

# International Normative Framework

## TRACKING BENEFICIAL OWNERSHIP AND THE PROCEEDS OF CORRUPTION: A NIGERIAN CASE STUDY

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## SECTION 1. OVERALL PROJECT SUMMARY

- 1.1 The project explores whether a better understanding of the identification and tracking of the beneficial owner (the natural person who ultimately has ownership or control of funds or assets) can help the authorities in their attempts to recover the proceeds of corruption and which may have a discouraging effect on the willingness of individuals to accept bribes.
- 1.2 Each part of the project will provide information from a different perspective that, when pulled together, creates a picture of how ownership has been hidden and how complex, or even simple, that disguise has been. We aim to provide an evidence base for the Nigerian authorities (accessible to other researchers and policy makers) that might assist their efforts to prevent the movement, as well as to recover, the proceeds of corruption: funds that otherwise would be available to invest in national development programmes.
- 1.3 The project team comprises experienced academics and practitioners who are able to draw from a range of disciplines and practice backgrounds from both the UK and Nigeria.
- 1.4 This report concerns the first stage of the project – Work Package 1 (WP1) - and:
  - 1.4.1 Sets out the normative framework to identify and briefly analyse the legal, regulatory, and institutional structures contributing to the identification of hidden beneficial owners (BO). This WP is intended to assist the evaluation of the anti-corruption framework and the recovery of corruption derived proceeds within Nigeria against the rules and requirements mandated by the international community.
  - 1.4.2 Provides an overview of the activities of the research to date in Section 2.
  - 1.4.3 Concludes, in Section 6, with problems, issues and questions to be followed through in the field research. Together they will clarify to what extent the observable compliance with accepted international standards in Nigeria contributes to a better understanding of the identification and tracking of the BO. This information will help the authorities in their attempts to recover the proceeds of corruption.

## SECTION 2. REPORT STRUCTURE

- 2.1 The overall project explores whether a better understanding of the identification and tracking of the beneficial owner (the natural person who ultimately has ownership or control of funds or assets) can help the authorities in their attempts to recover the proceeds of corruption and which may have a discouraging effect on the willingness of individuals to accept bribes.
- 2.2 This report concerns the first stage of the project and sets out the normative framework to identify and briefly analyse the legal, regulatory and institutional structures contributing to the identification of hidden BO. This work is intended to assist the evaluation of the anti-corruption framework and the recovery of corruption derived proceeds within Nigeria against the rules and requirements mandated by the international community.
- 2.3 The structure of the report on the work is as follows:
- 2.3.1 A review of literature and sources – Section 7 – which is used to inform the narrative of Sections 3 to 6.
- 2.3.2 Addressing the main contextual components necessary to inform the work of the project aims as outlined in 2.1 by:
- In Section 3*, defining what type of corruption – grand corruption – the project will be studying; why in the context of the project grand corruption and the question of beneficial ownership is the focus of the project; and the role of Nigeria as the country for study in terms of practice.
- In Section 4*, taking an overview of moving the proceeds of grand corruption off-shore; the definitions and roles of the BO; and the international framework.
- In Section 5*, looking (in terms of grand corruption, offshoring the proceeds and BOs) at the legal and institutional framework within Nigeria and setting out the relevant laws, regulatory framework and government agencies.
- In Section 6*, reviewing the material in Sections 3 to 5 to synthesise issues and problems in order to develop initial questions and lines of enquiry to be pursued by the project.

## SECTION 3. CORRUPTION, NIGERIA AND RECOVERY: THE CONTEXT FOR KEY PROJECT ISSUES

The Section defines what type of corruption – grand corruption – the project will be studying; why in the context of the project grand corruption and the question of beneficial ownership is the focus; and the role of Nigeria as the country for study in terms of practice.

### 3.1 What Type of Corruption Is the Project Concerned With?

The project addresses proceeds of corruption at the national and regional government level, often characterised in the literature as **grand corruption**. There are several separate acts/offences which may amount to corruption such as bribery, embezzlement and abuse of power. The United Nations Convention Against Corruption (UNCAC) contains no definition of either corruption or grand corruption. It should be noted that not all acts amounting to corruption may be considered offences. There is no internationally agreed standard or definition, and grand corruption is not a legal concept. Several governmental reports and international bodies seek to combat corruption / grand corruption, providing working definitions.

**BOX 1: TI Definition of Grand Corruption**

*Grand Corruption occurs when a public official or other person:*

- deprives a particular social group or substantial part of the population of a State of a fundamental right; or*
- causes the State or any of its people a loss greater than 100 times the annual minimum subsistence income of its people;*

*as a result of bribery, embezzlement or other corruption offence.*

One of the leading non-governmental advocacy and research groups, Transparency International, distinguishes between political corruption (abuse of power and political manipulation), petty corruption (everyday corruption), and grand corruption with the latter explained as ‘the abuse of high-level power that benefits the few at the expense of the many, and causes serious and widespread harm to individuals and society’ (see Box 1).

While this definition remains loose and subject to much interpretation,

it clearly requires an act of bribery, embezzlement or other corruption offence on behalf of a public official (or other person) which impacts on the population of any State. The definition attempts to set boundaries by including reference to harms caused by the offences: the deprivation of a fundamental right; or with reference to the loss of a multiple of the minimum subsistence income of the people.

Another anti-corruption non-governmental advocacy and research group, U4, suggests that corruption may be defined as the abuse of entrusted power for private gain. U4 also distinguishes between petty / administrative corruption and grand corruption, (see Box 2).

**BOX 2: U4 Definition of Grand Corruption**

*Grand corruption typically takes place at the public sphere's top tiers, and within the highest levels in private business. It includes actors that make rules, policies and executive decisions. It often involves large sums of money. Grand corruption is also often called political corruption, highlighting the negative influence of money in political processes, campaigns and political parties.*

The key features here seem to be the level at which the corruption takes place, within the top tiers of the public sphere or the highest levels in private business. It links grand corruption to executive decision-making and to decision-making which affects rules and policies. The definition also suggests that large sums of money are often (though not always) involved. Finally, the definition then suggests that grand corruption is the same as political

corruption, though it would seem logical that there could be political and petty corruption, and links this to the negative influence of money which doesn't seem to capture corruption by abuse of process / function.

The World Bank / UNODC (2011) refers to grand (or large-scale) corruption (p.2) and includes the following glossary (p.266) definition: see Box 3. This definition contains no reference to harm but relies upon a lists of underlying offences which must be committed by high-level public officials or senior officers of state-owned entities.

**BOX 3: World Bank/UNODC Definition of Grand Corruption**

*A broad range of offenses, including bribery, embezzlement, trading in influence, misappropriation of state funds, illicit enrichment, and abuse of office committed by high-level public officials or senior officers of state-owned entities.*

The FATF (2011) acknowledges there is no “internationally recognised legal definition of corruption” but says “it is most commonly functionally defined as the use of public office for private gain” (p.6). The FATF distinguishes between petty, or systemic, corruption (relating to the (non-)performance of specific acts) and grand corruption “in which those at the political, decision-making levels of government use their office to enrich themselves, their families, and their associates”. (p.7)

FATF limits corruption as the use of public office for private gain. It does not specify particular offences or harm. The grand corruption definition captures only those at political, decision-making levels of government rather than any other decision-makers or those involved in private enterprise. Grand corruption involves those persons using their office to enrich themselves, their families, and their associates. There is no measure of harm done to others. The distinction from other forms of corruption seems to be that it must take place within the political arena.

The UK National Crime Agency (NCA) / International Anti-Corruption Centre states that grand corruption increases poverty and inequality, undermines good business and threatens the integrity of financial markets. It can include acts of corruption by politically exposed persons that may involve vast quantities of assets and that threaten political stability and sustainable development. It indicates that acts falling into this category might include:

- Bribery of public officials
- Embezzlement
- Abuse of function
- The laundering of the proceeds of crime

The NCA is concerned with the harm done by grand corruption but does not seek to provide a clear definition of the actions causing the harm. It is interesting that the NCA suggests that grand corruption can include acts of corruption by politically exposed persons (PEPs). The acts may involve vast quantities of assets. What seems certain is that the acts must threaten political stability and sustainable development. The NCA suggests some acts which may constitute *grand corruption* activities but leaves the list (and even the perpetrators) open and focuses more on the harm.

While there is no simple, straightforward or agreed definition of grand corruption, a synthesis of the literature would suggest the following relevant components - the corruption offence / activity; the person carrying on the activity; the scale of the activity; the harm caused; the benefit gained – and a working definition of grand corruption for the purposes of the project; see Box 4.

