

UAE 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

IFF AND THE UAE: SOCIOLEGAL AND REGULATORY CONTEXTS.

This section of the report lays out the geophysical and socio-legal make-up of the UAE as a modern Arabian Gulf State; taking into account tremendous opportunities and challenges posed by the developmental successes of Dubai and Abu Dhabi Emirates. The section highlights the negative significance of investment of massive amounts of unexplained wealth by Nigeria's PEPs in the UAE property market and particularly in Dubai. Some of the methods used in channelling dodgy property purchases such as registration of properties through shell companies, close relatives, trustworthy proxies and unwitting but controllable stooges are revealed. The section explores popular perception relating to systematic flows of IFF into the UAE which tends to validate the country's cooptation into "Great Western Club and its Game Theory Cooperative Philosophy"; suggesting strong ally with the western powers in creating the perfect conditions for an unequal world. The finding reached is that the shortcomings in the practices of financial and professional bodies of the UAE are deep, substantive and troubling.

UAE's low number of ML prosecutions indicates a limited interest in policing money laundering given the country's high profile financial centres. The development of anticorruption and AML laws is discussed and recent changes to the UAE's banking and financial laws that are designed to tighten its money laundering regime are identified. There is no justification that capable system (investigation, prosecution, conviction and sanctions) is in place and functioning coherently in UAE to mitigate money laundering. Through a series of deliberate system of omissions, the UAE has positioned its economic space to gain the benefit of various kinds of illicit proceeds. The UAE has been quite slow to develop laws in relation to global standards as indicated by the FATF rules and there has been slow implementation of significant pieces of regulation it relates to trusts, beneficial ownership requirements and the late incorporation of DNFBP and nonfinancial entities into AML/CTF regulations. Even the second FATF mutual evaluation on the UAE, in 2020 crucially found that improvements in ten of the eleven areas evaluated still remain insufficient.

Many free zones in UAE operate within a lax regulatory environment; allowing maximum profits and gratuitous opaqueness for venture capitalist and cash entrepreneurs always looking for huge profits. The DIFC, however, is identified as one of the better and tighter regulated free zones in the UAE. Significant areas of improvement made over the years include introduction of requirement to expose PEPs and make STR reports. This section of the report finds that UAE operates under a strong regime of international laws which ought to enable better cooperation in preventing and restricting IFF flows in accordance with pertinent FATF Recommendations. The summary of the conclusion is that although the UAE as at 2020 has put in place better and more

efficient national laws as well as professional codes and rules of ethics for the guidance of FI and DNFBP sectors, the country's AML/CTF regime appears still not be fit for purpose.

2.0: Socio-Legal Background to the UAE

The UAE constitutes 83, 600 Km² of sovereign national territory; sharing land and maritime borders with Saudi Arabia, Oman, Qatar and Iran as well as access to the strategic Straits of Hormuz, which is the world's single most important oil passageway.⁵ According to recent World Bank sources, the UAE with capital in the city of Abu Dhabi has a population of 9,630,959, of which roughly 1,084,764 are Emirati nationals, with the remainder made up largely of expats of other Arab states, as well as nationals from South and South-East Asia.⁶ The UAE Federation is composed of seven emirates: Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al-Qiwain, Ras Al-Khaimah, and Fujairah. There is a patchwork of investigating authorities because each emirate is responsible for enforcing its own criminal laws.⁷ However, three of the emirates (Abu Dhabi, Dubai, and Sharjah) have separate police forces which are considered branches of the Federal Ministry of the Interior (MOI).⁸ Whatever obvious shortcomings may exist, the MOI is known to have effectively policed narcotics trafficking, carry out investigations and place traditional violent crimes competently under control⁹. Both the Abu Dhabi and Dubai police departments have separate units devoted to narcotics investigations.¹⁰ The UAE is a signatory to an impressive number of international treaties, conventions, UN resolutions and soft law that address transnational crime and corruption.¹¹ UAE is half way between Asia and Europe and has stable polity that makes it one of the most attractive places to do business not only by regional standards but also globally. UAE's economy is sustained by high oil revenue, a pro-market;

⁵ The straits of Hormuz is considered the world's most important oil transit chokepoint with an estimated 20.3 million barrels of oil per day passing through during 2017 which accounted for about a third of global maritime oil trade that year- a fifth of global consumption, In 2018, 1.4 million barrels per day specifically passed through the strait on their way to the US, in addition to more than a quarter of all global trade in liquefied natural gas. John Letzing "Why is the Strait of Hormuz so important?", World Economic Forum website, 29 Jul 2019 available at <https://www.weforum.org/agenda/2019/07/why-is-the-strait-of-hormuz-so-important/> 13 Sept 2020.

⁶ World Bank, United Arab Emirates - World Bank: Doing Business 2020 United Arab Emirates available at <https://www.doingbusiness.org/content/dam/doingBusiness/country/u/United-Arab-Emirates/ARE-LITE.pdf> accessed 26 03 2020; MENAFATF, FATF and the International Monetary Fund, Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism 9 April 2008 available at <https://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20UAE%20full.pdf> accessed 26 03 2020.

⁷ Ken Greenaway, "How Emirati Law Enforcement Allows Kleptocrats and Organized Crime to Thrive" in Page and Vittori, op.cit., p.86

⁸ Ibid p. 67.

⁹ Philip Robins Narcotic Drugs in Dubai: Lurking in the Shadows, British Journal of Middle Eastern Studies, Vol. 41(2014) 2,151-166. . Dubai has been particularly affected by the trade in narcotics through increased use, notably heroin, especially among its nationals. Transnational organised crime in narcotics by passing enroute Dubai to larger markets endangers the citizenry despite the apparent zero tolerance approach of the government. There is also the argument that the country needs to invest more in detoxification and rehabilitation programmes and ought to leverage much better on the perceptible cultural intolerance of Emirati national for 'weaknesses' like drug use.

¹⁰ "Organizational Structure," Dubai Police, <https://www.dubaipolice.gov.ae/wps/portal/home/aboutus/organizational-hierarchy>; Greenaway op.cit., p. 68.

¹¹ See our discussions on the UAE's international obligations and cooperation below – Section 4.5. See also the treaties and instruments in table 13 below.

liberal development strategy, large inflows of foreign direct investment and high rates of public and private sector investment. UAE remains a solid investment choice for companies and individuals around the world including those from Nigeria and other parts of the developing world.¹²

Significant economic prosperity began with the discovery of oil in the UAE in Abu Dhabi and Dubai¹³ contributing to the UAE (and Dubai in particular) becoming a global trading hub and a financial colossus in the desert¹⁴ and manifesting hugely in state development.¹⁵ Much of the UAE's commercial success is explained by dint of important investments as much as by clever and careful collaboration as manifest by sponsoring of leading popular brands such as the Emirates Airlines, Real Madrid, Arsenal, and AC Milan football clubs¹⁶ including playing host to high profile international events¹⁷ such as the Expo 2020 Dubai to be held in October 2021 to March 2022.¹⁸

By 2057, Abu Dhabi Police would have launched a satellite that would prevent police data piracy and by 2117, it would have designed a police station for the UAE Mars colony. Patrol vehicles will monitor security in space, AI systems will direct the behaviour of inmates in penal institutions and nano-robots will be used for firefighting. Robots will replace 50 per cent of police officers...¹⁹

There is, however, much to critique about the UAE's fast development and its socio-legal make-up. The country is not a democracy and does not pretend to be. It never held and still does not

¹²The increasing social liberalism of the UAE is reflected in the recently announced changes to the country's Islamic personal laws, allowing unmarried couples to cohabit, loosening alcohol restrictions and criminalizing the abominable practice of so-called "honor killings." Isabel Debre, UAE announces relaxing of Islamic laws for personal freedoms, ABC News, 7 November 2020 available at <https://abcnews.go.com/International/wireStory/uae-announces-relaxing-islamic-laws-personal-freedoms-74072723> accessed 15 Feb 2021. See World Bank Group, *Doing Business Comparing Business Regulation in 190 Economies*, (International Bank for Reconstruction and Development / The World Bank, 2020) p. 4. See particularly Table O.1 Ease of doing business ranking; See also NigeriansinDubai.com, "What's All the Dubai fuss? 10 Reasons Why Nigerians Are Madly In Love with Dubai" available at <http://nigeriansindubai.com/2019/07/01/10-reasons-why-nigerians-are-madly-in-love-with-dubai/> accessed on 13 Sept 2020.

¹³ In 1958 oil was discovered in Abu Dhabi the current capital of the UAE, a viable quantity was discovered also in Dubai in 1996. Fatima Al Sayeg, *The UAE from Tribe to The State*, (Dubai: Gulf Book Centre), 2000, p 50.

¹⁴Frauke Heard-Buy, "Social Changes in the Gulf States and Oman", vol. 59, *Asian Affairs*, October 1972, p.309 -310.

¹⁵ Mahesh Al Hameli/Ali Al Sheehy, *Images are An Outstanding Evidence on Rapid Development in The UAE*, 2004.

¹⁶ David Conn, *The Fall of the House of FIFA: The Multimillion-Dollar Corruption at the Heart of Global Soccer* (London: Yellow Jersey Press, 2017), 295.

¹⁷ Popular Culture has also been deployed as a tool in popularizing the UAE particularly Dubai. Note for example Star Wars: The Force Awakens. In Mission Impossible Tom Cruise scaled the iconic Dubai's BurjKhalifa building. See Page and Vittoriop.cit, p. 97.

¹⁸ New Expo 2020 Dates announced 1st October 2021 -31st March 2020. Available at <https://www.expo2020dubai.com/> accessed on 05 July 2020.

¹⁸ Mahesh Al Hameli/Ali Al Sheehy, *Images are An Outstanding Evidence on Rapid Development in The UAE*, 2004; New Expo 2020 Dates announced 1st October 2021 -31st March 2020. Available at <https://www.expo2020dubai.com/en> accessed on 05 July 2020.

¹⁸ Mahesh Al Hameli/Ali Al Sheehy, *Images are An Outstanding Evidence on Rapid Development in The UAE*, 2004; "The World's Greatest Show | Expo 2020 Dubai," accessed November 20, 2019, <https://www.expo2020dubai.com/en>.

¹⁹ UAE, "Future: 2030-2117" UAE Government Portal <https://u.ae/en/about-the-uae/uae-future#2030-2117> accessed 01 August 2020.

hold open elections. The country does not have a free press with high restrictive civil society that allow government to intercept all internet traffic, pinpoint people's locations based on their mobile phones, and break encrypted communications²⁰ while the country's royals, government and indeed the elite system are free to do as they wish whereas just about nobody can resist reforms.²¹ There are credible reports of Emirati human rights abuses, including what Page and Vittori describe as "allegations of mercenary hit squads against foes and a secret prison system that uses torture".²² The UAE often provides home for terror suspects and criminal gangs that render assistant to terror groups and has featured in the smuggling of nuclear parts to Libya and Iran as part of a Pakistani nuclear scientist's underground nuclear weapons programs²³ as a key link to payments for weapons that were officially destined for Sierra Leone through accounts at the Standard Chartered Bank in Sharjah in the UAE²⁴ and suspected in early 2000s as a conduit for Taliban gold smuggling following the collapse of the regime in Afghanistan.²⁵

Corrupt Nigerian elite have managed to evade detection and massively invested into the UAE property market particularly in Dubai. As argued by Barnaby Pace, "We know that the criminal and corrupt set up bolt-holes around the world in which to stash their dirty cash, with Dubai being a favoured spot for many..."²⁶ Dubai is also a preferred destination for trade-based money laundering (TBML –IFF) and political corruption money laundering from Nigeria, precisely because the city is seen as a soft touch for PEPs and their associates. The Nigerian government is not pleased with the situation and the country's regulators as well as civil society sector watchdogs are rightly very concerned. The largely opaque and inaccessible official records of the various Emirates obviously do not help the situation. Both foreign regulators and the public face considerable challenges in getting property beneficial ownership details.²⁷ Nigeria's PEPs have become quite adept at concealing their illicit Dubai property purchases. The methods used

²⁰ Rob Evans, "BAE 'Secretly Sold Mass Surveillance Technology to Repressive Regimes,'" Guardian, June 14, 2017, <https://www.theguardian.com/business/2017/jun/15/bae-masssurveillance-technology-repressive-regimes>.

²¹ Page and Vittori op.cit., p. xi.

²² Page and Vittori, "Challenges and Recommendations" op.cit., p. 97. Human Rights Watch, "World Report 2019: Yemen—Events of 2018," Human Rights Watch, 2019, <https://www.hrw.org/world-report/2019/country-chapters/yemen>; Ghaith Abdul-Ahad, "Yemen on the Brink: How the UAE Is Profiting From the Chaos of Civil War," Guardian, December 21, 2018, available at <https://www.theguardian.com/news/2018/dec/21/yemen-uae-united-arab-emiratesprofiting-from-chaos-of-civil-war> accessed on 20 August 2020; and Nick Cumming-Bruce, "War Crimes Report on Yemen Accuses Saudi Arabia and U.A.E.," New York Times, August 28, 2018, <https://www.nytimes.com/2018/08/28/world/middleeast/un-yemen-war-crimes.html>. accessed on 20 August 2020

²³ Jodi Vittori op.cit., pp 5 -6; *City of Gold: Dubai and the Dream of Capitalism* St. Martin's Publishing Group, 2009.

²⁴ Charles Freeland, "How Can Sound Customer Due Diligence Rules Help Prevent the Misuse of Financial Institutions in the Financing of Terrorism?"; Jim Krane, *Financing Terrorism* Mark Pieth ed. (Dodrecht: Kluwer, 2002) p. 25.

²⁵ K.C. Ulrichsen, "The Political Economy of Dubai" in Page and Vittori eds p. 99; Ulrichsen, *The United Arab Emirates: Power, Politics and Policy-Making* (The Contemporary Middle East), (London: Routledge, 2016) p. 143.

²⁶ Margot Gibbs, Ted Jeory and Lionel Faull, *Finance Uncovered*, "Nigerian Oil and Dubai Land " 12 June 2018, available at <https://www.occrp.org/en/goldensands/nigerian-oil-and-dubai-land> accessed on 25 May 2020.

