

## INTERNATIONAL AND OTHER EXTRA-TERRITORIAL LEGAL INSTRUMENTS AGAINST CORRUPTION

By

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### Abstract

*Bribery and corruption are crimes without borders, not restricted to any jurisdictional boundaries nor sectoral confines but exist in both the public and private sector. Liberalisation and openness of global economies and increased financial flows means that stolen money and other illicit wealth could be easily taken out. Annual cross-border flow of proceeds of crime is estimated at \$1-1.6 trillion. Half of this is from Less Developed or Developing countries (LDCs). Nigeria's share is the highest due to the prevalence of corruption. President Muhammadu Buhari, in his speech at the 70<sup>th</sup> United Nations General Assembly in 2015 stated that \$150 billion was looted from the government treasury in Nigeria between 1995 and 2015. Other estimates suggest that \$182 billion was stolen from Nigeria and stashed offshore between 2000 and 2009.<sup>1</sup> This paper seeks to critically evaluate the impacts as well as the weaknesses of the legal instruments for combating corruption internationally and domestically. It shall further discuss and analyse other domestic instruments with extra-territorial influence. Identifying the challenges and barriers in the law which most of the international organisations have set up means of exposing and combating corruption.*

**Keywords:** *Corruption, Extra-Territorial, International, Legal.*

### 1.0 Introduction

There have been positive developments in the international effort to combat corruption. There are now innumerable organisations that do exceptional work in exposing corruption, aided greatly by their ability to use the Internet to document and disseminate information which traditional, government-controlled media will not report. In addition, certain international institutions, such as the World Trade Organisation (WTO) and the European Union, require the adoption of national laws and the creation of national agencies to combat corruption as conditions for membership.

Nigeria is party to some international conventions and mechanisms against corruption. Some of these conventions include the following: the United Nations Convention Against Corruption (UNCAC); the African Union Convention on Preventing and Combating Corruption (AUCPCC); and the Economic Community of West African States (ECOWAS) Protocol on

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<sup>1</sup> Shehu, Abdullahi Y, 'Nigeria and Recovered Loot I,' *Thisday* (Nigeria, 4 February, 2018), p. 14

the Fight Against Corruption. Nigeria became a signatory to the AUCPCC in 2003.<sup>2</sup> Nigeria also ratified the UNCAC.

International measures being taken to tackle the menace of corruption have also resulted in the creation of specialized international organizations such as the World Bank Stolen Asset Recovery Initiative (STAR), the International Centre for Asset Recovery (ICAR), and the International Association for Asset Recovery.

International cooperation has greatly assisted in the sharing of information and confiscation of funds and assets that are proceeds of corruption. It has facilitated the repatriation of Abacha loot to the Nigerian government from foreign jurisdictions. The UNCAC also provided a template for the criminalisation of offences on corruption, asset recovery, and information sharing. Most developed countries-UK, US-have enacted domestic laws for the prosecution of individuals and companies for corruption irrespective of where the corrupt act occurred.

Former governor of Delta State, James Ibori, was tried and convicted of corruption and money laundering involving funds belonging to Delta State in the United Kingdom. Shell and ENI officials are being prosecuted in Italy for bribery of Nigerians for the settlement of a dispute in respect of an oil bloc Chief Dan Etete, erstwhile oil minister under the Abacha regime, awarded to his company, Malabu Oil. The growing principle of universal jurisdiction (to be discussed in detail later in this section) has enabled for the trial and prosecution of crimes in any country irrespective of where the offence is committed and this has aided the fight against corruption and terrorism.

With organisations like EGMONT, illicit wealth stashed in offshore banking can be easily traced and the information circulated amongst member states. There is now more international cooperation with the anticorruption convention now in force and being implemented in most countries. Most countries, especially developing nations, now have specialised agencies to fight corruption. Era of numbered Swiss accounts is over. Banks are now closely regulated for money laundering and they are required to undertake background checks on customers and their source of income before allowing certain deposits. Thresholds have been set by regulatory authorities worldwide and heavy fines imposed for infractions. States like the US and UK with political muscle have compelled banks to disclose information on their customers for the purpose of investigating alleged tax and other infringements. US and European laws now punish companies and individuals for corrupt acts committed abroad. Whilst all those involved in the Halliburton scandal in Nigeria have been investigated and prosecuted in the United States, the Italian authorities have begun the prosecution of Shell and ENI officials involved in the Malabu Oil fiasco.

Four of the international and regional conventions against corruption would be discussed in greater detail. Although domestic legislations are enacted in fulfilment of obligations in international treaties signed and ratified by states, it is necessary to state that the laws

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<sup>2</sup> As of September 2017, 55 African nations have signed and/or ratified the convention.

establishing the ICPC and EFCC were contemporaneous with the four international and regional conventions discussed here. While the ICPC and EFCC Acts were enacted in 2000 and 2004, respectively, the United Nations Convention Against Corruption (UNCAC), the AU Convention on Preventing and Combating Corruption (AUCPCC) and the ECOWAS Protocol on the Fight Against Corruption were signed in 2003 (UNCAC and AUCPCC) and 2001 (ECOWAS Protocol), respectively. There is also the United Nations Convention against Transnational Organised Crime. The domestic laws which have already been discussed, nonetheless incorporated most elements of the international instruments in the creation of offences, imposing strict sanctions for their violations, making provisions for international cooperation, money laundering, corruption in the private sector, extradition of offenders, recovery of stolen assets and codes of conduct for public officer

## **2.0. The United Nations Convention Against Corruption (UNCAC)**

The United Nations Convention Against Corruption (UNCAC) is a landmark international treaty adopted by the UN General Assembly in October 2003 and is viewed as a global response to a global problem.<sup>3</sup> When 140 countries convened on December 9, 2003 to sign the UNCAC, the event underscored international abhorrence of the detrimental effects of corruption and global recognition that governments can only combat and prevent corruption through cooperative efforts. Since then, more nations joined the Convention so that today more than 170 signatory countries make it one of the United Nations' most highly subscribed treaties, creating a global mandate to combat corruption and the harm it brings to society.<sup>4</sup>

The essence of the UNCAC is 'the promotion of international cooperation in the pursuit of a comprehensive and composite anti-corruption strategy by all countries of the world.' Its provisions on the criminalisation of corruption, international cooperation, and jurisdiction and asset recovery have been ratified by countries across the world with notable successes recorded in the investigation and prosecution of suspects for corruption.

The Convention introduces a comprehensive set of standards, measures and rules that all countries can apply in order to strengthen their legal and regulatory regimes to fight corruption. It calls for preventive measures and the criminalisation of the most prevalent forms of corruption in both public and private sectors. And it makes a major breakthrough by requiring member states to return assets obtained through corruption to the country from which they were stolen. This is a particularly important issue for many developing countries where corrupt high officials plundered the national wealth and where new governments badly need resources to reconstruct and rehabilitate their societies.

