

FINAL REPORT:

TRACKING BENEFICIAL OWNERSHIP AND THE PROCEEDS OF CORRUPTION: EVIDENCE FROM NIGERIA

October 31, 2021

Research project led by Northumbria University and funded by UK Aid as part of the Global Integrity Anti-Corruption Evidence Programme (GI-ACE)

Project Lead: Em. Professor Jackie Harvey



**Northumbria
University**
NEWCASTLE

TABLE OF CONTENTS

EXECUTIVE SUMMARY and RECOMMENDATIONS	7
1 INTRODUCTION	12
1.1 Project Objective	12
1.2 Working Definitions	12
1.3 Project Focus	13
1.4 Project Methods and Limitations	14
1.5 Report Structure	15
2 CONTEXT: NIGERIA	16
2.1 Self Interest and Economic Gain	16
2.2 The Legal Landscape: Summary of Laws and Timelines	16
2.3 The Institutional Landscape: Summary of the Agencies and Roles	18
2.4 Patronage and Networks	21
3 ANALYSING GRAND CORRUPTION AND BENEFICIAL OWNERSHIP IN NIGERIA	23
3.1 Grand Corruption and BO	23
3.2 Sources for Grand Corruption and BO in Nigeria	23
3.3 Analysing Grand Corruption and BO in Nigeria: An Overview	24
3.4 Grand Corruption and BO in Nigeria: Analysing Cases	29
4 BO: LESSONS FROM THE ANALYSIS	36
4.1 BO Methods	36
4.2 Use of Facilitators	39

TABLE OF CONTENTS

4.3	Currency Exchange	40
4.4	Currency Declaration Reports and Cash Evacuation	41
5	ADDRESSING THE PROCEEDS OF CORRUPTION THROUGH BO: NIGERIA'S ANTI CORRUPTION REGIME: LEGAL AND INSTITUTIONAL FRAMEWORKS IN PRACTICE	42
5.1	The Approach	42
5.2	Issues and BO-relevant Data	42
5.3	The Agencies and BO-relevant Data: Anti-corruption	43
5.4	The Agencies and BO-relevant Data: Regulation	44
5.5	Other Institutional Initiatives: the Nigerian Extractive Industries Transparency Initiative (NEITI)	46
6	BACK TO THE BASICS: BO, DATA AND RECORDS	47
6.1	Record Keeping and Information-Sharing	47
6.2	BO Standards	48
6.3	Company Registration	49
6.4	Asset and Income Disclosure	51
6.5	Land Registration	53
6.6	Financial Reporting in the Regulated Sector	54
6.7	Other sources	56
7	BO-RELEVANT DATA: THE OVERALL ISSUES	59
7.1	What's the Issue? The Role of BO-Relevant Data	59
7.2	Records	62

TABLE OF CONTENTS

7.3	Information Sharing: the Investigators and Practitioners Working Group	63
7.4	Information Sharing: the NFIU	64
8	CONSEQUENCES	65
8.1	For Investigation	65
8.2	For the Criminal Justice Processes	66
8.3	For Asset Recovery	67
8.4	For Recovered Assets	69
9	FINDINGS: BO AND ANTI-CORRUPTION RESPONSES	70
9.1	Illicit Money Flows	70
9.2	Agencies and Inter-Agency Working	71
9.3	Data	71
9.4	Beneficial Ownership	72
9.5	Asset Recovery	72
9.6	The International Dimension	72
9.7	Red Flags and Risks	74
10	SUMMARY	75
10.1	Summary: The Country Context	75
10.2	Summary: The Agencies and Data	76
10.3	Summary: Overview of The Recommendations	77
11	RECOMMENDATIONS	78
11.1	Recommendations: Data	78

TABLE OF CONTENTS

11.2 Recommendations: Using Improved Data	79
APPENDIX 1: ANALYSIS OF INFORMATION	82
APPENDIX 2: BANKS INVOLVED IN CASES OF GRAND CORRUPTION IN NIGERIA	83
APPENDIX 3: ANONYMISED SEARCH OF THE CAC DATA BASE AGAINST COMPANIES IDENTIFIED IN THE UK LAND REGISTRY DATA	85
APPENDIX 4: FINES LEVIED BY THE UK FINANCIAL CONDUCT AUTHORITY IN RELATION TO BREACHES OF AML REGULATIONS FROM 2013 TO DATE	87
APPENDIX 5: MEETINGS AND DISCUSSIONS	88
APPENDIX 6 ADDITIONAL REPORTS AND DATABASES	89

LIST OF AGENCIES AND ACRONYMS

Agencies contacted for this research

Abuja Geographic Information Systems (AGIS)
Association of Bureau De Change Operators of Nigeria (ABCON)
Association of Chief Audit Executives of Banks in Nigeria (ACAEBIN)
Central Bank of Nigeria (CBN)
Code of Conduct Bureau (CCB)
The Committee of Chief Compliance Officers of Banks in Nigeria (CCCOBIN)
Corporate Affairs Commission (CAC)
Economic and Financial Crimes Commission (EFCC)
Federal Inland Revenue Service (FIRS)
Federal Ministry of Justice (MoJ)
Independent Corrupt Practices and other Related Offences Commission (ICPC)
Institute of Chartered Accountants of Nigeria (ICAN)
Nigerian Bar Association (NBA)
Nigeria Customs Service (NCS)
Nigeria Extractive Industries Transparency Initiative (NEITI)
Nigerian Financial Intelligence Unit (NFIU)
National Insurance Commission (NIC)
Nigerian Police Force (NPF)
Nigerian Special Fraud Unit (PSFU)
Real Estate Developers Association of Nigeria (REDAN)
Special Control Unit Against Money Laundering (SCUML)
Securities and Exchange Commission (SEC)

EXECUTIVE SUMMARY and RECOMENDATIONS

1. **This project set out to answer the research question: can identification and tracking of Beneficial Ownership (BO) in Nigeria be improved to increase the likelihood of recovering the proceeds of grand corruption?**
2. **Our research question necessitated an analysis of grand corruption in Nigeria and the use of beneficial ownership and Nigeria's anti-corruption and asset recovery regime, especially its actions regarding beneficial ownership.** This focus had the objective of assessing and proposing improvements to the identification and tracking of BO in Nigeria to increase the likelihood of recovering the proceeds of grand corruption through practical and practitioner relevant recommendations with the intention of helping the Nigerian authorities.
3. **While the Final Report ('the Report') does not offer a 'silver bullet' to the problems of grand corruption, the answer to our research question is a qualified 'yes'.** The qualification concerns the necessary suggested improvements to the BO regime which require a number of other changes to be made first. We have concluded that the '*devil is in the detail*' and if certain building blocks are not in place then any changes to the accessibility and availability of BO, and its usefulness for investigative, prosecutorial and asset recovery purposes will be sub-optimal.
4. **We followed a triangulation approach to the methods employed.** These were: an analysis of secondary literature on corruption and beneficial ownership within and outside of Nigeria; primary research through the collection and collation of data from, and of information from interviews with, concerned agencies, professionals and non-governmental organisations in Nigeria, the UK and the USA; and assessment of the findings through structured workshops, written feedback on our interim report and follow-up discussions with specific organisations. While we acknowledge issues with available data, we consider that our approach allowed for a contextual analysis of grand corruption and the evidence of the disguise of the proceeds of grand corruption.
5. **Both our interim report and the Report contextualised corruption within the specific structural conditions of the economy and decisions that have affected Nigeria's growth and development.** These included the continued dominance of the cash based society, the reliance on the oil and extractive sector of the economy for both export earnings and government revenue, and an extremely low tax base of the formal economy. This situation appears compounded by an evident lack of tax compliance. Understanding the implications of such a context will be important to assessing the focus and effectiveness of those laws, procedures and institutions established to address corruption and the proceeds of grand corruption.
6. **Elections of representative bodies are not only a (re)distribution of the political landscape but also a matter of income: positions in one of the representative bodies are coveted because of their (relatively) higher remuneration packages.** In this context it is difficult to ignore the negative effects within Nigerian society of patronage, of political clientelism and of 'godfatherism' as well as practices that create avenues for rent-taking, embezzlement and personal wealth accumulation.

7. It is not easy to identify cases of grand corruption. If it were, then honest anti-corruption agencies would have little difficulty in arresting the perpetrators. Similarly, if it were easy to 'follow the money', the authorities would have more success in recovering the proceeds of corruption. Our case analysis notes four issues. First, being an influential patron in the region or country, requires spending not only to keep up appearances but also to buy loyalty while still leaving enough money for direct personal enrichment of astonishing dimensions. Second, many of the cases concerned the abuse of contracts, with contracts being awarded to companies run by close friends or business associates. Across the cases, purchase of property is widespread. Property and land ownership is particularly problematic due to the high degree of opacity of land ownership records and difficulty of access to records for investigators. Third, the use of currency purchase through Bureau de Change (BDC) operators is a method of laundering. Finally, companies, shell companies, banks and other means are used to hide and disperse the proceeds of corruption.