**BOX 4: Project Definition of Grand Corruption**

*serious or large-scale perversion of a person's integrity in the performance of duty or work by bribery etc., where 'grand' refers to either the scale or the seriousness of the activity, which may include the harm it inflicts.*

### 3.2 Why Study Grand Corruption?

The impact of corruption is not only on societies in which it occurs, but also on the systems of other societies where the proceeds are concealed. Corrupt officials often use different methods to conceal the true origin, ownership, movement and purpose of their corrupt enrichment. One noticeable issue with grand corruption is the opportunity (and incentive) to move significant amounts of illicit gains offshore.

The recovery of the proceeds of corruption and their return to the country of origin is a fundamental principle of UNCAC (2003). However, despite intensified international attention in recent years with global initiatives to counter corruption and money laundering, the recovery of the corruption proceeds remains difficult. This is due to the various channels through which corrupt transactions occur, including the concealing of the proceeds, and also of the identity of the real owner of the proceeds.

Thus a core component of recovering the proceeds is the need to identify the BO.

Consequently, one of the global approaches to the prevention and control of corruption is to focus on determining the whereabouts of the illicit BOs. Such approach is advocated in order to increase transparency and thereby reduce opportunities for the legitimate and financial infrastructure to be abused to disguise and move the proceeds of corruption.

It is in this direction that United Kingdom (UK) Department for International Development (DFID) conceived a project to examine the issue of laundering the proceeds of corruption from the perspective of practical interventions for recovery of assets. This project is consistent with the United Nations Convention against Corruption, the Financial Action Task Force (FATF) on Money Laundering among others, as well as the DFID's mission and mandate.

### 3.3 Corruption and Nigeria

As set out in the 2008 Mutual Evaluation Report for Nigeria, it is the “economic “power house” of West Africa contributing nearly 50% of the regional GDP” (MER, 2009:9), and it is “the 8th largest producer of petroleum in the world and the 6th largest exporter. Nigeria has one of the world’s highest natural gas and petroleum reserves and is a founding member of the Organization of Petroleum Exporting Countries (OPEC). Within the West African region, Nigeria is an active Member and contributes about 80% of the Economic Community of West African States’ (ECOWAS) Fund. In 2002, Nigeria’s per capita income was about one-quarter of its mid-1970s high, and lower than at independence. This situation led to massive growth of the “informal sector”, which represents close to 75% of the total cash-based economy today” (MER, 2008:11).

Systemic corruption is one of the greatest obstacles to the stability and overall development of Nigeria and a constraint to growth (DFID Nigeria Operational Plan, 2014). The 2016 National Bureau of Statistics Survey published by UNODC states in its report *Corruption in Nigeria, Bribery Public Experience and Response* that bribery is ‘clearly a significant issue in the lives of Nigerians’ (p.13), which implies more than this general statement. It means a hidden parallel income and cost structure in which on each level one tries to remain at least even, but preferably having a net gain. At the low end of society there is no net profit: people at the bottom only pay. But already at this humble level there may be corruption profits, and the higher one goes, the higher the net profits, with the connected criminal activity of laundering.

In Nigeria, corruption generates the highest proceeds for money laundering (GIABA, 2010). Close to \$400 billion were estimated to have been stolen from public accounts in Nigeria

between 1960 and 1999<sup>1</sup>; about \$182 billion was lost through illicit financial flows from Nigeria between 2005 and 2014<sup>2</sup> (Chatham House, 2017). Against a broader horizon, Global Financial Integrity (GFI, 2008) put the volume of illicit financial flows from less developed countries between 2002 and 2006 at \$859 billion to \$1.06 trillion yearly, which concerns more than corruption proceeds, e.g., it might include capital flight.<sup>3</sup> The African Union (AU, 2015) High Level Panel on Illicit Financial Flows (IFF) suggested that Africa lost in excess of \$1 trillion through IFF in 50 years. Nigeria has the highest amount in almost all estimates of IFF from Africa.

Nigeria remains in the bottom quartile of all countries covered in the Transparency International Corruptions Perceptions Index (CPI). Within the context of global action against corruption and money laundering, Nigeria is a strategic country because of the size of the economy, its regional influence in the ECOWAS, as well as the interaction of its financial sector with the global financial system.

As Nigeria has been described as ‘one of the world’s most complex corruption environments’ (Page, 2018: 2), it was necessary to draw some boundaries around the scope of our research. In our grant application we identified ‘grand’ corruption, i.e. as cases where “*mas-sive personal wealth is acquired from States by senior officials using corrupt means*” (Society for Advanced Legal Studies 2000:11). Table 1 notes the level of deprivations exercised at the highest levels of government.<sup>4</sup>

Nevertheless, a senior official in this context and for the purposes of this project can also be taken to be anyone whose control over decisions is sufficient to create opportunities for significant bribes or embezzlement where, as a rule of thumb, ‘significant’ may be any illicit acquisition over at least ten times an annual salary or over £100,000 annually and on a systematic basis; see Box 5 for an example.

**BOX 5. Example for Nigerian Grand Corruption**

A Director of the Civic Registration Directorate who in 2000-3 received over £5m in bribes (through company bank accounts in London) from companies hoping to supply Nigeria’s identity cards (Nicholls *et al.* 2017, paras. 11.49-50).

This is an important issue since it is not necessarily only the seniority of the public official that is a key variable but also the accessibility to authority to make decisions with significant opportunity for illicit income. Thus, someone like the defendant noted in the case SOCA v Agidi [2011] EWHC 175 (QB), illustrated that, judging by his meagre legitimate earnings, he was not at the most senior level of government.

<sup>1</sup> These statistics come from UN Office on Drugs and Crime (2007), ‘Anti-Corruption Climate Change: it started in Nigeria’, speech by Antonio Maria Costa at 6th National Seminar on Economic Crime, Abuja, 13 November 2007.

<sup>2</sup> Chatham House suggests that ‘this figure represents some 15 per cent of the total value of Nigeria’s trade over the period 2005–14, at \$1.21 trillion. In 2014 alone illicit financial flows from Nigeria were estimated at \$12.5 billion, representing 9 per cent of the total trade value of \$139.6 billion in that year. See Global Financial Integrity (2017), Illicit Financial Flows to and from Developing Countries: 2005–2014, April 2017, [http://www.gfintegrity.org/wp-content/uploads/2017/05/GFI-IFF-Report-2017\\_final.pdf](http://www.gfintegrity.org/wp-content/uploads/2017/05/GFI-IFF-Report-2017_final.pdf), pp. 30–34 (accessed 4 May 2017)’.

<sup>3</sup> As will be discussed ‘illicit flows’ has a broad definition including activities that are beyond the scope of this project.

<sup>4</sup> This has emerged from Work Package 3 as our initial empirical narrative on grand corruption.