²⁷ Page op.cit., p. 11.

include channelling property purchases through shell companies, close relatives, trustworthy proxies and unwitting but controllable stooges.²⁸

2.1: The UAE's webs of exploitation

Corrupt and criminal actors from around the world operate through or from Dubai with relative ease. There is enough evidence to suggest that the UAE and the major centers of financial and political power of the West have decided to ignore the problematic behaviours, administrative loopholes and weak enforcement practices that typify Dubai's global attractiveness as a destination for dirty money²⁹ as with Eastern centres like Shanghai, Singapore and Hong Kong.

The idea of a 'Great Western Club and its Game Theory Cooperative Philosophy' is one by which the western powers rely on each other in the creation of the perfect conditions for an unequal world. The game scenario, as it operates among the western powers not only permits for 'hegemony among the hegemonies', particularly as regards the primacy of the United States as a superpower.³⁰ UAE since the mid-90s appears to have been sponsored into this elite club by the USA as noted by Page and Vittori thus: the United States, "... is both the UAE's leading protector from external threats and the leading financial hub on which Dubai's prosperity depends".³¹ Dubai joins a select list of cities (New York, Miami, Los Angeles, London, Toronto, Sydney, Doha, Hong Kong, and other high-end real estate markets) where large amounts of illicit money flow unendingly³² as in specific Panama³³ case and the leaked Panama Papers.³⁴ It is especially difficult to acquire information and solicit cooperation from Emirati authorities³⁵ owing to the Jekyll and Hyde features of the UAE. Financial Action Task Force (FATF) has called out the UAE for its limited interest in policing money laundering as indicated in its ridiculously "low number of ML prosecutions in Dubai" which is "particularly of concern; considering its recognised risk of establishing human settlements in space."³⁶ However, for as

²⁸ Ibid.

²⁹ . Page and Vittori op.cit., p. ix

³⁰ It requires that even other European states should recognise the position of the top hegemon, as is true of all hegemonic arrangements. In truth the manifestation of the western game theory as described here is corrosive of its patrons as much as its intended and collateral victims. As Richard Nixon stated in an address to a joint session of Congress, 1 June 1972 immediately on his return from Russia after SALT I (Nixon 1972): 'No power on earth is stronger than the United States of America today. None will be stronger than the United States of America in the future. This is the only national defense posture which can ever be acceptable to the United States'. Cited in Oduntan 2012 at p. 117.

³¹ Page and Vittori, "Challenges and Recommendations" in Page and Vittori eds. Op.cit., p. 98.

³² In 2018, the Center for Advanced Defense Studies (C4ADS), a Washington, DC-based nonprofit research organization, identified forty-four luxury properties directly associated with seven individuals who were under debilitating sanctions by the United States and/or European countries (see Table 7) Sandcastles: Tracing Sanctions Evasion Through Dubai's Luxury Real Estate Market, p. 7; Page and Vittori, eds op.cit., p. 100.

³³ "7772 UAE-Based Entities in Leaked Panama Papers," Arabian Post, <https://thearabianpost.com/7772-uae-based-entities-in-leaked-panama-papers/> accessed 30 July 2020.

³⁴ Anon, "7772 UAE-Based Entities in Leaked Panama Papers," Arabian Post, <https://thearabianpost.com/7772-uae-based-entities-in-leaked-panama-papers/> accessed 30 July 2020.

³⁵ Page and Vittori, op.cit., p. xi.

³⁶ UAE, "Future: 2030-2117" op.cit., supra note 283.

long as it continues to be seen as “a facilitator of corruption” it has not fulfilled its duties as a responsible member of international society.³⁷

Among African states, Nigeria has been particularly hit by the shortcomings of this regime and the opportunities the UAE has come to represent for PEP money laundering and other criminal and illicit money movements particularly into Dubai. Dan Etete’s involvement in the Malabu scandal saw a significant chunk of the converted money laundered through Dubai. He successfully placed \$21.5 million through the UAE registered money-changing firm -Gunes General Trading. The alleged mastermind of the scheme Dan Etete himself took up residence living luxuriously in Dubai’s luxurious Emirates Hills for many years. In January 2020, however, a Nigerian court issued a warrant for the former oil minister.³⁸ To varying degrees, other African victim states, owing to Dubai’s laxity, include like DR Congo through international gold trade³⁹, Somaalia through illegal charcoal export to Al-Shabaab Somali terrorist group⁴⁰ which consequently jeopardise security in East Africa and across West Africa including Nigeria as manifest by Al-Shabaab’s collaboration with dreaded Boko Haram group.⁴¹

2.1.1: Free Trade Zones and Financial Free Zones (FFZs)

Lax regulatory climate featured in UAE’s network of free zones which are among the highest number of free zones in the world.⁴² The lax regulatory environments allows maximum profits and gratuitous opaqueness for venture capitalists, cash entrepreneurs and a motley crew of cowboy adventurers along with big businesses and corporations always looking for better profit. The “free” in FTZs in UAE essentially refer to “free from normal regulation” through which foreign investors offer 100 percent ownership in companies registered within them, no corporate taxes, no import and export duties, 100 percent repatriation of revenues and profits, reduced documentation and smoother recruitment and visa processes for employees.”⁴³ In other words,

³⁷ Page and Vittori, op.cit., p xii.

³⁸ See Margot Gibbs and Lionel Faull, “The Klepto Hills,” OCCRP, June 12, 2018, [https://www .occrp.org/en/goldensands/the-klepto-hills](https://www.occrp.org/en/goldensands/the-klepto-hills); Page and Vittori p. 8; Reuters Staff, Nigerian court issues warrant for oil minister Etete's in \$1.3 billion oil deal, World Reuters Website, 31, January 2020 available at <https://www.reuters.com/article/uk-nigeria-oil-idUKKBN1ZU1A7> accessed 15 Feb 2021.

³⁹Marcena Hunter, “Pulling at Golden Webs: Combating Criminal Consortia in the African Artisanal and Small-Scale Gold Mining and Trade Sector,” ENACT, April 2019, 21, <https://enact-africa.s3.amazonaws.com/site/uploads/2019-04-24-pulling-the-golden-websresearch-paper.pdf>.

⁴⁰ Page and Vitoriop.cit., p. 9; See also Katherin Petrich, “Guns, Pirates and Charcoal,” Global Initiative (blog), December 18, 2018, https://globalinitiative.net/somalia_untocwatch/.

⁴¹Olomojobi, Yinka, Boko Haram: It's Terror Networks and Western Response (October 24, 2016) pp. 1, 11. Available at SSRN: <https://ssrn.com/abstract=2858585> or <http://dx.doi.org/10.2139/ssrn.2858585>; G. Olivier and S. Robin, *Terrorism from Boko Haram and Ansaru*. A Henry Jackson Society Briefing (2014) pp. 1-21.

⁴² Anon, “How free zones help power the UAE economy” *Arabian Business* Sun 15 Apr 2018. Available at <https://www.arabianbusiness.com/politics-economics/394097-abe-1915-how-free-zones-help-power-the-uae-economy#:~:text=Free%20zones%20in%20the%20UAE,and%20visa%20processes%20for%20employees> accessed on 1st August 2020.

⁴³ibid.

the many free trade zones create ambivalence toward unregulated financial dealings and illicit trade⁴⁴ particularly involving trade-based money laundering (TBML).

Unofficial compilation of UAE Free Zones⁴⁵ reveals a national spread of forty-five free trade zones and two financial free zones (the DIFC and Abu Dhabi Global Market).⁴⁶ Approximately thirty FTZs are established in the Emirate of Dubai alone contributing at least 41 percent of Dubai's total trade with a combined total of \$118 billion in trade value data generated through Dubai's free trade zones in 2017.⁴⁷ The many FTZs are regulated by forty-five different sets of laws and regulations that warranted UAE's Central Bank issuing many similar but distinct circulars to each zone.⁴⁸ The cacophony of laws on beneficial ownership transparency within the various free trade zones has been described as "complicated and overcrowded regulatory architecture".⁴⁹ Dubai's FTZs attracts goods, which undergo transshipment, assembly, manufacturing, processing, warehousing, repackaging and re-labelling which illicit actors exploit to manipulate key data such as the real country of origin or destination and payments cash or check details⁵⁰ including providing safe haven to criminal organizations in acquiring wealth to buy guns or drugs and facilitate terrorist activity.⁵¹

2.1.2: Trapping wealth from Commodities

Dubai is now one of the top four gold-importing countries conducive for laundering Artisanal and Small-Scale Gold Mining (ASGM) gold.⁵² This success is however, built on what appears to be an elaborate scam as described thus:

“Dealers buying gold to sell in the souk require only a single document—a UAE customs form— that proves the gold was legally declared to customs officials upon arrival at an Emirati airport. The form does not require information about the gold's origin. These

⁴⁴ J Vittori “Introduction” in Page and Vittori, op.cit., p. 7. Lakshmi Kumar Dubai: Free Trade Or Free-For-All? in Page and Vittori eds. p. 23.

⁴⁵ Adopted from Lakshmi Kumar's (policy director of Global Financial Integrity) compilation of free zones in the UAE published in the Appendix of Page and Vittori eds. op.cit., pp. 103-105.

⁴⁶ (See Table 8 for a list of the total known free zones in the UAE compiled from Page and Vittori study)

⁴⁷ Sarah Townsend, “Dubai Free Zones Saw 22% Growth This Year, Government Says,” National (UAE), December 22, 2018, <https://www.thenational.ae/business/economy/dubai-free-zones-saw-22-trade-growth-this-year-government-says-1.805246>.

⁴⁸ Kumar op.cit., pp. 25 -28.

⁴⁹ Lakshmi Kumar, “Dubai: Free Trade Or Free-For-All?” in Page and Vittori op.cit., p. 28.

⁵⁰ Dominic Dudley, “Dubai Has Become a ‘Money Laundering Paradise’ Says Anti-Corruption Group,” Forbes, January 29, 2019, <https://www.forbes.com/sites/dominicdudley/2019/01/29/dubai-has-become-a-money-laundering-paradise-says-anti-corruption-group/#50c7eaa0315e>. On April 30, 2014, the UAE Federal National Council passed a draft law to amend Federal Law No. 4 of 2002 regarding the criminalization of money laundering and to prevent the use of bearer negotiable instruments; See also Mark Brown, “Financial Institutions: Obligations Under the New AML Law,” Al Tamimi & Company, December 2014, <https://www.tamimi.com/lawupdate-articles/financial-institutions-obligations-under-the-new-aml-law/> accessed 20 August 2020..

⁵¹ Karina Shedrofsky, “Remittances and Trade-Based Money Laundering,” OCCRP, June 12, 2018, <https://www.occrp.org/en/goldensands/remittances-and-trade-based-money-laundering>.

⁵² Shawn Blore and Marcena Hunter, Dubai's Problematic Gold Trade in Page and Vittori p. 34.

dealers therefore accept gold originating from any country, regardless of the production circumstances, no questions asked. They habitually record their purchases of ASGM gold as “scrap,” a practice that even some refineries have exhibited. This accounting sleight of hand completed, souk dealers can then sell this gold to DMCC buyers or UAE refineries, having sufficiently clouded its origins to satisfy their auditing requirements.⁵³

The casualness of gold importation into Dubai makes the country a magnet for the world’s dodgy gold across regions of Africa where airports exist.⁵⁴ UAE’s gold imports in 2016 showed that at least 46 percent came from countries that would be “red-flagged” by the OECD. Stolen gold from Nigeria ends up in Dubai and is turned into jewellery, which is then sold to buyers in countries like the UK that operate under international legal regimes which, would have prevented the import of gold from conflict-affected countries.⁵⁵ A UK judge in April 2020 awarded almost \$11 million in compensation to a whistleblower in a sensational case that highlights the connectedness of the UAE and UK jurisdictions and the way enablers from both jurisdictions collaborate on the issue of IFF in exposing concealment of sources of gold from high-risk or unknown sources.⁵⁶

The damning but persuasive conclusion reached by the court is that:

“Dubai’s role in the global gold trade is problematic due to Emirati authorities’ lackadaisical approach toward traders’ due diligence and responsible sourcing obligations. Without requiring any kind of export license or certificate of origin for hand carried parcels, the UAE has essentially allowed gold smugglers to try and avoid legitimate government royalties or export taxes. As a direct result, smuggling of African gold has become the norm, not the exception, depriving African nations of millions of dollars of needed revenue”.⁵⁷

2.1.3: Dubai’s Property Web

Nigeria’s PEPs and public officials including corrupt and criminal actors from Armenia, Pakistan, Russia, South Africa, Thailand⁵⁸ and around the world who operate with relative

⁵³Ibid., p. 37.

⁵⁴ 5 Hunter, “Pulling at Golden Webs”; and Blore, “Contraband Gold in the Great Lakes Region,” 22.

⁵⁵Blore and Hunter p. 48; UK companies are also expected to adhere with the Voluntary Principles on Security and Human Rights; the Kimberley Process; the Extractive Industries Transparency Initiative (EITI) and the UN Global Compact. Information about the Voluntary principles are available at <https://www.voluntaryprinciples.org/>; The United Nations Global Compact is a non-binding United Nations pact to encourage businesses worldwide to adopt sustainable and socially responsible policies, and to report on their implementation. Information about the Global Compact are available at <https://www.unglobalcompact.org/>

⁵⁶*Rihan v. Ernst & Young Global Ltd and others* [2020] EWHC 901 (QB); “Kaloti Response to Media Reports,” Kaloti Precious Metals, undated, <http://www.kalotipm.com/Media-Center-PressReleases-Details/13/KALOTI--RESPONSE-TO-MEDIAREPORTS>; Jane Croft and Tabby Kinder, “EY ordered to pay \$10m to Dubai whistleblower”, *Financial Times* April 17 2020.

⁵⁷Blore and Hunter p. 46.