The Convention highlights four features namely: prevention, criminalization, international cooperation and asset recovery. Countries are bound by the Convention to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court while a major

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<sup>3</sup> Hannes, Hechler; 'UNCAC in a Nutshell; A Quick Guide to the United Nations Convention for Embassy and Donor Agency Staff,' U4 Anti-Corruption Resource Centre, 2017.

<sup>4</sup> McCulley, Terrence; 'Working in Partnership to Combat Corruption', *Thisday* (Nigeria, 9 December, 2012), p.21

breakthrough in the fight against corruption is the provision for asset recovery in the Convention which is made an explicit fundamental principle of the Convention.<sup>5</sup> In the process of carrying out their obligation under the UNCAC, state parties are enjoined to respect the sovereignty and territorial integrity of signatories to prevent interference with other countries.<sup>6</sup>

To this end, the UNCAC provides that ‘nothing in this Convention shall entitle a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.’<sup>7</sup>

Each state party is required to develop institutional and legal anti-corruption frameworks, and implement anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.<sup>8</sup>

State parties are also required to ensure the existence of institutional frameworks committed to the fight against corruption.<sup>9</sup> Article 36 of the Convention requires states to set up specialized bodies with necessary independence to enforce anti-corruption laws. The institutions will be saddled with the responsibility of enforcing anti-corruption laws and disseminating knowledge about the prevention of corruption.<sup>10</sup> The body shall be granted independence, and necessary material resources and specialized staff to enable it carry out its functions. Nigeria in this regard has complied with the UNCAC in the establishment of anti-graft agencies such as the Independent Corrupt Practices and Other Related Offences Commission (ICPC)<sup>11</sup> and the Economic and Financial Crimes Commission (EFCC). The ICPC has a robust preventive function which clearly makes dissemination of knowledge and sensitisation about corruption prevention as one of its core mandates.<sup>12</sup> The UNCAC admonishes state parties to grant anti-corruption agencies the needed independence to carry out their duties without political interferences.

Bearing in mind that the public sector plays a crucial role in the anti-corruption drive of the government, state parties are advised to put in place ethical code of conduct anchored on integrity, honesty and responsibility.<sup>13</sup> State parties are required to take measures to promote transparency and accountability in the management of public finances particularly in the procurement process.<sup>14</sup> Such measures encompass procedures for the adoption of a national budget, timely reporting on revenue and expenditure, system of accounting and auditing

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<sup>5</sup> Article 3 UNCAC.

<sup>6</sup> Article 4(1) UNCAC

<sup>7</sup> Article 4(2) UNCAC.

<sup>8</sup> Article 5(1) UNCAC.

<sup>9</sup> Article 6(1) UNCAC.

<sup>10</sup> Article 6(1) (a) & (b) UNCAC.

<sup>11</sup> Section. 3(1) ICPC Act 2000

<sup>12</sup> Section. 6(f) ICPC Act 2000

<sup>13</sup> Article 8 UNCAC

<sup>14</sup> Article 9(1) UNCAC.

standards and related oversights, effective and efficient systems of risk management and internal control.<sup>15</sup> The UNCAC further advocates for a fearless, courageous and independent judiciary for the purpose of prosecuting corruption cases.<sup>16</sup> In order not to leave the important task of fighting corruption in the hands of the government and anti-graft agencies alone, state parties are urged to foster public support in the fight against corruption by civil society groups, non-governmental organization and community-based organizations.<sup>17</sup>

Of great significance is Chapter 3 which provides for criminalization of offences relating to bribery and corruption. The UNCAC requires states parties to adopt such legislative and other measures as may be necessary to establish as criminal offences:

- a. the promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; and
- b. the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official to act or refrain from acting in the exercise of his or her official duties.<sup>18</sup>

Also covered in the UNCAC are criminal offences such as the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position. States are required to establish as criminal offence illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.<sup>19</sup>

Next is laundering of the proceeds of crime. States are required by the Convention to adopt legislative measures to establish as criminal offences:

- a. The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property.
- b. The concealment or disguise of the true nature, source, location, disposition or ownership of or rights with respect to property knowing that such property is the proceeds of crime; and
- c. The acquisition, possession or use of property knowing such property is the proceed of crime.<sup>20</sup>

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<sup>15</sup> Article 9(2) UNCAC

<sup>16</sup> Article 11 UNCAC

<sup>17</sup> Article 13 UNCAC

<sup>18</sup> Article 15 UNCAC

<sup>19</sup> Article 22 UNCAC.

<sup>20</sup> Article 23 UNCAC

The Convention is divided into eight chapters. Article 1 of Chapter 1 states the purposes of the Convention to include:

- a. To promote and strengthen measures to prevent and combat corruption more efficiently and effectively.
- b. To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery.
- c. To promote integrity, accountability and proper management of public affairs and public property.

‘Public Official’ was defined in Article 2 of Chapter 1 to mean:

- i. Any person holding a legislative, executive, administrative or judicial office, whether appointed or elected, permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority.
- ii. Any other person who performs a public function, including for a public agency or public enterprise, or provides a public service.

‘Proceeds of crime’ mean property derived from or obtained, directly or indirectly, through the commission of an offence. The scope of application of the Convention include the prevention, investigation and prosecution of corruption and the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with the Convention.<sup>21</sup> The scope of application of the Convention include the prevention, investigation and prosecution of corruption and the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with the Convention.<sup>22</sup>

The Convention also makes provision for preventive measures. Each state party is required under Article 5 to develop and implement anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. Each state party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

State parties are also required to ensure the existence of a body that prevent corruption and disseminates knowledge about the prevention of corruption. The body shall be granted independence, necessary material resources and specialized staff to enable it carry out its functions.

Article 7 requires states to adopt and maintain systems for the recruitment, hiring, retention, promotion and retirement of civil servants. Such systems should be based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude; include

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<sup>21</sup> Article 3.

<sup>22</sup> Ibid (n 21).



adequate procedures for the selection of and training of individuals for public positions especially vulnerable to corruption; promote adequate remuneration and equitable pay scales; and promote education and training programmes to enable public officials meet the requirements for the correct, honourable and proper performance of public functions.

States parties are also required under this Article to adopt legislative and administrative measures to prescribe criteria concerning candidature for and election to public office, and to enhance transparency in the funding of candidatures for elected public office and funding of political parties.

