAE and the UK.

There are some areas of direct bilateral importance. For instance, extra focus may be necessary for Nigerian authorities to understand the role played by various actors within the ADGM and

environmental development agenda at shore gate hotel Lagos on 20th and 21st November 2017 and Rockview Royale hotel Abuja on 23rd and 24th November 2017. HEDA, Joint Communique Issued at the End Of 4-Day Training Conference on Tracking Noxious Funds: available at <https://hedang.org/blog/joint-communique-issued-at-the-end-of-4-day-training-conference-on-tracking-noxious-funds/> accessed on 30 Oct 2020; Kent Law School, "Tracking faulty towers: Strategies and techniques for tracing property purchased from proceeds of bribery and corruption in the UK" *Kent Law School News* 28 June 2017 available at <https://blogs.kent.ac.uk/law-news/tracking-faulty-towers-strategies-and-techniques-for-tracing-property-purchased-from-proceeds-of-bribery-and-corruption-in-the-uk/> accessed on 30 October 2020.

¹⁶⁰ Greenway op.cit. p. 77; Alexander Cornwell, "UAE Doing Too Little to Stem Money Laundering and Terrorist Finance: Watchdog," Reuters, April 29, 2020, <https://www.reuters.com/article/us-emiratesfinancing/uae-doing-too-little-to-stem-money-laundering-and-terrorist-finance-watchdogidUSKBN22B3CF>; and "United Arab Emirates' Measures to Combat Money Laundering and Terrorist Financing," April 30, 2020, available at <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-uae-2020.html>. accessed 28 Jan 2021.

DIFC as well as the UAE's free zone areas.¹⁶¹ Several leading studies of the WCO, OECD and FATF have pointed out the risk factors within the UAE's free trade zones. They include insufficient customs controls and the insufficient integration of information technology systems by governmental agencies. The ease of setting up companies is also problematic to the extent that it does not engender a robust compliance culture.¹⁶²

4.11.3: Recommended Nigeria –UK strategies.

- a. UK should rein in or better still put an effective stop to tax havens. The UK has to reduce drastically the formula and modus operandi of secrecy banking in many of these jurisdictions. Tax havens and secrecy jurisdictions are a tool for defrauding other peoples and nations and ought to be exposed for what they really are. The UK has to be sure that the country wants the increasingly visible negative record of these vassal states on the image of the UK. Although the shadiness and opaqueness of tax haven operations might have been largely unknown and anonymous in a previous century, the global community is increasingly educated and enlightened on their negative aspects. It is unedifying for the UK that its history is yet again in the 21st century linked to a system of mass exploitation just like it was in previous centuries with respect to slavery and colonialism. The UK's participation in the spread of misery around the world by playing a central role in IFF is indeed similar in many ways to its participation in colonialism and slave trade in previous centuries.
- b. Both Nigeria and the UK should agree to a system whereby public procurement of contracts excludes companies that operate out of tax havens.
- c. Both countries should share public registries of beneficial owners of companies, trusts and foundations.

4.11.4: Nigeria –UAE strategies and imperatives.

There are some immediate steps that need to be taken by Nigeria and the UAE together to reduce the incidents of IFF between them and there are some steps which the UAE has to take urgently in fulfillment of its international obligations.

- a. UAE banks need better training to fully understand TBML- and customs-related risks. They need to know more about the products traded and shipping routes, and they need access to other detailed records that cover the commerce side of transactions. These issues need to be looked at specifically in relation to imports from Nigeria including gold and other precious stones.

¹⁶¹ Note our discussions in Chapter 3 on Shell banks (R.18) and Non Profits. Although there are currently no operational FTZs in the U.K, there are indeed a number of ports, which have been authorized in the past, and it is expected that in a post-Brexit, environment, the U.K. could have the freedom to set its own trade policy and thus reintroduce FTZs. See R.M. Crowe, "INSIGHT: Free Trade Zones—a Potential Opportunity for the U.K.?" March 5, 2020, available at <https://news.bloombergtax.com/daily-tax-report-international/insight-free-trade-zones-a-potential-opportunity-for-the-u-k> accessed 24 June 2020.

¹⁶² Kumar opcit., p. 29.

- b. The UAE must work on flushing out bulk cash smuggling and other money laundering offenses identified by the FATF. They must also design a robust reporting framework that will spread out supervisory responsibilities across market participants, such as forwarding agents, shipping agents, clearing agents, importers, exporters, and other relevant actors. Doing so will help reduce the risk of TBML.

4.11.5: Imperatives of International Cooperation.

Nigeria's fight and the orchestration of international cooperation against IFF ought to start at the subregional and regional level. Thus, the implementation of targeted programmes at the ECOWAS and the AU level is key. UNECA's epoch-making effort under the Mbeki Panel is outstanding in its usefulness but its findings and recommendations must be pursued with greater vigour. Following UNECA's lead the AU must become more proactive and aim to develop a coherent framework for addressing IFF on the continent at the earliest possible period. Although the AU is beginning to show more concern about IFF issues, progress is slow. The continent is in dire need of leadership on IFF and Nigeria because of its historical exposure and experience as the largest victim state is in a position to offer leadership.¹⁶³ If the 'spiders web' spun by bankers, financial institutions and other powerful actors based in metropole capitals like London, New York and Paris is to be disentangled from the African region, the fight back will have to be sustained and there will have to be courageous and coordinated response particularly from Nigeria and other African states like South Africa Angola and Congo.