TABLE 1: Nigeria Grand Corruption – Some examples from the press		
Babangida	1985 – 1993	<p>Exorbitant luxurious villa. Far beyond his legal earning. Corruption became state policy <a href="http://9jabook.com/profiles/blogs/ibb-the-mess-iah-see-ibbs">http://9jabook.com/profiles/blogs/ibb-the-mess-iah-see-ibbs</a> Hotel <a href="https://www.modernghana.com/news/262857/1/ibb-shuns-mourning-of-dead-wife-plans-to-commissio.html">https://www.modernghana.com/news/262857/1/ibb-shuns-mourning-of-dead-wife-plans-to-commissio.html</a> 2-9-2010</p> <p>Giwa (journalist) murder &amp; 2 sons dipped from companies in London into the state coffer; Squandering of the Gulf War windfall: \$ 12.2 of the 12.4 billion dissipated to life style and “wasteful projects”; Son Mohammed owns oil blocks and property in London + 24% hidden ownership in Globacom, telecom company.</p>
Abacha	1993-1998	<p>He and family and cronies embezzled \$654 billion. He had the money withdrawn from the NCB and transferred it to overseas accounts in his name and in the names of 14 others. Further accounts frozen in Luxembourg, Germany and Belgium. The 10 accepting banks were: Credit Suisse, Goldman Sachs, Schroder and Banque Leu, all in Zurich, and, in Geneva, the UBS, Banque Nationale de Paris, Societe Generale, Credit Agricole, Banque Pictet and Banque du Gothard. Monetary instruments: cash, cheques and bonds. <a href="https://www.nytimes.com/2000/01/26/news/swiss-freeze-a-dictators-giant-cache.html">https://www.nytimes.com/2000/01/26/news/swiss-freeze-a-dictators-giant-cache.html</a></p> <p>Concerning the USA, Kleptocracy Asset Recovery Initiative by a team of dedicated prosecutors in the Criminal Division’s Asset Forfeiture and Money Laundering Section, mentions \$622 million in bank accounts. Figures continue to change. The Nigerian Special Investigation Panel came to an added total of cash \$1,131 million; £413 million; travellers cheques \$50 million and £3.5 million. In the end the SIP tallied \$ 1,491 million and £ 416 million. In 36 cases (\$386 million) direct transfer from Central Bank to offshore companies in names of family or friends. (Enrico Monfrini, 2008. In M. Pieth (ed.) <i>Recovering stolen assets</i>; Bern, Peter Lang). There are no mentions of the use of sophisticated money laundering techniques, which he hardly needed as a dictator. <a href="https://books.google.nl/books?id=Twdt0VF-ML8C&amp;pg=PA44&amp;redir_esc=y#v=onepage&amp;q&amp;f=true">https://books.google.nl/books?id=Twdt0VF-ML8C&amp;pg=PA44&amp;redir_esc=y#v=onepage&amp;q&amp;f=true</a>  <a href="https://www.fbi.gov/contact-us/field-offices/washingtondc/news/press-releases/u.s.-forfeits-more-than-480-million-stolen-by-former-nigerian-dictator-in-largest-forfeiture-ever-obtained-through-a-kleptocracy-action">https://www.fbi.gov/contact-us/field-offices/washingtondc/news/press-releases/u.s.-forfeits-more-than-480-million-stolen-by-former-nigerian-dictator-in-largest-forfeiture-ever-obtained-through-a-kleptocracy-action</a></p> <p>Stretching a time span of 1993 (Abacha) till 2004 (Obasanjo) Halliburton with subsidiaries and corporations in France, Italy and Japan paid \$ 180 million bribes to secure a construction contract for a liquefied natural gas plant in Bonny Island in the Niger Delta. They settled for \$1.65 billion to the USA authorities. Although several foreigners involved in the matter have been prosecuted in their home countries, Nigerian authorities have failed to prosecute the country’s citizens involved in the matter.  <a href="https://www.premiumtimesng.com/foreign/world-foreign/238376-halliburton-bribed-nigerian-officials-agrees-pay-29-2-million-bribing-angolan-officials.html">https://www.premiumtimesng.com/foreign/world-foreign/238376-halliburton-bribed-nigerian-officials-agrees-pay-29-2-million-bribing-angolan-officials.html</a></p> <p>The bribes were paid in instalments: \$60 million in 1995, \$37.5 million in 1999, \$51 million in 2001 and \$23 million in 2002.  <a href="https://www.thenewsnigeria.com.ng/2015/07/halliburton-bribery-chronology-of-a-nigerian-scandal/">https://www.thenewsnigeria.com.ng/2015/07/halliburton-bribery-chronology-of-a-nigerian-scandal/</a></p> <p>In one brazen episode (2002) in the Nigerian capital, Abuja, Tesler directed the drop-off of a travel bag stuffed with \$1 million in \$100 bills in the foyer of a luxury hotel. The cash was destined for the ruling party and the NNPC. Wife and daughters functioned as BOs. <a href="https://www.icij.org/investigations/swiss-leaks/files-open-new-window-182-million-halliburton-bribery-scandal-nigeria">https://www.icij.org/investigations/swiss-leaks/files-open-new-window-182-million-halliburton-bribery-scandal-nigeria</a>. No further mention of the way of criminal money management or BOs.</p>
Obasanjo	1999-2007	<p>Tried to bribe Parliament to go for a third term, not allowed by the constitution, which should have been changed.</p> <p>Two members “confessed that the administration of Ex-President Olusegun Obasanjo offered a N50m bribe each to members of NASS to secure third term in office for the former President”. . . for the first time in my life, I saw huge sum of money in brief cases or boxes. N 50 million per person.  <a href="https://www.vanguardngr.com/2011/05/the-third-term-bribery-allegation/">https://www.vanguardngr.com/2011/05/the-third-term-bribery-allegation/</a></p>

TABLE 1: Nigeria Grand Corruption – Some examples from the press		
		Also allegation of receiving funds for his Presidential Library. Shamefully expensive, but no corruption mentioned.
Goodluck Jonathan	2010-2015	<p>Scandal around the National Nigerian Petroleum Corporation: was \$ 20 billion missing, misappropriated or spent without having been properly accounted? Basically, the NNPC proved to be an accountancy labyrinth. Or what Reuter deduced from NCB president Sanussi’s report to president and Senate: it “offers one of the most comprehensive studies of waste, mismanagement and what Sanusi called “leakages” of cash in Nigeria’s oil industry.” Sanusi was dismissed nevertheless. Three mechanisms of embezzlement: a. No-bid contracts: contracts awarded non-competitively to two companies that did not supply services but sub-contracted the work; b. a kerosene subsidy that doesn’t help the people it is meant to. Subsidy to retailers of kerosene to make it affordable to the poor. But retailers pocket the money and still sell at higher prices (4x) to the customers. Damage \$ 100 million per month; c. and a series of complex, opaque “swap deals” that might be short-changing the state: Nigerian crude oil bartered against refined oil products (Nigeria has insufficient or no refineries). No oversight of the deals that are non-transparent: is the barter fair and have the refined products been delivered? The opaqueness of NNPC is such that misallocation or miss-invoicing is a real temptation. <a href="https://www.reuters.com/article/us-nigeria-election-banker-specialreport/special-report-anatomy-of-nigerias-20-billion-leak-idUSKBNOLA0X820150206">https://www.reuters.com/article/us-nigeria-election-banker-specialreport/special-report-anatomy-of-nigerias-20-billion-leak-idUSKBNOLA0X820150206</a></p> <p>About the non-transparency of NNPC: <a href="https://aguntasolo.com/2015/04/29/this-yam-this-goat-this-country-part-1/">https://aguntasolo.com/2015/04/29/this-yam-this-goat-this-country-part-1/</a></p> <p>Other scandals reported: \$2.2 billion illegally withdrawn from Excess Crude Oil Accounts, of which \$1 billion supposedly approved by President Jonathan to fund his re-election campaign without the knowledge of the National Economic Council made up of state governors and the president and vice president; NEITI discovered \$11.6 billion was missing from Nigeria LNG Company dividend payments; 60 million barrels of oil valued at \$13.7 billion was stolen under the watch of the national oil company, Nigerian National Petroleum Corporation, from 2009 to 2012; NEITI indicates losses due to crude swaps due to subsidy and domestic crude allocation from 2005 to 2012 indicated that \$11.63 billion had been paid to the NNPC but that “there is no evidence of the money being remitted to the federation account”. (no referencing footnotes) Diversion of 60% of \$1 billion foreign loans obtained from the Chinese by the Ministry of Finance; Massive scam in weapons and defense procurements, and misuse of 3 trillion naira defense budget since 2011 under the guise of fighting Boko Haram; Diversion of \$2.2 million vaccination medicine fund, by Ministry of Health; Diversion of Ebola fight fund up to 1.9 bn naira; NIMASA fraud under investigation by EFCC, inclusive of accusation of funding PDP and buying a small piece of land for 13 billion naira; Ministry of Finance led by Okonjo Iweala hurried payment of \$2.2 million to health ministry contractor in disputed invoices; NDDC scams and multifarious scams including 2.7 billion naira worth of contracts that does not confirm to the Public Procurement Act; Police Service Commission Scam investigated by ICPC that revealed misappropriation of over 150 million naira related to election related trainings. ICPC made refund recommendations, but many analysts indicated prosecution was more appropriate.</p>
Buhari	2015-2019	<p>No real scandals under his rule. Two suspect high officials who acted reprehensibly in the awarding of contracts in north-east Nigeria have been dismissed. Much cash was found which is now under investigation by EFCC. Unclear case. The embezzlement of \$5.6 million by the head of the task force on pension reforms is a legacy from the regime of President Jonathan. The suspect, now under Interpol arrest warrant, fled the country but returned, under the protection of security or to strike a deal is not certain yet. He is still wanted. <a href="https://naijanewsandevents.com/alhaji-abdulrasheed-maina-ever-elusive-fugitive/">https://naijanewsandevents.com/alhaji-abdulrasheed-maina-ever-elusive-fugitive/</a> <a href="https://punchng.com/n2bn-fraud-maina-on-the-run/">https://punchng.com/n2bn-fraud-maina-on-the-run/</a></p> <p>Buhari also accused Obasanjo, Previous president, of grand corruption but EFCC exonerates Obasanjo <a href="https://www.premi-umtimesng.com/news/headlines/269831-inside-efcc-report-on-corruption-allegations-against-obasanjo.html">https://www.premi-umtimesng.com/news/headlines/269831-inside-efcc-report-on-corruption-allegations-against-obasanjo.html</a></p>

## SECTION 4: MONEY FLOWS AND BENEFICIAL OWNERSHIP - AN OVERVIEW

**The Section takes an overview of moving the proceeds of grand corruption off-shore; the definitions and roles of the BO; and the international framework.**

### 4.1 Moving the Proceeds of Grand Corruption Offshore

Illicit financial flow refers to “money that is illegally earned, transferred or utilized” (AU, 2015:11). As such it can encompass: (a) money originated from (any) crime (including the transfer of the proceeds of corruption); and, (b) illicit movement of legally earned money. Evidence suggest that Africa has been seriously affected by illicit financial flows.<sup>5</sup> The data show that Africa is a net global creditor because illicit financial flows from the continent over the 30-year period 1980 – 2009 grew much faster than it attracted net recorded transfers, while the net drain is about four times its total external debt (AfDB & GFI 2013: 51).<sup>6,7</sup> Authors have noted one of the principal sources of such flows to be the proceeds of corruption and theft by government officials (Haken, 2011 and Shehu, 2014).