⁵⁸ Peter Kirechu And Jodi Vittori, “The Illicit Allure of Dubai’s Luxury Property Market” in Matthew Page, Jodi Vittori eds., opcit., p. 62. Margot Gibbs, “How to Inherit a Villa, Kremlin Style,” OCCRP, December 13, 2018;

impunity through or from Dubai.⁵⁹ It took a series of dramatic arrests on behalf of the FBI to finally deal with a string of young Nigerian hackers and cybercriminals –the ‘Hushpuppy gang’ - who made home for themselves in Dubai with very loud and lavish lifestyles.⁶⁰ It would appear there is deliberate orchestration to make Dubai an Eldorado for property investors looking for a place to store wealth considering that construction and real estate sectors in the UAE contributed 20% to GDP as of 2016.⁶¹

The sheer recklessness of a system which allows PEPs including thirty-four Nigerian governors to own seventy-one properties, seven senators to own thirty-three properties, and thirteen Federal ministers to buy and own twenty-six properties is apparent. In the circumstances this is a case of *res ipsa loquitur*- the facts speak for itself. The 2012 report stated that Nigerians had invested up to \$6 billion in real estate in Dubai over three years, including whole floors of apartment blocks.⁶² As bad as things are with respect to dirty money being funnelled into properties in the UK particularly in London, Dubai is qualitatively worse as noted in 2012 article: “There are not the same checks on the sources of money coming into Dubai as there are in London and elsewhere”⁶³ The lack of qualitative and mandatory beneficial ownership reporting system exacerbates the UAE’s significant shortcomings in relation to the interaction between luxury property market and IFF.⁶⁴ Dubai and other Emirates in the UAE operate a more *laissez faire*

<https://www.occrp.org/en/goldensands/how-to-inherit-a-villa-kremlin-style>; Vahe Sarukhanyan, “Wealthy Armenians Join the Dubai Land Rush,” OCCRP, March 22, 2019, <https://www.occrp.org/en/goldensands/wealthy-armenians-join-the-dubai-land-rush>; Shedrofsky, “Dubai’s

Golden Sands”; Gibbs and Faull, “The Klepto Hills.” OCCRP 12 June 2018 Available at <https://www.occrp.org/en/goldensands/the-klepto-hills> accessed 30 July 2020.

⁵⁹ Dubai’s real estate purchases are uniquely conducted under high incidences of cash transactions and purchasers come from and estimated 217 nationalities. In the 18 months up to the end of June 2017 a total of AED 151 billion [37 billion euros] was invested through 71,000 transactions in Dubai’s real estate market. See the FATF (2020), Anti-money laundering and counter-terrorist financing measures – United Arab Emirates, Fourth Round Mutual Evaluation Report, FATF, Paris p. 28. available at <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-uae-2020.html> accessed on 2020.

⁶⁰ This group of young hackers operated an online fraud network that was committing crimes outside the UAE, including hacking, money-laundering, cyber fraud, impersonation, scamming individuals, banking fraud and identity theft to the tune of Dh1.6 billion. Ali Al Shouk, “Dubai Police hands over Hushpuppy to FBI in the US Efforts by the UAE in fighting cybercrime comes in for high praise” *Gulf News*, July 02, 2020 available at <https://gulfnews.com/uae/dubai-police-hands-over-hushpuppy-to-fbi-in-the-us-1.72374920> accessed on 30 August 2020. See particularly the indictment of the apparent ring leader Olorunwa Abbas *United States of America v. Ramon Olorunwa Abbas, aka “Ray Hushpuppy,” aka “Hush,”* Case No. 2.20-mj-02992 Date 06-25-2020. AO 91 (Rev. 11/11) Criminal Complaint (Rev. by USAO on 3/12/20) available at <https://www.justice.gov/usao-cdca/press-release/file/1292066/download> accessed on 07 Jan 2021

⁶¹ FATF (2020), *opcit.*, p. 28.

⁶² Matthew T. Page, “Dubai Property: An Oasis for Nigeria’s Corrupt Political Elites,” Carnegie Endowment for International Peace, March 19, 2020, <https://carnegieendowment.org/files/20203-Page-Nigeria%20Dubai%20Property.pdf>. 243 Ikenna Obi and Chuka Oroko, “Nigerians Account for 60% Dubai Apartment Sales,” *Business Day*, October 31, 2014, <https://businessday.ng/exclusives/article/nigerians-account-for-60-dubai-apartment-sales/> accessed 29 July 2020; Page and Vittoriop.cit., p. 64.

⁶³ Tom Arnold, “Dubai Property Draws Nigerians,” *National (UAE)*, July 16, 2012, <https://www.thenational.ae/business/property/dubai-property-draws-nigerians-1.394019> cited in Kirechu and Vittoriop.cit., p. 64.

⁶⁴ FATF (2020), Anti-money laundering and counter-terrorist financing measures – United Arab Emirates, Fourth Round Mutual Evaluation Report, FATF, Paris pp. 5, 11-12, 181. available at

philosophy and the UAE generally has shaped itself into a vast bohemian desert investment space. A recent damning report concludes that:

“Various leaked documents—from the Panama Papers to Angola’s Luanda Leaks documents to Dubai’s own property registry—demonstrate that Dubai is a place where many people associated with criminal activity feel free to settle down with their families, manage their networks, and engage in smuggling and money laundering”.⁶⁵

Organized Crime and Corruption Reporting Project (OCCRP) identified multiple luxury property holdings in Dubai held by former public officials—from Armenia, Nigeria, Pakistan, Russia, South Africa, and Thailand—as well as by their family members and business associates.⁶⁶ As revealed in the Sandcastle data leaks, the Dubai authorities have more or less ignored the serious lapses as manifest in the purchase ‘a ten-bedroom, thirteen-bathroom villa’ in Dubai’s famous Emirate Hills⁶⁷ by Rajesh “Tony” Gupta despite being under United States sanctions. Dubai luxury real estate sector has proven vulnerable to exploitation through illicit investments by global kleptocrats, weapons proliferators, and narcotics traffickers.⁶⁸

1.1.4: Financial Centres and UAE’s well-woven webs of exploitation

The aim of financial centres in major global cities is to provide direct access to large capital pools from banks, insurance companies, investment funds, and listed capital markets. An Offshore Financial Centers IMF Background Paper Prepared by the Monetary and Exchange Affairs Department in June 23, 2000 differentiates financial centres in cities like New York City, London, and Tokyo from Regional Financial Centres (RFCs), such as Shanghai, Shenzhen, Frankfurt, and Sydney; and Offshore Financial Centres (OFCs), such as Cayman Islands, Dublin, Hong Kong, and Singapore.⁶⁹ The intuitive premise is that there is a natural connection between the outflow of illicit capital from developing countries and their absorption into offshore financial centres.⁷⁰ Estimates reveal that 45 per cent of IFFs end up in offshore financial centres,

<http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-uae-2020.html>; StianOverdahl, UAE banks face compliance pressure after anti-money-laundering report S & P Global Intelligence 11 Jun, 2020 available at <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/uae-banks-face-compliance-pressure-after-anti-money-laundering-report-58943852> accessed 30 July 2020.

⁶⁵Vitorri, Introduction in Page and Vittoriop.cit., P.2

⁶⁶Page and Vittoriop.cit., p. 62.

⁶⁷Allegedly bought in 2015 for former South African president Jacob Zuma in the Emirates Hills development.

⁶⁸NqobileDludla, “U.S. Sanctions Brothers at Center of South African Graft Scandal,”

Reuters, October 10, 2019, available at <https://www.reuters.com/article/us-safrica-corruption-guptasidUSKBN1WP2DO> accessed on 10 August 2020; Kirechu and Vittori, p. 65.

⁶⁹“Offshore Financial Centers: IMF Background Paper”. International Monetary Fund. 23 June 2000 available at <https://www.imf.org/external/np/mae/oshore/2000/eng/back.htm> accessed 04 Jan 2021.

⁷⁰Kar, Dev, Illicit Financial Flows from the Least Developed Countries: 1990-2008 (May 2, 2011). p. 5 Available at SSRN: <https://ssrn.com/abstract=2335018> or <http://dx.doi.org/10.2139/ssrn.2335018> accessed on 04 Jan 2021; Naheem, M.A. (2018), “Illicit financial flows: HSBC case study”, Journal of Money Laundering Control, Vol. 21 No. 2, pp. 231-246. <https://doi.org/10.1108/JMLC-08-2015-0036> accessed on 04 Jan 2021.

while the remaining 55 per cent percolates into developed countries. The UAE's International Financial centres in Dubai and Abu Dhabi are placed at the 17th and 33rd positions respectively on the 2020 Global Financial Centres Index of International Financial Centres (GFCI IFC Rankings). Both financial centres however, top the league of financial hubs in Africa and the Middle East.⁷¹

2.2: The Dubai International Financial Centre (DIFC)

Article 121 of the UAE Constitution accords the Union exclusive legislative jurisdiction in “the order and the manner of establishing Financial Free Zones and the boundaries within which they are exempted from having to apply the rules and regulations of the Union”.⁷² The Financial Free Zones created their own legal and regulatory framework, covering civil and commercial matters.⁷³ Consequently, the Federal Cabinet of the UAE approved Federal Decree No. 35 of 2004 allowing for the full establishment of the DIFC as a Financial Free Zone with a substantial degree of sovereignty from the Central Bank of the UAE. The DIFC offers financial institutions and other companies operating within it a number of important benefits and advantages in a highly attractive investment environment alongside other financial regulatory agencies located in major global jurisdictions; a wholly transparent operating environment, complying with global best practices.⁷⁴ DIFC is better regulated free zones in the UAE with at least ten independent regulatory and judicial authorities including at least twenty-seven different laws that govern operations within the financial center; relating to national beneficial ownership standard⁷⁵ and higher compliance threshold than those outside it.⁷⁶

Notwithstanding, DIFC is not exempt from laundering in relation to gold business⁷⁷ particularly involving large amounts of physical cash from the UAE to a foreign country.⁷⁸ DIFC regulations

⁷¹ See the twenty-eighth edition of the Global Financial Centres Index (GFCI 28) published on 25 September 2020. The Global Financial Centres Index, is available at <https://www.longfinance.net/programmes/financial-centre-futures/global-financial-centres-index/> accessed 30 Dec 2020.

⁷² See article No 121 of UAE Constitution.

⁷³ <http://www.dfsa.ae/Documents/Federal%20Law%20No%208%20of%202004.pdf>. Accessed 18 May 2012.

⁷⁴ http://www.uaefreezones.com/fz_Dubai_International_financial_Exchange.html. Accessed 18 May 2012.

⁷⁵ 4 “Circular 308: DCCA to Dubai Development Authority,” Dubai Development Authority, January 6, 2019, <https://dda.gov.ae/wp-content/uploads/2019/02/308-1.pdf>

⁷⁶ “Cabinet Resolution No. 38 of 2014 Concerning the Executive Regulation of Federal Law No.4 of 2002 Concerning Anti-Money Laundering and Combating Terrorism Financing,” Federal Reserve Cabinet United Arab Emirates, 2014, <https://www.adgm.com/-/media/project/adgm/operating-in-adgm/financial-crime-prevention-unit/aml-tab/05-eng-cabinet-resolution-no-38-2014-concerning-the-executive-regula.pdf>; “Federal Decree-law No. (20) of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Financing of Illegal Organisations,” United Arab Emirates, 2018, <https://www.mof.gov.ae/en/lawsAndPolitics/govLaws/Documents/EN%20Final%20AML%20Law-%20Reviewed%20MS%2021-11-2018.pdf>.

⁷⁷ The allegation includes that the Gold refiner “...Kaloti has done more than \$5.2bn (£4bn) in cash in one year”. Tim Robinson, Blowing whistle on dirty money 'wrecked my life' BBC Panorama

28 October 2019 available at <https://www.bbc.co.uk/news/business-50205956> accessed on 20 August 2020.

⁷⁸ Mondo Visione, “Dubai Financial Services Authority Fines La Tresorerie for Serious Failings”,

Mondo Visione - Worldwide Exchange Intelligence, 23/04/2020 available at <https://mondovisione.com/media-and-resources/news/dubai-financial-services-authority-fines-la-tresorerie-for-serious-failings/> accessed on 20 August 2020.

allow the registration of nominee directors⁷⁹ involving PEPs in grand corruption according to a World Bank study.⁸⁰ Transparency in registering companies with nominee directors rather than with the ultimate beneficial owners of a company vastly increases anonymity of the ownership of the firm. The DIFC regulation mandates disclosure of information relating to full name, residential address, address for service of notices (if different), date and place of birth, nationality, and details of passport or government issued ID⁸¹ in relation to Beneficial Ownership and/or Nominee Director Registry.

2.3: Abu Dhabi Global Market (ADGM)

Abu Dhabi Global Market (ADGM) was established by UAE Federal Decree with jurisdiction extending across the entire 114 hectares of Al Maryah Island. The ADGM has three independent authorities - the Registration Authority (RA), the Financial Services Regulatory Authority (FSRA) and ADGM Courts. Together they ensure that an excellent business-friendly environment operates in line with the best traditions of major financial centers worldwide. ADGM advertises itself as an ideal hub for businesses operating across all sectors to access the substantial growth opportunities emanating from Abu Dhabi, UAE and the wider Middle East, Africa and South Asia (MEASA) region.⁸² As at March 2020, the ADGM has a workforce on Al Maryah Island of 22,768. It has registered 2,385 corporate entities and has a total of US \$26bn in Assets under management (AUM). The financial services rendered by ADGM and DIFC include underwriting, mergers and acquisitions, venture capital/private equity, foreign exchange trading, trade finance, capital market and Islamic finance operations.⁸³ Report from the Commission to the European Parliament and the Council on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities note that: “Free-trade zones pose a risk as regards counterfeiting and that misuse of free-trade zones may be related with infringing intellectual property rights, and engaging in VAT fraud, corruption and money laundering”.⁸⁴

The EU is concerned about willful infringement on intellectual property rights, permission of VAT fraud, corruption and money laundering and ambiguous beneficial ownership regime associated with free-trade zones. Under the 5th Anti-Money Laundering Directive free port

⁷⁹ DIFC, “Ultimate Beneficial Owner Regulations,” Dubai International Financial Center, November 12, 2018, 4, https://www.difc.ae/files/7815/4200/4130/UBO_Regulations_2018.pdf

⁸⁰ See Gerard Ryle and Stefan Candea, “Faux Corporate Directors Stand in for Fraudsters, Despots and Spies,” International Consortium of Investigative Journalists, April 7, 2013, <https://www.icij.org/investigations/offshore/faux-corporate-directors-stand-fraudsters-despots-and-spies/>; DIFC *ibid.*, p.28.

⁸¹ DIFC, “Dubai International Financial Centre” Available at https://www.difc.ae/download_file/7101/11431/ accessed on 28 September 2020

⁸² ADGM, “About ADGM: An International Financial Centre born out of ambition “available at <https://www.adgm.com/about-adgm/overview> accessed on 24/02/2020.

⁸³ <http://www.dfsa.ae/Documents/Federal%20Decree%20No%2035%20of%202004.pdf>. Accessed on 24/02/2020.