4.11.6: Training and Institutional development.

Training and institutional capacity development is an area of distinctive importance. There is a special role to be played by the Central Bank of Nigeria (CBN), which it has clearly not been playing to its ultimate best. Although the CBN appears to be very well resourced, its lapses in preventing IFF are very worrisome. This may be a reflection of a general incapacity of African Central Banks. There is therefore, a good basis to recommend special cooperation between the CBN, the CBUAE¹⁶⁴ and the Bank of England. This should involve IFF focused joint training sessions on their mutual legislation, regulations, statistics, bank guidelines, banking operations and payment systems as well as consumer protection and licensing etc.

At the risk of recommending even more institutional structures to join the already myriad national structures within the three countries, this study proposes the need for a trilateral Anticorruption Task force between the UAE, UK and Nigeria. Such a taskforce will be in a position to act as a clearinghouse of special projects, investigations and asset recovery operations. Clearly, the work that needs to be done is complex, extensive, important, increasing and herculean in nature.

¹⁶³EmmanNnadozie argues that Africa needs leadership and Nigeria must lead the campaign. See The Presidency Presidential Advisory Committee Against Corruption, p.56

¹⁶⁴<https://www.centralbank.ae/en>

4.12: Persuading the UAE and UK to stop receiving.

One of the central tasks before the entire international community is to convince IFF recipient states to stop funnelling wealth towards their shores by a combination of direct and indirect strategies, actions and inactions. This would not be an easy task with respect to both the UAE and the UK. In the case of the UAE, there are stark warnings that Dubai's political economy depends heavily on organized crime, conflict finance and IFF. This is so despite the fact that, the UAE is widely viewed internationally as an upstanding and successful modern state. With the current policies and deficiencies, its successes are growing in leaps and bounds with leading companies locating their regional offices in Dubai. Indeed with 138 out of 500 of the world's largest companies (by revenue) locating their regional headquarters in Dubai and the UAE government appearing polished, cooperative, and willing to embrace anticorruption best practices, how then can the state be convinced towards adopting better behaviour in relation to combating the IFF malaise?¹⁶⁵ Indeed, how can the UAE be convinced to change course when its "...comparative advantage as a trade and financial hub relies to a large extent on its openness to dubious characters and transactions".¹⁶⁶ In essence why would any country change what appears to be a winning formula?

4.12.1: Persuading a wider number of Receiver states.

Corruption from other lands will inevitably breed corruption at home and expand its base. With the global goodwill and corporate image that the UAE and the UK enjoy they really ought to be at the very top of the league table on the Transparency International Index but they are far from being there. Instead of that there are nagging criticisms that suggest they do not even deserve to be at the current positions they occupy giving the widespread abuses of transparency practices and particularly the positions both countries have in attracting IFF.

There is a case to be made to professionals in Nigeria and of course those in the IFF attracting countries to convince them to mount an effective indigenous campaign for change towards greater transparency both in their fields of operation and in the general regulation of their national economies.

4.13: Persuading enabling Professionals and entrenchment of a Whistleblowing culture in the enabling professions.

A new culture of picking out the bad eggs in the enabling professions is an imperative for change. We must again lay emphasis that for the purposes of our study the principal but the enabling professions we have concentrated on are the legal profession, banking profession/financial profession and real estate professionals. However, many other professions could be critical to any analysis on IFF. For instance, accountants and auditors are particularly

¹⁶⁵ Anthony McAuley, "World's Largest Companies Favour Dubai as Location for Regional Headquarters," National (UAE), March 21, 2017, <https://www.thenational.ae/business/world-slargest-companies-favour-dubai-as-location-for-regional-headquarters-1.81332>.

¹⁶⁶ Page and Vittoriop.cit. p. 96.

crucial to the important task of stemming the tide of IFF. These Professionals hold the frontline of responsibility in establishing due diligence standards and raising ethical awareness, standards and best practices within their associations.¹⁶⁷

4.14: IFF and the requirements of an Asset Recovery strategy

Nigeria's IFF must be traced, seized and recovered in accordance with national and international law. This study demonstrates that Nigeria has had extensive involvement in asset recovery cases and in the return of its stolen funds. The repatriation of the Abacha funds, Alamieyeseigha funds and parts of the OPL 245 scandal funds are examples of these.¹⁶⁸ Although celebrated cases have been successfully handled involving Nigeria the government, has not established significant or impressive expertise. The recovery of funds have in many cases been undertaken by private lawyers acting as agents for the government. These lawyers have been siphoning off huge fees for their efforts. Examples of these include the OPL 245 case and the Abacha case. This sort of privatised asset recovery approach is not in the best interests of Nigeria. It has to be recommended that Nigeria should create a world class team of government lawyers, backed with sufficient funds, to undertake international asset recovery operations in both the EFCC and ICPC.