The destination of these transfers are mainly to (and through) tax havens because of the secrecy and complex legal structures in place to disguise the origin of funds (AU/ECA, 2011) and also to developed countries (Imani Countess, 2019).<sup>8</sup> While a legitimate financial flow is driven by the assurance of the integrity of the system, illegitimate

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<sup>5</sup> Reasons for this are many: the prevalence of corruption in most countries and the weaknesses of the control institutions, the lack of availability of gatekeepers and suitable locations for concealment in tax havens, flight capital in times of inflation and other instability *etc.*

<sup>6</sup> Dev Kar. *The Drivers and Dynamics of Illicit Financial Flows from India: 1948-2008*. Washington DC: Global Financial Integrity (2010); Dev Kar. *Mexico: Illicit Financial Flows, Macroeconomic Imbalances, and the Underground Economy*, Washington DC: Global Financial Integrity (2012); Dev Kar and Sarah Freitas. *Russia: Illicit Financial Flows and the Role of the Underground Economy*, Washington DC: Global Financial Integrity (2013).

<sup>7</sup> This is perhaps one of the reasons why the former UN Secretary General, Mr. Kofi Annan, expressed grave concern that Africa loses twice as much to illicit financial outflows as it receives in international aid. BBC News. *Kofi Annan: Africa Plundered by Secret Mining*. 10 May 2013. [www.bbc.co.uk/news/world-africa-22478994](http://www.bbc.co.uk/news/world-africa-22478994).

<sup>8</sup> Also refer to the various reports by Transparency International.

financing is managed from the same assumption of reliability, but naturally, aiming to remain unrecognised as 'deviant'. The circle of legitimate finance is complicated and the system by its nature can create gaps and opportunities for illegitimate finance to slip into its arteries (Shehu, 2011:16). Whilst the suppliers of 'wealth movement services' (Seabrooke and Wigan, 2017) deliberately act to conceal the identity of their customers or BOs from the regulator, others within the international architecture may well be unknowing facilitators. Using examples from Nigeria (amongst others), the FATF typology report (2011) mapped the mechanisms of grand corruption and of PEPs that have employed the banking and legal infrastructure (an examination of financial flows is part of WP 4).

Funds flow freely around the globe, thus whilst the focus of the study is Nigeria, other jurisdictions will be discussed. In Nicholls *et al's* case studies (2017), the key jurisdictions in the British Isles appear to be England and Wales and Jersey (which is not technically part of the UK). Other jurisdictions which feature in their Nigerian cases are the USA, British Virgin Islands (BVI), Cyprus, Denmark, the Seychelles and Switzerland. In connection with the recent Russian Laundromat investigations of the Baltic banks, there is evidence that much of the "Slavonic" (Moldova, Ukraine and Russia) money landed in London. The Home Office (2017) restated the risk of corruption proceeds being invested in UK assets such as property.

In March 2017, Transparency International (TI) identified London properties worth £4.2 billion that were bought by individuals with suspicious wealth from all points of the compass (although this is more than just Nigeria). The Home Office report (2017) noted the progress made by Nigeria in strengthening its anti-money laundering regime and that it was no longer subject to the FATF's monitoring process. Similarly there is recognition of its admittance to the Open Government Partnership in 2016. *However, the continued suspension of Nigeria from the EGMONT group makes sharing of sensitive legal and financial data with international partners difficult.*<sup>9</sup>

However, the UK itself is not without problems despite the high level commitments following its hosting in 2016 of the International Anti-corruption summit.<sup>10</sup> For example it still only requires beneficial owners to report themselves as such if they control 25% of the shares or

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<sup>9</sup> Source Transparency International UK website, available at: <https://www.anticorruptionpledgetracker.com/commitments/automatic-exchange-of-information-2/> accessed 14/04/19.

<sup>10</sup> Further information available from <https://www.gov.uk/government/topical-events/anti-corruption-summit-london-2016> accessed 17/04/19.

voting rights in a company and there is concern not only that this cut-off is considered too high but that data does not contain unique identifiers, restricted only to name, date of birth *etc.* (Global Witness, 2017). As reported in the House of Commons (2019), there is a clear problem with data integrity - if the company inputs are not externally properly tested. This is a problem not limited to the UK.

## 4.2 The BO as a Focus in the Recovery of the Proceeds of Corruption

The subject of BO has found its way into the international lexicon of money laundering and is included within the regular plenary discussions of the FATF. It has been the topic of FATF reports, most recently ‘Concealment of Beneficial Ownership’<sup>11</sup> July 2018. Attention has sharpened since the G20 meeting in Pittsburgh (2009) followed by a number of global initiatives placing requirements upon national governments to increase transparency. BO is also the subject of the FATF 2014 guidance paper ‘Transparency and Beneficial Ownership’ that had (p.8) supplied an initial working definition used for the purposes of this project: see Box 6.

In practical terms, this generally refers to ownership or control of 25% of a company or trust. As noted by the Inter-American Development

### BOX 6: Project Definition of BO

*Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.*

Bank (2019) the 25% threshold is widely used, however, they also observe that lower thresholds do operate in some jurisdictions, for example, Argentina and the Dominican Republic use a threshold of 20 per cent; Uruguay, 15 per cent; Barbados, the Bahamas, Belize, and Jersey, 10 per cent; and Colombia, 5 per cent. A discussion of some key definitions of BO appears below as part of the consideration of the relevant international framework.

Despite this intensified attention, basic empirical information to inform policy-making remains lacking. At a practical level, this is due to the task conception of the prosecution which is mainly directed at the

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<sup>11</sup> FATF – Egmont Group (2018), Concealment of Beneficial Ownership, FATF, Paris, France Available at <http://www.fatf-gafi.org/publications/methodsandtrends/documents/concealment-beneficial-ownership.html> accessed 12/04/2019.

predicate offences. This is the frequently uttered complaint of the FATF in the MER: as soon as the predicate crime is solved and prosecuted there is little capacity to “follow the money” (Van Duyne *et al.*, 2018; ch. 9). This entails usually a complicated cross-border flow of money and a geographical spread of ownership. Indeed, funds are fluid, moving globally across the ‘virtual sphere’ making it laborious to determine which countries funds have transited through or, indeed, where they end up. It is also difficult to identify the point at which the ‘disguise’ of BO actually occurs. For example whether that takes place within the national jurisdiction of the predicate offence or within other transit countries through which funds may move or alternatively within destination countries where funds are ultimately invested.

A circumstance that does not further the detection of a hidden BO is a basic shortcoming in the international framework related to BO: an asymmetry in standards (and associated costs) being applied to those countries in the OECD and other well-resourced non-OECD states (Stessens, 2001, Gilmore and Levi, 2002, Rosdol, 2007) versus less resourced countries. This asymmetry is important as the FATF regulations will have been constructed by the richer countries that have more experience with multiple agency cooperation and information sharing.

### 4.3 The International Framework

A number of papers provide useful reviews and discussion of the issues arising from the field that have contributed to our understanding of transparency and of BO. It is important to stress that it was not our intention to restate what is already in the public domain. For example Artingshall (n.d.)<sup>12</sup> provides a useful comparison of the G20 Principles, FATF Recommendations and 4MLD standards in relation to transparency and BO in his report on the methodology that was used as part of the E(BOT) project. We do not claim this to be an exhaustive list but these were located using search terms of ‘methods of studying Beneficial Ownership’ and ‘methods of studying corruption’ on the internet and then by following up on their references. We used some of their questions and lines of enquiry to inform our own empirical data gathering (to be part of WP 2). A full list of reviewed documents is included in the Reference list with this report.

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<sup>12</sup> TI(EU) EBOT Methodology Approach Available at <https://transparency.eu/wp-content/uploads/2017/07/EBOT-compiled-methodology.pdf> Accessed 12/04/19.