8. Against these issues, we note several factors. First, while legislation has created sufficient agencies, they often have overlapping mandates that have resulted in competition rather than collaboration (although an agency view would argue that an advantage of overlapping mandates was to eliminate gaps). Second, evaluation of operational efficiency of the agencies is severely hampered by inadequate data – information we were told was available was rarely forthcoming, while that from the public domain was frequently not up-to-date. Sometimes data is collected without a clear purpose, making it less useful, and the same information may be separately collected by different agencies, creating unnecessary inefficiencies. Sometimes data that should be collected and disseminated, such as Suspicious Transaction Reports (STRs), is not. Third, using a standardised data collection template and record management process for capturing and validating data, particularly BO data, does not happen. Fourth, the means of, and enthusiasm for, intelligence and information verification and sharing is sporadic in practice.

9. We would argue that the basic building block to the work of relevant agencies is data, and particularly BO-relevant data. A great deal of information is collected on BO by different agencies but what is missing is the institutional capacity to bring it together in a timely and useable form for those who need access to the information. To be useful (and compliant with Financial Action Task Force Recommendation No. 24), records have to be accessible (on-line if possible), accurate, shared in a timely manner and in a format that is useable. We were told of agencies finding it difficult to share data and that record keeping differs between agencies. We have looked at the content of data capture forms to see what information is requested and held by different agencies. Of particular interest is the personal identification information (variables, fields and format) that is collected by multiple agencies and that could usefully be shared in furtherance of both BO identification and prevention of corruption if standardised, validated, maintained and accessible.

10. Consequences of existing weaknesses. Whether it is company registration, asset and income disclosure, land registration or financial reporting, we consider that the weaknesses – from uniformity through verification to dissemination – have significant implications for the investigation and recovery of the proceeds of corruption. At the same time, those weaknesses are equally noticeable in terms of how individual agencies handle and record data. Further weakness applies to information sharing. There are several consequences. For investigations it means a disorganised system with no central database leading to poor judicial consequences, delays in asset recovery and the absence of transparency in the management of recovered assets.

11. In terms of findings, this Report notes that there cannot be a single ‘silver bullet’ that we can recommend in connection with how greater knowledge of BO information would help in the fight against corruption.

This is because the system itself mitigates against any willingness to achieve substantive institutional or procedural reform. Nevertheless, our Report acknowledges the role of BO in facilitating anti-corruption investigations and the tracing and recovery of the proceeds of corruption.

12. The Report has highlighted the challenges. These include the general lack of transparency and tendency towards secrecy which compound a systematic data deficiency. The use of BO as a fundamental building block in addressing the investigation and recovery of the proceeds of corruption has been undermined by a lack, or poor quality, of data and record management. There were problems with inter-agency and cross border support, information-sharing, cooperation, and investigation faced by the authorities in making effective use of BO information. The primary research confirms that the most frequently occurring themes that emerged were: data deficiency; cooperation; intelligence and information; BO and delays in courts.

13. The Nigerian authorities face challenges in minimising opportunity for illicit financial flows arising from the structural characteristics of the economy. The institutional landscape is complex with overlapping mandates and duplication in effort. Consistent with the findings of others, we observe the absence of collaboration, coordination, and information-sharing between various anti-corruption agencies to be longstanding, structural and cultural in organisational terms.

14. In terms of Recommendations, our analysis suggests that (i) some improvements can be made to BO data; (ii) such changes can improve the use of BO data in anti-corruption responses by relevant agencies; and (iii) the first two recommendations would be helped by incremental changes both to agencies’ work and to inter-agency working.

15. Recognising that the issue of BO and the associated agencies should be seen against the background of the governance of Nigeria, the Report therefore recommends that:

15.1 In terms of data:

- **Data use and harmonisation:** there should be a national agreement or protocol on data content and recording. This would be underpinned by a proactive approach to records management across the public sector. This could be developed into a uniform set of standards, one that specifies what information should be recorded, how, by whom, how verified, how stored, how updated and how accessed. When such data is used for any law enforcement investigation or intelligence function, that incidence should be associated with a unique reference number for tracking and management purposes. The agreement or protocol should be set in a context of explaining the value that would be added to information sharing, the work of agencies, the prosecutions, and the recovery of assets. The agreement or protocol will govern both natural persons and legal persons data.
- **Data-sharing:** The Corporate Affairs Commission (CAC) should push ahead with implementing the provisions of the Companies and Allied Matters Act (CAMA) 2020 with respect to BO as a priority. We support the efforts of NEITI and recommend that the data captured by the CAC be harmonised with that

from NEITI so that the two databases could be easily searched, and data shared with relevant authorities, in particular the Federal Inland Revenue Service (FIRS) and the Code of Conduct Bureau (CCB).

- **Data access:** To improve transparency and assist in data management and record keeping a unique case record or identification number should be created that would link cases prosecuted and convicted to assets recovered rather than the present system whereby the case number is tied to the court, changing as a case moves through the court system.
- **Data management:** The inconsistency and unreliability of data urgently calls to the establishment of a central database which should be fed from sectoral registries and databases and to the recognition of records management as an important discipline role within the civil service.
- **Data cleaning:** Verifying historic data as it is transferred onto the CAC portal will be a significant piece of work that should be properly resourced. A process that includes removal of old data of companies that no longer exist; validating/refreshing data on companies in existence; and adding a new layer of BO data to companies currently in existence.

15.2 The National Assembly should move to finalise the Proceeds of Crime (POCA) legislation without delay. They could also consider an amendment to the Central Bank of Nigeria (Anti-Money Laundering and Combating the Financing of Terrorism in Banks and Other Financial Institutions in Nigeria) (AML/CFT) Regulations (2013 s.13-16) to require the regulated sector to report discrepancies between person(s) with significant control (PSC) information available through CAC and the information that they obtain through independent checks when on-boarding new or transacting with existing customers.

15.3 Reporting of STRs should not simply be an automated process. In connection with reporting of potentially suspicious transactions it is important for banks to carefully look at the justification for payments of Naira deposits or for international funds movements. Operational level staff should be empowered to act on and report their suspicions. More senior officials should record their reasons if no further action is taken to avoid any conflict of interest. By restricting the number of politically exposed persons (PEPs) that must be tracked and instead concentrating on a smaller number of the most senior individuals, banks would be able to use their internal compliance and risk teams to properly monitor unusual or large-scale account activity.

15.4 Central Bank capacity. To limit opportunity for corrupt proceeds to enter the financial system in Nigeria, we would suggest that continued investment should be made in the technical capacity within the Central Bank so that they have a greater understanding of the risks faced by the regulated sector and are able to properly apply a risk-based approach to their supervision. In line with other countries, information on regulated entities (and individual officers) subject to regulatory sanction should be shared in public notices.

15.5 There should be a transparent system of case selection focusing on those that have caused the greatest public damage and have the greatest chance of success. The Economic and Financial Crimes Commission (EFCC) and/or the Independent Corrupt Practice Commission (ICPC) should pay attention to

evidence management, ensuring that evidence is correctly obtained, timing its presentation in court effectively, and ensuring that the strongest evidence that clearly ties the charge to the defendant is presented. Disorganisation can compromise the trial and likelihood of conviction.

15.6 The prosecution can simplify the process of trial by presenting the strongest evidence against a single charge, rather than a large amount of weaker evidence against multiple charges as appears evident in several of the cases of grand corruption we reviewed. Indeed, it is not necessary to present all available evidence to the court, only that which absolutely links the defendant to the charge for a conviction to be secured and/or assets to be recovered. Pursuit of cases from prosecution through the courts should be clear and unbiased and the agencies should not be restricted by political party interests. Removal of political influence ensures that investigators should be able to pursue cases irrespective of political affiliation of the suspect. This also would address the charge of ‘mutual softness’ by the main political parties.

15.7 We would greatly support and emphasise current initiatives to create and task working groups from the different agencies to focus on particular cases. These groups should be kept small to work well: effective operational collaboration is more than just turning up at a task force meeting. In this regard we suggest creation of an operational level working group comprising only Police, EFCC, ICPC, the Special Control Unit against Money Laundering (SCUML) and the Nigerian Financial Intelligence Unit (NFIU). To facilitate discussion and consensus building, this group should be kept small in its membership, ideally comprising only two representatives from each of the five named agencies. This group should be chaired by the NFIU as the central organisation responsible for quality of intelligence and as coordinator with the financial sector. The group should meet monthly.

15.8 We also emphasise the sharing of technical expertise between agencies at the operational investigator/practitioner level as well as the sharing of intelligence and knowledge so that the lead agency does not always have to start an investigation from the beginning. From the perspective of operational efficiency it is equally important to ensure that agencies share information on cases that are underway so that one agency does not inadvertently interfere with or hamper the operations of another. Moving more quickly will prevent individuals from disposing of or dissipating their assets, an area that was particularly frustrating to the ICPC.

15.9 We recommend that CCB limit the scope of their activity to the most senior civil servants only. Asset declaration forms should include information of assets held without inclusion of specific valuations and that asset declaration reports by senior civil servants should be in the public domain. Sharing of this information would facilitate linking of assets to BOs.