A holistic treatment of IFF in the countries under review would inevitably require an interrogation of the efficiency or otherwise of the law and practice of asset recovery. The history of asset recovery operations between the countries is not sufficiently motivating and particular mention must be made of the inordinate delays between the time illicit funds are frozen and the time when they are eventually repatriated. Indeed, there are vast sums yet to be repatriated to

¹⁶⁷ The global bodies for professional accountants like the ACCA with 227,000 fully qualified members and 544,000 future members worldwide have a central role to play in reinterpreting the future of the profession towards a departure from the current reality whereby accountants and auditors often aid the practice of IFF. Information and material about the ACCA is available at <https://www.accaglobal.com/gb/en.html> accessed on 08 July 2020.

¹⁶⁸ Following the successful application for an order requiring Malabu Oil and Gas to pay the Federal Republic of Nigeria the \$85 million frozen in the UK, Mrs. Justice Cockerill ordered that the monies be returned to the Nigerian treasury. (The money had been frozen through the so called Malabu External Restraint Order) that arose from the "unlawful dissipation" by Malabu of monies it obtained through "entering into a corrupt arrangement with an oil consortium" in relation to the allocation of OPL 245 to Shell and Eni in 2011. See *Federal Republic of Nigeria vs Malabu Oil and Gas Limited*, Variation Order, Southwark Crown Court, 12 October 2017. The Federal Government of Nigeria had applied to discharge the External Restraint Order and although the application was refused, but Mr. Justice Edis agreed to vary the ERO in order to allow the \$85 million to be paid over to the FRN in satisfaction of the default judgment it had obtained against Malabu in December 2016. See *Federal Republic of Nigeria v. Malabu Oil and Gas Limited*, Particulars of Claim, High Court, London, 18 October 2016. [2017] EWHC Case No: CL-2016-000631. See also *Federal Republic of Nigeria v. Malabu Oil and Gas Limited*, High Court, London, 18 October 2016 in the High Court of Justice Admiralty Jurisdiction; In December 2016, the Federal Republic of Nigeria obtained a default judgment ordering Malabu to pay \$85 million; *Federal Republic of Nigeria v. Malabu Oil and Gas Limited*, Default Judgment, Admiralty and Commercial Court, December 2016 CL-2016-000631 ; *Federal Republic of Nigeria v. Malabu Oil and Gas Ltd*, Judgment, High Court, London, 15 December 2017 Case No: CL-2016-000631.

Nigeria from both countries despite diplomatic action and the efforts of platforms such as the World Banks Stolen Asset Recovery Initiative (StAR) programme. Perhaps the greatest injustice is that even when monies are frozen, they remain in the hands of banks that are complicit in the transactions much against the grain of modern wisdom as expounded by the prestigious recommendations of the Mbeki Reports to the contrary.¹⁶⁹ The idea that such frozen assets should be kept in an escrow account in regional development banks such as the African Development Bank is feasible and equitable.¹⁷⁰ Retention of the capital in London and Dubai encourages obfuscation of issues and retention of procedures that lean towards late or no return of the funds. Worse still, the emerging practice of imposition of conditionalities on victim-countries by destination countries is indeed an unacceptable impediment to the quick recovery of illicit funds. Nigeria has to aggressively push the dialogue it has been trying to maintain with the UK and UAE and other destination countries to remove the practice of attaching conditionalities to the recovery of illicit funds and assets.

Citizen participation should be built in to prevent instances of accusation and counter accusation of re-looting that typified the return of Alamieyeseigha funds into Bayelsa state. It is indeed true that a fundamental aspect of asset recovery is ownership. For this reason the citizen must be convinced that the process carries them along.

Nigeria should as a matter of principle resist the attachment of conditionalities to the return of recovered assets to the country. The preferred principle and the general rule to be maintained is that the proceeds of crime should be returned to the country of origin. UNCAC as the first international treaty making detailed provision for the return of recovered assets remains commendably the most useful instrument for the development of law and practice of asset recovery.

4.15: Charity begins at home: Radical Socio-Legal and Policy changes for Nigeria.

Nigeria deserves the opportunity to clean up its Aegean stables of corruption at home. It also deserves a much more responsible international community that eschews IFF and which is generally more responsive to international cooperation and asset recovery requests. To achieve these ideals, however, Nigeria must work hard to increase its commitment to an IFF free world by becoming more transparent and accountable within its political and economic space. To do this it must at the very least have the best laws and policies that reduce the opacity and

¹⁶⁹ Elizabeth Archibong, "Osinbajo calls for Sanction of financial institutions aiding illicit flow of funds" *Business Day* Jun 5, 2017 available at <https://businessday.ng/uncategorized/article/osinbajo-calls-sanction-financial-institutions-aiding-illicit-flow-funds/> accessed on 23 June 2020.