The international framework for BO, in particular the FATF Recommendations that are relevant to this study have been set out in Table 2. We have not discussed the wider approach and position of the FATF as this is well covered in van Duyne *et al* (2019). The paper has provided interpretation of the main definitions of BO by the FATF and has considered how it is defined by the EU Directive and within UK law. Its interpretation within Nigerian Law appears later in Section 6.

The FATF 40 Recommendations provide a set of counter-measures against money laundering, covering the criminal justice system and law enforcement; the financial system and its regulation; and international co-operation. The standards suggest that they allow countries a measure of flexibility in implementing these principles according to their unique circumstances and constitutional frameworks (FATF, 2012; Shehu, 2011). However, others cogently argue this is far from the case (Van Duyne *et al.*, 2019). The FATF Recommendations deal with transparency and beneficial ownership of legal persons (24) and arrangements (25) together with Recommendation 38 that relates to Mutual legal assistance: freezing and confiscation.

Transparency of legal persons requires a country to maintain adequate, accurate, and up-to-date information of beneficial ownership and that such information can be provided to the authorities if required. Transparency of legal arrangements requires the same approach (Asian Development Bank, 2019). In their commentary, FATF-Egmont (2018) note that the determination of ultimate BO is often less than straight forward, particularly in the context of trusts. In consequence, the problem faced by the authorities is not so much the construction of the register but (a) how to ensure the accuracy of the data contained therein (avoiding opportunity for misidentification, and (b) how to police the non-compliant obliged entities and not-registered BO.

The elaboration of the FATF (2012) Recommendations is by far the most comprehensive attempt to address the issue of BO associated with the laundering of the proceeds of crime. Other inter-governmental actions include: the work of the International Financial Institutions (the World Bank and the International Monetary Fund); the United Nations (UN) Conventions on Transnational Organized Crime (TOC 2000); Convention against Corruption (UNCAC, 2003); the UN Convention for the Suppression of the Financing of Terrorism (1999); and relevant UN Security Council Resolutions (UNSC) in relation to the financing of terrorism and terrorist organisations. Many of the requirements contained in conventions or related institutions have been incorporated into the FATF Recommendations. Relevant parts of some of these treaties and agreements are briefly described below insofar as they are relevant to BO.

**TABLE 2: Definitions of BO**

<p>FATF</p>	<p>The European Union 4<sup>th</sup> Money Laundering Directive (EU 2015/849) (EU Directive 2015) Article 3(6)</p>
<p><i>Beneficial owner</i> refers to the natural person(s) who <b><u>ultimately owns or controls</u></b> a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who <b><u>exercise ultimate effective control</u></b> over a legal person or arrangement. The phrases “<b><u>ultimately owns or controls</u></b>” and “<b><u>ultimate effective control</u></b>” capture natural persons owning / controlling via a chain of ownership or by means</p>	<ul style="list-style-type: none"> <li>• <i>Beneficial owner</i> means any natural person(s) who ultimately <b><u>owns or controls</u></b> the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted.</li> <li>• For corporate entities, this includes <b>at least</b> the natural person(s) who ultimately <b><u>owns or controls</u></b> a legal entity through shares or voting rights, defined as a minimum of:             <ul style="list-style-type: none"> <li>○ A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer (for <b><u>direct ownership</u></b>).</li> <li>○ A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s) (for <b><u>indirect ownership</u></b>).</li> </ul> </li> <li>• <b><u>Control</u></b> may also be determined with reference to voting rights or influence over subsidiary undertakings (see Article 22(1) – (5) of Directive 2013/34/EU).</li> </ul>



of control other than direct control. The definition from the FATF Recommendations is very broad, capturing:

- (a) Natural persons who ultimately own or control; AND
- (b) Natural persons on whose behalf a transaction is being conducted; AND
- (c) Natural persons exercising ultimate effective control.

References to ownership and control are intended to capture both direct and indirect ownership and control (i.e. ownership via a chain or control via indirect means).

As in the FATF Recommendations, beneficial owner is defined broadly, reaching up to the natural person: who ultimately owns or controls the customer; or on whose behalf a transaction or activity is being conducted.

The EU sets out minimum standards for determining ownership based on ownership of greater than 25% of shares or voting rights, but allows for a much, much wider interpretation of beneficial ownership by using the words "at least" and allowing member states to enact lower thresholds. Beneficial ownership may also be determined by reference to "control", which incorporates an alternative definition based on ownership, voting rights and influence over subsidiary undertakings (actually linked to the requirement to prepare consolidated financial statements). There is a separate definition for trusts.

UNCAC includes asset recovery as one of its pillars and makes comprehensive provisions in articles 51-59. Similarly, UNTOC addresses issues of laundering the proceeds of crime in the context of mutual legal assistance and other forms of international cooperation for identifying illegal BO. In 2005, the IMF developed a policy discussion paper titled “Deterring Abuse of the Financial System”<sup>13</sup> which outlined a number of preconditions and principles relating to governance structures (including ‘sound’ legal and accounting systems) and financial transparency (discussed in Shehu, 2001: 16). In addition to the FATF, private sector professional organisations, including the Committee for Banking Supervisors, the International Association of Insurance Regulators and the Basel Committee have developed their own standards and interpretational guidance notes as a means of sharing good practice with respect to the identification of BO. For the banking industry, the Wolfsberg Group<sup>14</sup> agreed a common set of principles including due diligence procedures for opening and monitoring accounts, especially those identified as belonging to the customer category of PEPs.

## SECTION 5: THE NIGERIAN CONTEXT

**The Section looks at, in terms of grand corruption, offshoring the proceeds and BOs, at the legal and institutional framework within Nigeria and sets out the relevant laws, regulatory framework and government agencies.**

### 5.1 Legal Framework and Specific Acts of Parliament

According to the MER (2008) Nigeria operates a common law system modelled after that of the United Kingdom. However, it has a written Constitution, which is the supreme law of the land. The criminal laws include the criminal code applicable in the southern parts of the country and the penal code, applicable in the northern parts. Cases related to corruption, organized crime, and economic crime are usually dealt with at the high court but can also be dealt with at the federal high court since they are in the concurrent legislative list. Only the federal high court has the power to hear money laundering (ML) cases.

Cases fall into two categories “criminal and civil”. Section 36 (5) of the Constitution requires that every person who is charged with a criminal offence shall be presumed innocent until proved guilty. Thus, criminal cases, including those of ML must be proved beyond reasonable doubt. Section 32 (6) of the Constitution provides that a person shall not be convicted of a criminal offence unless that offence is defined, and the penalty is prescribed in a written law. Section 36 (12) states that “a written law refers to the Act of the National Assembly or a law of a State, any subsidiary legislation or instrument under the provisions of a law”.

### 5.2 Relevant Officers and Agencies

The typologies of agencies, institutional arrangements and structures, as well as coordination mechanisms is not claimed to be exhaustive; they are those identified at the start of the project that were considered relevant in terms of BO. It is additionally noted that the government has introduced other anti-corruption measures that are not within scope of this project:

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<sup>13</sup> Deterring Abuse of the Financial System: Elements of an Emerging International Integrity Standard, Prepared by R. Barry Johnston and John Abbott, March 2005.

<sup>14</sup> Agreed at Wolfsberg, Switzerland, in 2000 to establish a common global standard for private banking operations (i.e. for wealthy clients only).

- The Treasury Single Account (TSA) to consolidate all government monies from all Ministries, Departments and Agencies into a single account to ease the facilitation and management of government funds.
- Nigeria signed up to the Open Government Partnership Initiative and has adopted a National Action Plan for implementation.
- Introduction of Bank Verification Number policy which identifies and links all beneficial owners of accounts towards combating money laundering and fraud.
- Adoption of a cashless policy in 2012 to curb excesses of cash-based transactions in Nigeria; and recently
- Nigeria adopted a whistle blowing policy in 2016 to facilitate recovery of proceeds of crime.

The identified agencies are:

**5.2.1 The Attorney General of the Federation (AGF) and Minister of Justice:** the Attorney General of the Federation (AGF) and Minister of Justice oversees prosecution of criminal cases. Section 174 of the Constitution provides that the AG of the Federation shall have power to:

*“institute, commence and undertake criminal proceedings against any person before any court of law in Nigeria in respect of any offence created under any Act of the National Assembly; to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; to discontinue at any stage before judgment is delivered, any such criminal proceedings instituted or undertaken by him or any other authority or person”.*

Section 174 (3) provides that the AGF may exercise this power in person or through officers of his department. In exercising this power, the AGF is expected to consider public interest, the interest of justice and the need to avoid the abuse of legal process.