Article 8 stipulates a Code of Conduct for Public Officials. States are required to promote integrity, honesty and responsibility among its public officials; apply codes or standards of conduct for the correct, honourable and proper performance of public function; establish measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities; establish measures and systems requiring public officials to make declarations to appropriate authorities; establish measures and systems requiring public officials to make declarations to appropriate authorities regarding their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials; and consider taking disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

Article 9 covers Public Procurement and Management of Public Finances. States Parties are required here to establish appropriate systems of procurement, based on transparency and competition. Such systems shall address:

- a. The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;
- b. The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;
- c. The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures; and
- d. An effective system of review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established are not followed.

States parties are also required to take measures to promote transparency and accountability in the management of public finances. Such measures shall encompass procedures for the adoption of a national budget, timely reporting on revenue and expenditure, system of accounting and auditing standards and related oversights, effective and efficient systems of risk management and internal control.

Article 10 provides for Public Reporting. Here, states are required to take such measures as may be necessary to enhance transparency in its public administration. Such measures may include adopting procedures or regulations allowing members of the general public to obtain information on the organization, functioning and decision-making processes of its public administration; simplifying administrative procedures in order to facilitate public access to the competent decision-making authorities; and publishing information, which may include periodic reports on the risks of corruption in its public administration.

Measures relating to the judiciary and prosecution services is the subject of Article 11. Here, states parties are required to take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

The private sector comes next in Article 12. States are required to take measures to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures. Measures to achieve these ends may include:

- a. Promoting the development of standards and procedures designed to safeguard the integrity of private entities and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the state;
- b. Promoting transparency among private entities, including procedures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;
- c. Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities; and
- d. Ensuring that private enterprises have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

Article 13 relates to participation of civil society. States parties are required to take appropriate measures to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organisations and community-based



organisations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption.

Article 14 contains measures to prevent money laundering. States parties are required to institute comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions in order to deter and detect all forms of money laundering, which regime shall emphasize requirements for customer and beneficial owner identification, record-keeping and the reporting of suspicious transactions.

States shall also consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in anyway the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

Of great significance is Chapter 3 which provides for criminalisation of offences relating to bribery and corruption. Article 15 requires states parties to adopt such legislative and other measures as may be necessary to establish as criminal offences the promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; and the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official to act or refrain from acting in the exercise of his or her official duties.

Article 17 requires states to adopt such legislative and other measures as may be necessary to establish as criminal offences the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

Under Article 19, states shall adopt legislative measures to establish as criminal offence the performance of or failure to perform an act in violation of laws by a public official in the discharge of his or her functions for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

States are required under Article 20 of the Convention to adopt such legislative and other measures as may be necessary to establish as a criminal offence illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

Bribery and embezzlement in the private sector is dealt with in Articles 21 and 22.

Next is laundering of proceeds of crime. States are required by the Convention to adopt legislative measures to establish as criminal offences:

- a. The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property;
- b. The concealment or disguise of the true nature, source, location, disposition or ownership of or rights with respect to property knowing that such property is the proceeds of crime; and
- c. The acquisition, possession or use of property knowing such property is the proceed of crime.

States are required by Article 30 to take such measures as may be necessary to establish in its legal system and constitutional principles an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility of effectively investigating, prosecuting and adjudicating offences established in accordance with the Convention.

The Article also requires states to endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximise the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

States are required in Article 31 to take measures to enable confiscation of proceeds of crime and identification, tracing, freezing or seizure of such proceeds of crime.

Article 36 of the Convention requires states to set up specialized bodies with necessary independence to enforce anti-corruption laws.

International cooperation is covered by chapter four of the Convention. States parties are required to cooperate and assist each other in investigations of and proceedings in civil and administrative matters relating to corruption. Scope of cooperation amongst state parties shall cover matters relating to extradition, transfer of sentenced persons, mutual legal assistance (for the purpose of taking evidence from persons, service of judicial documents, searches and seizures, examining objects, providing information and documents, and facilitating appearance of persons), transfer of criminal proceedings, law enforcement cooperation, joint investigations.

Return of assets is recognised in the Convention as a fundamental principle and states parties are required in chapter five to afford one another measure of cooperation and assistance in this regard. The chapter also makes provisions for cooperation between states parties for direct recovery of property by one state party in another; mechanisms for recovery of property

through international cooperation in confiscation; and return and disposal of confiscated assets by state parties.

States are required in Article 52 to take such measures as may be necessary to require financial institutions to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are entrusted with prominent public functions and their family members and close associates.

States are required in Article 58 to consider establishing financial intelligence units to be responsible for receiving, analysing and disseminating to competent authorities reports of suspicious financial transactions.

Chapter 6 of the Convention deals with technical assistance and information exchange. Article 60 requires states to initiate, develop and improve specific training programmes for its personnel responsible for preventing and combating corruption. Such training programme could deal with measures to investigate and control corruption, development and planning of anticorruption policy, and the preparation of requests for mutual legal assistance that meet the requirements of this Convention. Other areas that the training programme could cover include the following:

- a. Evaluation and strengthening of institutions, public service management and management of public finances, including public procurement, and the private sector;
- b. Preventing and combating the transfer of proceeds of offences established in accordance with the Convention;
- c. Detecting and freezing of the transfer of proceeds of offences established in accordance with the Convention;
- d. Surveillance of proceeds of corruption; and
- e. Appropriate and efficient legal and administrative mechanisms and methods for facilitating the return of proceeds of corruption and money laundering.

Article 63 of the Convention establishes a Conference of the State Parties to the Convention to improve the capacity of and cooperation between state parties to achieve the objectives of the Convention. The meeting of the Conference in 2018 was held in Nigeria.

Article 65 of the Convention requires all state parties to take necessary measures, including legislative and administrative measures in accordance with their domestic laws, to ensure the implementation of their obligations under the Convention.

### **3.0. Regional Conventions on Corruption**

There are also a number of international conventions enacted by regional organisations to combat corruption. The 1997 OECD Convention on Combating Bribery of Foreign Public

Officials in International Business Transactions, adopted by 34 member-states/countries and 6 non-member countries, criminalised the payment of bribes to foreign public officials in international business transactions in all the states which adopted it. The Convention focuses on the 'supply side' of the crime and has been able to achieve several convictions/imprisonment of individuals as well as fines for companies falling foul of its provisions.

Transparency International, OECD and its Working Groups continue to monitor developments in member countries and to make recommendations. The 2009 OECD Anti-Bribery Recommendations is one of such recommendations.

#### **4.0. Domestic Anticorruption Legislations with Extra-Territorial Influence**

And the prosecution of some crimes is being internationalised. This happens not just through organisations such as the International Criminal Court, which deals with serious violations of human rights, but also through the judiciaries of some rich countries. Anti-bribery laws in America and Britain, for example, not only focus the minds of British and American businessmen, who risk arrest if they pay bribes in Africa, but also of Africans who worry that they may be arrested for bribery at home when they travel abroad. This means that even in places where the courts are weak, people can be forced to play by the rules.