15.10 We recommend that the data captured by the CAC be harmonised with that from NEITI so that the two databases could be easily searched and data shared with relevant authorities. We propose enabling public access to the details of BO to enable the regulated sector and civil society organisations to add an additional level of checking of accuracy of data. To encourage reporting to the land registries, fees should be made reasonable, and the process kept simple and straightforward.

1 INTRODUCTION

1.1 PROJECT OBJECTIVE

This project¹ set out to answer the research question:

Can improvements be made to the identification and tracking of Beneficial Ownership in Nigeria to increase the likelihood of recovering the proceeds of grand corruption?

This question necessitated an analysis of grand corruption in Nigeria and of Nigeria's anti-corruption and asset recovery regime - especially its actions regarding beneficial ownership (beneficial ownership is referred to in this report as 'BO'). Without these it would be impossible to recommend improvements to the current regime. Our suggestions are aimed at identifying and tracking the beneficial ownership of assets derived from grand corruption that have been deposited in Nigeria and beyond with the aim of increasing their chances of recovery.

While the report does not offer a silver bullet to the problems of grand corruption, the answer to our research question is a qualified 'yes'. The qualification concerns the necessary suggested improvements to the BO regime which require a number of other changes to be made first. We have concluded that the devil is in the detail and if certain building blocks are not in place then any changes to the accessibility and availability of BO, and its usefulness for investigative, prosecutorial and asset recovery purposes will be sub-optimal.

1.2 WORKING DEFINITIONS

A beneficial owner is defined for the purposes of this research as the natural person (or one of the persons) who ultimately owns or controls an asset or the natural person(s) on whose behalf a transaction involving the acquisition of property is conducted.² It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

Corruption is a complex problem with no easy solution.³ We would argue that it is not an inevitable natural phenomenon; it is the outcome of the power to make decisions that circumvent existing rules and criteria to gain an advantage (or its expectation). This study focused its attention on 'grand corruption'⁴ which we have defined as:

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.

¹ Research team members comprised: Bello A, Doig, A, van Duyne, PC, Gonul, S, Harvey, J, van Koningsveld, J, Shehu, A, Sittlington, S, Sproat, P, Turner, S and Ward, T. In addition, research assistance support was provided at Northumbria University by Crane, S and Ogbeide, H, and in Abuja by Okwor, JP and Ifeanyi-Agbo, C.

² In using this definition, we do acknowledge that a legal person may also be a BO - see section 9.6 of this report.

³ For a useful review, see Cecilie Wathne, *Understanding corruption and how to curb it: A synthesis of latest thinking*, U4 Issue 2021:4, Chr. Michelsen Institute (CMI). Available at: <https://www.u4.no/publications/understanding-corruption-and-how-to-curb-it>

⁴ For a recent survey of wider corruption in Nigeria see: UNODC Corruption in Nigeria: patterns and trends. Second survey on corruption as experienced by the population, December, 2019. Available at: <https://www.unodc.org/nigeria/en/the-national-bureau-of-statistics-in-partnership-with-the-united-nations-office-on-drugs-and-crime-launch-the-report-of-the-second-survey-on-corruption-in-nigeria.html>

We recognise that an accurate delineation of the important element ‘grand’ remains problematic. Setting any financial threshold remains arbitrary: is one million dollars enough to classify a case as ‘grand corruption’? We consider that there is also another element that delineates ‘grand’ - the connection with higher levels of political or entrepreneurial decision making. This may be more decisive because of its association with the ability to exert influence. It was this focus that we applied to our review of the cases of grand corruption.

1.3 PROJECT FOCUS

Our project focused on grand corruption in Nigeria with the objective of assessing and proposing improvements to the identification and tracking of BO in Nigeria to increase the likelihood of recovering the proceeds of grand corruption through practical and practitioner relevant recommendations with the intention of helping the Nigerian authorities. Our study would be incomplete without wider geographic consideration if for no other reason than that *‘it is axiomatic that any attempt to tackle grand corruption cannot merely focus on the source, but must also encompass destination (or ‘host’) countries’*.⁵ What we found on the ground was more complex than initially anticipated and our enquiries led us into a range of different areas more indirectly related to the central topic of BO. We were also mindful of the request by colleagues in Nigeria to identify practical examples as to what could be done to bring about change.

In seeking to propose improvements to the identification and tracking of BO in Nigeria to increase the likelihood of investigating and recovering the proceeds of grand corruption we undertook research into the Nigerian context, its laws, agencies, cases and operational procedures. Within the research we were both cognisant of the national context and of the place BO had in the practice of anti-corruption.

Much of the narrative is to be found in our accompanying Interim Project Report: *Tracking Beneficial Ownership and the Proceeds of Corruption: Evidence from Nigeria*,⁶ although it is our intention that this Final Project Report may be read as a standalone document. Additional information included in the interim report and not brought into this report includes a discussion of Illicit Financial Flows in and out of Nigeria; the role of cash; analysis of data from the Bank for International Settlements (BIS); analysis of data from UK Companies House of companies registered in the UK with Nigerian affiliations; an analysis of UK Land Registry overseas companies’ ownership data; and details of Nigeria’s legal and operational framework for Anti-Money Laundering (AML) and Anti-Corruption (AC).

⁵ Ilaria Zavoli and Colin King The Challenges of Implementing Anti-Money Laundering Regulation: An Empirical Analysis *Modern Law Review*, 84(4) July 2021 pp740-771 p743. See similar ideas from J. Sharman, *The Despot’s Guide to Wealth Management: On the International Campaign against Grand Corruption* (Ithaca: Cornell University Press, 2017) p 6-7. Cited in the same paper p 743; For a critique of the West see Cooley et al (2018; p 42) who draw attention to professional global intermediaries whose specialized services cater to high-net-worth international clients. In short, the West’s institutions and brokers play a crucial role in facilitating transnational corruption (Cooley, Alexander, John Heathershaw, and J.C. Sharman. “The Rise of Kleptocracy: Laundering Cash, Whitewashing Reputations.” *Journal of Democracy* 29, no. 1 (2018): 39–53. For a commentary on the UK Government’s role in illicit finance see Tom Keatinge *Getting Serious? Illicit Finance Is Finally a UK Foreign Policy Issue* 25th March 2021, RUSI. Also see, for example, Transparency International UK, *Faulty Towers: Understanding the Impact of Overseas Corruption on the London Property Market* (TI-UK, 2017). For a discussion the UK’s corruption sanctions regime see Susan Hawley *The UK’s new corruption sanctions regime – Can it help end the UK’s role as a global money laundering centre and what role will journalists play?* 10th March, 2021, Spotlight on Corruption, published by The Foreign Policy Centre available at <https://fpc.org.uk/the-uks-new-corruption-sanctions-regime-can-it-help-end-the-uks-role-as-a-global-money-laundering-centre-and-what-role-will-journalists-play/>

⁶ Harvey, J, Bello A, Doig, A, van Duyne, PC, Gonul, S, van Koningsveld, J, Shehu, A, Sittlington, S, Sproat, P, Turner, S and Ward, T, (2020) *Tracking Beneficial Ownership and the Proceeds of Corruption: Evidence from Nigeria*, Interim Project Report, Northumbria University, Newcastle, November. Available at: <https://ace.globalintegrity.org/projects/benowner/>

1.4 PROJECT METHODS AND LIMITATIONS

We followed a triangulation approach to the methods employed. First, we analysed secondary literature on corruption and beneficial ownership within and outside of Nigeria. Second, we used primary research through the collection and collation of information from interviews with concerned agencies, professionals and non-governmental organisations in Nigeria, the UK and the USA (see Appendix 1). We then assessed findings through three workshops (one in Nigeria and two virtual). All three events included participants from agencies in Nigeria for which we employed a structured approach in terms of questions and assessment of answers. We also solicited written feedback on our interim report and undertook follow-up discussions (see Appendix 5).

As with the interim report we express our sincere thanks to all those agencies and individuals that have helped us with this work. We are extremely grateful to the responding agencies in Nigeria who nominated members of staff to liaise with the project team over the course of the study. Following our visit to Abuja in 2019, it had been our intention to revisit in 2020; unfortunately, that was not possible due to the travel restrictions imposed by governments in response to Covid-19. We, therefore, acknowledge the many participants at the on-line workshops kindly hosted by the Royal United Services Institute (RUSI) (July 2020) and by Northumbria University (December 2020); and all of the individual academics, officials, activists and organisations who took the time to read and supply feedback and advice on the content of our reports and presentations. For those interested in particular aspects of the project, project outputs and the supporting analyses will be made accessible following the end of the project. Quotations used from our various workshops and discussions should be assumed to have been made in a personal capacity and do not necessarily reflect those of the agency.

We were able to secure valuable insights through access to some of the forensic financial information from the UK prosecution of former State Governor, James Ibori. We were also able to analyse a number of high-profile cases featuring banks (see Appendix 2) and to draw upon specialist input to unpick and present in detail a schematic representation of the cases of former Taraba State Governor Jolly T. Nyame and of former Oil Minister Diezani Alison-Madueke that reflect networks, connections and concealment of BO. We also recognise limitations of our work in terms of data access and potential sample bias/validity. Sample bias, for example, arose from the requirement to formally approach each agency in Nigeria with the request that they designate individual(s) who would liaise with our project: not all agencies responded to our requests. Another difficulty in describing the nature and extent of the existing response to grand corruption in Nigeria was (and is) the lack of an orderly set of quantitative data.