⁸⁴ European Commission Brussels, 24.7.2019 COM(2019) 370 final Report From The Commission To The European Parliament And The Council on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities. pp. 5-6. https://ec.europa.eu/info/sites/info/files/supranational_risk_assessment_of_the_money_laundering_and_terrorist_financing_risks_affecting_the_union.pdf

operators and actors in the art market have become targeted entities and therefore, subject to more stringent customer due diligence requirements.⁸⁵

2.4: Problems with the UAE Anti-Bribery and Corruption and AML/CTF

2.4.1: UAE Compliance Shortcomings Concerning FATF Recommendations

The UAE entered the 21st century with loose financial and other business regulations which informs relatively weak 2002 anti-money laundering and counterterrorism finance law, which scholars have noted fell far short of the intergovernmental FATF recommendations. Companies and even shell companies could be easily used to purchase real estate with few links to identification of the ultimate beneficial owners under a much lower compliance threshold in most parts of the country apart from the relatively better guidance found within the DIFC.⁸⁶

The Penultimate Mutual Evaluation Report relating to the implementation of anti-money laundering and counter-terrorist financing standards in the United Arab Emirates undertaken by the (FATF) in 2008⁸⁷ revealed that, the UAE was deemed ‘Compliant’ for 5 and ‘Largely Compliant’ for 15 of the FATF 40 + 9 Recommendations. It was deemed ‘partially compliant’ or ‘non-compliant’ for another 4 of the 6 Core Recommendations. In spite of this, the UAE was not actually immediately placed on the FATF list of countries identified as having strategic AML deficiencies. Many of the serious shortcomings in the UAE’s Money Laundering regime indicated in the 2008 evaluation arguably still have a direct bearing on the continuous leakages of Nigeria’s financial resources into the UAE although recent assessment found that the UAE has demonstrated a high-level commitment to better understand and mitigate its ML/TF risk in a coordinated way and actually has an emerging understanding of its ML/TF risks.⁸⁸

Based on latest FATF assessment, UAE’s national AML/CFT policies and co-ordination remain worrisome⁸⁹ on account of inadequate definitions contained in the requisite Civil Code and the Commercial Code (See DNFBP–R.13–15 & 21). While dealers in precious metals and stones, CSPs and real estate dealers that operated in the UAE may be technically covered under the category of “other commercial and economic establishments”, the respective supervisors did not

⁸⁵ Ibid pp 5-6.

⁸⁶ FATF evaluators reported that “AML/CFT regulation or guidance had been issued for DNFbps operating in the commercial FTZs [outside the DIFC] at the time of the evaluation mission. See “Mutual Evaluation Report: Anti-Money Laundering and Combating the Financing of Terrorism—United Arab Emirates,” paragraph 514; Peter Kirechu And Jodi Vittori “The Illicit Allure Of Dubai’s Luxury Property Market”, in Page and Vittoriop.cit., p. 64.

⁸⁷ Mutual Evaluation Report Anti Money Laundering and Combating the Financing of Terrorism 9 April 2008 United Arab Emirates. The UAE previously went through a Mutual Evaluation in 2008, conducted according to the 2004 FATF Methodology and there was a 2014 follow-up report. In November 2014, the UAE exited the follow-up process because it had reached a satisfactory level of compliance with all Core and Key Recommendations.

⁸⁸ FATF 2020, “Mutual Evaluation Report: Anti-Money Laundering and Combating the Financing of Terrorism—United Arab Emirates”, available at <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-United-Arab-Emirates-2020.pdf> accessed on 19 August 2020. p. 35.

⁸⁹Kirechuop.cit., p. 50.

issue regulations with regard to reporting suspicious transactions.⁹⁰ Perhaps as a result of such deficiencies and shortcomings Kaloti Precious Metals—the largest gold refinery in Dubai—in 2012 reportedly purchased 44 tons of gold from Sudan and then sold it to a Swiss refiner, despite existing U.S. sanctions imposed on Sudanese gold.⁹¹ Much of the gold allegedly was abstracted from mines in North Darfur, which are controlled by Mohamed Hamdan Dagolo (“Hemeti”) an uneducated former leader of the Janjaweed militias that brought death and destruction to Darfur.⁹² This situation is alarming in a world where much of the gold in circulation is tainted and produced under conditions where many die in collapsing shafts or poisoned by the mercury and arsenic.⁹³ The UAE provides a market where dirty Gold is laundered into more compliant markets and tainted supplies of gold get to be given a clean bill of health.⁹⁴

2.4.2: General lack of attention to higher risk countries and exploitation of shell banks, foreign branches & subsidiaries

The UAE traditionally simply had no legal provisions to prevent domestic banks from having correspondent relationships, either directly or indirectly, with foreign shell banks. No obligations were placed on domestic securities companies as guidance on how to relate to jurisdictions that pose particular money laundering risks. Quite significantly, there were also no processes in place for alerting institutions that deal with those jurisdictions, which betray significant weaknesses in AML controls. There is much latitude for laundering proceeds of grand corruption from Africa such as unwholesome practices of Isabel dos Santos -the daughter of Angola’s former president alleged to have stolen more than \$2 billion from state oil company out of which over \$57 million was deposited in a shell company owned by a Dubai-based friend while she moved to the UAE according to a Maltese commercial register.⁹⁵

⁹⁰ Supervisor refers to the designated competent authorities or non-public bodies with responsibilities aimed at ensuring compliance by financial institutions (“financial supervisors” 64) and/or DNFBPs with requirements to combat money laundering and terrorist financing. Non-public bodies (which could include certain types of SRBs) should have the power to supervise and sanction financial institutions or DNFBPs in relation to the AML/CFT requirements. These non-public bodies should also be empowered by law to exercise the functions they perform and be supervised by a competent authority in relation to such functions. FATF (2012-2019), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France

⁹¹ “Gold and Diamond Markets,” OCCRP, June 12, 2018, <https://www.occrp.org/en/goldensands/gold-markets> accessed on 03 August 2020; Jodi Vittori, op.cit., p. 9.

⁹² It is interesting to note that Mohamed HamdanDagolo is now Sudan’s *de facto* leader since the April 2019 violent overthrow of former president Omar al-Bashir JérômeTubiana, “The Man Who Terrorized Darfur Is Leading Sudan’s Supposed Transition”. *Foreign Policy* May 14, 2019, <https://foreignpolicy.com/2019/05/14/man-who-terrorized-darfur-is-leading-sudans-supposed-transition-hemeti-rsf-janjaweed-bashir-khartoum/> accessed 03 August 2020.

⁹³ BBC News, “Sudan crisis: The ruthless mercenaries who run the country for gold”, BBC News, 20 July 2019, available at accessed on 03 August 2020.

⁹⁴ Page and Vittori Challenges and Recommendations opcit., p. 95.

⁹⁵ Sydney Freedberg et al., “How Africa’s Richest Woman Exploited Family Ties, Shell Companies and Inside Deals to Build an Empire,” International Consortium of Investigative Journalists, January 19, 2020, <https://www.icij.org/investigations/luanda-leaks/how-africasrichest-woman-exploited-family-ties-shell-companies-and-inside-deals-to-build-an-empire/>. 63 Michael Forsythe, Gilberto Neto, and Megan Specia, “Africa’s Richest Woman Set to Face Charges in Angola over Embezzlement,” New York Times, January 23, 2020, <https://www.nytimes.com/2020/01/23/world/africa/angola-santos-embezzlement.html>. Accessed on 02 August 2020. See Republica De Angola Tribunal Provincial De Luanda 2 Seccao Da Sala Do Civel E D

2.4.3: Regulation, supervision and monitoring of DNFBP

As at 2008, “Professionals” (Lawyers, accountants, auditors) were not subject to the AML law except for Ancillary Service Providers (ASPs) who are registered with the DFSA. Indeed, there were no regulations issued domestically for DNFBPs, except for accountants when acting as auditors. The DMCC free zone regulations⁹⁶ for instance were found to have limited AML/CFT application to its members. The Jebel Ali Free Zone in fact had no AML/CFT regulations for its company service providers. There were limited AML/CFT on-site supervision by the DFSA of the trust service and ancillary service providers. These deficiencies have contributed to the general reputation of the UAE in attracting a lot of dodgy businesses and corporations. The FATF by formally classifying DNFBPs as AML/CTF risks in 2012 and applying the same financial standards to financial and nonfinancial entities has mandated change on this important issue. The 2020 assessment takes the view that with respect to DNFBPs outside of the FFZs and some CFZs, controls are still not particularly comprehensive or they are not yet fully in place. At any rate, current controls still do not adequately address important issues such as foreign directors, shareholders or beneficial owners as elucidated further by FATF 2020 Report.⁹⁷

2.4.4: Deficiencies in Institutional Measures, Integrity and Training of Official Bodies

There has traditionally been some level of institutional deficiencies, which the UAE has put in some work to ameliorate. It is arguably scandalous that as at 2008 the Assessors could not conclude that in practice the FIU was the sole national centre for receipt analysis and dissemination of STRs. A major deficiency in the system is the inadequate dissemination of STRs to law enforcement agencies. Other serious shortcomings include non-publication of annual reports with statistics, trends, typologies and information on FIU activities.

Despite the above shortcomings the UAE has received some endorsement of its efforts in legal reform. As at the conclusion of the FATF 2020 assessment, the UAE was estimated to have all of the key structural elements required for an effective AML/CFT system, including political and institutional stability, governmental accountability, rule of law, and a professional and independent legal profession and judiciary.⁹⁸ The FATF 2020 assessment of the UAE concluded *inter alia*, that the country has significantly streamlined its AML/CFT measures under the new

Administrativo AOs 30 de Abril de 2020 A/o Escrivão de Direito Processo No. 33/20-A Sentença No 60 /20. <https://assets.documentcloud.org/documents/6981536/Sentenc-a-Isabel-Dos-Santos-E-Banco-BIC.pdf> 08 Jan 2021. It should be noted that Dos Santos has always maintained that her business success is a product of hard work and business acumen, not family connections and has even unsuccessfully brought proceedings to defend her commercial interests in Angola. See *Atlantic Ventures Sociedade De Desenvolvimento Gestao Portuaria, S.A. (Angola) Demandante v. 1. De Angola (Angola) 2. Presidente Da Republica De Angola (Angola) 3. Ministerio Dos Transportes (Angola) 4. Porto De Luanda E.P. (Angola) 5. Ministerio De Construcoes Obras Publicas (Angola)*. <https://www.documentcloud.org/documents/6998986-International-Arbitration-Port-of-Dande-Angola.html> 08 Jan 2021.

⁹⁶ DMCC Company Regulations Regulations No. (1/03) Issued in Dubai 2003 available at <https://www.dmcc.ae/application/files/1115/0891/4244/DMCCCompanyRegulationsFullVersion.pdf> accessed on 04 October 2020.

⁹⁷ FATF 2020, Para 37 p. 11.

⁹⁸ FATF 2020, para 61, p. 23.

the new Federal Decree Law No. 20 of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Financing of Illegal Organizations,⁹⁹ and its by-law/executive regulation Cabinet Decision No. 10 of 2019.

2.4.4.1: Cash Border Declaration & Disclosure

As at 2008, when the penultimate assessment took place, it was found that deficiencies in this area include inconsistent enforcement of the reporting system. There was little or no trusted system for the reporting of the transportation of bearer negotiable instruments, in both inbound and outbound directions. The system for the reporting of outbound cross border transportation of cash was virtually non-existent. Perhaps not surprisingly it was found that there were no sanctions or restraint powers for failure to disclose/declare or false disclosure/declaration of bearer negotiable instruments. FATF 2020 notes that while there are positive steps in relation to border cash disclosure particularly on technical compliance, it was not demonstrated how these measures are addressing more specific ML/TF risks. For example, the UAE's NRA Committee determined that the most effective policy response in mitigating the country's exposure to cash-based ML was to reduce the cash declaration threshold from AED 100,000 (EUR 25 000) to AED 60,000 (EUR15 000) in January 2019. This is seen as compliant with the minimum standards in the FATF Recommendations, but it is still unclear the extent to which the UAE has considered specific policy or operational actions that are targeted at the most pressing ML/TF risks such as professional third-party money laundering.

2.5: International Obligations and Cooperation

In furtherance of its international obligations to cooperate with other civilized states against transnational corruption and money laundering, the UAE has entered into many treaty agreements, conventions and soft law arrangements. It is important to begin with the fact of the UAE's status as a party to the United Nations Convention Against Corruption (UNCAC) in 2003. Other more IFF focused international obligations include its full participation in the United Nations Convention Against Transnational Organized Crime (UNTOC).¹⁰⁰ The UAE adopted the Kimberley Process Certification Scheme, which aims to ensure that diamonds from conflict zones are not marketed within the country.¹⁰¹ The UAE was indeed one of the first signatories on the UN resolution that led to development of the scheme in 2002. In the important area of tax evasion, mention must be made of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS).¹⁰²

⁹⁹ Available at <https://www.mof.gov.ae/en/lawsAndPolitics/govLaws/Documents/EN%20Final%20AML%20Law-%20Reviewed%20MS%2021-11-2018.pdf> accessed on 06 October 2020

¹⁰⁰ Signed in 2002 and ratified in 2007.

¹⁰¹ For documents and materials about the Kimberley Process see <https://www.kimberleyprocess.com/en/system/files/documents/KPCS%20Core%20Document.pdf> accessed on 04 October 2020.

¹⁰² Signed: 7 June 2017, Signatories: 94 Parties: 15 Effective: 1 July 2018. Available at <https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf> accessed 04 October 2020.

Although the Gulf Cooperation Council (GCC) is an FATF member, the UAE has only agreed to be a member of the Middle East and North Africa Financial Action Task Force (MENAFATF), a regional FATF body. Regardless of its level of participation, a member of the FATF or one of its regional bodies agrees to comply with the “40 Recommendations on Combating Money Laundering and Financing of Terrorism and proliferation issued in 2012 and by the 2013 FATF “Common Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems.”¹⁰³

Apart from terrorism, certain areas of criminality such as drug trafficking contributes to IFF in very direct ways and international cooperation has coalesced against these vices. Special mention must be made of three complementary treaties, which form the basis for international law enforcement and cooperation against narcotics and psychotropic drug trafficking networks. They include the Single Convention on Narcotic Drugs of 1954, amended by the 1972 protocol; the Convention on Psychotropic Substances of 1971; and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.¹⁰⁴

Despite the availability of robust bases for international cooperation, the FATF 2008 found that the UAE has actually provided mutual legal assistance (MLA) and extradition to a minimal extent considering its exposure to foreign predicate offences and associated proceeds of crime. The FATF 2020 finding¹⁰⁵ is quite damaging to the record of the UAE but is in accordance with findings during the informal interviews conducted with Nigerian investigators.