A number of agencies may prosecute offences – see Box 7 - and the AGF does not interfere in the day-to-day activities of these agencies but can take over the exercise of this power when the need arises in the interest of justice. The AG may also issue guidelines to the agencies to guide them in the exercise of the conferred powers.

#### BOX 7: Prosecuting Agencies

Law enforcement agencies, such as the Police, Economic and Financial Crimes Commission (EFCC), the Independent and Corrupt Practices Commission (ICPC), Nigerian Drug Law Enforcement Agency (NDLEA), Legal Aid Council, Human Rights Commission, and National Agency against Trafficking in Person (NAPTIP), can prosecute corruption, money laundering, and other organised crime offences with the fiat of the AGF.

**5.2.2 The Nigeria Police:** the Police are the highest investigative organ, but the above mentioned have the statutory mandate and responsibility for investigating and prosecuting cases of corruption, economic and financial crimes.

**5.2.3 The Nigeria Financial Intelligence Unit (NFIU):** the NFIU was established under the NFIU Act (2018) in fulfilment of the FATF Recommendation 29 which requires countries to establish a central authority for the receipt and analysis of suspicious transactions (STRs) and dissemination of financial intelligence to law enforcement and other relevant agencies, is key to the monitoring of transparency and beneficial ownership of legal persons and arrangements in Nigeria. The NFIU is developing a data base on beneficial ownership, which will be a useful tool for this study.

**5.2.4 The Code of Conduct Bureau:** the Bureau was established in 1989 under the *Code of Conduct and Tribunal Act* (Cap.56, Laws of the Federal Republic of Nigeria), the Code of Conduct Bureau (CCB) was created with the aim of establishing and maintaining a high standard of morality in the conduct of government business and ensuring that the actions and conduct of public officers conform to the highest standards of public morality and accountability. A tribunal was simultaneously established alongside the Bureau to ensure

speedy trial of officials that may be referred to the tribunal by the Bureau<sup>15</sup>. The Bureau (CCB) administers the Code of Conduct for Public Officers and its functions include: (i) receiving asset declarations by public officers; (ii) examining the assets declarations and ensuring that they comply with the requirements of the Act and of any law for the time being in force; (iii) taking and retaining custody of such assets declarations; and (iv) receiving complaints about non-compliance with or breach of the Act and where the Bureau considers it necessary to do so, referring such complaints to the Code of Conduct Tribunal.

The most important and powerful aspect of this Act with respect to the prevention of corruption has to do with assets declaration by public officers which is a tool to track illicit enrichment; see Box 8.

In Nigeria, the Code of Conduct for Public Officers combines both the compliance and soft approaches. Reliable statistics on the enforcement of this code of conduct are hard to obtain so that it is difficult to assess effectiveness. Nevertheless, a progress report from the CCB in 2014 showed that it issued 303,911 asset declaration forms (ADFs) and received (from returns) 167,241 completed forms (55%) with an estimated 2,337 defaults. The CCB also received 79 petitions/complaints on non-declaration, investigated 18 and closed 6 for lack of merit in the petitions. 39 cases were referred to the Code of Conduct Tribunal (CCT), increasing the pending cases before the CCT to 371 for that year without a single reported conviction. Most of the cases of breach of the Code of Conduct by Politically Exposed Persons (PEPs) were either struck out or have been inconclusive at the Code of Conduct Tribunal (Shehu, 2017: 5-7).

The CCB, which has responsibility for enforcing the provisions of the Act, faces many challenges (which may include lack of resources, staffing, technical ability, and so on) that meant it has been unable to verify most of the asset declarations made by public officials. That is not to say the code of conduct is in some way deficient, rather, the main problem has to do with enforcement. One of the ways of ensuring adherence and enforcement is to have specific guidelines on elements of the Code, such as Conflict of Interest Rules and Gifts and allowable circumstances thresholds. That will clarify the blurred lines on these issues for both public officers and the public. Had the code of conduct been effectively enforced, several corruption cases would have been prevented or exposed at an earlier stage, including the classic case of James Ibori, a former Governor of oil rich Delta State who was eventually convicted in the UK (to be discussed in WP3).

5.2.5 *The Independent Corrupt Practices and other Related Offences Commission (ICPC):* the ICPC was established under the *Corrupt Practices and Other Related Offences Act* that came into force in June 2000 and the ICPC was inaugurated in September of the same year

**BOX 8: s.15 of the Code of Conduct and Tribunal Act**

*1) Every public officer shall, within fifteen months after the coming into force of this Act or immediately after taking office and thereafter*  
*a. At the end of every four years;*  
*b. At the end of his term of office; and*  
*c. In the case of a serving officer, within thirty days of the receipt of the form from the Bureau or at such other intervals as the Bureau may specify ... submit to the Bureau a written declaration in the Form prescribed in the First Schedule to this Act or, in such form as the Bureau may, from time to time, specify, of all his properties, assets and liabilities and those of his spouse or unmarried children under the age of twenty-one years.*  
*2) Any statement in any declaration that is found to be false by any authority or person authorized in that behalf to verify it, shall be deemed to be a breach of this Act.*  
*3) Any property or assets acquired by a public officer after any declaration required by subsection (1) of this section and which is not fairly attributable to income, gifts or loan approved by this Act, shall be deemed to have been acquired in breach of this Act unless the contrary is proved.*

<sup>15</sup> For details, see Shehu, AY (2015) *NIGERIA: The Way Through Corruption to the well-being of a People*, National Open University press, Lagos, pp.278-281.

to enforce the law (ss.3–7).<sup>16</sup> This Act criminalises just about every imaginable act of corruption in sections 8–19.<sup>17</sup> The ICPC is responsible for enforcement of the act, which focuses on public sector corruption.

*5.2.6 The Economic and Financial Crimes Commission (EFCC):* the EFCC was established under the EFCC Act 2003, the EFCC is mandated to enforce all economic and financial crimes laws in Nigeria and is the coordinating agency for the prevention and control of money laundering. Like the ICPC, the EFCC has sweeping powers including for the arrest, investigation and prosecution of offenders under the EFCC Act, the Money Laundering (Prohibition) Act, the Advance Fee Fraud Act, the Failed Banks and Financial Malpractice in Banks Act, etc.

*5.2.7 The Central Bank of Nigeria (CBN):* the CBN was established under the BOFID (Banks and other Financial Institutions) Act, 1991. The CBN is the main regulator for the financial sector. It has oversight function over all financial institutions on the enforcement of anti-money laundering and due diligence measures with respect to beneficial ownership. The most remarkable policy introduced by the CBN in this regard was the issuance of a circular on Administrative Sanctions for violation of various anti-money laundering laws and regulations.

*5.2.8 The Corporate Affairs Commission (CAC):* the CAC established under the Companies and Allied Matters Act, 1990 and is responsible for registration of company names and other legal processes about the establishment of beneficial ownership. The CAC has developed a comprehensive company register and a data base for BO. This will be explored during the field research.

*5.2.9 The Securities and Exchange Commission (SEC):* the SEC has oversight functions on the capital market and is responsible for the regulation of BO in the sector.

*5.2.10 The National Insurance Commission (NAICOM):* the NAICOM has similar oversight function as the above mentioned, but on the insurance sector. Transparency of beneficial ownership is a key concern for insurance premium and other related products.

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<sup>16</sup> A comprehensive governance and corruption survey was conducted and the results indicated that corruption was widespread. Fundamentally, the highlights of the survey findings include: households see corruption as a serious problem and that it is getting worse; enterprises are generally dissatisfied with public services; enterprises often have to pay gratification to obtain even unsatisfactory services.

<sup>17</sup> The Act defines corruption to include bribery, fraud, embezzlement and gratification, criminalizes these practices, and prescribes appropriate penalties under s.8. It gives ICPC the necessary powers to investigate reported cases of corruption. It also vests on the Chairman of the Commission the authority to make rules and regulations for the efficient and effective performance of the duties of the Commission. A unique feature of the Act is the provision for non-disclosure of parties in proceedings under this Act. It obliges any public officer to whom gratification is given or promised to report to ICPC. Similarly, any non-public officer is also required to report any solicitation or acceptance of gratification to the Commission (s.23).

## SECTION 6: PROBLEMS, ISSUES AND PROJECT QUESTIONS

The Section reviews the material in Sections 3 to 5 to synthesise issues and problems in order to develop an initial questions and lines of enquiry to be pursued by the project.