As we explored in our interim report, there are data, but there are serious doubts about their reliability, validity or completeness as a source of valid statistics. Moreover, they are hard to come by: some data sets are still manual and our requests for data remained unanswered. Many agencies are delinquent in production of required annual reports.⁷ Due to differences in collection and processing, the data that are available are difficult to combine and assess. For example, we were unable to match prosecution and conviction databases nor conviction and asset recovery databases. A similar observation was also reported by respondents from two UK law enforcement agencies and contained in the FATF mutual evaluation and follow up reports of Nigeria.⁸

⁷ Petrus C. van Duyne and Jackie H. Harvey *Grand corruption in Nigeria: Nigeria's grabbing political elite*. Forthcoming.

⁸ Details of the MER and follow up reports are available at: <https://www.giaba.org/reports/mutual-evaluation/Nigeria.html?lng=eng>. At the time of drafting this report, the second Mutual Evaluation of Nigeria was not available. It is now in the public domain.

Against this background, this report contains a contextual analysis of grand corruption and the evidence of the disguise of the proceeds. It builds on a review and analysis of the legal framework and of the regulatory authorities from our interim report. It draws conclusions based on facts and observations and makes several policy recommendations with a view to improving the AML/AC architecture in Nigeria.

1.5 REPORT STRUCTURE

Section 2 provides a brief overview of the country context and those issues identified as relevant to the project focus, including the formal legal and institutional landscape and the realities of poor governance and compliance. **Section 3** goes into more detail about grand corruption and the role of BO. **Section 4** focusses on BO – how it is organised and deployed to facilitate the concealment and transfer of the proceeds of corruption. **Section 5** assesses in more detail the work, effectiveness and issues facing the legal framework and institutional landscape in practice when investigating and prosecuting offenders and attempting to trace and recover the proceeds of corruption. Returning to the primary focus of the research, **Section 6** looks at how to improve the identification and tracking of Beneficial Ownership, by assessing the BO regime in practice, from records to owners and sources. **Section 7** analyses issues concerning the BO regime, including record keeping and information sharing. **Section 8** considers the consequences for information sharing, investigations, prosecutions, and the recovery of the proceeds of corruption. **Section 9** synthesises the findings to identify general themes relating to BO and its purpose or benefits within the anti-corruption responses, including the international dimension. **Section 10** provides an overall summary. **Section 11** concludes with recommendations to improve the identification and tracking of Beneficial Ownership in Nigeria to increase the likelihood of recovering the proceeds of grand corruption.

2 CONTEXT: NIGERIA

2.1 SELF-INTEREST AND ECONOMIC GAIN

Our interim report contextualised corruption within the specific structural conditions of the economy and decisions that have affected Nigeria's growth and development.⁹ That report highlighted the continued dominance of a cash-based society; the reliance on the oil and extractive sector of the economy for both export earnings and government revenue (a situation that long-term is not sustainable); and an extremely low tax base of the formal economy. This situation is compounded by an evident lack of tax compliance. Further, widespread tax evasion is facilitated by mis-invoicing of traded goods, while the use of informal foreign exchange mechanisms not only points to a lack of compliance but also to a culture of avoiding formal structures, a state of affairs that persists due to poor standards of governance. Understanding the implications of such a context will be important to assessing the focus and effectiveness of those laws, procedures and institutions established to address corruption and the proceeds of corruption.

2.2 THE LEGAL LANDSCAPE: SUMMARY OF LAWS AND TIMELINES

The AML/AC legislative framework promulgated by the FATF (see Table 1 below) has been implemented in Nigeria, thus avoiding, in recent years, designation as a non-cooperative jurisdiction or a country with strategic deficiencies in its framework and thus subject to related international sanctions.

A legal framework must be operationalised if the AML/AC regime is to be effective. In the past it would appear to have been easier to implement a new act and create a new agency rather than help improve the operation of those already in existence. It has been suggested this state of affairs was deliberate as *'it is rarely in the interests of political elites to establish independent and well-resourced institutions that threaten the networks that sustain their power'*.¹⁰

⁹ We do not revisit those here, for a recent review of reforms see The World Bank, *Nigeria Economic Update: Resilience through Reforms* Latest Issue: June 2021. Available at: <https://www.worldbank.org/en/country/nigeria/publication/nigeria-economic-update-resilience-through-reforms>

¹⁰ Bamidele, Oluwaseun; Olaniyan, Azeez O.; and Ayodele, Bonnie (2015) "In the cesspool of corruption: The challenges of national development and the dilemma of anti-graft agencies in Nigeria," *African Social Science Review*: Vol. 7: No. 1, Article 5. Available at: <http://digitalscholarship.tsu.edu/assr/vol7/iss1/5>; p 84.

TABLE 1: NIGERIA, LEGISLATIVE AND INSTITUTIONAL TIMELINE¹¹

NIGERIA ANTI-MONEY LAUNDERING TIMELINE:

A Timeline of the Development
of the Anti-Money Laundering
Framework in Nigeria

- Convention
- Legislation (in force)
- Legislation (no longer in force)
- Agency
- Financial Action Task Force (FATF) / Inter-Governmental Action Group Against Money Laundering in West Africa (IAGAMLWA)

Securities & Exchange
Commission (SEC)

1986
State Security Service
Defense Intelligence Agency
National Intelligence Agency

1988
Code of Conduct Bureau (CCB)

1989
National Drugs Law
Enforcement Agency Act, 1989

1990
Companies Allied Matters Act 1990
Established
Corporate Affairs Commission (CAC)

1991
Bars and Other
Financial Institutions 1991

1995
Money Laundering Decree No. 3

1997
National Insurance Commission
Act 1997
established
National Insurance Commission
(NACOM)

2000
Corrupt Practices & Other
Related Offences Act 2000
established
Independent Corrupt Practices
etc. Commission (ICPR)

2002
Economic & Financial Crimes
Commission (Establishment)
Act 2002
establishes
Economic & Financial Crimes
Commission (EFCC)

2004
Economic and Financial Crimes
Commission (Establishment) Act
2004
established
Nigerian Financial Intelligence
Limit (NFIL)
Money Laundering (Prohibition)
Act 2004

2005
Special Control Limit Against
Money Laundering (SCLAL)

2006
Advance Free Fraud and Other
Fraud Related Offences Act 2006

2007
Nigeria Extractive Industry
Transparency Initiative Act 2007
The Fiscal Responsibility Act 2007
Public Procurement Act 2007
Statistics 2007
Central Bank of Nigeria Act 2007
Federal Inland Revenue Services
Act 2007

2008
AML/CT Inter Ministerial
Committee (IMC)

2009
AML/CTC Regs issued by CBN

2010
AML/CTC Regs issued by SEC

2011
Assert Forfeiture Limit
Terrorism (Prevention) Act 2011
Money Laundering (Prohibition)
Act 2011

2012
Money Laundering (Prohibition)
(Amendment) Act 2012

2013
Terrorism (Prevention)
(Amendment) Act 2013
AML/CTF Regs issued by CBN,
SEC and NACOM

Federal Ministry of Industry,
Trade and Investment
(Designation of non-Financial
Institutions and other related
Matters) Regs 2013

Terrorism Prevention (Freezing of
International Terrorist Funds etc.)
Regs 2013

2018
Nigerian Financial Intelligence
Limit (NFIL) Act 2018

AML/CTF Regs Issues by CBN

2019
AML/CTF Regs Issued by CBN

1980-2000

2000-2015

2015-2020

01/01/1979

1989

2001-2003

2006-2008

2019-2020

Ratification of UN Convention
Against Illicit Traffic in Narcotic
Drugs & Psychotropic Substances

Ratification of UN Convention against
Transactional Organized Crime
FATF designates Nigeria as a non-co-
operative jurisdiction
Ratification of UN Convention for
the Suppression of the Financing
of Terrorism
Ratification of UN Convention
against Corruption

FATF removes Nigeria from the list of
non-co-operative jurisdictions
Nigeria on-site visit conducted by
GIABA
Nigeria Mutual Evaluation Report
issues by GIABA

Nigeria on-site visit conducted by
GIABA
Nigeria Mutual Evaluation
Report to be issues by GIABA

¹¹ Table extracted from *Transnational Criminal Law: A case study of the international anti-money laundering framework as applied in Nigeria: A case of smoke and mirrors*. (2021) Jackie Harvey, Sue Turner, Tony Ward, Peter Sproat and Jonathan Bainbridge, GI-ACE working paper 10 available at https://ace.globalintegrity.org/wp-content/uploads/2021/03/Jackie_Harvey-Smoke_Mirrors-1.pdf

The evidence from prosecuted cases of grand corruption in Nigeria and what can be understood of the mechanisms employed by a criminal to separate their identity as perpetrator of the corrupt act from the assets acquired is considered in **Section 3**. Prior to that, the operational framework of the anti-corruption agencies (ACAs) is reviewed.