Notwithstanding that the FATF 2020 assessment notes tepid improvements in relation to international engagement with key partners on cross-border cash and gold and precious metals/stones movements including policy change by the UAE’s FIU, it is too early to conclude that genuine changes have occurred here.¹⁰⁶ It is expected the UAE will actually begin proper implementation of best practices on international money laundering investigations involving foreign bribery and corruption.¹⁰⁷ In view of the shortcomings highlighted in the latest assessment, it is indeed no wonder that the UAE has attracted the Kleptocracy class of Nigeria in such significant numbers and that Dubai and Abu Dhabi have become a favourite watering hole of the entire corrupt PEP class of Nigeria.

2.6: Anatomy of the UAE Anti-Bribery and Corruption Law

Like the UK, the UAE has ratified UNCAC and has domesticated it in the form of Federal Decree Law No. 8 of 2006 (2006 Law). The UAE is a party to the leading anticorruption

¹⁰³ FATF (2013-2019), Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems, updated October 2019, FATF, Paris, France, <http://www.fatf-gafi.org/publications/mutualevaluations/documents/fatf-methodology.html>.

¹⁰⁴ The UAE acceded to the first two in 1988 and the third in 1990. For the treatment of these laws see Greenaway op.cit., pp. 68-70.

¹⁰⁵ FATF 2020, Para 585 (b) p. 181.

¹⁰⁶ Ibid, Para 585 (e) p. 182.

¹⁰⁷ Greenaway op.cit., p. 77.

instrument for the Middle East in the form of the Anti-Corruption Convention (the Arab Convention) on the 21 December 2010, which includes 21 Arab Countries, including the UAE.¹⁰⁸

The development of the anticorruption regime in the UAE began notably with the enactment of Federal Law No. 3 of 1987, otherwise known as the UAE Federal Penal Code.¹⁰⁹ Articles 234-239 deal with the offence of bribery relating to Public office. Section 237 criminalizes bribery as a conduct in relation to members of the board of directors of any private company, institution, cooperative association or public benefit association, managers or employee. Articles 240 -245 deal with the abuse of office and misuse of authority. The Federal Decree Law No. 11 of 2008 (also known as the Federal Human Resources Law also combats bribery.¹¹⁰ The problem of bribery and its links to criminal activity is well documented in the UAE's national life and some of it does affect Nigeria and other African states.¹¹¹ In response to shortcomings, the UAE passed new AML/CTF laws in 2014¹¹² and 2018.¹¹³ The introduction of a requirement to maintain records that expose PEPs has led to beneficial corroboration for the unveiling of Isabel dos Santos, Dan Etete and the Gupta family who allegedly operated using shell companies headed by others like Salim Essa.¹¹⁴ The air of financial anomie which till today pervades financial operations in the FTZs received only 'rudimentary sampling' by the FATF during its 2008 evaluation of the UAE.¹¹⁵ There is mismatch in the level of enforcement by supervisory

¹⁰⁸ Arab Anti-Corruption Convention, 21 December 2010, LAS English translation online: available at <https://star.worldbank.org/sites/star/files/Arab-Convention-Against-Corruption.pdf> accessed 05 October 2020. See also our discussion below Chapter 6.1 and 6. 3 particularly Table 13.

¹⁰⁹ Unofficial translation, 14p. (DOC.NORMES). Penal Code (in Arabic), 1987-12-20, Federal National Council, United Arab Emirates, 220 pages. (DOC.NORMES) available at https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=59896&p_lang=en accessed on 05 Oct 2020.

¹¹⁰ Executive Rule for the Law of Federal Government Human Resources [http://www.sai.gov.ae/en/Laws/the%20Cabinet%20Resolution%20\(13\)%20of%202012.pdf](http://www.sai.gov.ae/en/Laws/the%20Cabinet%20Resolution%20(13)%20of%202012.pdf)

¹¹¹ Jodi Vittoriopcit., in Page and Vittoriopcit., p. 9.

¹¹² The 2014 regime, which brought in beneficial ownership requirements for the first time, also modified customer due diligence requirements. It required mandatory maintenance of records for all corporate entities that own more than 5 percent of a business. There was also a new requirement that all financial institutions must confirm the source of wealth for PEPs and their families. "Federal Law no. (7) of 2014 on Combating Terrorism Offences

¹¹³ Federal Decree-law No. (20) of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Financing of Illegal Organizations," United Arab Emirates, 2018, <https://www.mof.gov.ae/en/lawsAndPolitics/govLaws/Documents/EN%20Final%20AML%20Law-%20Reviewed%20MS%2021-11-2018.pdf>; and "The Updated UAE Federal Anti-Money Laundering Framework," Briefing Note, Clifford Chance, May 2015, 1, <https://financialmarketstoolkit.cliffordchance.com/content/dam/cliffordchance/briefings/2015/05/the-updated-uae-federalanti-money-laundering-framework.pdf>.

¹¹⁴ It is important to these discoveries were unveiled by parties outside of the UAE. Transparency International "The United Arab Emirates: A Key piece in the global money laundering puzzle" 11 May 2020 available at <https://www.transparency.org/en/news/the-united-arab-emirates-a-key-piece-in-the-global-money-laundering-puzzle> accessed on 20 August 2020; Kirechu, "Dubai's Vulnerability to Illicit Financial Flows" opcit., p. 55; See "Cabinet Resolution No. 38 of 2014, Concerning the Executive Regulation of Federal Law No.4 of 2002 Concerning Anti-Money Laundering and Combating Terrorism Financing," 2014, articles 4 and 5, <https://www.adgm.com/-/media/project/adgm/operating-in-adgm/financial-crime-prevention-unit/amltab/05-eng-cabinet-resolution-no-38-2014-concerning-the-executive-regula.pdf>.

¹¹⁵ Kumar op.cit., p. 28; Internationa Monetary Fund Lega Department, "United Arab Emirates: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism," Financial Action Task Force Evaluation Report, International Monetary Fund, June 19, 2008, <https://www.imf.org/external/pubs/ft/scr/2008/cr08305.pdf>, 136.

authorities inside FTZs as against those outside the zones.¹¹⁶ The 2020 FATF evaluation still flags significant difficulties relating to the laws and procedures in FTZs leading, for instance to the exploitation of FTZ “regulatory arbitrage.”¹¹⁷

2.6.1: UAE Anti-Bribery and Anti-Corruption Agencies

The major institutions within the UAE set up to combat corruption are as follows:

- The Abu Dhabi Accountability Authority (ADAA)¹¹⁸ was established by Abu Dhabi Law No. 14 of 2008, which applies to Abu Dhabi-based public sector bodies;
- The Dubai Economic Security Centre (DESC), established by Dubai Law No. 4 of 2016;¹¹⁹
- The State Audit Institution (SAI) which is for federal public sector bodies;
- The Central Bank of the UAE houses the Financial Intelligence Unit (FIU), which is now by design independent;
- the Police Forces of the UAE (jurisdiction restricted to each Emirates jurisdiction), under the Ministry of Interior;
- Dubai Financial Services Authority (DFSA) (in the Dubai International Financial Centre – the DIFC).
- Financial Services Regulatory Authority (FRSA) (of the ADGM).¹²⁰

The competences of major institutions highlighted above allow them to cooperate intuitively with other national bodies and even foreign partners and to develop domestic anticorruption strategies within their jurisdiction. For illustrative purposes we may expand on the domestic and foreign competences and organization of the ADGM’s FSRA. The FSRA is a signatory to 115 bilateral MoUs with both national and international bodies including international financial centres and regulators. This body aims at the efficient and responsive regulatory environment for its market participants and stakeholders both in the UAE and internationally. Its standard duties include supervision and independent review, handling of complaints and application processes and financial crimes prevention. In this particular role, the ADGM is charged with promoting sound practices in financial crime compliance, which include AML/CFT, and compliance with international tax reporting obligations including the Foreign Account Tax Compliance Act (FATCA)¹²¹ and the Common Reporting Standard (CRS).¹²² This organization is, thus, key to

¹¹⁶ FATF 2020, *op.cit.*, pp. 5, 11, 134.

¹¹⁷ Counter-Terrorist Financing Measures: United Arab Emirates Mutual Evaluation Report,” 5.

¹¹⁸ Information and materials about the Abu Dhabi Accountability Authority (ADAA) is available at <https://adaa.gov.ae/en/About-ADAA/Pages/default.aspx> accessed 05 October 2020.

¹¹⁹ Law No. (4) of 2016 Establishing the Dubai Economic Security Centre available at [https://dip.dubai.gov.ae/Legislation%20Reference/2016/Law%20No.%20\(4\)%20of%202016.pdf](https://dip.dubai.gov.ae/Legislation%20Reference/2016/Law%20No.%20(4)%20of%202016.pdf) accessed on 05 October 2020.

¹²⁰ Website available at <https://www.adgm.com/financial-services-regulatory-authority> accessed 21 July 2020.

¹²¹ U.S.C. sections created: 26 U.S.C. §§ 1471–1474, § 6038D; The Foreign Account Tax Compliance Act is a 2010 United States federal law that requires all non-U.S. foreign financial institutions to search their records for all customers with indications of a connection to the U.S.A. Such relevant data include records of birth or prior residency in the U.S. and to report the assets and identities of such persons to the U.S. Department of the Treasury.

understanding obligations to prevent many of the lapses that fall under the purview of this study. The pertinent laws, regulations and rules it relies on are the UAE Constitution, which established ADGM as a financial free zone; The Abu Dhabi Legislation set out by Abu Dhabi Law No. 4 of 2013;¹²³ Financial Services Regulations and Rules;¹²⁴ and the FSRA Guidance and Policy Statements¹²⁵ (which are based on English common law).

2.6.2: Anti-Bribery and Corruption Law and Abuse of Office Provisions

For Nigeria to be able to rely on cooperation under the UNCAC regime, for instance, the particular act of corruption must be an offence both under Nigerian law and under UAE law. Article 236 bis (1) of the Federal Penal Code deals with the offence of accepting a bribe as a public official.

There are similar provisions targeting bribery of a foreign public official and this is of great significance in reducing the space for bribe offences internationally and particularly in the developing world. Private sector bribery is unlawful under Article 236 b (2) of the Federal Penal Code. Public servants are defined under the Law as any persons in a federal or local position, whether legislative, executive, administrative or judicial, whether appointed or elected. (Article 5, Federal Penal Code)

2.6.3: Money Laundering Offences, Freezing Powers and Travel Bans

Money laundering offences are deemed to be unlawful under the new Federal Decree-Law No. 20 of 2018 (the AML Law).¹²⁶ It is generally assumed that this law was introduced in 2018, partly in anticipation of the then on-coming FATF evaluation¹²⁷ and as elaborated in Article 2(1) –of the law. The requirement of predicate offence reciprocity is dealt with under Art.1 of Federal Decree Law No. 20 of 2018, which defines ‘Predicate Offence’ as “[a]ny act constituting an offense or misdemeanor under the applicable laws of the State whether this act is committed inside or outside the State when such act is punishable in both countries.”

Freezing powers: By the very nature of anticorruption investigations and prosecutions it is often necessary to exercise powers to freeze accounts and various other financial assets in order to

¹²² OECD (2014), *Standard for Automatic Exchange of Financial Account Information in Tax Matters*, OECD Publishing, Paris, available at <https://doi.org/10.1787/9789264216525-en>. Accessed on 05 Oct 2020; The Common Reporting Standard (CRS) was developed in response to G20 requests and approved by the OECD Council on 15 July 2014. This instrument calls on jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. It sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions.

¹²³ Available at https://en.adgm.thomsonreuters.com/sites/default/files/net_file_store/ADGM1547_3270_VER021913.10.pdf accessed 05 Oct 2020.

¹²⁴ Available at <https://en.adgm.thomsonreuters.com/rulebook/commercial-legislation> accessed 05 Oct 2020

¹²⁵ Available at <https://en.adgm.thomsonreuters.com/rulebook/guidance-policies-manual-gpm-03-february-2020> accessed 05 Oct 2020.

¹²⁶ Available at <https://www.mof.gov.ae/en/lawsAndPolitics/govLaws/Documents/EN%20Final%20AML%20Law-%20Reviewed%20MS%2021-11-2018.pdf> accessed on

¹²⁷ Page and Vitorra p. 50.

prevent suspects from quickly dissipating assets or craftily ferrying them out of jurisdiction. Upon reasonable suspicion and competent requests, the Governor of the Central Bank of the UAE or his/her delegate can exercise formidable freezing powers for no more than (7) seven working day, which is renewable by the Public Prosecutor (Art. 5(1)). Other than in the case of CTF, financial institutions may not freeze suspicious funds without an order from the UAE Central Bank.

Travel bans: Very often suspects may develop a flight instinct once they are aware that investigations may commence, have commenced or they become fearful of the direction of the criminal proceedings they are facing. It is, therefore, usual in most advanced jurisdictions that legal travel bans may be placed on concerned person(s) once investigations commence. The Public Prosecutor has powers to issue a travel ban during an investigation (Art. 5(2)) with such bans being applied for in addition to demand for the arrest of suspects. Furthermore, Federal Law No. (6) of 1973 Concerning Immigration and Residence¹²⁸ and its Executive Regulations as amended by the Ministerial Decree No. (83) of 2002, provides an approximate list of categories of foreigners who are not allowed to enter or leave the territory of the UAE. Arrests and committal to the custody of requesting states have occurred in at least two celebrated investigations relating to Nigeria (i.e. against James Ibori in 2010 and Adoke in 2019.)¹²⁹ When a competent request is made to the UAE, the competent authority can then issue an arrest warrant to detain the individuals accused of committing criminal offences according to the articles (45-46) of the UAE Criminal Procedures Law. Once a person is accused of committing a crime, he or she is automatically banned from travelling while an arrest warrant automatically entails a travel ban but not vice versa.¹³⁰

2.6.4 Regime of International Cooperation in UAE AML/CTF Law

The UAE has a robust regime of international cooperation, which a country like Nigeria ought to be able to rely on to curtail IFF flows into the UAE. In accordance with FATF Recommendation 29, the UAE established its national FIU that serves as a center for the receipt and analysis of: (a) suspicious transaction reports; and (b) other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of

¹²⁸ Available at <https://www.refworld.org/pdfid/3fb9fab24.pdf> accessed on 15 October 2020.