Domestic anti-corruption legislations and conventions with extra-territorial influence include the United States Foreign Corrupt Practices Act (1977), the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997), the OECD Anti-Bribery Recommendation (2009), and the United Kingdom Bribery Act (2010).

The US Foreign Corrupt Practices Act (FCPA) applies to all persons and/or organisations that have any link with the United States and the UK Bribery Act applies to persons and organisations with links with the United Kingdom. The FCPA has achieved convictions against companies and their officials especially with respect to the transparency requirements of the 1934 Securities and Exchange Act and the bribery of foreign officials. The Bribery Act is of significant interest. It appears to have surpassed the FCPA in terms of scope and reach, bringing the private sector within its purview more than the latter did and is reputed to be the most expansive and stringent anti-bribery and corruption law in the world at present.

The British government has set up a new crime division, International Corruption Unit (ICU), which will investigate corruption cases relating to Nigeria and other developing countries in the United Kingdom. The ICU will bring together existing investigation and intelligence units funded by the Department for International Development from the Metropolitan Police Service, City of London Police and National Crime Agency. The multi-agency team would be operated by the National Crime Agency and it would be the central point for investigating international corruption in the UK.<sup>23</sup> The ICU would work to ensure that Nigeria and other developing

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<sup>23</sup> 'UK Raises Team on Nigeria, Others' Corruption Cases,' *The Punch* (6<sup>th</sup> September, 2015), p.6.

countries got back looted funds stashed in the UK. For the ICU to take off successfully, the DFID will provide £21m for five years to 2020.

#### **4.1. Unexplained Wealth Orders (UWO)**

Unexplained Wealth Orders (UWO) enacted in the United Kingdom in 2018 has set panic buttons amongst Nigerians with property in the UK. The law requires foreigners who own properties in the country to explain the source of their funds or risk forfeiting them to the government. According to the new law, the UWOs could be obtained on any property or combination of properties valued at 50,000 pounds (N25 million) or more, for which the owner is unable to explain.

In addition to the above, there are two proposals that may aid the fight against corruption in Nigeria and a hybrid regime currently in operation in Honduras that would be considered next in the discussion.

#### **5.0. International Anti-corruption Court (IACC)**

There has been suggestion for the setting up of an ICC-style International Anticorruption Court (IACC). In many countries, corruption is pervasive at the highest levels of the national government and is unpunished. Such misconduct has come to be known as ‘grand corruption’, which occurs ‘when politicians and state agents entitled to make and enforce the law in the name of the people, are misusing this authority to sustain their power, status and wealth’. Grand corruption depends on a culture of impunity. In countries with such a culture, there is neither the will nor the capacity to investigate, prosecute, and punish grand corruption. The enormous wealth obtained by corrupt officials in those countries is often laundered through a series of complex financial transactions, invested abroad, sometimes hidden, and sometimes enjoyed in appealing places by those officials.<sup>24</sup>

Massive violations of human rights by high level officials in countries with a culture of impunity led to the creation of the International Criminal Court, in 2002, for the prosecution of genocide, crimes against humanity, and war crimes. An International Anti-Corruption Court, as part of the ICC or as an independent entity, is now equally necessary and appropriate because of the consequences of grand corruption. Since international efforts to combat grand corruption have been inadequate and ineffective so far, an International Anti-Corruption Court (IACC), similar to the ICC or as part of it, should be established to provide a forum for the criminal enforcement of the laws prohibiting grand corruption that exists in virtually every country, and the undertakings that are requirements of various treaties and international organisations. Staffed by elite prosecutors and investigators as well as impartial judges, an IACC would have the potential to erode the widespread culture of impunity, contribute to creating conditions conducive to the democratic election of honest officials in countries which have long histories

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<sup>24</sup> Wolf, Mark L.; ‘A Case for an International Anti-Corruption Court’, Brookings Institution (July 2014).

of grand corruption, and honour the courageous efforts of the many people, particularly young people, who are increasingly exposing and opposing corruption at great personal peril.

Powerful, corrupt leaders understandably do not permit the honest, energetic investigation and prosecution of their friends, families, and, indeed, themselves. Rather, to perpetuate the culture of impunity on which corruption depends, they often prompt the persecution of those who expose official misconduct. For example, President Goodluck Jonathan of Nigeria dismissed the country's bank governor after the governor informed the Nigerian Senate that the treasury was missing billions of dollars in expected oil revenue.

An International Anti-Corruption Court would only be a new forum for prosecuting violations of universal, existing obligations of honesty, rather than a place for the enforcement of new norms.

An International Anti-Corruption Court would require the creation and employment of an elite corps of investigators who are expert at unravelling complex financial transactions, and prosecutors experienced in preparing and presenting complicated cases. It should also include experienced, impartial judges. Like the ICC, the International Anti-Corruption Court should operate on the principle of complementarity. In addition, the International Anti-Corruption Court should, like federal courts in the United States, be empowered by international law to hear civil fraud and corruption cases brought by private 'whistleblowers'. The United States False Claims Act authorises *qui tam* actions by private citizens, who sue on behalf of the United States those who have allegedly defrauded the government. A successful *qui tam* action can result in an award of treble damages against the perpetrator of fraud against the government, which in some cases involves the payment of bribes. If the Department of Justice takes over the prosecution of the claim, the private 'relator' who initiated the action is entitled to a substantial payment from any settlement or judgment. If the Department of Justice declines to intervene and the suit is settled or won, the relator received at least 25 percent of the amount recovered for the government, which at times provides a payment of hundreds of millions of dollars.

In contrast to criminal cases, which require proof beyond a reasonable doubt to obtain a conviction, a civil fraud charge must be proved only by a preponderance of the evidence and is, therefore, easier to establish. Relators' lawyers typically work on a contingent fee basis. Thus, lawyers are available to private citizens who are financially unable to match the companies being sued. In addition, under the American system, a relator who brings an unsuccessful claim does not usually have to pay the prevailing defendant's attorneys' fees.

All of these features of the False Claims Act greatly expand the resources devoted to combating fraud against the United States, including fraud perpetrated with the collusion of corrupt officials, and minimize the risk that politically powerful government contractors will succeed in keeping well-founded cases from being brought against them by the Department of Justice.



As a result, in nine thousand False Claims Act cases between 1987 and 2005, the United States recovered \$15 billion, two-thirds of which came from cases first brought by private citizens.

In any event, submission to the jurisdiction of the International Anti-Corruption Court should be incorporated in the United Nations Convention Against Corruption. It should also be made a condition of membership in international organisations such as the OECD and WTO, and for obtaining loans from international lenders such as the World Bank.