¹⁷⁰ The Brookings Institution, "A conversation with President Thabo Mbeki of South Africa and the High-Level Panel on Illicit Financial Flows from Africa" Wednesday, Feb 17, The Brookings Institution Somers Room 1775 Massachusetts Ave., NW Washington, DC. Available at <https://www.brookings.edu/events/a-conversation-with-president-thabo-mbeki-of-south-africa-and-the-high-level-panel-on-illicit-financial-flows-from-africa/> accessed 23 June 2020.

negative practices needed for IFF to thrive. The country must clean up its act and introduce radical reform.

4.15.1: Improved interagency cooperation

IFF affects Nigeria in very direct ways and the fight against it has to be full frontal and coordinated. Nigeria must get its Ministry of Finance, Financial Intelligence Unit, Anti-Corruption Agencies, Nigeria Police Force, Customs and Statistical Agencies together to fight IFF. Although there is a glimmer of hope that Nigerian governments are finally beginning to address the cankerworm of corporate IFF, grand corruption and other forms of unjust enrichment, this study has not revealed any coherent national strategy or coordinated approach against IFF in Nigeria. The Nigerian government for instance, should strengthen and revitalize certain existing institutions such as the Nigeria Commodity Exchange.¹⁷¹ This body for instance, is critical to the tracking of IFF transactions through its risk management functions and mechanisms in commodity exchange operations.¹⁷² There is an obvious need for a keener interagency cooperation that will help stem the flow of money out of Nigeria. Overall, Nigerian regulatory agencies should be alert and keyed in to their responsibilities and pursue the objectives established by their mandates in the national interest.

4.15.2: Implementation of a Non-Conviction Based Asset Forfeiture.

The emerging jurisprudence surrounding non-conviction based asset conviction in Nigeria is commendable and in line with the progressive domestic anticorruption law and practice of the UK. Just like the EITI movement, the non-conviction based asset forfeiture regime is perhaps one of the ways the UK's anticorruption philosophy positively influenced Nigerian law and policy. There are however, also good antecedents in Nigerian law. Section 17 of the Advance Fee Fraud and other Related Offences Act (AFFA) 2006 had introduced a Nigerian adaptation of a civil forfeiture procedure. There is a persuasive argument that AFFA also complies with the anti-corruption standards required of member states under the UNCAC.¹⁷³

There are excellent reasons to argue for the adoption of non-conviction asset based forfeiture by Nigeria. Nigeria as a party to the UNCAC (2003) convention has accepted the global standards on anticorruption laws including the progressive provisions on asset recovery and Non-Conviction Based Asset Forfeiture (civil) procedure. Art 54 (1) (c). It is important to note that Nigeria itself has benefitted from foreign non-conviction based asset forfeiture regimes.

¹⁷¹ Information and materials about the he Nigeria Commodity Exchange (NCX) was originally incorporated as a Stock Exchange on June 17, 1998. It commenced electronic trading in securities in May 2001 and was converted to a commodity Exchange on August 8, 2001 and brought under the supervision of the Federal Ministry of Commerce. Available at <https://nigeriacommex.com/> 17 July 2020.

¹⁷² The Presidency Presidential Advisory Committee Against Corruption op.cit., p. 62.

¹⁷³ Harrison Ogalagu and Peter Okoyomoh, "The Jurisprudence Of Non-Conviction Based Asset Forfeiture (Civil Forfeiture) In Nigeria: Constitutionality Of The New Knight-Errant Innovated Under the UNCAC", Tope Adebayo LLP Featured Insight June 19, 2020 available at <https://www.topeadebayollp.org/wp-content/uploads/2020/06/NON-CONVICTION-BASED-ASSET-FORFEITURE.pdf> accessed on 09 July 2020

4.15.3: Professional Rules of Conduct

The various professional groups in Nigeria (as indeed it is the case also of those in the UAE and the UK) may have to revisit their professional rules and ethic documents. These will involve the professional associations of bankers, lawyers, accountants, auditors, estate agents etc. There is the need to amend some of these instruments by infusing them with clearer and more stringent provisions on the demands of integrity and ethical discipline.

4.15.4: Stronger financial regulatory framework

To improve upon the performance of its fiscal and financial sectors and to reduce IFF, Nigeria must take steps towards improving domestic stability, financial regulation and reduction of microeconomic instability and money laundering. The entire financial architecture of the country must work in harmony to block all channels of IFF. It is of utmost importance for Nigeria to continue to subscribe to and adhere to the FATF recommendations. The country's commercial and trading system as well as financial institutions should aim at reducing to the barest minimum the practice of physical movement of cash and use of large volumes of physical cash in the purchase of valuable goods.¹⁷⁴

4.15.5: Extraterritorial jurisdiction and more internationally proactive institutions.

Nigeria has a well-developed network of anticorruption institutions that would be the envy of many other developing states. The position of this study is that their numbers should not be rationalised or reduced as has been advocated in several quarters. However, the Nigerian anticorruption institutions and Nigerian legislation are mostly inward looking and perhaps not sensitive and proactive enough to combat external threats in line with emergent international practice. Thus, criminal conduct, bribery schemes and corporate scams that are hatched outside the country but against the country's interests including those of its nationals need to fall within the jurisdiction of national law. For this to happen, the National Assembly should introduce FCPA and UK Bribery Act (2010) style legislation.¹⁷⁵ Indeed, Nigeria can go further and based upon the protective jurisdiction principle of international law, foreigners who hatch IFF tactics abroad should fall within the criminal jurisdiction of Nigeria as long as that conduct comes into effect in Nigeria and the act(s) is a crime in whatever foreign country they are in.¹⁷⁶

Nigeria's policing and anti-corruption agencies must become better at harnessing and using the utility of anti-corruption legislation and institutions based outside the country. They must become more diligent in following leads that expose the pathways of IFF to and from the country.