¹²⁹ Ibori was arrested at the United Kingdom's request on suspicion of money-laundering and conspiracy to defraud. "Ibori arrested in money-laundering probe" *The Financial Times*, May 13, 2010. Ex-attorney general Mohammed Adoke was arrested in Dubai on Wednesday, 20th November 2019 because of his involvement in relation to the Nigeria Malabu Oil and Gas \$1.3 billion offshore oilfield sale made in 2011.

¹³⁰ Legal Advice Middle East, "UAE Travel Ban: What You Need to Know", Legal Blog available at <https://legaladviceme.com/legal-blog/132/uae-travel-ban-what-you-need-to-know> accessed 05/04/2020.

that analysis. The country's FIU is located in the UAE Central Bank,¹³¹ which is strategically located under the Ministry of Finance.¹³²

The Central Bank Annual Report of 2018 informs us that there were 7,404 STRs received from banks and other financial, commercial and economic entities. Of this number, 1,922 STRs were referred to law enforcement authorities in the UAE, for further investigation and 78 spontaneous information STRs were disseminated by the UAE itself to counterpart FIUs. An additional 1,516 reports of suspected fraud were recorded representing, an increase of 18.2% from 2017. It is instructive that 79% of all received STRs were filed by banks; similar to 2017 this shows the central importance of banking institutions as gatekeepers. The UAE worked on a modest number of 19 adhoc requests from counterpart FIUs. There were 270 search and/or freeze requests received and executed from domestic law enforcement and public prosecution authorities.¹³³ It is easy to see that this number is quite low given the dynamics of the UAE as a favorite destination for banking and short to medium term stays by millions of visitors from around the world including from money laundering hot spots. This raises the possible argument that domestic authorities may not be enthusiastically carrying out their gatekeeping functions and this has created the impression that the UAE is a soft touch for inward dodgy deposit transactions.

Although the statistics does show that the UAE is indeed receiving a formidable amount of internally generated STRs and fraud reports, the number of international requests for cooperation appears to be far from formidable. The UAE has obligations to execute requests received from any foreign entity and exchange information on crimes at the appropriate speed with all their foreign counterparts. The country also has to obtain and respond qualitatively to requested information, even if such requests change in nature, whether spontaneously or upon request (as required by Art. 53, UAE Cabinet Decision No. 10 of 2019 concerning the Implementing Regulation of the UAE/CTF Law).¹³⁴

International cooperation is dictated under the key provision of Art. 9 (preamble) of the Federal Decree-law No. 20 of 2018 which identifies the role of the FIU to include: Art. 9(2) – exchanging information with its counterparts in other countries, with respect to Suspicious Transactions Reports (STR) or any other information ...” The UAE is legally obliged to issue orders that identify, freeze, seize or confiscate any funds, proceeds and instrumentalities

¹³¹ Information and materials about the Central Bank of the UAE are available at <https://www.centralbank.ae/en> accessed 06 October 2020.

¹³² Information and materials about the UAE Federal Ministry of Finance are available at <https://www.mof.gov.ae/en/Pages/default.aspx> accessed 06 Oct 2020.

¹³³ Annual Report Central Bank of the UAE 2018 p. 74 Available at <https://www.centralbank.ae/sites/default/files/2019-05/Central%20Bank%20-%20Annual%20Report%20-%202018.pdf> accessed on 19/ February 2021 accessed on 19 Feb 2021. spontaneous information STRs are disseminated information and the results of its analysis to competent authorities when there are grounds to suspect money laundering, predicate offences or terrorist financing. This is as opposed to STRs disseminated upon request: FIUs should be able to respond to information requests from competent authorities pursuant to FATF Recommendation 31.

¹³⁴ Available at <https://www.centralbank.ae/en/node/1753> accessed 06 October 2020.

generated from the crime, used or intended to be used in the crime or take any other procedures applicable under the enforceable legislations in the UAE which compares favourably with its obligations under UNCAC, Chapter IV (*International Cooperation*).

With respect to a requesting state like Nigeria the competent authorities within the UAE are expected to exchange information related to the crime and respond promptly to requests. The UAE shall gather information from its relevant authorities and take the necessary action to ensure the confidentiality of the information it gathers so that it is used only for its intended purpose as stated in the request for information and in accordance with applicable legislations in the UAE” (Art. 18 (2) Federal Decree Law No. 20 of 2018). This obligation is complemented by the provisions in Art. 19(1)) of the UAE Federal Decree Law No. 20 of 2018, which state that priority shall be given to requests for international cooperation related to countering money laundering and combating terrorism financing in order to ensure prompt handling of requests.

2.6.5: Applicable Memorandum of Understandings (MOU)

These MOUs regulate important aspects of the cooperation relating to exchange of information on suspicious transactions and money laundering. Examples of these MOUs include that between the UAE and the following states:

- Saudi Arabia (Aug. 2019)¹³⁵
- India (Jan. 2018)
- Egypt (Jan. 2017)¹³⁶
- Kuwait (May 2016)¹³⁷
- Kazakhstan (Jul. 2012)
- Ukraine (Jul. 2012)¹³⁸

¹³⁵ Central Bank of UAE, UAE Financial Intelligence Unit Signs MoU With The Saudi Arabia Financial Intelligence Unit To Reinforce The Anti-Money Laundry Policies And The Combat Of Financial Terrorism available at <https://www.centralbank.ae/en/node/1788> accessed 24 -02 -2020.

¹³⁶ DFSA signs MoU with the Central Bank of Egypt 07 Aug 2019. The Dubai Financial Services Authority (DFSA) signed a memorandum of understanding (MoU) with the Central Bank of Egypt (CBE) to enhance the relationship and cooperation between both institutions, facilitate the performance of their respective supervisory tasks, and promote the safety and soundness of banks in their respective jurisdictions. This includes, but is not limited to, combatting financial crime, conducting consolidated supervision of common firms and discussing crisis management. [https://www.dfsa.ae/MediaRelease/News/DFSA-signs-MoU-with-the-Central-Bank-of-EgyptAbu Dhabi-WAM](https://www.dfsa.ae/MediaRelease/News/DFSA-signs-MoU-with-the-Central-Bank-of-EgyptAbu-Dhabi-WAM) “UAE Anti Money Laundering and Suspicious Cases Unit”, *Egypt Today*, 2017 Friday, 27 January <https://www.egypt-today.com/en/amp/83/uae-anti-money-laundering-and-suspicious-cases-unit-062726> accessed 24 -02 -2020.

¹³⁷ Emirates News Agency, “UAE’s Anti-Money Laundering and Suspicious Cases Unit and Kuwait’s Financial Intelligence Unit sign MoU”, Mon 23-05-2016 <http://wam.ae/en/details/1395295814356>

¹³⁸ Memorandum of Understanding between the State Financial Monitoring Service of Ukraine and the Anti-Money Laundering and Suspicious Cases Unit (AMLSCU) at the Central Bank of the United Arab Emirates in the Sphere combating the legalization (laundering) of the proceeds of crime - July 10, 2012. International Cooperation Memoranda of Understanding 21.09.2016 Available at http://www.sdfm.gov.ua/articles.php?cat_id=319&lang=en accessed 05/04/2020.

2.6.6 Progressive *Aspects of UAE AML Regime*

There are some aspects of the UAE AML regime, which are progressive and commendable. As at 2019, the UAE was the first GCC country in collaboration with the United Nations Office on Drugs and Crime (UNODC) to launch the ‘goAML’ platform. The goAML is designed specifically to meet the data collection, management, analytical, document management, workflow and statistical needs of an efficient FIU.¹³⁹ The potentials of such systems to improve on efficiencies of combating money laundering and IFF are quite promising and hopefully will progress further into synchronizing the current systems with block chain technology into AML operations between the concerned countries.

Aside from a common investment into innovative technology such as go AML, the three countries that make up the UAE are also parties to the UNTOC.¹⁴⁰ Especially for Nigeria and the UAE, this level of convergence of policies and compatibility in treaty obligations ought to contribute to the attainment of the UN Sustainable Development Goal (SDG) 16. Specifically SDG 16.4 demands that states “significantly reduce illegal financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime by 2030”.

2.6.7: **Administrative and other Penalties for UAE AML violations under the Federal Decree-law No. (20) of 2018**

The penalties for AML violations in the UAE under the Federal Decree-law No. (20) of 2018 vary. The erring body or corporation could receive a formal warning. Administrative penalties of no less than AED 50,000 (approx. USD 13,600) and no more than AED 5,000,000 (approx. USD 1.36m) may be levied for each violation. A violator may receive a ban from working in the sector related to the violation for the period determined by the supervisory authority. The criminal penalties for money laundering violations are dire and can attract imprisonment for a period not exceeding ten years and a fine of no less than AED 100,000 (approx. USD 27,000) but not exceeding AED 5,000,000 (approx. USD 1.36m), or either one of these two penalties. (Art. 22(1)). The penalties may increase to a fine of no less than AED 300,000 (approx. 81,700), and no more than AED 10,000,000 (approx. USD 2.7m) (Art. 22(2) if the violation occurs through the use of influence or powers granted by a profession or through professional activities; occurs through a non-profit organization; is performed through an organized crime group; or if the offender commits a repeat offence.

¹³⁹ This platform has contributed immensely to interconnectivity between FIUs. Interestingly, the goAML software (a product of UNODC's Information Technology Service (ITS), was created in cooperation with The Global Programme against Money-Laundering, Proceeds of Crime and the Financing of Terrorism (GPML)), which was developed as a part of an EC funded project in 2005 to provide an IT solution for the EFCC in Nigeria, including the Nigerian FIU. The UK is also part of the system, which has been rolled out among 49 FIUs. See UNODC, “GoAML” <https://www.unodc.org/unodc/en/money-laundering/GoAML.html> accessed 05/04/2020.

¹⁴⁰ The Convention was adopted by resolution A/RES/55/25 of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nations UN Doc. A/55/383; Available at https://treaties.un.org/doc/Treaties/2000/11/20001115%2011-11%20AM/Ch_XVIII_12p.pdf accessed on 05/04/2020 Nigeria ratified on 28 Jun 2001; United Arab Emirates ratified on 7 May 2007; the United Kingdom of Great Britain and Northern Ireland ratified on 9 Feb 2006.

2.6.8: Regulation, Supervision, Monitoring, Sanctions and Beneficial Ownership Requirements under the FATF Recommendations (R.17, 24, 25, R.33 and 34)

Certain imperatives are clear and must be pursued with diligence by the government of the UAE in accordance with its obligations under the FATF Recommendations.¹⁴¹ The UAE must seriously beef up certain aspects of its Financial Anti-Money Laundering regime. Areas of improvement include the regulation, supervision, monitoring and sanctioning of official and commercial actors in its domestic and commercial free zones alike. Lawyers, auditors, accountants and allied professionals must be added to and clearly brought within the legislative framework of AML law. In the case of non-profit organizations (SR.VIII), it is recommended that the DIFC (DIFC law 11/2005), the ADGM and other relevant authorities should review, their Trust Law especially regarding the creation of charitable trusts. Similarly, it is necessary to highlight the need for changes in the area of extraditions (R. 39, 37, SR.V & R.32).

2.6.8.1: Shell banks (R.18) and Non Profits

It is particularly important for the UAE to bring its entire banking sector in line with the obligation to avoid both direct and indirect dealings with foreign shell banks through correspondent relationships. Banks must understand the true nature of investments and savings from all legal persons and Non-profit Organizations in line with FATF R.33. There appears to be the need for introduction of additional procedures to ensure that company registration processes include a declaration of beneficial ownership. This is particularly useful in the case of the Free Zone Areas, where it is important to introduce provisions that impose obligations on registered agents to acquire and maintain information on beneficial ownership of the companies for which they act.

2.6.8.2: The system of organisation of suspicious transaction reports

The system of organisation of STRs and other reporting required by FATF (R.13, 14, 19, 25, & SR.IV) are arguably in need of further changes and improvement. Those that may be caught under the STR rules need more clarification on the precise basis (objective or subjective suspicion, or merely unusual activity) upon which transactions are required to be reported to the FIU. There is some ambiguity over the point whether reporting obligations are linked to criminal activity or to those offenses that are defined as predicates for money laundering? There is the need for introduction of a clear statutory obligation for all institutions to report and create more specific sanctions for failure to report suspicious transactions or to generate over disclosures especially where these are done in pursuit of terrorist financing.

2.7: Examination of the Ethical Code of Conduct for Banks in UAE: the Dubai Financial Services Authority's Code of Values and Ethics

The DFSA has implemented a Code of Values and Ethics (“the Code”) for Members of the Board, Committees and Tribunals (“Members”) as a set of minimum standards applicable to

¹⁴¹ FATF (2012-2019), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, available at www.fatf-gafi.org/recommendations.html accessed on 07 October 2020.

individuals appointed to serve in any of these important roles.¹⁴² The DFSA has established, and strives to maintain, an environment that fosters the DIFC guiding principles of integrity, transparency and efficiency. It has done so by seeking to embed high standards in a clear, succinct and flexible regulatory framework based on international best practices relevant to a modern international financial centre.¹⁴³

2.7.1: UAE Bank Federation: Code of Conduct (Voluntary Code)

The UAE Banks Federation is the professional body representing banks operating in the UAE and which seeks to promote growth and to raise standards in the banking and financial services industry. The UAE Banks Federation developed a ‘Code of Conduct’ for the banking industry¹⁴⁴ to promote fair competition between banks and to strengthen and develop the UAE Banking Industry¹⁴⁵ and helps to promote trust and best practice across the industry as a whole.¹⁴⁶ The responsibility to comply with the Code rests with each individual bank and there is a strong moral obligation that every member of the UAE Banking Federation, is expected to consistently comply with Code.¹⁴⁷ Chairman of UAE Banks Federation Al Ghurair noted that any breaches in the code will attract remedial action from any member bank that is not meeting the standards set out in the Code.”¹⁴⁸ With the code, the community of banks is determined to render the best quality of service to their customers in the UAE.”¹⁴⁹ According to the Code of Conduct, all banks must conduct their business with integrity, high ethical standards, due skill, care and diligence.¹⁵⁰ In this context, a bank must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems and financial resources.¹⁵¹ Furthermore, banks are expected to have and effectively employ the resources, policies and procedures, processes, systems and control checks, including compliance checks and staff training that are necessary for compliance with and understanding of the 2013 Code and the bank’s own code of conduct/ethics¹⁵². According to the Code of Conduct, a bank must take reasonable care to ensure their use of technology and systems protects clients and the banking system as a whole and does not subject its clients nor the system to unnecessary loss.¹⁵³ The standards expected from all UAE Banks Federation members cut across a wide spectrum of attributes and disciplines and covers management and control, relationships between banks, conduct in the market, conduct with customers, relations with the banks’ regulator and development of UAE national staff.¹⁵⁴

¹⁴² DFSA, Code of Values & Ethics | 2020/2021 available at https://www.dfsa.ae/getattachment/About-Us/Our-Structure/Board-of-Directors/DFSA-Code-Ethics-Board_11-May-2020.pdf.aspx accessed on 15 Oct 2020.