The threat of prosecution in the International Anti-Corruption Court would give many nations an incentive to strengthen their capacity to prosecute grand corruption itself, the principle of complementarity would preclude prosecution of its officials in the International Anti-Corruption Court. An International Anti-Corruption Court should, therefore, encourage efforts to establish specialised national anti-corruption courts in countries in which judges are often corrupt.

Moreover, recognising the link between grand corruption and abuses of human rights has the potential to lead to the more effective prosecution and punishment of perpetrators of those abuses. High-level officials responsible for genocide, for example, typically operate through subordinates and allies, making their criminal culpability difficult to prove by the eyewitness testimony of victims. However, the money laundering frequently associated with grand corruption can often be proven based on more easily acquired documentary evidence alone. Therefore, if an IACC is established and empowered to decide cases involving bribery and other financial crimes, it should be possible to successfully prosecute and punish powerful officials for crimes relating to corruption when it would not be possible to do so for genocide, war crimes, or crimes against humanity. This would be comparable to the experience in the United States, where members of the Mafia and other dangerous criminals are sometimes convicted and imprisoned for tax evasion when their violent crimes cannot be proven.

## **6.0. Universal Jurisdiction**

The growing principle of universal jurisdiction has enabled for the trial and prosecution of suspects in any country irrespective of where the offence is committed. This has greatly aided the fight against piracy, drug trafficking and terrorism. Universal jurisdiction is the power granted to all States to exercise control over persons or events in order to ensure that there is a basis for taking positive action even though there is no territorial linkage or nationality. For universal jurisdiction to apply, it is necessary for the act to occur outside the jurisdiction of a State.

The concept of universal jurisdiction is premised on the fact that the crime is one that affects the common interest of the community of States and, therefore, all States have an interest to combat that crime.

Universal jurisdiction allows states or international organisations to claim criminal jurisdiction over an accused person regardless of where the alleged crime was committed, and regardless of the accused's nationality, country of residence, or any other relation with the prosecuting entity. Crimes prosecuted under universal jurisdiction are considered crimes against all, too serious to tolerate jurisdictional arbitrage.<sup>25</sup>

The concept of universal jurisdiction is therefore closely linked to the idea that some international norms are *erga omnes*, or owed to the entire world community, as well as the concept of *jus cogens*-that certain international law obligations are binding on all states.

According to Amnesty International, a proponent of universal jurisdiction, certain crimes pose so serious a threat to the international community as a whole that states have a logical and moral duty to prosecute an individual responsible; therefore, no place should be a safe haven for those who have committed genocide, crimes against humanity, extrajudicial executions, war crimes, torture and forced disappearances.

Opponents of universal jurisdiction argue that universal jurisdiction is a breach of each state's sovereignty: all states being equal in sovereignty, as affirmed by the United Nation's Charter. Widespread agreement that human rights violations and crimes against humanity must be prosecuted has hindered active consideration of the proper role of international courts. Universal jurisdiction risks creating universal tyranny-that of judges. Since any number of states could set such universal jurisdiction tribunals, the process could quickly degenerate into politically driven show trials to attempt to place a quasi-judicial stamp on a state's enemies or opponents.

Universal jurisdiction has its roots in maritime law. It was spurred by the need to combat piracy. Pirates have from time been considered 'enemies of mankind.' Hence, a state can exercise control in maritime law even in the absence of territorial nationality. The essence of universal jurisdiction in maritime law is the power granted to all states to combat piracy on the high seas. The exercise of jurisdiction to combat piracy occurs in the high seas. To combat Somali pirates, the Security Council of the United Nations gave power to warships guarding the sea to enter Somali waters.

Professor David Attard stated in one of his seminal lectures on Public International Law at the International Institute of Maritime Law, Malta on December 4, 2014 that there are three 'super treaties' adopted by the United Nations to confer universal jurisdiction on states in order to enable them exercise control over persons, situations and events outside their territory or where there is no territorial linkage or nationality. They are the United Nations Convention against

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<sup>25</sup> International Justice Resource Centre Available on: <https://ijrcenter.org> Accessed 21<sup>st</sup> December, 2021

Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, the United Nations Convention against Transnational Organised Crime 2000<sup>26</sup> and the SUA Conventions.

State parties are obligated under the above treaties to enact national laws which would create relevant offences, confer mandatory and optional grounds for jurisdiction in respect of the offences so as to have a jurisdictional well where authority can be exercised irrespective of territorial limit. Such domestic legislations shall also consider the treaty as an extradition treaty for the relevant offences where domestic legislation requires extradition treaty before extradition. States parties shall also remove the political exception rule to extradition for relevant offences in the domestic law. Lastly, states parties agree that in creating relevant offences, they undertake to accord serious penalties/punishments for the offences. Related to this is the obligation that states parties make it clear that the relevant offences are extraditable offences. Finally, the new treaties require states parties either to extradite or submit the offender to prosecution in his own state. So that if the offender is not extradited, he will still be tried by the state where he is.

The treaties, also referred to as the post-UNCLOS (The United Nations Convention on the Law of the Sea) treaties, came into being following the inability of UNCLOS to adequately address emerging pirate and terrorist threats in the late 1980s and early 1990s. The Italian cruise ship *Achille Lauro* incident, especially, fell outside the scope of the definition of piracy under Article 101 of the Convention leading to calls for treaties that would adequately address it.

Although universal jurisdiction has a maritime origin as it was meant to address the challenge of piracy, considered a threat to humanity, it has assumed significance with the proliferation of very violent crimes affecting global trade and stability.

### **7.0. International Commission Against Impunity in Guatemala (CICIG)**

In August 2017, Guatemala's Attorney-General and the head of a UN-backed international commission jointly asked the legislature there to lift the immunity of President Jimmy Morales after uncovering over \$800,000 in hidden and unexplained funds that went to his party's 2015 campaign. Two days later, Morales deepened the political crisis by declaring the UN-appointed commissioner persona non grata and ordering him out of the country. Within hours, the country's Constitutional Court had provisionally remanded that order, and on Monday it found enough evidence to permit the legislature to consider lifting Morale's immunity.<sup>27</sup>

Now the country is waiting to see how this battle over immunity will be resolved and whether a morally and legally damaged president can survive. The outcome of this contest will shape not only whether Guatemala can emerge from decades in the grip of powerful criminal-

<sup>26</sup> Entered into force September 29, 2003.

<sup>27</sup> Call, Charles T.; 'What Guatemala's Political Crisis Means for Anti-Corruption Efforts Everywhere,' Brookings Institution (07-09-2017). Available on: <https://www.brookings.edu/blog/order-from-chaos/2017/09/07/what-guatemalas-political-crisis-means-for-anti-corruption>. Accessed 30<sup>th</sup> December, 2021.

political-security networks, but also whether an innovative hybrid international-national experiment will be able to continue to serve as a model for combating corruption and impunity in other countries.