¹⁷⁴ The Presidency, (Presidential Advisory Committee Against Corruption), op,cit., p. 31.

¹⁷⁵ See above Chapter 5.4.1.

¹⁷⁶G. Oduntan, "International Moral Legalism and the Competence over Prosecution of Corruption Crimes", *African Journal of Law and Criminology*, (2011) pp. 89-91.

Being proactive as a regulatory or security body can translate into huge benefits for the Federal purse because lost revenue can be recouped and valuable stolen assets returned.

4.15.6: Trade Based Money Laundering and the need for a fit for purpose Custom Agency in the 21st Century.

As concluded earlier the largest proportion of Nigeria's IFF losses are due to trade and business practices especially those by multinationals. In today's global economy, MNCs have perfected ways of interacting with key regulatory authorities to the best of their commercial advantages by performing import and export operations in a variety of legal settings. Customs administration plays a pivotal role when it comes to control, facilitation and regulation of international trade.¹⁷⁷ Unfortunately, the sort of IFF that MNCs engage in all over Africa and the developing world very often relies on complicity of custom agents.¹⁷⁸ The Nigeria Customs Service (NCS) is particularly in dire need of attention in terms of failing in its own contributions to the prevention of IFF. The regularity of MNC bribery scandals that involve bribery of the Nigerian Customs officials is clearly perturbing.

Clearly therefore, the NCS must be specifically targeted for reform to combat IFF. The NCS must endeavour to work more collaboratively with other government agencies in all approved ports and border stations. Considering the indications of IFF damage found in the trade between Nigeria, the UAE and the UK, specialized risk assessment tools are very much in need.

We therefore, strongly recommend immediate adoption of blockchain technology in Nigerian customs operations. Blockchain improves compliance, trade facilitation, and fraud detection (including curbing of illicit trade through the misuse of Bitcoins and other cryptocurrencies).¹⁷⁹ It is perhaps for these reasons that the World Customs Organization (WCO) has endorsed blockchain technology for Customs and other border agencies and the governments of Japan, China and the USA have adopted it for their customs and border operations.¹⁸⁰

¹⁷⁷ E. Mashiri, F.Y. Sebele-Mpofu, Illicit trade, economic growth and the role of Customs Vol 9 *World Customs Journal* issue 2, (2015) pp. 38-50.

¹⁷⁸ Boiko Todorov, Ognian Shentov, Aleksandur Stoianov eds. *Corruption and Illegal Trafficking: Monitoring and Prevention : Assessment Methodologies and Models of Counteracting Transborder Crime* 2nd Revised edition (Sofia: Centre for the Study of Democracy, 2000) p. 8.

¹⁷⁹ Yotaro Okazaki, "Unveiling the Potential of Blockchain for Customs" (June 2018) WCO Research Paper No. 45 Available at <https://tradenews.com.ar/wp-content/uploads/2018/12/Blockchain-aduana.pdf> accessed on 17 July 2020; PwC How blockchain technology could improve the tax system, PwC UK (161205-171727-LL-OS) (2017) available at: <https://www.pwc.co.uk/issues/futuretax/how-blockchain-technology-could-improve-tax-system.html> accessed on 16 July 2020.

¹⁸⁰ A. Antonovici, (2017), 'Japan, Singapore Start Blockchain Pilot to Improve Trade Links', Cryptovest website: <https://cryptovest.com/news/japan-singapore-start-blockchain-pilot-to-improve-trade-links/> accessed on 17 July

4.15.8: General Institutional and Infrastructural Capacity Development.

The perceived capacity deficit in Nigeria identified in the Mbeki Report must be rectified.¹⁸¹

The capacity areas requiring urgent acquisition are as follows:

- i) “Soft capacity”: change in this area effectively requires a bureaucratic mind-set change. Top-level commitment, leadership skills, normative development and culture are of importance.
- ii) Institutional and regulatory framework: improvements here would require qualitative changes to monitoring and deterrence capacity. Just as important in relation to this are institutional coherence and institutional cooperation.
- iii) Human capacity development: This includes appropriate staffing strategies to retain well-trained staff across agencies and ministries.¹⁸²

4.15.9: Thinking outside the box strategies and other novel interpretations and solutions.

The immensity of the Nigerian problem with IFF would require the ideas and strategies we have identified above as well as many other novel indigenous solutions. Nigeria needs, for instance, to nurture its own indigenous big businesses and multinationals to take up the many opportunities in its massive internal market space and across the African continent. To actualize its potentials and economic destiny the country must indeed spurn its own multinational companies that will explore other parts of Africa and beyond. Greater transparency should therefore, be embedded into the market economy. Naturally the country’s notoriously difficult credit systems would hamper such growth.¹⁸³ The country must thus, consider ways to retain and unlock the informal capital which tends to flow abroad and percolate into foreign hands.