¹⁴³ DFSA “Who we are” available at <https://www.dfsa.ae/en/About-Us/Our-Purpose/Who-We-Are> accessed 15 October 2020.

¹⁴⁴ UAE Banks Federation, “Code of Conduct”, available at <https://www.uaebf.ae/en/who/coc.html> accessed on 07 October 2020; Emirates247, “UAE ‘Code of Conduct’ for banks” op.cit.

¹⁴⁵ UAE Banks Federation, “Code of Conduct”, available at <https://www.uaebf.ae/en/who/coc.html>.

¹⁴⁶ UAE Bank Federation, “Customer Charter”, available at <https://www.uaebf.ae/en/customers/customer-customer.html>

¹⁴⁷ UAE Bank Federation, “Code of Conduct”, available at <https://www.uaebf.ae/en/who/coc.html>

¹⁴⁸ Basitop.cit.

¹⁴⁹ Statement of the First Gulf Bank chief executive at the introduction of the Code of Conduct in 2013 cited in Basitop.cit.

¹⁵⁰ UAE Bank Federation, “Code of Conduct”, op.cit.

¹⁵¹ Ibid

¹⁵² Ibid

¹⁵³ Ibid

¹⁵⁴ Basitop.cit.

The Code covers disclosure and principles of conduct, such as the obligation of banks to disclose terms and conditions, fees and charges, and other information about banking services¹⁵⁵ including meeting up with international standards.¹⁵⁶ An independent monitoring agency was created in 2015 for the implementation of this Code of Conduct by member banks.¹⁵⁷ In many instances, industry codes are viewed with disdain as largely a public relations exercise.¹⁵⁸ The criticism that voluntary codes of conduct are ineffective can be dispelled by showing some uniqueness or valuable features such as infusion of human rights ethics in such codes.¹⁵⁹ The code is no more than "... a voluntary guideline and its objective is to increase awareness among banks, banking industry professionals and customers on what to expect from banks."¹⁶⁰ Notwithstanding, there is perception that the Code it is largely a window dressing exercise calculated to aid the beneficial interests of the UAE economy and particularly its banking sector.¹⁶¹ A mostly inward-looking system of commitments by UAE banks would continue to jeopardise exposure to both internal and external financial crime¹⁶², enhance transparency reform¹⁶³ and strengthen deterrence against IFF and give teeth to Federal authorities that combat criminal activity.¹⁶⁴

2.7.2: Evaluation of the Regulatory Environment, Professional Rules and Ethics of Real Estate Property business in the UAE

Activities related to real property (including massive development projects involving construction of multi-storey buildings and compounds for residential, commercial, industrial, or multiple purposes) are generally required to operate under license in the Emirates.¹⁶⁵ Three legal

¹⁵⁵ UAE Bank Federation, "Customer Charter",

¹⁵⁶ UAE Bank Federation, "UAE Banks adopt the Code of Conduct" 12-November-2013, available at <https://www.uaebf.ae/en/news/news-latest/2013/latest-2013-6.html>

¹⁵⁷ AMEinfo Staff, "UAE Banks Federation appoints independent agency", available at <https://www.ameinfo.com/industry/finance/uae-banks-federation-appoints-independent-agency> accessed on 27 April 2020. May 25, 2015

¹⁵⁸ Sethi, S. and Emelianova, O. "A failed strategy of using voluntary codes of conduct by the global mining industry", Vol. 6 *Corporate Governance*, No. 3, (2006), pp. 226-227; See also Krista Bondy Dirk Matten Jeremy Moon, *The Adoption of Voluntary Codes of Conduct in MNCs: A Three-Country Comparative Study* 24 November 2004.

¹⁵⁹ Campbell, T. (2006). A Human Rights Approach to Developing Voluntary Codes of Conduct for Multinational Corporations. *Business Ethics Quarterly*, 16(2), 255-269.

¹⁶⁰ Babu Das Augustine, "UAE banks take first step towards self-regulation: UAE Banks Federation adopts Code of Conduct", *Gulf News* November 12, 2013 available at <https://gulfnews.com/business/banking/uae-banks-take-first-step-towards-self-regulation-1.1254446> accessed on 27 April 2020.

¹⁶¹ Emirates247, op.cit.

¹⁶² Borys Y. Dackiw, Mazen Boustany, Laya Aoun-Hani, "Strengthening Compliance Against Financial Crime: Recent Developments and Enforcement Trends in the UAE" 15 March 2019 available at <https://www.bakermckenzie.com/en/insight/publications/2019/03/strengthening-compliance-uae> accessed on 16 Oct 2020.

¹⁶³ Baker McKenzie, Habib Al Mulla, "Strengthening compliance against financial crime: recent developments and enforcement trends in the UAE", available at <https://www.tamimi.com/law-update-articles/learning-to-adapt-the-uaes-new-anti-money-laundering-law-and-matching-fatf-standards/> accessed 27 April 2020.

¹⁶⁴ Ibtissem Lassoued, "Learning to Adapt: The UAE's New Anti-Money Laundering Law and Matching FATF Standards", available at <https://www.tamimi.com/law-update-articles/learning-to-adapt-the-uaes-new-anti-money-laundering-law-and-matching-fatf-standards/> accessed 27 April 2020.

¹⁶⁵ The pertinent laws in the Dubai Emirate include No. (3) of 2003 Establishing the Executive Council of the Emirate of Dubai; Law No. (8) of 2007 Concerning Escrow Accounts for Real Property Development in the Emirate of Dubai; Law No. (16) of

instruments are crucial to understanding the demands on practitioners in the real estate industry in the Dubai Emirate. The first is a law, the second is the Rules of Professional Ethics for Estate Brokers in the Dubai Emirate, and the third is the Dubai Land Department's (DLD).¹⁶⁶

2.7.2.1: Key Duties under the UAE Bylaw (85) of 2006 Regulating the Real Estate Brokers

Real Estate Agents are governed by By-Law No (85) of 2006 regarding the Regulation of Real Estate Brokers Register in the Emirate of Dubai (the "Brokers Law").¹⁶⁷ The By-Law was issued pursuant to Article (6) paragraph 6 and Article (28) of Law No (7) of 2006 concerning Real Property Registration in the Emirate of Dubai (the "Dubai Property Law").¹⁶⁸ The key duties that apply to estate brokers and which should prevent much of the damaging practices are to be found in Chapter 3 of the Real Estate Brokers Law which contains pertinent provisions.¹⁶⁹ Penalties for the loss of a real estate broker's status as defined by Chapter 6 of the Real Estate Brokers Law may include (a) issuance of a notice (b) Warning (c) suspension of activities for up to six months (d) Blacklisting. It is suggested that where there is evidence of any criminal liability the normal sanctions of the criminal laws of the UAE will also apply.

2.7.2.2: Rules of Professional Ethics Prepared by the Permanent Committee of the Real Estate Brokerage

The Professional Ethic Rules for the Emirate of Dubai Real Estate Brokers was issued to supplement the Brokers' By-Law Article 14 of which stipulates that "all registered brokers must comply with professional ethics according to the Code of Ethics prepared by the Committee in consultation with Brokers with expertise and opinion". It is important to highlight that this set of professional ethics rules exist only in Dubai where it has legal effects and there currently is no equivalent in the other emirates. Some practitioners, however, consider it morally binding in all the Emirates.¹⁷⁰ However, the fact that the other emirates do not have an equivalent clearly establishes a lacuna, which really ought to be quickly filled by the other Emirates developing

2007 Establishing the Real Estate Regulatory Agency; Law No. (13) of 2008 Regulating the Interim Real Property Register in the Emirate of Dubai and its amendments; Law No. (13) of 2012 Establishing the Dubai Real Estate Institute; Law No. (7) of 2013 Concerning the Land Department; Law No. (8) of 2018 Concerning Management of the Government of Dubai Human Resources; Executive Council Resolution No. (6) of 2010 Approving the Implementing Bylaw of Law No. (13) of 2008 Regulating the Interim Real Property Register in the Emirate of Dubai; and Executive Council Resolution No. (37) of 2015 Regulating the Real Property Valuation Profession in the Emirate of Dubai.

¹⁶⁶ This was issued through its Real Estate Regulatory Agency (RERA). Ashfaq Ahmed, "10 Principles of Business Ethics Real Estate Companies in Dubai", *Gulf News* 04 Nov 2019 Available at <https://gulfnews.com/business/10-principles-of-business-ethics-for-real-estate-companies-in-dubai-1.67598558>

¹⁶⁷As issued by the Dubai Land Department. This law aims at the preservation and organisation of the Real Estate Brokers Register, which includes the regularised procedural and subjective rules for real estate brokerage activity. Government of Dubai Land Dept, *Dubai Real Estate Legislation* (Marketing and Corporate Communications Department), available at <https://dubailand.gov.ae/media/zrrd4qw4/en-legislation.pdf> accessed on 17 Oct 2020. See further Tony Maalouli, "Duties of Real Estate Brokers in the United Arab Emirates" HG.org Legal Resources (2020) available at <https://www.hg.org/legal-articles/duties-of-real-estate-brokers-in-the-united-arab-emirates-46947> accessed on 24 April 2020.

¹⁶⁸ORYX World Real Estate, Real Estate: Legislation in Dubai, available at http://oryxworldrealestate.com/wp-content/themes/crowd_oryx/images/MediaLibraryPDFS/realestate-legislation-in-dubai.pdf accessed 19 Feb 2020.

¹⁶⁹ <https://www.hg.org/legal-articles/duties-of-real-estate-brokers-in-the-united-arab-emirates-46947>

¹⁷⁰ George J Lloyd, Code of Ethics, available <https://georgejlloyd.com/code-of-ethics> accessed on 24 April 2020.

their own code of ethics. The Rules contains admonitions and standards which the brokers have undertaken to observe.¹⁷¹

2.7.2.3: *Guiding Principles of Real Estate Business Ethics*

Real Estate Regulatory Agency (RERA)¹⁷² is responsible for regulating Dubai Land Department (DLD).¹⁷³ Very recently in 2019, the DLD issued a circular through the RERA containing 10 Guiding Principles of Real Estate Business Ethics. Its provisions are designed to enhance and improve the sector's overall reliability and efficiency. The 10 real estate business ethics principles aim to ensure that development in real estate is based on trust, transparency and professionalism.¹⁷⁴

2.8: **Scope for Improvement**

If the question is whether there are sophisticated national laws and professional codes and rules of ethics for the guidance of UAE professionals in the FI and DNFBP sectors the answer will have to be in the affirmative. 10 Guiding Principles of Real Estate Business Ethics all provide decent standards for the guidance of professionals in the banking and real estate sectors. If, however, the question is whether these laws are diligently and appropriately applied and are actually effective in resolving the mischief they were drafted to prevent, the answer will certainly be in the negative.

Request by a foreign states like Nigeria for asset tracing or law enforcement cooperation such as to apprehend and prosecute international criminals or freeze their finances the requesting authorities is most likely to be confronted with "...a byzantine system in which such requests often do not reach the relevant officials. And even when they do, some requests go unanswered".¹⁷⁵ It is indeed no wonder that the FATF 2020 report noted that the UAE is not discharging its duties as desirable as "feedback from delegations highlighted significant issues in the provision of formal cooperation, including limited responses to requests or extended delays

¹⁷¹Sudhakar R Rao, "UAE Real Estate Brokers: Code of Ethics & Honesty- A Welcome Step" available at <https://www.sudhakar Rao.com/uae-real-estate-brokers-code-of-ethics-honesty-a-welcome-step/> accessed 26 April 2020; Staff Report, "New ethical standards issued to Dubai realtors" *Gulf News* 04 November 2019;

¹⁷² The law establishing the Real Estate Regulatory Agency is Law No. (4) of 2019 Concerning the Real Estate Regulatory Agency. This law is available at [https://dlp.dubai.gov.ae/Legislation%20Reference/2019/Law%20No.%20\(4\)%20of%202019%20Concerning%20the%20Real%20Estate%20Regulatory%20Agency.pdf](https://dlp.dubai.gov.ae/Legislation%20Reference/2019/Law%20No.%20(4)%20of%202019%20Concerning%20the%20Real%20Estate%20Regulatory%20Agency.pdf) accessed on 26 April 2020.

¹⁷³Dubai Land Department (DLD) was founded in May 1960 to establish a real estate sector up to national, regional and international levels. Information and Materials at the DLD are available at <https://dubailand.gov.ae/en/#/>.

¹⁷⁴ See Ashfaq Ahmed, "10 principles of business ethics for real estate companies in Dubai Real estate agencies not allowed to do certain things: Dubai Land Department warns" *Gulf News* November 04, 2019 available at <https://gulfnews.com/business/10-principles-of-business-ethics-for-real-estate-companies-in-dubai-1.67598558> accessed on 17 Oct 2020; ZAWYA.com, "DLD announces 10 principles of business ethics in real estate" Press Release Real Estate 04 November, 2019 available at https://www.zawya.com/uae/en/press-releases/story/DLD_announces_10_principles_of_business_ethics_in_real_estate-ZAWYA20191104070944/ accessed on 17 October 2020.