2.3 THE INSTITUTIONAL LANDSCAPE: SUMMARY OF THE AGENCIES AND ROLES

There are a wide range of agencies working to counter corruption including: the Nigerian Police Force (NPF); the Code of Conduct Bureau (CCB); the Economic and Financial Crimes Commission (EFCC); the Bureau of Public Procurement (BPP); the Nigerian Financial Intelligence Unit (NFIU); The Independent Corrupt Practices and Other Related Offences Commission (ICPC); the Nigerian Extractive Industries Initiative (NEITI) and the Special Control Unit against Money Laundering (SCUML). Those with asset recovery powers include the police, CCB, ICPC, Federal Inland Revenue Services (FIRS) and the EFCC. Those mandated to collaborate include the CCB, EFCC, FIRS, BPP, NFIU and SCUML. In terms of mandated information-sharing, the NFIU, now and when it was operationally part of the EFCC, disseminates intelligence reports to the EFCC, ICPC, the National Drug Law Enforcement Agency, the Special Fraud Unit under the NPF, the CCB, FIRS, and the Department of State Security. Only the EFCC has a legal coordination mandate.

Table 2 below lists relevant agencies identified with an anti-corruption role and responsibility including or specifically relating to the proceeds of corruption. The focus of the table is on the main agencies with operational investigative responsibilities: the EFCC; SCUML; and the ICPC. The EFCC's responsibilities relate to investigating and prosecuting financial crimes (including money laundering, embezzlement, bribery, looting, any form of child labour, illegal oil bunkering, illegal mining, tax evasion, foreign exchange and piracy, open market abuse, dumping of toxic waste, and prohibited goods) and confiscation. It is also mandated to conduct joint operations geared towards the eradication of economic and financial crimes and collaborating with government bodies both within and outside Nigeria carrying on functions wholly or in part analogous with those of the Commission. The ICPC focusses on bribery, fraud, concealed financial interests in public contracts, misappropriation and illicit gift-giving. While it has the right to access financial information relating to a suspected offence, its area of responsibility is theoretically different to that of the EFCC, and in practice they overlap in the investigation of PEPs. The National Drug Law Enforcement Agency (NDLEA) has responsibility for investigating and prosecuting drug related money laundering, which may relate to BO. The operation of the institutional landscape in practice will be discussed in more detail in **Section 5**.

As stated in our interim report we have produced a narrative of institutional management structure information (available as a separate document, see **Appendix 6**) that we have gathered from official sources and enhanced with the information that we collected during our visit to Abuja. Although the structure of all ACAs is set out in the agencies' enabling/establishment acts, it is not always clear that they receive the resourcing to enable them to operationalise these structures. This analysis also included a mapping of interagency interaction identified as '*the agency with which you cooperate at an operational level*' taken from data gathered at our workshop in Abuja, supplemented by information supplied by the EFCC (see Chart 1). The map indicates both the number of different agencies involved and the central role of the EFCC but additionally draws attention to the important contribution made by the CCB, the NFIU and the CAC (discussed further below).

TABLE 2: THE INSTITUTIONAL LANDSCAPE

THE MAIN AGENCIES

THE ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC): mandated to enforce all economic and financial crimes laws in Nigeria and is the coordinating agency for the prevention and control of money laundering.

SPECIAL CONTROL UNIT AGAINST MONNEY LAUNDERING (SCUML), the collection of intelligence and implementation of AML/CFT measures within the Designated Non-Financial Institutions (DNFIs) Sector in Nigeria.

THE NIGERIA POLICE: is the highest investigative organ for criminal matters. Specifically it has the statutory mandate and responsibility for investigating and prosecuting cases of corruption, economic and financial crimes through its Special Fraud Unit (SFU) and the Financial Malpractices Investigation Unit (FMIU).

THE INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION (ICPC): set up under the Corrupt Practices and Other Related Offences Act 2000. It encompasses enforcement, prevention and educational measures, including investigating and prosecuting allegations of corrupt practices, examining the practices, systems and procedures of public bodies and educating the public on and against bribery, corruption and related offences.

THE CODE OF CONDUCT BUREAU (CCB). Set up by the Code of Conduct Bureau and Tribunal Act 1979. Responsible for receipt and assessment of asset declarations by public officials. It enforces the provisions of the code of conduct and investigate complaints about non-compliance with or breach of the provision of the code of conduct and refer cases to the Code of Conduct tribunal. The Tribunal under 23(c) may order the seizure and forfeiture to the State of any property acquired in abuse or corruption of office.

OPERATING UNDER WHICH LAWS

SPECIFIC

Economic and Financial Crimes Commission Act 2004
Corrupt Practices and Other Related Offences Act 2000
Code of Conduct Bureau and Tribunal Act 1979

GENERIC

The Advance Fee Fraud and Other Fraud Related Offences Act 2006
The Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 1994
The Banks and other Financial Institutions Act 1991
Miscellaneous Offences Act 2004
Money Laundering (Prohibition) Act 2011
Terrorism (Prevention) (Amendment) Act 2013
The Constitution of the Federal Republic of Nigeria 1999 (as amended)
Criminal Code Act 1990 (as amended)
Penal Code 1960 (as amended)
Nigerian Extractive Industries Transparency Initiative Act 2004
Freedom of Information Act 2011
Fiscal Responsibilities Act 2007
Banks and Other Financial Institutions (Amendment) Act 1991
Failed Banks (Recovery of Debts) and Financial Malpractices in Banks (Amendment) Act 1994

SHARING

Money Laundering (Prohibition) Act 2011
Economic and Financial Crimes Commission Act 2004
Nigerian Financial Intelligence Unit Act 2018
Public Procurement Act 2007

INFORMATION SOURCES

THE CODE OF CONDUCT BUREAU (CCB). Set up by the Code of Conduct Bureau and Tribunal Act 1979. Responsible for receipt and assessment of asset declarations by public officials. It enforces the provisions of the code of conduct and investigate complaints about non-compliance with or breach of the provision of the code of conduct and refer cases to the Code of Conduct tribunal. The Tribunal under 23(c) may order the seizure and forfeiture to the State of any property acquired in abuse or corruption of office.

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 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.

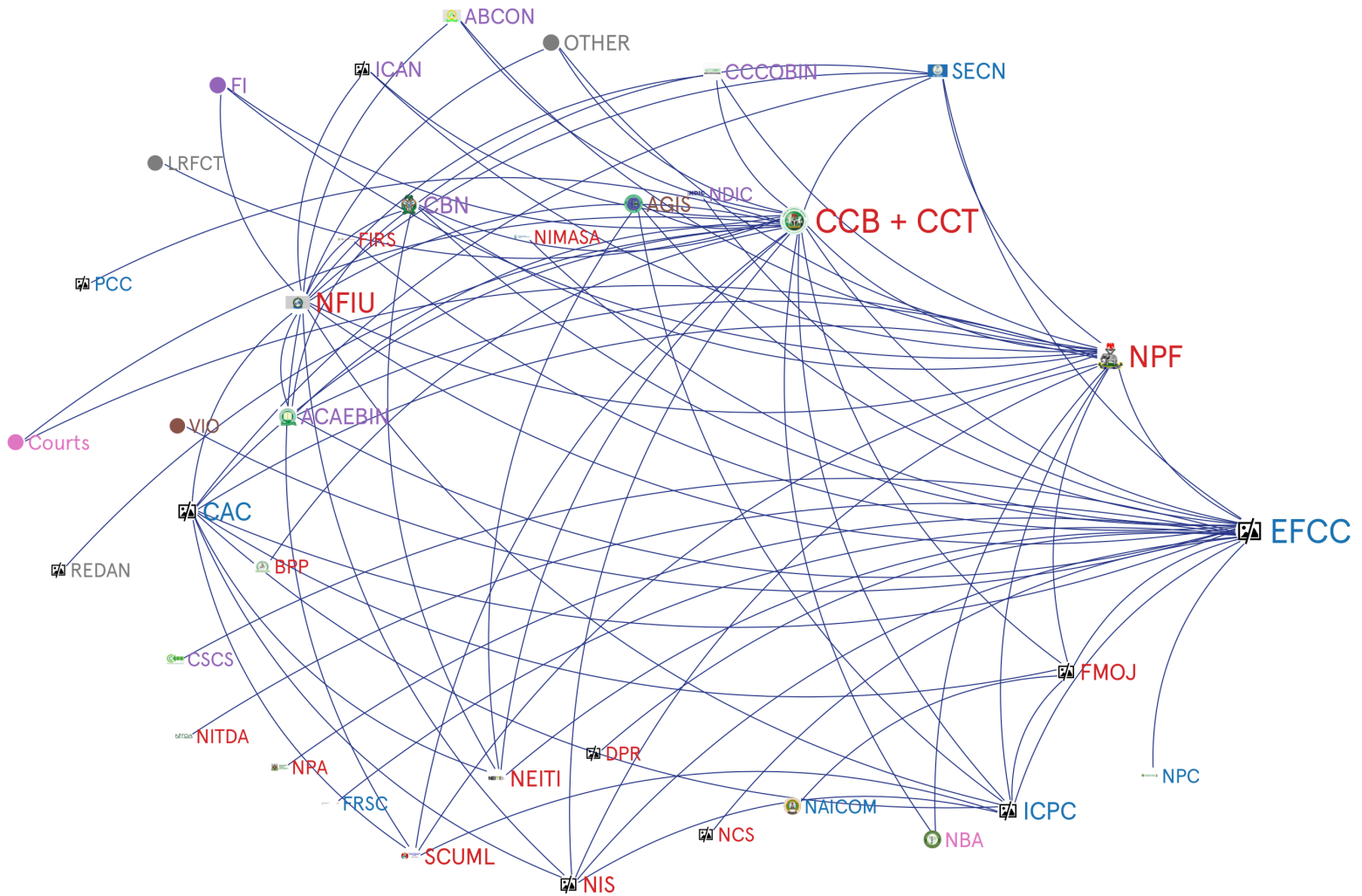
THE BUREAU OF PUBLIC PROCUREMENT (BPP): set up by the Public Procurement Act to prevent fraudulent and unfair procurement, set standards for public procurement and harmonise existing government policies and practices in public procurement. Under s.53 it can ask a 'relevant' agency to undertake investigations.