There is, indeed, something to be said for the idea of appropriate and strategic amnesty. It is important to encourage Nigerians to invest their money in Nigeria’s industries and real estate rather than ferrying billions off to banks and luxury properties in Dubai and London. One academic in fact, suggests that when it comes to determination of punishments and sanctions leniency should be exercised for accused persons who have invested IFF money within

2020; Miranda Wood “China to use blockchain for cross-border customs clearance” available at <https://www.ledgerinsights.com/china-blockchain-cross-border-customs-clearance/> accessed on 17 July 2020. *Ledger Insights: Enterprise blockchain news* available at <https://www.ledgerinsights.com/china-blockchain-cross-border-customs-clearance/> accessed on 17 July 2020.

¹⁸¹ UNECA op.cit., pp. 36-37, 43-44, 47.

¹⁸² The Presidency Presidential Advisory Committee Against Corruption op.cit., p. 59.

¹⁸³ The structure of lending in Nigeria include: the formal sector (commercial banks, microfinance institutions), Semi formal sector (moneylenders, hire-purchase and pawnbrokers, Cooperative societies, Fintech Start-ups) and informal sector (black market, moneylenders, hire purchasers vendors and pawnbrokers, Rotating Savings and Credit Associations, customary moneylenders, family and friends, vendor and sales credit). Omedeop.cit., pp. 31-63.

Nigeria.¹⁸⁴ This increasingly popular but difficult suggestion is based on the understanding that corruption is endemic to the system of global political capitalism.¹⁸⁵ This explains why London, New York, Paris and other major Western capitals tend to condone inward IFF flows.¹⁸⁶

¹⁸⁴ Prof. ObehiAlegimehen, University of Benin - takes the view “that it may be better to generally encourage people to invest their money in the country”. The Presidency Presidential Advisory Committee against Corruption, p. 65.

¹⁸⁵ Branko Milanovic, *Capitalism Alone: The Future of the System that Rules the World* (Harvard: Harvard University Press 2019) pp. 2-4, 34, 91.

¹⁸⁶ The other western capitals and financial hubs, include Hong Kong, New York, Singapore, Toronto, and Vancouver. See Page and Vittora p. 41; See also “No Reason to Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts,” Transparency International Canada, 2016, <https://www.yumpu.com/en/document/read/58031165/no-reason-to-hide/5>; “Opacity: Why Criminals Love Canadian Real Estate (And How to Fix It),” Transparency International Canada, 2019, <https://www.readkong.com/page/opacity-why-criminals-love-canadian-real-estate-9000884?p=1>; Caroline Binham, “UK Money Laundering Reports Hit Record Level in 2018,” Financial Times, January 10, 2019, Carnegie Endowment for International Peace 119 <https://www.ft.com/content/15aebf9e-0548-11e9-99df-6183d3002ee1>; and “Towers of Secrecy: Piercing the Shell Companies,” New York Times, 2019, <https://www.nytimes.com/news-event/shell-company-towers-of-secrecy-real-estate>.

SECTION 5

5. GENERAL CONCLUSIONS AND REMARKS.

Any appreciable understanding of the depth of the IFF problem as it affects Africa and other developing countries will come to two unassailable conclusions. First, IFF destroys the economic prospects and social and political life of developing states. Secondly, IFF is pressed to the service of certain richer states and economic jurisdictions and it greatly enriches those countries that have chosen to capture illicit funds and assets. Nigeria is a prime example of victim state in this dark game of illicit monopoly capital. The UAE and the UK especially with respect to Nigeria unfortunately are examples of IFF receiver states. Dubai and London feature prominently in the macabre story of international IFF damage. Both capitals act like opportunistic lightning rods tapping and conducting economic life away from the satellite victim state like Nigeria to themselves as metropolises of financial and political power. These two states do not however even represent the most of the damage occurring to Nigeria via IFF. There are other major countries that do similar and sometimes worse damage. The lessons and solutions developed from this study can be applied to many other satellite-metropole relationships of exploitation that Nigeria finds itself embedded in across the globe. Fighting itself free from such relationships of exploitation is an existential struggle for Nigeria just like many other developing states.

There should be no doubt that the position countries like the UAE and the UK occupy, as IFF receiver states is deliberately orchestrated. This is because historically the mechanisms of attaining and retaining receiver state status in the international system has always been based on mischief. In other words Dubai's "reluctance to comprehensively address its role in global illicit financial flows is a deliberate choice and not borne out of a lack of capacity".¹⁸⁷ The acquisition of the status of being a receiver state does not happen by default. It is a coveted and even contested position in the international financial system. The tools such states survive on are unique to their type and the services they render are equally unique, mischievous and contrived. The UAE and the UK appear to be practised and skilled at utilising and achieving primacy in these areas. Their tools require a honed relationship with other *dramatis personae* needed to function as receiver nations. Over the decades, these include coordination with other receiver jurisdictions –tax and secrecy jurisdictions. It also includes rules that permitted relationships with managed banks or shell banks as an offshore speciality. The status of an IFF receiver state involves complicity of a compliant legal Bar and bench sometimes working in tandem with all the other enablers. It even includes an understanding and compliant press, elite intelligentsia and ideally a complacent general population whose complacency is smoothed over by a comfortable lifestyle that is sustained by the inimical benefits of IFF.