¹⁷⁵Vittoriopcit.. p. 3.

in execution with little or no feedback”.¹⁷⁶ Investigators from the Nigerian ICPC and EFCC are of the opinion that they have not been receiving the appropriate levels of cooperation in actual investigations. The UAE may be maintaining a deliberate distinction between investigations and cooperation relating to terrorism finance and those that relate to organized crime and IFF related or money laundering offences.¹⁷⁷ The FATF’s 2020 evaluation report indicate that between 2013 and 2018, only fifty individuals were prosecuted for money laundering with thirty-three convicted. Of those prosecutions, only seventeen took place in Dubai which essentially is the *fons et origo* of the UAE’s reputational problems in money laundering and terrorism finance.¹⁷⁸

The FATF 2020 report specifically noted “the low number of [money laundering] prosecutions in Dubai is particularly concerning, considering its recognized risk profile”¹⁷⁹ and other high risk predicate crimes (such as drug trafficking), professional third-party [money laundering], and those involving higher risk sectors (such as money value transfer services or dealers in precious metals or stones).¹⁸⁰ It has been correctly stated that with no national watchdog operating in the FTZs, opportunities for regulatory arbitrage abound.¹⁸¹ It is necessary to reiterate for emphasis that the UAE also appears to have selectively focused on combating those who finance terrorism.¹⁸² Furthermore, the perceived lack of cooperation with victim states, investigation teams and anticorruption activists around the world has led some writers to make stark recommendations which include withdrawal of International companies like Accenture, Cisco, Mastercard, PepsiCo, and Siemens sponsoring Expo 2020.¹⁸³ Nigerian investigators and journalists believe that PEPs are largely but not completely shielded from investigations in the UAE. The handling of some of the Nigerian PEPs involved in the OPL 245 case by the UAE authorities betray some of the limits of the UAE’s cooperation in such cases. It took the EFCC’s collaboration with Interpol to secure the arrest of Mohammed Adoke, the indicted former Attorney General of Nigeria and Minister of Justice on account of controversial sale of OPL 245 after his arrival in Dubai for medical evaluation in October 2019..¹⁸⁴

Activist groups such as Corner House and Global Witness in the UK, Human Environmental Development Agenda (HEDA) Resource Centre in Nigeria and Re:Common in Italy, have

¹⁷⁶ FATF, Anti-money laundering and counter-terrorist financing measures in the United Arab Emirates 2020, op.cit. paragraph 44.

¹⁷⁷ Vittoriop.cit., p. 3.

¹⁷⁸ Dubai’s financial institutions are in fact highly suitable for all stages of the money laundering process See .Karen Greenaway, How Emirati Law Enforcement Allows Kleptocrats And Organized Crime To Thrive In Page and Vittoriop.cit., p. 89. Teichmann, F.M. and Falker, M.-C. "Money laundering through banks in Dubai", Vol. 28 *Journal of Financial Regulation and Compliance*, No. 3, (2020), pp. 337-352.

¹⁷⁹ “Anti-Money Laundering and Counter-Terrorist Financing Measures: United Arab Emirates Mutual Evaluation Report,” 4.

¹⁸⁰ Ibid P. 8

¹⁸¹ Kumar opcit., p. 28

¹⁸² Page and Vittori, opcit., p. 98.

¹⁸³ Ibid. p. 101.

¹⁸⁴ IyobosaUwugiaren and Alex Enumah, EFCC Collaborates with Interpol to Extradite Adoke, This Day, 19, November 2019 available at accessed on 06 August 2020.

raised cogent queries as to why the UAE authorities failed to sequester Dan Etete's jet when it was in Dubai, despite official requests from Nigeria that it be seized.¹⁸⁵ The order in favour of the Federal Republic of Nigeria authorised Canadian Bailiffs to carry out a seizure before judgment of (a) Bombardier 6000 Jet (type BD-700-1A10) with Tail number M-MYNA and serial number 9471, registered in the Defendant's name with the Isle of Man Aircraft Registry (the "Jet"; and (b) The Jets log book (the "Log Book")).¹⁸⁶ This leaves some experts with the view that when it comes to the UAE informal cooperation is often better than formal cooperation.¹⁸⁷

SECTION 3

2. 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

¹⁸⁵ Lionel Faull & Margot Gibbs, "Nigeria seizes luxury private jet linked to OPL245 money laundering in Montreal", Finance Uncovered June 6, 2020 Available at <https://www.financeuncovered.org/investigations/nigeria-seizes-luxury-private-jet-linked-to-opl245-money-laundering-in-montreal/> accessed on 06 Aug 2020.

¹⁸⁶ Federal Republic of *Nigeria v. Tibit Limited GiuseppinaRussa* and Aeroports de Montreal Transport Canada Nav Canada. Available at https://www.financeuncovered.org/wp-content/uploads/2020/06/Jugement-30-mai_1.pdf accessed 06 August 2020.

¹⁸⁷ Ibid p.3; FATF, Anti-money laundering and counter-terrorist financing measures in the United Arab Emirates 2020, op.cit. para 45.

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.

3.0: 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) 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".¹⁸⁸ 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.¹⁸⁹

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)

¹⁸⁸ Nicholas Hildyard, *Corrupt but legal: Institutionalised corruption and development finance* (Counter Balance secretariat, 2016) available at accessed on <http://www.thecornerhouse.org.uk/sites/thecornerhouse.org.uk/files/Corrupt-but-Legal.pdf> 11 Jan 2021.

¹⁸⁹ 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.

Resolution on Promotion of International Cooperation to Combat Illicit Financial Flows in Order to Foster Sustainable Developments.¹⁹⁰

3.1: 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.¹⁹¹ These include entering into a fair number of Mutual Legal Assistance in Criminal Matters treaties with the UK, the UAE and many other countries (See table 13).¹⁹² 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.¹⁹³ 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.¹⁹⁴

3.2: 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

¹⁹⁰ Resolution A/RES/72/207 of 21 October 2019.

¹⁹¹ 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 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.

¹⁹² 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.

¹⁹³ 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.

¹⁹⁴ Waziri – Azi, *ibid* p. 9.

(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.¹⁹⁵ 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 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.¹⁹⁶

3.3: 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

¹⁹⁵ See Abbah *op.cit.* p. 52.

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

Intelligence Agency Establishment Act (NFIA) and the Proceeds of Crime Bill.¹⁹⁷ 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.¹⁹⁸ The general regime of international 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).¹⁹⁹ 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.

3.4: 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

¹⁹⁷ NASS, Bill Tracker: Proceeds of Crime Management Agency (Establishment) Bill, 2019 available at <https://www.nassnig.org/documents/bill/10450> accessed 20 June 2020.

¹⁹⁸ 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.

¹⁹⁹ See footnote 95, 455 and our discussion in 5.2: The Malabu Case – OPL 245 Oil Deal.

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.”²⁰⁰

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.²⁰¹

Nigeria needs to pay more attention to organisations like African Tax Administration Forum (ATAF).²⁰² 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.²⁰³

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.²⁰⁴ The requirement of Country-by-Country reporting (CbCr), would affect consolidated Multinational groups with a substantial turnover threshold to make such submissions.

²⁰⁰ 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/>

²⁰¹ Miyandazi and Martin Roncerayop.cit., p. 23

²⁰² 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.

²⁰³ 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/2018/02/16/26wr?highlight=ATAF>.

²⁰⁴ 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/2018/02/16/26wr?highlight=ATAF>.

3.5: 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.²⁰⁵ 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.²⁰⁶ Even with the onset of EITI and its Nigerian equivalent – NEITI, it is altogether 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”²⁰⁷ 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.

3.5.1: 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.²⁰⁸ 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.²⁰⁹ 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).²¹⁰

²⁰⁵ 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.

²⁰⁶Shaxson (2012) opcit., p. 221.

²⁰⁷ p. 222

²⁰⁸ 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.

²⁰⁹Chineme 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.

²¹⁰

3.6: 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 UK's 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 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.

3.7: 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).²¹¹ 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.²¹² Some experts have persuasively recommended that the BVN system should be extended to the Federal Inland Revenue Service (FIRS) and even insurance companies.²¹³ Indeed, modern electronic resources are an imperative in dealing with IFF in the 21st Century.

3.8: 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

²¹¹ 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.

²¹² Esoimeme, Ehi, "A Critical Analysis of the Bank Verification Number Project introduced by the Central Bank of Nigeria" *SSRN Electronic Journal*, 2015.

²¹³ 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.

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.

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

3.9.1: 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 UAE²¹⁴ 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.

3.9.2: 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.²¹⁵

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

²¹⁴ Tax Justice Network, Financial Secrecy 2020 Index Narrative Report on the United Kingdom <https://fsi.taxjustice.net/PDF/UnitedKingdom.pdf> accessed 21 July 2020.

²¹⁵ 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>.

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 and it will boost tax compliance and the tax receipts accruable particularly to countries in the developing world.²¹⁶

3.9.3: 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.²¹⁷

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

3.9.4: 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.²¹⁸ For

²¹⁶ Ibid.

²¹⁷ For a long list of enablers in other criminal enterprises involved in IFF see Todorov, Shentov and Stoianovop.cit., p. 9.

²¹⁸ 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

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 arrested, investigated or prosecuted, it is important that their intermediaries, handlers and enablers should face similar treatment.²¹⁹

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.²²⁰

3.10: 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.²²¹

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

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.

²¹⁹ 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.

²²⁰ 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

²²¹ 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.

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.²²²

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 conduct due diligence on applicants or effectively evaluate whether and to what extent applicants are politically exposed persons (PEPs).²²³

3. 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.²²⁴ 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.²²⁵ 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.²²⁶ 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.

²²² 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.

²²³ 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-capitalflows-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-immigrationdeal-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.

²²⁴ 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.

²²⁵ Badré *ibid*.

²²⁶ Raymond W. Baker, "Curtailing 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.

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.²²⁷ This view has fortunately caught the attention of the Nigerian government 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’.²²⁸ 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.²²⁹ 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).²³⁰

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.

3.11.1: 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

²²⁷IliasBantekas, “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.

²²⁸Comrae 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.

²²⁹CBI 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.

²³⁰ 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.

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.²³¹

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.

3.11.2: 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.²³² 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

²³¹ 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 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.

²³² 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.

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 DIFC as well as the UAE's free zone areas.²³³ 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.²³⁴

3.11.3: 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.

²³³ 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.

²³⁴ Kumar opcit., p. 29.

3.11.4: 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.
- 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.

3.11.5: 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.²³⁵ 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.

3.11.6: 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

²³⁵EmmanNnadozie argues that Africa needs leadership and Nigeria must lead the campaign. See The Presidency Presidential Advisory Committee Against Corruption, p.56

CBN, the CBUAE²³⁶ 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.

3.12: 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?²³⁷ 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".²³⁸ In essence why would any country change what appears to be a winning formula?

3.12.1: 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.

²³⁶<https://www.centralbank.ae/en>

²³⁷ Anthony McAuley, "World's Largest Companies Favour Dubai as Location for Regional Headquarters," National (UAE), March 21, 2017, <https://www.thenational.ae/business/world-s-largest-companies-favour-dubai-as-location-for-regional-headquarters-1.81332>.

²³⁸ Page and Vittoriop.cit. p. 96.

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.

3.13: 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 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.²³⁹

3.14: 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, Alamiyeseigha funds and parts of the OPL 245 scandal funds are examples of these.²⁴⁰ 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

²³⁹ 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.

²⁴⁰ 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.

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 Nigeria from both countries despite diplomatic action and the efforts of platforms such as the World Bank's 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.²⁴¹ 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.²⁴² 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 Alamiyeseigha 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

²⁴¹ 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.

²⁴² 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.

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.

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

3.15.1: 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.²⁴³ This body for instance, is critical to the tracking of IFF transactions through its risk management functions and mechanisms in commodity exchange operations.²⁴⁴ 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.

3.15.2: 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

²⁴³ 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.

²⁴⁴ The Presidency Presidential Advisory Committee Against Corruption op.cit., p. 62.

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.²⁴⁵

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.

3.15.3: 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.

3.15.4: 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.²⁴⁶

3.15.5: 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.²⁴⁷ Indeed, Nigeria can go further and based

²⁴⁵ 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

²⁴⁶ The Presidency, (Presidential Advisory Committee Against Corruption), op,cit., p. 31.

²⁴⁷ See above Chapter 5.4.1.

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.²⁴⁸

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.

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.

3.15.6: 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.²⁴⁹ Unfortunately, the sort of IFF that MNCs engage in all over Africa and the developing world very often relies on complicity of custom agents.²⁵⁰ 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

²⁴⁸G. Oduntan, "International Moral Legalism and the Competence over Prosecution of Corruption Crimes", *African Journal of Law and Criminology*, (2011) pp. 89-91.

²⁴⁹ 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.

²⁵⁰Boiko 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.

(including curbing of illicit trade through the misuse of Bitcoins and other cryptocurrencies).²⁵¹ 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.²⁵²

3.15.8: General Institutional and Infrastructural Capacity Development.

The perceived capacity deficit in Nigeria identified in the Mbeki Report must be rectified.²⁵³

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.²⁵⁴

3.15.9: 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

²⁵¹Yotaro 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.

²⁵² 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 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.

²⁵³ UNECA op.cit., pp. 36-37, 43-44, 47.

²⁵⁴ The Presidency Presidential Advisory Committee Against Corruption op.cit., p. 59.

hamper such growth.²⁵⁵ 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 Nigeria.²⁵⁶ This increasingly popular but difficult suggestion is based on the understanding that corruption is endemic to the system of global political capitalism.²⁵⁷ This explains why London, New York, Paris and other major Western capitals tend to condone inward IFF flows.²⁵⁸

SECTION 4

3. 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

²⁵⁵ 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.

²⁵⁶ 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.

²⁵⁷ Branko Milanovic, *Capitalism Alone: The Future of the System that Rules the World* (Harvard: Harvard University Press 2019) pp. 2-4, 34, 91.

²⁵⁸ 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>.

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".²⁵⁹ 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.

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.²⁶⁰ Over the few

²⁵⁹ Page and Vittori, *Challenges and Recommendations op.cit.*, p. 99.

²⁶⁰ Oduntan, *op.cit* (2009) p. 92.

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".²⁶¹

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 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

²⁶¹ 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.

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.²⁶²

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, 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

²⁶² Nick Hildyard p. 7.

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 2.²⁶³ 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.²⁶⁴

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.

²⁶³ See above 2.0: Conceptualization of the Scope of IFF.

²⁶⁴ See above p. 17. Supra note 16. See also Oduntan (2009) pp. 118 -120.