The International Commission against Impunity in Guatemala (CICIG) was launched in 2007 to dismantle parallel security groups with links to criminal organisations and political elites that persisted after a 1996 peace agreement ended decades of civil war. Staffed by international experts and vetted Guatemalan prosecutors and investigators, it is empowered to independently investigate cases and jointly bring them to the courts with the national Public Ministry. US has been a solid backer of the experiment.

The Commission has been the driving force in embezzlement charges against a former president and charges of extra-judicial executions against an ex-minister and the head of police criminal investigations, as well as senior security officials. It has also put dozens of prominent drug traffickers and politicians and security officials behind bars, including the interior minister who helped create it. It has forced the ouster of over a dozen corrupt judges and a tainted attorney general, and sparked the dismissal of over 2,500 police officers.

In 2015, CICIG's investigations of a multi-million-dollar customs fraud ring led to the arrest of some 200 people, including the country's vice-president Otto Perez, both of who resigned. Since 2013, Ivan Velasquez was head CICIG. Following Morales' attempt to oust Velasquez, several cabinet and other senior officials left the government. In their resignation letter, the health minister and her vice ministers opined that the president had 'assumed a position in favour of impunity and the corrupt sectors of the country.'

CICIG is significant not just due to its impact at the highest levels in Guatemala, but because so many prior international approaches to combat corrupt regimes have not worked. Decades of traditional development assistance to judicial institutions and to corrupt and abusive police forces have not been able to overcome the entrenched character of corrupt political systems in Latin America. Foreign aid for the 'rule of law' has helped reform criminal codes, introduce updated investigative approaches, and confer technologies. However, hundreds of millions of dollars to Latin American justice and police forces have not ended corrupt networks reaching the highest levels of governments.<sup>28</sup>

Even the heavy footprint of UN peacekeeping missions has not been able to break corrupt mafias. With thousands of troops and resourced mandates to reconstitute new civilian police and justice institutions, peace operations have left behind post-war societies plagued by violent criminal organisations and corrupt mafia in places such as Bosnia, Kosovo, El Salvador, Afghanistan, Haiti and Tajikistan.

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<sup>28</sup> Beltran, Adriana; 'Is Guatemala's Fight Against Corruption Under Threat? How Its Enemies are Undermining Progress,' *Foreign Affairs* (June 6, 2018). Available on: <https://www.foreignaffairs.com/guatemalas-fight-against-corruption-under-threat>. Accessed 13 September, 2021.

Guatemala's CICIG began as an attempt to dismantle security threats but ended up bolstering the justice system in ways that improved governance. As a UN peace operation was winding down in the early 2000s, parallel security groups with ties into the state continued to kill human rights activists and those seeking accountable governance. Human rights groups sought an international commission to help fulfil the government's pledge to dismantle these groups made in a 1996 peace accord that ended thirty-six years of civil war. The initial proposal failed in the face of elite opposition and constitutional objections, but eventually the Guatemalan government worked with the UN to create CICIG.

CICIG is the first hybrid international-national investigative body to tackle present-day problems of impunity and criminal armed groups. Although it emerged from a peace process, its focus is not on crimes associated with the prior civil war (like Sierra Leone's hybrid Special Court). It falls short of a UN-authorized mission but involves unprecedented powers by internationals to independently select and investigate criminal cases that are then taken jointly with national prosecutors before the Guatemalan courts. It thus overcomes the problems of conventional justice aid programmes in which national courts can bury, ignore or dismiss internationally-assisted criminal investigations. And it offers the advantage of bolstering, rather than supplanting, the capacity and legitimacy of national institutions.

Despite slow initial progress, some premature accusations, and questionable decisions on where to focus efforts, CICIG has become a model in the hemisphere. In April 2016, the Organisation of American States opened a Support Mission against Corruption and Impunity in Honduras (MACCIH), whose international investigators and prosecutors can select cases where they assist vetted Honduras prosecutors and investigators to take forward.

The future of global fight against corruption would be affected by the underlisted recent developments:

- i. Reintroduction of border controls in Europe and America and reduced migration and movement of people across borders.
- ii. Increased exercise of sovereignty by states 'trying to take back control of their countries'-Brexit. More protectionist measures and restriction of free trade. Whither WTO.
- iii. Erosion of liberal democracy across Europe with increasing attack on independent judiciary and free press in Hungary and Poland.
- iv. Increased xenophobia across the world-attacks on foreigners/Africans in South Africa, rise of white supremacists and clashes with blacks in the US, racist rhetoric that came with Trump election.
- v. Decrease in international cooperation amongst countries on matters like terrorism, drugs, and environment. US pulled out of Paris Climate Change

Agreement, reducing funding and aid to health NGOs and those engaged in democracy and rule of law abroad (USAID).

### **8.0. Asset Recovery**

Asset recovery is a priority on the anticorruption agenda of the Buhari administration. This has been appropriately articulated in the National Anti-Corruption Strategy 2017.

Illicitly obtained funds are usually invested abroad either because domestic currency or economy is unstable; to avoid detection or simply to place the money outside the reach of a national government's jurisdiction. Until recently, financial institutions in financial centres were accepting and would accept stolen money without question. This has now changed relatively due to the anti-money laundering standards being enforced the world over.

The principles behind the recovery of assets include the common understanding that it is an economic intervention strategy with potential of bringing back what have been stolen or misappropriated, thus, increasing the revenue profile of the government. To that extent, it serves as a restitution to the society/citizens who have been 'victimised' by acts of corruption. Asset recovery also aims to deny criminals their illegal gain and to prevent them from misusing it for organised crime purposes. But most importantly, it is an anti-corruption strategy with potential of removing negative role models from society and rebutting the notion that crime pays.<sup>29</sup>

The international community and governments have developed various tools for recovering the proceeds of crime. However, in spite of domestic legislation, which allows confiscation and forfeiture of the proceeds of crime, globalisation and technological advancement have allowed perpetrators of crime to continue to launder the illicit proceeds of their crime. The subject of asset recovery has become one of the major themes in discourses on development funding, due in part to the enormous amount of resources that are lost annually by developing countries to corruption. Over the last couple of decades, the legal and criminological approach to dealing with criminal activities like drug trafficking, corruption, money laundering and terrorist financing have undergone a paradigm shift from the utilitarian and the traditional 'just deserts' model of punishment to a 'dispossession' model which aims at taking the profit out of crime. Recovering the proceeds of crime takes the profit out of the crime because it deprives perpetrators of their illicit gains. Asset forfeiture and asset recovery have thus, become some of the more innovative tools to combat economic and financial crimes.