¹⁸⁷ Page and Vittori, *Challenges and Recommendations op.cit.*, p. 99.

The IFF problem in international relations goes beyond the three states focused upon in this study. At a more base level, the regulations in many western countries that are supposed to discourage and prevent money laundering and other IFF are simply not fit for purpose.

The study concludes that despite the intricate web of legislation, public international law, international trade law and international commercial law against IFF, the law has been unable to achieve its true potentials for the common good of mankind.

The argument that suggests itself is that the West has deliberately underdeveloped the potentials of these regimes to properly regulate IFF. This underdevelopment was achieved through strategic actions and inactions by certain economically powerful occidental states.¹⁸⁸ Over the few decades the UAE has come to benefit from this existing state of affairs and joined the league of 'privileged receiver states. In this position it is protected by the structures of international imperialism and enjoys the tolerance and client state status relationship particularly to the United States and the UK.

It is also argued that this state of underdevelopment of the law and practice around the subject of IFF is designed to be permanent, or will become permanent, unless steps are taken in due course to reverse the democratic deficit that pervades the making and implementation of international laws and particularly the implementation of sanctions on receiver states.

As a technical possibility, IFF can be stopped, tracked and returned with the domestic and international laws that exist today. The UAE and the UK parade an impressive, array of anti-corruption and anti-money-laundering regulations. The technological and institutional capacities are impressive and at least in the case of the UK is comparable to some of the very best in the world even as there is need for some improvements. The true scandal is that, their actual commitment to dealing with this current international problem amount to what Nicholas Hildyard helpfully submits as "all hat and no cattle".¹⁸⁹

The harsh reality is that Nigeria may never even find out just how many hundreds of billions of looted assets it has suffered over the decades and certainly since its independence as a sovereign state. The chances of having the losses restored in meaningful ways are extremely low. Sadly, even recent scandals with ample documentary trail have led to little or no asset recovery. The practice of some Western nations including the UK in insisting on exacting and retaining arbitrary sums as during asset recovery requests from weaker states is particularly abhorrent. Nigeria and other developing state have a duty to posterity to resist this practice. Similarly, the practice of demanding and attaching conditionalities outside the confines of international law to

¹⁸⁸ Oduntan, op.cit (2009) p. 92.

¹⁸⁹ This was the title to the talk given by Nicholas Hildyard, Co-Director, The Corner House in one of the workshops conducted during the completion of this funded project. See Nicholas Hildyard, "All Hat and No Cattle: The scandal of the West's anti-money-laundering regulations" Presentation to Conference on Agenda Setting for Citizens' Interaction with Stolen Assets Recovery, Abuja, 3rd July 2019.

the return of illegally transferred wealth is abominable. These practices are not products of law and equity but are expressions of the asymmetries in international relations, which permit a certain group of privileged states to add insult to the injuries of weaker states in the sheer context of things.

The UK's record is particularly egregious and deserving of censure. The role of the UK in draining out a country like Nigeria revealed itself in this study through the peeling back of the slim veneer that shields much of the mucky business out of sight. As the ex-colonial power from which Nigeria gained its political independence, the UK arguably owes fiduciary duties in law and equity far beyond the actual political and economic behaviour it has exhibited towards the Nigeria. Nigeria is the UK's most economically and demographically powerful ex-colonial territory in Africa. Thus, Nigeria's overall success ought to be the UK priority. On moral grounds alone, the UK ought not be seen to return to the scene of its colonial schemes to continue abstractions of wealth under questionable terms. Equity demands that the UK's relationship with Nigeria and its attitudes towards the country's commercial and financial interests should be in a sense *nec vim nec clam nec precario* (*neither secretly, nor by force, nor with license*). In other words if there is one country that the UK owes a duty to help secure its financial flows within legitimate constraints, that country would be Nigeria. Unfortunately the opposite appears to be true. Despite national and international regimes and promises to tighten up the system, little has been done by the UK to actually stem IFF flows from Nigeria. The fact is, although, the UK has a special relationship and duty of good will to the entire commonwealth, Nigeria was its biggest colonial project in Africa. If Nigeria fails as a result of instability and insecurity due to the negative effects of IFF among other reasons, the entire West African region would be thrown into a peculiar chaotic mess, the sort that may take decades to recover from.

Part of the problem on the UK's part is that there are far too many powerful financial interests that benefit immensely from the current system of exploitation. MNC's, businesses, banks, financial institutions as well as politicians on both sides appear to benefit from the continuance of IFF. There is, therefore, too much money to be made in leaving things much the way they are than to bring the system under control. There is also the argument that the UK Treasury particularly in a post-Brexit world may actually be too scared of losing tax receipts from the beneficiaries of IFF. The government's interests to keep a steady flow of finances towards its capital, London's and to maintain its pre-eminent position as a global financial centre is all too powerful. In essence, the deficit of action and political will is explained by the predominance and pre-eminence of those benefiting from inaction or at least slow changes in implementation of the emergent applicable legal regime.