### 6.1 The Legislative Framework

The legislative framework establishing the law enforcement agencies give them wide powers to identify, track, seize and seek orders from the court to freeze, confiscate and forfeit proceeds of crime. While significant efforts have been made in this direction and some assets have been seized, confiscated or forfeited to the government, there are problems arising from the management of seized assets both while under interim forfeiture and when finally forfeited. Over the years, there has been concern over the management of such assets due to the dissipation, as well as the lack of transparency. The law enforcement agencies seem to agree on the need for a strategy / mechanism for the management of such assets. This is what the Proceeds of Crime (POCA) Bill before the National Assembly seeks to address.<sup>18</sup>

**Problem:** is the legislative framework fit-for-purpose or is it the implementation, particularly in terms of seizure and recovery that is the issue? In addition to the Constitution and for the specific purpose of analysing the effectiveness of the legal framework on BO and grand corruption, is the legislation relevant, specific and up-to-date?

### 6.2 A National Anti-Corruption Strategy (NACS)

Apart from the absence of a non-conviction-based asset forfeiture law, the absence of a holistic national strategy to combat corruption is another major weakness in Nigeria's anti-corruption and asset recovery framework. This has been highlighted in various fora including the 1<sup>st</sup> cycle of review of Nigeria's implementation of the UNCAC<sup>19</sup>. The Inter Agency Task Team of Anti-corruption Agencies had jointly developed a draft which was submitted to the office of the Honourable Attorney General of the Federation and Minister of Justice in 2011. The limited capacity of the Code of Conduct Bureau to verify asset declarations and the lack of transparency in the asset declaration regime cannot be overlooked. The public does not have access to declarations by public office holders and therefore cannot make reports on irregularities and false declarations. Even with the passage of the Freedom of Information Act, the Bureau still maintains that the National Assembly needs to make a specific regulation as provided by the Constitution before asset declarations can be made public.

**Problem:** does the absence of an appropriate national anti-corruption strategy, associated anti-corruption measures and institutional capacity exacerbate the situation?

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<sup>18</sup> The POCA Bill seeks to among other things, establish an agency and a centralized framework for asset recovery and management. Furthermore, the POCA Bill provides for a non-conviction based asset forfeiture framework. However, some of its provisions may impinge on critical areas of the work of the Law Enforcement Agencies (LEAs) rather than strengthen them. For instance, the Bill seeks to establish an Asset Management Agency to manage all assets immediately upon seizure or confiscation by the LEAs till the final determination of each matter, and also to solely carry out all civil forfeiture cases. The stage of transfer of the assets as contemplated in the Bill is perceived as a major challenge in the investigation and prosecution, especially in the tendering of evidence and exhibits. It may also be beneficial to the asset recovery regimen to empower the LEAs to carry out civil forfeiture in appropriate cases.

<sup>19</sup> First cycle of the Mechanism of Review of the Implementation of the Convention against Corruption: Good practices and experiences of, and relevant measures taken after the completion of the country reviews, including information related to technical assistance Implementation Review Group Second Resumed Ninth session Vienna, 12–14 November 2018 Item 2 of the provisional agenda available at <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/12-14November2018/V1807546e.pdf> Accessed 16/04/19.

## 6.3 Agencies

The LEAs have investigated and prosecuted several cases of corruption, including those involving PEPs and some assets have been recovered; yet there are still deficiencies associated with the quality of investigation and prosecution, which is what may have led to some unsuccessful prosecutions. The Administration of Criminal Justice Act, which was introduced to address those challenges, as well as some recent case laws shifting the burden of proof on the accused provide recent additional powerful tools in Nigeria's anti-corruption arsenal.<sup>20</sup>

An assessment of the operations of these agencies will provide useful insights into Nigeria's long road in fighting corruption, and especially on beneficial ownership. It is important to note that the Attorney General of the Federation (AGF) and Minister of Justice who has the responsibility for prosecuting all criminal cases has given his fiat to these agencies to prosecute offenders. The Office of the AGF remains in principle the central coordinator for law enforcement and it is where the National Central Authority for mutual legal assistance and other matters is located.

**Problem:** Is there a lack of, and a lack of consistency in how, data is presented by different agencies? How is data captured, stored and processed and shared with other agencies? What challenges face agencies individually and in terms of inter-agency coordination, cooperation and joint working? Is the legislation suitable for their functions? Do they have resources, staffing and technical ability? Are there overlapping jurisdictions or areas where joined up information sharing and working is not possible?

## 6.4 Nigeria and the International Framework

The project is seeking a better understanding of the identification and tracking of the BO, in order to help the authorities in their attempts to recover the proceeds of corruption and thus have a discouraging effect on the willingness of individuals to accept bribes. Nigeria is identified as a country where corruption, and particularly grand corruption, is systemic. With that issue comes the integral concern of proceeds of grand corruption moving offshore and, in terms of BO, disguised. Nigeria is also categorised as being a low-capacity country for the enforcement of the FATF Standards.<sup>21</sup> However, it faces a number of challenges in enforcing the FATF measures. The project will wish to explore what challenges Nigeria faces in addressing grand corruption, proceeds of grand corruption and the transnational issue of BO. In so doing, it also seeks to have added practitioner value in exploring:

- What were the main points to be addressed from the MER?
- What is the content of the follow up reports?
- In preparation for the forthcoming MER what arrangements are currently underway to demonstrate how the country is preparing for the next visit?
- Would any of the project work be in any way useful to the authorities as part of their visit preparation?

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<sup>20</sup> The case of *Gabriel Daudu vs FRN (2018) 10 NWLR (Pt.1626) 169, 183 E-F (2018) LPELR – 43637 (SC)* in which the Supreme Court made a significant pronouncement on burden of proof in corruption cases. The apex court held: 'The burden lies on an accused person to explain properties he acquired which are disproportionate to his KNOWN legitimate earnings.' The implication of this judgment is that once it is shown that you have much more than you should have had, then it is your responsibility to explain the source of such wealth. This is a major contribution by the judiciary, particularly the Apex Court, to the war against corruption (Shehu, 2019)'.

<sup>21</sup> The FATF, in 2008, issued guidance on capacity building for mutual evaluations and implementation of the FATF standards within 'Low Capacity Countries' (LCCs). The guidance is intended to support LCCs in implementing the FATF standards in a manner reflecting their national institutional systems, consistent with the ML/FT risks they face and in light of their limited resources.

***Project Questions:*** what are the challenges with developing and enforcing the necessary legal framework? What are the challenges associated with effective due diligence compliance, including customer identification, monitoring and reporting? What are the challenges of dealing with Politically Exposed Persons (PEPs)? What are the challenges of institutional development and capacity, including FIUs, regulators and law enforcement agencies? What are the problems of national coordination and collaboration? What are the problems with regional and international cooperation?

Exploring these wider questions will be facilitated by, in the first instance, answers to a number of problems and issues identified in WP1 6.1 to 6.3 above.



## SECTION 7: REFERENCES

Adebwani, W. (2012). *Authority Stealing: Anti-Corruption War and Democratic Politics in Post-Military Nigeria*. Carolina Academic Press, Durham NC.

Adebwani, W. (2017) Africa's 'Two Publics': Colonialism and Governmentality. *Theory, Culture and Society* 34(4): 65–87

Anaodozie, F. (2017). A Critical Analysis of Grand Corruption with Reference to International Human Rights and International Criminal Law: The Case of Nigeria. <https://doi.org/10.21427/D7V983>

AU (2015) Illicit Financial Flows - Report of the High Level Panel on IFF from Africa.

AU/ECA. (2011). Illicit financial flows. Better Policies for Development. <https://doi.org/10.1787/9789264115958-11-en>

Charles E. Ekpo, Jide Chime, A. F. N. E. (2016). The Irony of Nigeria's Fight against Corruption: An Appraisal of President Muhammadu Buhari's First Eight Months in Office. *International Journal of History and Philosophical Research* Vol.4,56(1), 61–73.

Chatham House (2017) Collective Action on Corruption in Nigeria - A Social Norms Approach to Connecting Society and Institutions.

DFID (2015) *Evidence Paper: Why Corruption Matters*. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/406346/corruption-evidence-paper-why-corruption-matters.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/406346/corruption-evidence-paper-why-corruption-matters.pdf)

Van der Does de Willebois, E., E Halter, R Harrison J Won Park J Sharman (2011) The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It World Bank Stolen Asset Recovery Initiative 2011

Van Duyne, P.C., Harvey, J., and Gelemerova, L., (2019) The Critical Handbook of money laundering: Policy, analysis and myths, Palgrave Macmillan

Ekeh, P. (1975) Colonialism and the Two Publics in Africa: A Theoretical Statement. *Comparative Studies in Society and History*, 17(1): 91-112

FATF (2011) Laundering the Proceeds of Corruption, July

FATF (2012) International standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, Paris, France.