THE NIGERIA EXTRACTIVE INDUSTRY TRANSPARENCY INITIATIVE (NEITI): set up under the Nigeria Extractive Industry Transparency Initiative Act 2007 to promote and ensure transparency and accountability and eliminate corrupt practices in payments and receipts within the extractive sector. Requires reporting from related government bodies and from all extractive industry companies.

FEDERAL INLAND REVENUE SERVICE (FIRS): set up by the 1961 Companies and Income Tax Act and subsequently amended. Has powers to confiscate proceeds of tax fraud and evasion and liaise with all government security and law enforcement agencies and such other financial supervisory institutions in the enforcement and eradication of tax related offences.

THE AUDITOR GENERAL OFFICE: has responsibility for audit and enforcing accountability at federal, state and local levels.

Chart 1: Inter-Agency Mapping, Nigeria Anti-corruption



Map created using Graph Commons open-source mapping and analysis software.

2.4 PATRONAGE AND NETWORKS

It is difficult to ignore the negative effects within Nigerian society of patronage,¹² political clientelism,¹³ and ‘godfatherism’. Oviasuyi connects godfatherism¹⁴ to money-based politics and within the Nigerian context, the term ‘godfather’ is used to denote a wealthy individual who binds followers to their sphere of influence by furthering political careers. Running for office is hugely costly (in part linked to patronage), costs that are expected to be recouped.¹⁵

¹² Acemoglu, D., Ticchi, D., and Vindigni, A. (2006). Emergence and persistence of inefficient states. *National Bureau of Economic Research Working Paper Series*, No. 12748.; Acemoglu, D., Ticchi, D., and Vindigni, A. (2011). Emergence and persistence of inefficient states. *Journal of the European Economic Association*, 9(2):177–208

¹³ Ay kunle Olumuyiwa m b wale and Akin lu lanrewaju Olutayo, *Political Clientelism and Rural Development in South-Western Nigeria* published online by Cambridge University Press: 19 May 2011

¹⁴ Oviasuyi, Patrick (2012), Impact of Godfatherism on Nigerian Politics and Administration: Anambra and Oyo States Experiences *Educational Research Quarterly* (Research Gate); also see *Nigeria election 2019: How ‘godfathers’ influence politics*, Mayeni Jones, Nigeria correspondent, BBC News Published 4 February 2019, <https://www.bbc.com/news/world-africa-47089372>

¹⁵ Olly Owen And Zainab Usman (2015) Briefing: Why Goodluck Jonathan Lost the Nigerian Presidential Election Of 2015 *African Affairs*, 114/456, 455–471.

Apart from democratic values, elections of representative bodies are not only a (re)distribution of the political landscape but also a matter of income: positions in one of the representative bodies are coveted because of their (relatively) higher remuneration packages. The same applies to the elected governors of the states and the office holders nominated by them. In 2020: the basic salary for a state governor was N2,223,705 (approximately \$5,852), however with added allowances for the use of cars and other facilities this is raised to a total package worth N11,540,896 (approximately \$30,371). A deputy's package is N10,772,296 (approximately \$28,348). Although relatively low on a global comparative scale, this nevertheless places them in the upper quartile for distribution of salaries within Nigeria.¹⁶

The problem of corruption associated with PEPs has little to do with their official remuneration but more with practices that create avenues for rent taking, embezzlement and personal wealth accumulation. The corruption cases discussed in the next section provide evidence of improper influence exerted by some individuals holding these positions over the allocation of government contracts pointing to the vulnerability of public procurement and the ease with which processes can be circumvented, particularly in the award of contracts, and simple embezzlement of public resources through disbursement of public funds. These include examples of high-profile PEPs setting up a company with family or fictional names as directors who will apply for tenders, but with the PEP as the signatory on the bank account. Or, in the case of former oil minister Alison-Madueke, awarding company contracts and receiving payment of fees in return thereby directly benefiting from the contracts although not being a director of the company. As senior politicians can influence a country's management of its natural resources, utility and resource extraction companies are entities of particular vulnerability and have been investigated in other countries as a development issue.¹⁷

We were told (by respondents both internal and external to Nigeria) of a 'positive Buhari effect'¹⁸ and of his administration's visible anti-corruption stance since his election in 2015. Despite the advances made in bringing successful prosecutions against high-ranking public officials from the administration of Goodluck Jonathan, corruption remains 'intractable'.¹⁹ Evidence from our analysis of corruption cases and from the Abuja workshop suggested anti-corruption agencies could not always successfully prosecute cases that caused the greatest harm: 'big fish' slipped through because of political influence. There is evidence of PDP State Governors, facing serious corruption charges, changing 'sides' and joining the APC of President Buhari as well as a result of 'pressure being applied from higher up'.²⁰

¹⁶ Average Salary in Nigeria 2021: Salary explorer, <http://www.salaryexplorer.com/salary-survey.php?loc=158&loctype=1>

¹⁷ see for example, Kenny, Charles and Søreide, Tina, (2008) *Grand Corruption in Utilities* World Bank Policy Research Working Paper 4805, December 2008. Available at <https://openknowledge.worldbank.org/handle/10986/6326>

¹⁸ Interview with Former FBI agent, Washington; Feedback during on-line workshop.

¹⁹ *The Conversation* 'Why Buhari's government is losing the anti-corruption war' Oludayo Tade, March 7th, 2021. Available at <https://theconversation.com/why-buharis-government-is-losing-the-anti-corruption-war-155488>; also see *PremiumTimes* 'Buhari's anti-corruption failure fuels insecurity, undermines democracy – Report', June 13th 2021, available at <https://www.premiumtimesng.com/news/headlines/467455-buharis-anti-corruption-failure-fuels-insecurity-undermines-democracy-report.html>; and Centre for Democracy and Development, *Buhari's Anti-Corruption Record At Six Years: An Assessment*. Available at <https://www.cddwestafrica.org/wp-content/uploads/2021/06/Buhari-Anticorruption-record-at-6years.pdf>

²⁰ Discussion with former NCA officer, on-line.

It was difficult to prosecute cases involving high level individuals from within the current regime.²¹ Others have highlighted similar problems: *‘Despite accelerated convictions by anti-corruption agencies, the majority of these convictions are rather insignificant cases as lack of diligent prosecution, corruption in the judiciary and too many count charges destroy grand corruption cases’*.²² Possibly in response to frustration with the slow passage of the Proceeds of Crime Bill, the Attorney General pushed through a revised framework for asset management.²³ The regulations empower the Attorney General to take charge of the custody and management of all final forfeited assets (notwithstanding the provisions of the respective law enforcement agencies’ laws on asset recovery), approve and appoint asset managers and operate and maintain a centralised database for the storage of records of all recovered assets within and outside Nigeria, including for non-conviction based forfeiture. However, as was expressed to us *‘by now should we be seeing the results of this process?’*²⁴

3 ANALYSING GRAND CORRUPTION AND BENEFICIAL OWNERSHIP IN NIGERIA²⁵

3.1 GRAND CORRUPTION AND BO

It is not easy to identify cases of grand corruption; if it were, then honest anti-corruption agencies would have little difficulty in arresting the perpetrators. If it were easy to ‘follow the money’, the authorities would have had more success in recovering the proceeds of corruption. Academics have far fewer means of attempting to identify cases of grand corruption involving BO than those with investigative powers and so alongside discussions with individuals from law enforcement we attempted to gain an insight by creating a datasheet of cases from an analysis of existing literature.

3.2 SOURCES FOR GRAND CORRUPTION AND BO IN NIGERIA

The starting point for our more specific investigation into the use of BO in the hiding of the proceeds of grand corruption was an interrogation of data collected by the Human Environmental Development Agenda (HEDA), a Nigerian non-governmental organisation (NGO) interested in raising public awareness of the court delays around high profile cases

²¹ Discussion with Former ICU officer, on-line.