Many of these issues relate to the reasons for the inaction by the UAE as well. Certainly in both states the problems are further exacerbated by timid and pusillanimous enforcement by governmental institutions. Nigeria on its own part must fight good battles against corruption at home and win them. The saying "charity begins at home" has a particular usefulness in that the

first line of defence in stoppage of the leakage of Nigeria's wealth abroad is to make sure that rampant acquisition of illicit wealth is reduced to the barest minimum. Nigeria needs to prosecute its top corporate thieves and all their enablers more efficiently. Examples must be made of the management of MNCs and banks that are implicated in corruption in Nigeria. One of the surest ways to deter engagement in IFF transfers is to increase the rate of conviction and custodial sentences for top executives who are found to have participated in TBML, tax evasion schemes, bribery and corruption or who have facilitated the laundering of funds.

Much more vigorous engagement strategies and action is needed in the area of south-south cooperation. It suffices to reiterate that IFF are inherently international. There is therefore, a need to strengthen alliances with other developing countries. Commitment to secure cooperation in combatting corruption must be secured in order to counter the imperialism of the global North. South-South cooperation is also needed to place the issues of IFF and asset recovery on the global agenda. Developing states must fight to have a more egalitarian, solutions- based path, which gives stolen wealth and assets back to victim states with little rancour. Success in this area gives more traction to African states in negotiations over the return of their assets. It has been suggested that a good starting point might be the newly created African Caucus which has the aim to push Africa's anti-corruption interests within the UN Convention Against Corruption.¹⁹⁰

Governments and the elite structures of the UAE and the UK need to engage in soul-searching discussions at home and between themselves. The proclivities of both countries to engaging in attraction of IFF and their status as receiver state certainly cannot be a satisfactory position. Although both countries have become adept at public relations exercises and image-laundering, history will not judge the countries well if things continue as they are presently. There is a need for anti-corruption campaigners in both countries to reach out to each other in order to put a stoppage to the destruction of other parts of the world for their own benefits. A similar North-to-North dialogue is required to take place between those other countries of the global North that have a problem with IFF. This will include tax havens and secrecy jurisdiction assisting the developed receiver states in facilitation of IFF. The richer and more powerful states are also not immune from some of the debilitating consequences of a world, which travels on the jet stream of corruption. The immigration crisis in many parts of the developed world which also affects the UAE is created by people fleeing poverty, despondency and instability generated by the effects of corruption at home and in the developing world. Increasingly even the middle class can no longer afford buying property in London, in part, because of the flood of illegal money into property markets. There is therefore, a lot of self-interest in collaboration among the states of the global North to reduce IFF.

Just as important is the development of cooperation between the global south and the global north, which we highlighted above. Thus, greater collaboration between CSOs,

¹⁹⁰ Nick Hildyard p. 7.

intergovernmental organisations and international organisations are all-important in addressing the type of corruption at hand. Indeed, it will be very desirable for a certain *esprit de corp* to develop among the national regulatory agencies and prosecutorial agencies between and among the developing and developed states. Collaboration between Nigeria and UK regulatory bodies has stepped up since the early 2000s and has increased steadily since. Ideally, these multisector collaborations will translate into long-term relationships of trust and solidarity that will make the 21st century a much better time to eradicate rampant IFF.

Nigeria has a sacred duty to its past, present and future generations to remove itself as an item from the menu of IFF receiving states. This is not only a sacred duty and task that must be done; it is one with an alarming urgency to it. Achieving this is perhaps the only way the country may remain one single corporate body and sovereign state by the middle of the 21st century. To this end, Nigeria like most African states must very keenly watch out for modern day equivalents of bargains of valuable concessions in exchange for mirrors and gin. Unfair contracts that are blatantly slanted towards the interests of western superpowers are very much part and parcel of IFF as we argued in our conceptualisation of a wider normative and developmental view of IFF phenomena in Chapter 2.¹⁹¹ It is indeed important to finally put a stop in this century to Lugardian territorial and mining concessions purchased for the present of old pairs of boots.¹⁹²

It is hoped that this study has contributed to the understanding of the nature and extent of damage IFF has caused to Nigeria and other developing countries. It would be even better if as a result of the study and the ideas and discussions pursued therein, things change for the better and are never the same again. It is indeed hoped that the entire project (of which, this study forms a part), would illuminate in a qualitative and lasting manner the understanding of key issues in international economic law. Hopefully it will assist stakeholders, both within and outside the country, in preventing further damage done to Nigeria by IFF. More importantly, it is hoped that the study leads to a reversal of the corrosive effect of IFF on the development of Nigeria and that the country as a result becomes a much better place for MNCs from UK and UAE and other global firms to operate in ethically and profitable manner.

¹⁹¹ See above 2.0: Conceptualization of the Scope of IFF.

¹⁹² See above p. 17. Supra note 16. See also Oduntan (2009) pp. 118 -120.