The United Nations Convention Against Corruption (UNCAC) is the ground breaking convention on asset recovery. The UNCAC explicitly identifies asset recovery as its fundamental principle. It enjoins states parties to establish comprehensive domestic regulatory and supervisory regimes to prevent money laundering. Countries that have ratified the UNCAC

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<sup>29</sup> Shehu, Abdullahi Y.; 'Nigeria and Recovered Loot I,' *Thisday* (Nigeria, 04 February, 2018), p. 14.



are required to criminalise the offence of bribery, embezzlement, misappropriation or other diversion of property by a public official and, laundering of the proceeds of crime. However, criminalisation of illicit enrichment is left to the discretion of states. Nevertheless, Article 21 of the UNCAC encourages states parties to put in place measures that would criminalise illicit enrichment, which is defined as ‘a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.’ Applying the principles of Article 21 means that a significant increase in the assets of a public servant raises a *prima facie* presumption that the public official concerned benefited from illicit enrichment. This presumption can be rebutted by furnishing facts which reasonably explain the legal source of the assets. While several jurisdictions have successfully enacted and enforced illicit enrichment, others consider it inconsistent with their constitutions and fundamental principles of due process.

The greatest innovation of the convention is contained in chapter five. Asset recovery and the return of such assets to countries of origin is a fundamental principle of the convention, and this chapter contains provisions such as prevention and detection of transfers of proceeds of crime; measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for the purposes of confiscation; return and disposal of assets; the requirement for the establishment of financial intelligence unit; as well as bilateral and multilateral agreements and arrangements (Articles 51-59). Specifically, Article 51 states: ‘The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.’ And on matters of direct recovery, the Convention provides (Article 53) that:

Each State Party shall, in accordance with its domestic law:

- (a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;
- (b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and
- (c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognise another State Party’s claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

Despite these comprehensive international frameworks, recovering the proceeds of crime is premised on evidence, that is, the existence of assets. Thus, the spirit and letter in the

international instruments is that in order to conduct a successful recovery of criminal proceeds, assets must be followed not only to their final hiding place, but causality must be established between the asset and the criminal activity. This process is complex, technical and time-consuming; as such, it poses particular challenges for developing countries such as Nigeria that is a cash-based society with low capacity. Stolen assets are often layered through different accounts and corporate vehicles. Therefore, identifying and tracing illicit assets successfully require expertise, resources and cooperation between multiple intelligence and law enforcement agencies, as well as prosecutors. It is thus, crucial for the Financial Intelligence Unit (FIU), law enforcement agencies and prosecutors to cooperate and work together to build a strong case each and every time.

The existing legal and institutional framework for asset recovery in Nigeria is still evolving. Although the country has made provision for confiscation pursuant to a criminal conviction in the MLPA 2011 and the EFCC Act, it can be argued that the institution has been effective in respect of fraud cases involving ordinary citizens but less so in respect of cases involving politically exposed persons (PEPs). In other words, prosecutions and convictions are fewer in matters involving PEPs and many of these cases are being delayed while others have been struck out by the courts.

Nevertheless, within one year (from May 29, 2015 to May 29, 2016), following pressure from the public, the government announced the recovery of assets in cash totalling N78,325,354,631.82; \$185,119,584.61; £3,508,355.46; €11,250.

In December 2017, on the margins of the Global Forum on Asset Recovery held at the IFC Headquarters in Washington DC, USA, the Attorney-General of the Federation and Minister of Justice, Abubakar Malami, SAN, signed a tripartite agreement with the government of Switzerland and the World Bank for repatriation of \$321 million purported to be part of the Abacha loot. While commending the government for these recoveries, the most important questions agitating most Nigerians now is what to do with the recovered proceeds.

A recent statement in the news media attributed to the Vice-President indicated that government intends to invest recovered proceeds on a 'Social Protection Scheme' which is one of the pet programmes of the Buhari administration.

Vice-President Yomi Osinbajo yesterday listed six obstacles facing Nigeria and other nations seeking to repatriate looted funds and confiscate assets of corrupt elements. He also said developing countries lose \$1 trillion annually to corporate transgressors, adding that the private sector's complicity in corrupt practices is significant. In Osinbajo's view, the procedures to obtain Mutual Legal Assistance to confiscate and repatriate proceeds of corruption need to be reformed. He spoke at the opening of the eighth Commonwealth Regional Conference for

Heads of Anticorruption Agencies in Africa, hosted by the Economic and Financial Crimes Commission (EFCC) in Abuja.<sup>30</sup>

Osinbajo said the procedures for repatriation of stolen funds and proceeds of corruption are complex. He listed six major obstacles which have made the implementation of Mutual Legal Assistance among countries difficult. The challenges are:

- a. Absence of a legal basis for cooperation in some countries;
- b. Differences in legal and procedural frameworks;
- c. Language barriers;
- d. Bank secrecy;
- e. Jurisdictional issues; and
- f. Lack of funding.

Osinbajo said: 'Recovering stolen assets not only accomplishes the goal of restitution, it also serves as a potential deterrent to future corruption.'

'Article 51 of the United Nations Convention Against Corruption states unequivocally that return of assets is a fundamental principle of the Convention, and mandates States Parties to afford one another the widest measure of cooperation and assistance in this regard. Similarly, Article 16(1)(c) of the African Union Convention for Preventing and Combating Corruption obligates States Parties to adopt such legislative measures as to enable repatriation of proceeds of corruption. The effective implementation of these Conventions depends to a considerable extent on the willingness, cooperation and the assistance of States in the areas of mutual legal assistance (MLA), law enforcement cooperation, asset recovery and return, and technical assistance. Regrettably, the procedures to obtain mutual legal assistance to seize, confiscate and repatriate proceeds of corruption are often complex and problematic, and in urgent need of reform.

'Another report that may enjoy a major mention here is the 2015 report of the High Level Panel on Illicit Financial Flows from Africa. Chaired by former South African President Thabo Mbeki, the panel stated in its report that Africa had lost over \$1 trillion over a 50-year period and that Africa loses more than \$50 billion annually to illicit financial flows. Most of these illicit flows are perpetrated in the extractive sector and through companies with hidden ownerships.

'The cost of corruption therefore imposes on all African countries and governments and governments a moral obligation to fight it with vigour and political will, by strengthening all institutions and systems involved in law enforcement as well as in promoting a culture of transparency and accountability. While public sector corruption is the usual focus, the private

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<sup>30</sup> 'Osinbajo: Why Loot Recovery is Tough,' *Thisday* (Nigeria, 15th May, 2018), pp. 1, 6-7.

sector's complicity is significant, as when large multinational corporations engage in tax evasion or transfer pricing. But it is the complex web of public-private collusion and connivance that results in proceeds of corruption ending up in foreign countries and especially in their financial institutions and systems.'