²² Civil Society Legislative Advocacy Centre / Transparency International Nigeria 2019, *How Effective Is Fighting Dirty Money In Nigeria? Assessing Preventive and Punitive Measures against Money Laundering and Illicit Financial Flows: Effective Implementation of Compliance Measures*; Policy Brief p 3.

²³ The Asset Tracing, Recovery and Management Regulations, 2019.

²⁴ Discussion with Former ICU officer, on-line.

²⁵ Much of the discussion from within this section is taken from Petrus C van Duyne and Jackie H Harvey (2021) *Grand Corruption in Nigeria: What can be learned from a review of cases?* Available at <https://ace.globalintegrity.org/wp-content/uploads/2021/06/grand-corruption-in-nigeria-harvey-06-2021.pdf>; and in Petrus C. van Duyne and Jackie H. Harvey *Grand corruption in Nigeria: Nigeria’s grabbing political elite*. Forthcoming.

of corruption. Its first edition in 2018 - *Compendium of 100 High-profile Corruption Cases in Nigeria* - has been followed by those of 2019 and 2020.²⁶ It constitutes the most detailed secondary source of information on corruption in Nigeria we have found, although it extended into cases other than grand corruption. The case selection is derived from the EFCC, the ICPC documents or other sources and is based upon high profile corruption cases brought to court during the last decade involving public officers and 'substantial' sums. Unfortunately, because it is produced by others, we cannot say anything about the relationship between these one hundred cases and the totality of all known cases. What we can say is we are reasonably confident that, given their sources, they are a good sample of detected grand corruption cases.

HEDA's compendia were not the only source from which we extracted information. We looked at the World Bank's STAR asset recovery database and reports by Transparency International that mentioned Nigeria. Like HEDA itself, we examined the websites of the EFCC²⁷ and ICPC²⁸ and Nigeria's Code of Conduct Bureau (CCB).²⁹ In addition to the websites of anti-corruption agencies we also extracted information from that of another Nigerian based NGO - the Cleen Foundation - established in 1998 to promote public safety, security, and access to justice by carrying out empirical research. We also made use of news reports in order to provide additional and/or current information on the cases. From this database we removed cases of low level corruption, dismissed/acquitted cases, deaths before conviction, and cases with a serious lack of information. The database is available as a separate excel spreadsheet document (see [Appendix 6](#)).

3.3 ANALYSING GRAND CORRUPTION AND BO IN NIGERIA: AN OVERVIEW

The first and least surprising finding was that our systematic analysis of these secondary sources revealed sixty cases of grand corruption on our datasheet, some of which were still at court. In terms of identified proceeds, the lowest figure mentioned in the cases was embezzlement of N16,412,315 (approximately US\$105k) in 2012;³⁰ the highest was embezzlement of N300,000,000,000 in 2015 (approx. US\$1.5bn).³¹ In nine cases, foreign currency figures were mentioned with a range from \$500,000 to \$2.1 billion with other sums in GB£. As can be observed from the range values (see Table 3) the largest financial damage was attached to cases involving the smallest number of perpetrators, though these figures must be read with caution. In eight cases proceeds in foreign exchange were mentioned, totalling \$179.1m. In five of these cases the proceeds in Naira were missing as the case notes refer only to sums in foreign currency.

²⁶ The 2020 compendium was produced after we had completed our analysis of the 2018 and 2019 data. This version removed some of the older cases that seem to have been ‘ongoing’ with no further court information available: five cases that we had excluded from our analysis either because the cases had been dismissed (three), charges had been dropped (one) or did not meet our definition (one). In addition, this version of the report removed four cases that we had included in our analysis (one convicted, one pending due to hospital admission with no further information, another ongoing with no update and a final one removed without record). The 2020 version introduced 59 new cases that do not show any fundamental differences to those included in our analysis. The 2021 version is about to be published in November.

²⁷ Their website provides a PDF “High Profile, Oil Subsidy, etc. Matters Being Prosecuted” which appears to have been produced in 2015 (<https://www.efccnigeria.org/efcc/images/HIGH%20PROFILE%20CASES%20BEING%20PROSECUTED%20BY%20THE%20EFCC%20FOR%20%20%20%20%20%20%20%20AG.pdf>). In addition, they have produced an annual report of convictions for the years 2013 – 2016 relating to all economic crime and fraud convictions. The confiscation and recovery information cannot be connected to a database with information about perpetrators and predicate offences. The group TransparencIT (<https://transparencit.com/2018-mid-year-convictions-of-efcc-and-icpc/>) refers to the numbers of prosecutions by the EFCC for the period January to June 2018, however, without any details.

²⁸ Databases: (1) Records of funds and properties recovered from 2006-2019. (2) A cash refund list of two pages; (3) Status of criminal and civil cases as at March 2015; (4) The data collection on enforcement and petitions until 2017 consisted of tables that were not suitable for statistical analysis.

²⁹ Apart from three tables of cases handled by the Independent Code of Conduct Tribunal there was no database.

³⁰ Sunday Ehindoro, Inspector General of Police in a case brought by the ICP, involving diversion of funds from arms purchase into a deposit account (N500m) from which the accused took the interest for personal use (N16.4m); note the defendant was cleared of all charges in November, 2019 – postdating our analysis.

³¹ In the case of Ali Modu Sheriff, former governor of Borno State, the EFCC website notes that the two-term governor is facing multiple charges bordering on criminal conspiracy, stealing, money laundering and misappropriation of public funds, the trial has been stalled since 2016 since the defendant changed political party to the APC (this case was removed from the 2020 version of the HEDA compendium, postdating our analysis).

**TABLE 3: THE AMOUNT OF MONEY INVOLVED
AND THE NUMBER OF SUSPECTS**

N. CASES	N. SUSPECTS	TOTAL NAIRA ³²	RANGE LOWEST NAIRA	RANGE HIGHEST NAIRA	MEDIAN NAIRA	TOTAL FOREIGN CURRENCY IN \$
16	1	510,418,822,786	211,300,000	300,000,000,000	6,300,000,000	\$29.8m ³³
11	2	21,276,412,315	16,412,315	7,600,000,000	1,940,000,000	\$1.3m ³⁴
14	3	61,435,300,000	177,300,000	21,000,000,000	1,800,000,000	\$12.0m ³⁵
9	4	51,427,000,000	177,000,000	29,000,000,000	925,000,000	\$21.0m ³⁶
2	5	4,700,000,000	0	4,700,000,000		\$115.0m ³⁷
1	6	2,600,000,000				
1	9	6,500,000,000				
1	10	5,200,000,000				
2	11	5,479,000,000	479,000,000	5,000,000,000	2,739,500,000	
1	12	1,900,000,000				
1	25	100,000,000,000				

Unfortunately, it was not clear whether the sums of money referred to the value of the loss in total or the proceeds gained by a particular individual. Indeed, it was not always clear if a named suspect had gained financially as a number of cases refer to the diversion of funds to support election campaigns of political parties. Also, given the status of most criminal procedures, the amounts of money mentioned are often pre-trial estimates.

Similarly, it was not always possible to identify the exact offence from the reports of HEDA and others. Nevertheless we created a table of crime type and office holder (Table 4) and a table which identified the number of suspects per case (Table 5).

³² Only the data for the Naira proceeds is included in this table; if the lowest amount shown is 0, then proceeds would have only been identified in \$ or £.

³³ Three cases included FX, one for \$20m, one for \$9.8m together with £74k and one case for £0.4m.

³⁴ Two cases include FX, one for \$0.5m and the other \$0.8m.

³⁵ Single case Martin Elechi, former state Governor Eboni State.

³⁶ Single case Diezani Alison Madueke, former Petroleum Minister.

³⁷ Single case Muktar Shagari former Water Resources Minister and linked to Diezani Alison-Madueke.

TABLE 4: TYPE OF CRIME AND TYPE OF OFFICE HOLDER

CATEGORY	CRIME TYPE				TOTAL
	EMBEZZLEMENT / MISAPPROPRIATION / DIVERSION / DISAPPEARANCE	CORRUPTION	MONEY LAUNDERING	FRAUD (INCL. FUEL SUBSIDY)	
Governors	12	5	6	1	24
Ministers	0	1	3	4	8
Senators	1	0	1	1	3
Cent. Admin	1	1	2	0	4
Directors	4	0	1	2	7
Military	1	0	0	2	3
Law Enforcement	2	1	0	0	3
Oil Position	0	0	0	4	4
Political Party	1	0	0	0	1
Elect. Com	0	1	0	0	1
Accountant	0	0	0	1	1
Media	22	0	0	1	1
Total	22	9	13	16	60

This revealed that a variety of people in public positions were accused of grand corruption in one form or another. These included elected politicians holding positions in the executive with the largest single group being State Governors.³⁸ In our interim report we explained the operation of the ‘cash withdrawal’ mechanism that has been exploited by State Governors (for example, the case of James Ibori) to divert public funds for private use. Subsequently, we were informed that to address this deficiency in controls, the NFIU had implemented changes. These changes are to ensure direct allocation of funds from the Federation Account to local governments that also imposed a daily cash transaction limit. However, a recent report by the NFIU suggests that this area is one of continued vulnerability.³⁹

There were also allegations against, or convictions of, public officials in the central administration, military and to a lesser extent the police. The public corruption took various forms. ‘Embezzlement’ which included misappropriation, diversion or disappearance of public funds was the most frequently occurring type of grand corruption – followed by

³⁸ Note there are a range of publications from TUGAR on AC and governance measures in public financial management – particularly focused at the federal state level although none of these reports considered BO as a means of increasing transparency, available at <http://tugar.org.ng/publication/>

³⁹ NFIU (undated) *State Government Accounts Analysis and Reporting: Money Laundering Terrorist Financing Risk Analysis of State Government Accounts in Nigeria: The Big Picture of The Abuse of Cash Withdrawals*. Report shared with the research team.