FATF-Egmont (2018) Concealment of Beneficial Ownership July

GIABA (2010) "Corruption-Money Laundering Nexus: An Analysis of Risks and Control Measures in West Africa".

Gilmore, W., & Levi, M. (2002). Terrorist Finance, Money Laundering and the Rise and Rise of Mutual Evaluation: A New Paradigm for Crime Control? *European Journal of Law Reform*, Vol. 4, No. 2, 2002, p. 337-64.

Global Financial Integrity (2008) Illicit Financial Flows from Africa: Hidden Resource for Development

Global Financial Integrity. (2019a). Illicit Financial Flows to and from 148 Developing Countries: 2006-2015, (January).

Global Financial Integrity. (2019b). Illicit Financial Flows to and from 148 Developing Countries: 2006-2015. Retrieved from <https://www.gfintegrity.org/wp-content/uploads/2019/01/GFI-2019-IFF-Update-Report-1.29.18.pdf>

Global Witness (2017) Learning the lessons from the UK's public beneficial ownership register October

Hamilton, S. (2011). International trade and business ethics. In Peace and Prosperity through World Trade. <https://doi.org/10.1017/cbo9780511723285.056>

Hatchard, J. (2014) *Combating Corruption: Legal Approaches to Supporting Good Governance and Integrity in Africa*. Edward Elgar, Cheltenham

Herkenrath, M. (2014). Illicit Financial Flows and their Developmental Impacts: An Overview. *Revue Internationale de Politique de Développement*, 5(3). <https://doi.org/10.4000/poldev.1863>

Home Office/HM Treasury, (2017) National risk assessment of money laundering and terrorist financing, October

House of Commons Treasury Committee Economic Crime (2019) Anti-money laundering supervision and sanctions implementation Twenty-Seventh Report of Session 2017-19 Report, 5 March

Ijewereme, O. B. (2015). Anatomy of Corruption in the Nigerian Public Sector: Theoretical Perspectives and Some Empirical Explanations. SAGE Open. <https://doi.org/10.1177/2158244015581188>

Imani Countess. (2019). Illicit financial flows thwart human rights and development in Africa. Retrieved March 31, 2019, from [http://www.cadtm.org/spip.php?page=imprimer&id\\_article=17090](http://www.cadtm.org/spip.php?page=imprimer&id_article=17090)

Inter-American Development Bank (2019) A Beneficial Ownership Implementation Toolkit Prepared by: The Secretariat of the Global Forum on Transparency and Exchange of Information for Tax Purposes, March

Itodo, S. and O'Regan, D. (2018) Nigeria's Movement for Transparency and Accountability: Bringing the Pieces Together. <https://www.usip.org/sites/default/files/2018-10/sr433-nigerias-movement-for-transparency-and-accountability-bringing-the-pieces-together.pdf>

Klitgaard, R. (1991) *Controlling Corruption*. University of California Press, Berkeley.

Lawson, L. (2009). The Politics of Anti-Corruption in Nigeria. *J. of Modern African Studies*, 47(1): 73-100

Levin, C., & Bean, E. J. (2010). Keeping Foreign Corruption Out of the United States: Four Case Histories Majority and Minority Staff Report Permanent Subcommittee. Permanent Subcommittee on Investigations United State Senate.

Lewis, P. (1996). From Prebendalism to Predation: The Political Economy of Decline in Nigeria. *J. of Modern African Studies* 34(1): 79-103.

Minto, A. (2018). The Anatomy of Corruption Practices: A Theoretical Framework for a 'Macro' Analysis. IACA Research & Science, (04). Retrieved from [https://www.iaca.int/images/Research/Research\\_paper\\_04\\_Andrea\\_Minto\\_final.pdf](https://www.iaca.int/images/Research/Research_paper_04_Andrea_Minto_final.pdf)

MER (2008) Nigeria Mutual Evaluation Report

Nicholls, C., Daniel, T., Bacarese, A., Maton, J and Hatchard, J. (2017) *Corruption and Misuse of Public Office* (3<sup>rd</sup> ed.) Oxford University Press.

OECD (2001) 'Behind the Corporate Veil'

OECD (2007) 'Identification of Ultimate Beneficial Ownership and Control of a Cross-border Investor'

OECD. (2014). Illicit financial flows from developing countries: Measuring OECD responses. <https://doi.org/http://dx.doi.org/10.1787/9789264203501-en>

Ogbeidi, M. M. (2012). Political Leadership and Corruption in Nigeria Since 1960: A Socio-economic Analysis. *Journal of Nigeria Studies*, 1(2). Retrieved from [http://www.unh.edu/nigerianstudies/articles/Issue2/Political\\_leadership.pdf](http://www.unh.edu/nigerianstudies/articles/Issue2/Political_leadership.pdf)

Ogunyemi, A. O. (2016). Historical Evidence of Corruption in Colonial Nigeria: An Analysis of Financial Records in the Decolonisation Period, 1950–1960. *Journal of Asian and African Studies*. <https://doi.org/10.1177/0021909614541250>

Olken, B. A., & Pande, R. (2012). Corruption in Developing Countries. SSRN. <https://doi.org/10.1146/annurev-economics-080511-110917>

Page, M.T., (2018) *A New Taxonomy for Corruption in Nigeria* Carnegie Endowment for International Peace, July [https://carnegieendowment.org/files/CP\\_338\\_Page\\_Nigeria\\_FINAL.pdf](https://carnegieendowment.org/files/CP_338_Page_Nigeria_FINAL.pdf)

Persson, A., Rothstein, B. and Terell, J. (2013). Why Anticorruption Reforms Fail—Systemic Corruption as a Collective Action Problem. *gove\_160 Governance: An International Journal of Policy, Administration, and Institutions*, 26 (3) 449–471.

Rosdol, A (2007) "Are OFCs leading the fight against money laundering?", *Journal of Money Laundering Control*, Vol. 10 Issue: 3, pp.337-351, <https://doi.org/10.1108/13685200710763498>

Seabrooke, L. and Wigan. D. (2017) The governance of global wealth chains. *Review of International Political Economy* 24:1, pages 1-29.

Shehu, AY (2019) *Elections in Nigeria - The Long Road to Democracy*, Meteo Books, UK.

Shehu, AY (2017) *Imperative of Effective Ethics Framework in Combating Corruption in Nigeria*

Shehu, AY (2015) *NIGERIA: The Way Through Corruption to the well-being of a People*, National Open University press, Lagos, pp.278-281.

Shehu, AY (2014) "Bolstering Corporate Sector Partnership in the Fight against Financial Crimes in the Developing World: The Experience of West Africa", *Journal of Social Sciences Research*, Vol. 5, No 1, Council for Innovative Research, pp 694-703.

Shehu, AY (2011) "Illicit Financial Flows and Implications for Anti-Money Laundering/Counter Financing of Terrorism and Development", A paper presented at a Policy Seminar organised by UNIDEP, Dakar, Senegal,

Smith, D. J. (2007) *A Culture of Corruption: Everyday Deception and Popular Discontent in Nigeria*. Princeton University Press.

Society for Advanced Legal Studies, Anti-Corruption Working Group (2000) *Banking on Corruption: The Legal Responsibilities of those who Handle the Proceeds of Corruption*. <https://sas-space.sas.ac.uk/4297/>

Stessens, G. (2001). The international fight against corruption': General report. *Revue internationale de droit pénal*, vol. 72,(3), 891-937. doi:10.3917/ridp.723.0891.

Tafirenyika, M. (2016). Illicit financial flows from Africa. *Africa Renewal*. <https://doi.org/10.18356/695a854c-en>

Transparency International (2017) *Beneficial Ownership: How to find the Real Owners of Secret Companies. A Guide for Journalists and Civil Society in Ghana, Kenya and Nigeria.* [https://www.transparency.org/whatwedo/publication/beneficial\\_ownership\\_how\\_to\\_find\\_the\\_real\\_owners\\_of\\_secret\\_companies](https://www.transparency.org/whatwedo/publication/beneficial_ownership_how_to_find_the_real_owners_of_secret_companies)

Transparency International. (2018). Corruption Perceptions Index 2017 Brochure. Country Review. <https://doi.org/978-3-943497-18-2>

United Nations (2003) Convention against Corruption (UNCAC)

United Nations (2000) Convention on Transnational organized Crime (TOC)

United Nations (1999) Convention for Suppression of the Financing of Terrorism.

Yusha'u, M. J. (2018). Corruption Without Borders: PTFD and Former Governors' Scandals in the Nigerian Press. In *Regional Parallelism and Corruption Scandals in Nigeria*. [https://doi.org/10.1007/978-3-319-96220-7\\_6](https://doi.org/10.1007/978-3-319-96220-7_6)