Osinbajo said anonymous corporate ownership serves as a vehicle for masking conflict of interests, corruption, tax evasion, money laundering, and even terrorism financing. If nothing else, the Panama Papers clearly illustrated the global scale and spread of this problem. So this is a global challenge and nothing less than a truly global approach will be needed to tackle it.

'This is why we salute the United Kingdom, Norway, Netherlands and Denmark for leading the way in establishing public registers of the real, human owners of companies in their countries. We call on other G8 and G20 countries not only to follow suit but also to initiate actions to end corporate secrecy in some of their dependencies.'

Osinbajo explained the conditions attached to the return of \$320 million Abacha loot to Nigeria by Switzerland. He said: 'The GFAR saw the signing of a Memorandum of Understanding between Nigeria and the Government of Switzerland for the return of an additional USD320 million of the Sani Abacha loot. Included in that agreement is the commitment that the funds would be invested in one of the Nigerian Government's flagship social investment programmes-a Conditional Cash Transfer scheme targeted at the poorest and most vulnerable households in the country.'

The Commonwealth Secretary-General Scotland said the world was facing a Tsunami of corruption. She said globally that about \$800 billion to \$300 trillion had been lost to money laundering globally. She said Africa loses \$148 billion to corruption per annum. In 2015, UNODC estimated that the amount of money laundered globally each year is 2-5 percent of global domestic product or between \$800 billion and \$200 trillion. It is estimated that corruption costs the African continent over \$148 billion per annum. She said that here in Nigeria, over \$3 billion of ill-gotten gains have been recovered.

To Magu, 'There are leaders of States here today who are not assertive on matters of state policy; you can hardly say with any conviction that such and such is the position held by such leaders on issues of national or international significance. You cannot however say that of President Buhari who from the very beginning, even while he sought political office, publicly requested to be judged by his anticorruption credentials than on any other. Very early in the life of his administration, the president declared that: 'The institutions of State dedicated to fighting corruption will be given independence and prosecutorial authority without political interference.' I can confirm to you, Madam Secretary and my dear colleagues, that the promise has been kept. The fact that the fight against corruption is central to the administration of President Buhari is not accidental. That is what has defined the entire public lives of our first and second citizens and we are extremely lucky at this time in the life of our nation to have the

most committed anticorruption administration led by the President piloting the affairs of Nigeria. I dare say that there has never been a better, more focused and committed team as far as anticorruption is concerned, anywhere in Africa, than the current leadership in Nigeria.

### **9.0. Anticorruption in Latin America**

Latin Americans are turning against officials who have embezzled public money or peddled their influence for personal gain. Although no populists have yet managed to turn this anger to their advantage, they will certainly try, especially given the intensity of the public's rage.<sup>31</sup>

Over the last year, millions of Brazilians have flooded the streets, flying gigantic balloons bearing images of former President Luiz Inacio Lula da Silva and his successor, Dilma Rousseff (who was impeached by the Senate at the end of August, 2016), dressed in prison stripes. Sergio Moro, the judge who has sent dozens of high-ranking politicians and business leaders to jail in a corruption scandal involving the state oil company, Petrobras, has become one of the country's most popular political figures. And no wonder: more than 60 percent of Brazil's members of Congress have been charged with corruption or other crimes. Meanwhile, in Guatemala in 2015, thousands of protesters filled the main plaza for weeks to demand that President Otto Perez Molina step down over accusations that he and others stole tens of millions of US dollars in customs duties. Perez Molina now sits in jail, awaiting trial.

The anger is also palpable in Honduras, where thousands have joined vigils calling for the resignation of President Juan Orlando Hernandez after an independent investigation revealed that the director of the country's healthcare system had stolen millions of dollars in public money. In March, protesters took to the streets again to demand justice after the murder of the indigenous leader and environmental activist Berta Caceres. And in Mexico, in June, voters threw out the political parties of several governors embroiled in corruption scandals, in the process ending over 80 years of uncontested rule by the Institutional Revolutionary Party in four states.

Many of these developments were made possible by reforms enacted by some countries in recent years to improve the transparency and accountability of government officials. Countries including Brazil and Mexico have passed laws requiring their public servants to disclose their finances, open public procurement to competitive tender, and provide greater access to government documents. The newly available information, acquired by intrepid reporters, has led to some of the explosive revelations described above.

The regional economic downturn has also made it harder for corrupt officials to hide their bad behaviour. As public funds dry up, graft become more visible. The rise of social media has helped amplify these stories, allowing millions of Latin Americans to find out about the fancy homes and offshore bank accounts of public officials.

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<sup>31</sup> O'Neil, Shannon K. O.; 'Latin America's Populist Hangover,' *Foreign Affairs* (November/December 2016), p. 31.

The backlash against corruption has also resulted from the rise of a new middle class throughout the region. Across Latin America, nearly 70 million people rose out of poverty during the first decade of this century. These people now have assets to protect and have become quick to denounce a system they see as rigged against them. Polls show that this middle-class citizens are also more interested in democratic governance than the poor, who are overwhelmingly concerned with their economic security (or lack thereof).

Most of the region's politicians have yet to understand, much less harness, this ire. Unlike economic frustration, anger over corruption is directed squarely at them. And the independent citizens' groups leading the current fight against corruption want stronger institutions, not charismatic leaders who will bypass them.

Earlier in 2016, in Mexico, over 600,000 citizens signed petition calling for the government to bolster the country's weak anticorruption laws, and on July 6, their demands became law. In January, after months of pressure from the Honduran public, the president accepted a new investigatory body modelled on the independent Guatemalan commission that helped force the resignation of that country's corrupt president and vice president in 2015.

In Mexico, Andres Manuel Lopez Obrador, who has launched his third attempt to become president, is trying to harness voters' disgust over the current government's corruption scandals. True to populist form, he has promised to take on poverty, expand social welfare programmes, defend Mexican interests against foreign imperialists, and end the current political system, referring to the government and the opposition National Action Party as a political Mafia that must be destroyed.

Although Mexico has generally avoided populism in the past, the government has aided Lopez Obrador's cause by dragging its feet on anticorruption reforms and failing to prosecute theft by its governors. Unless the government changes course in the next two years, Lopez Obrador could become Mexico's next president.

## **Conclusion**

The application to the fight against corruption of universal concepts such as the 'super-treaty' principles and the proposed IACC thereby creating a jurisdictional well that ensures the 'capture' and prosecution of corrupt elements in any state, and the Guatemalan hybrid international experiment should be of help to countries like Nigeria who are still institutionally challenged.

Conclusively, there is a wide basis under international law for a state to have jurisdiction over acts of corruption, even if they are committed abroad. Often, more than one state will have the right to exercise its jurisdiction over the same corrupt act.