'Fraud' which included forging documents, fraudulent accountancy and fuel subsidy fraud. Money laundering was the next most frequent type – but that term could cover a wide variety of predicate offences – while the final category of corruption consisted of cases that specifically mentioned bribery or corruption.

As we have already referenced the administration of the former President Goodluck Jonathan, we illustrate here the inter-relationship between some of the cases of grand corruption during that administration. Of note are the involvement of National Security Advisor to President Jonathan, Sambo Dasuki, and the erstwhile Petroleum Minister Diezani Alison-Madueke in the financing of the re-election campaign of former President Goodluck Jonathan. From the unaccounted funds held by Dasuki, payments were made for the Jonathan re-election campaign: N400 million was allegedly received by Metuh, spokesman of the PDP; N2.1 billion went to Dokpesi's Lagos-based DAAR Communication (for positive reporting on Jonathan) and to Aziboala, cousin of the former President Jonathan; N2.2 billion was used for the election of Fayose (PDP) as governor of Ekiti State. In the important Ekiti election, the PDP candidate Fayose defeated the APC candidate Fayemi. Both the APC and PDP offered respectively N5,000 and N4,000 to voters whom they visited at their homes carrying with them bags of cash.⁴⁰ Although the state has recovered assets from the wife of former President Jonathan, and the Government has accused Jonathan,⁴¹ no formal charges have been brought.

⁴⁰ Ekiti vote buying: Rewarding emerging electoral fraud with victory Punch, July 22nd, 2018 <https://punchng.com/ekiti-vote-buying-rewarding-emerging-electoral-fraud-with-victory/>. For a broader discussion see Akinde Sunday Israel and Micah, Damilola John (2020) Vote-buying Enterprise and Voting Behaviour among Electorate: Evidence from Southern Nigeria, *Journal of Education, Society and Behavioural Science* 33(10): 15-24; Article no.JESBS.53134 ISSN: 2456-981X

⁴¹ See, <https://www.cfr.org/blog/nigerian-government-accuses-jonathan-accepting-bribes-while-president>, May 16th, 2019

TABLE 5: NUMBER OF SUSPECTS PER CATEGORY OF OFFENDER

N CASES PER CATEGORY	N SUSPECT PER CASE											TOTAL N CASES
	1	2	3	4	5	6	9	10	11	12	25	
Governors	11	3	6	2					0	1	1	23
Ministers	1		2	2	2				0			7
Senators	1	1		1					0			3
Cent. Admin	1	2		1					0			4
Directors	1			1		1	1	1	2			7
Military		1	1	1								3
Law		2		1								4
Oil position	1		3									4
Pol. Party		1										1
Elect.Com			1									1
Accountant			1									1
Media		1										1
Total	16	11	14	9	2	1	1	1	2	1	1	59
Missing Values												1

Similarly, another group of cases refers to the military, a group of high-ranking officers, many of whom had been nominated by and supported Jonathan in his re-election campaign. The financial support was not financed by the military themselves but taken from an 'extra-budgetary intervention' that was handled by Dasuki. Transparency International noted the vulnerability of the cash 'security vote' that created discretionary spending pots without the need for accountability, referring to them as '*budgetary black boxes that are ripe for abuse by politicians seeking re-election or officials looking to run for political office.*'⁴² In a contest for high political positions, patronage or 'godfatherism' plays an important role. To maintain influence there must be an ongoing access to various funds to hand out money or other incentives to bolster loyalty.

⁴² Transparency International (2018) *Camouflaged Cash: how security votes fuel corruption in Nigeria*, Matthew Page, May, p 4.

Each of these individuals has been prosecuted as a separate case. The figures discussed must again be interpreted with caution, as the EFCC may be selective in its reporting of co-offenders. As indicated in Table 5, in sixteen cases the charges concerned only one suspect, in the majority of the cases two to four suspects were mentioned as arraigned with the main suspect. In nine cases there was a co-offending of five persons or more. While we could not assure whether all suspects were mentioned, the data do not support a supposedly general broad network of collaborating high office holders, some of whom may be pulling the strings. In the cases with multiple suspects, the cooperation appears more often based on a professional or on a hierarchical relationship within the same office as illustrated in the cases discussed below. We also heard that in cases involving multiple suspects, those considered less important will be used as witnesses against the main target of the investigation.

3.4 GRAND CORRUPTION AND BO IN NIGERIA: ANALYSING CASES

3.4.1 INTRODUCTION

To gain understanding of how potentially complex a case can be when looked at from the perspective of BO, we selected a small number of cases for detailed analysis (discussed in sections 3.4.2 – 3.4.4). The cases show how circumvention of procurement rules can be easily perpetrated by those in a position of power. We provide illustrations of the cases, showing our understanding of the case together with the networks involved. Diagrams have been created in Visio and are available as a separate document (**Appendix 6**). All information is taken from public source documents⁴³ and in presenting it here, we make no comment or inference about the actions of the companies or individuals named in the case information.

3.4.2 SCHEMATIC MAPPING: CASE I

Mrs Diezani Alison-Madueke (alleged embezzlement \$1.6bn) is the former Minister for Petroleum Resources under Goodluck Jonathan who oversaw Nigeria's state-owned oil company. She is alleged to have used her influence to direct a subsidiary of the Nigerian National Petroleum Corporation (NNPC) to award contracts to shell companies (created in Nigeria) that were owned by existing business associates (Kolawole Akanni Aluko and Olajide Omokore). Moving from Nigeria, the proceeds of those illicitly awarded contracts were then 'laundered' through companies (and banks) in the BVI, Switzerland, the US and the UK. In the latter two countries the proceeds were used for the successful purchase of various assets, including extensive property in London, a \$50 million condominium located in one of Manhattan's most expensive buildings – 157 W. 57th Street – and the Galactica Star, an \$80 million yacht that was built in the Netherlands.⁴⁴ As noted above, Alison-Madueke appears in connection with four cases discussed in the HEDA Compendia, allegedly involved in the diversion of funds to support the re-election campaign of the incumbent President Jonathan. Given her lavish lifestyle it seems more likely that she did not use all the diverted money to further Jonathan's cause. Both she and Jonathan have been accused by the Nigerian Government of "*plotting to receive bribes and make a secret profit*" in connection with papers filed as part of the OPL 245 case.⁴⁵

⁴³ In the third case of James Ibori, public source information was supplemented by our interpretation of financial information shared with the research team.

⁴⁴ Also see US Department of Justice, Friday July 14th, 2017, Department of Justice Seeks to Recover Over \$100 Million Obtained From Corruption in the Nigerian Oil Industry <https://www.justice.gov/opa/pr/departments-justice-seeks-recover-over-100-million-obtained-corruption-nigerian-oil-industry>

⁴⁵ Nigeria says ex-president and his oil minister took bribes: court filing Libby George, Reuters May 10th, 2019 <https://www.reuters.com/article/us-nigeria-oil/nigeria-says-ex-president-and-his-oil-minister-took-bribes-court-filing-idUSKCN1SG21U>; Nigerian Government Accuses Jonathan of Accepting Bribes While President, Blog Post by John Campbell, May 16, 2019, Council on Foreign Relations <https://www.cfr.org/blog/nigerian-government-accuses-jonathan-accepting-bribes-while-president>

Chart 2 below illustrates our understanding of the case, constructed from public source documents including information released by the EFCC, the US Federal Bureau of Investigation, the Swiss Trader 'Opaque Deals in Nigeria' report⁴⁶ and news reports. To aid interpretation, purple lines indicate company subsidiaries; green lines indicate allocated oil transactions; brown lines are fund transfers within subsidiaries; red lines are money laundering related transfers and blue indicate strategic agreement/partnerships. Chart 3 below focusses specifically on the relationships and associations between various individuals. In addition to the sources cited we also used information from the International Consortium of Investigative Journalists. On this chart the green lines show the links from Diezani to the associates and the purple lines show the links from companies to the associates. We have included, where possible, the location of company registration and its current trading status. The business structure shows that companies were all formed between 2011 and 2014, some within a short time of each other.⁴⁷ Properties acquired in the UK were in the name of her relatives including an older brother, mother, nephew and her son.⁴⁸

While complex laundering schemes can and do exist, it is natural for individuals to work with a small group of trusted business associates; thus, the personal networks can be quite small. Analysis of networks in the case of Alison-Madueke reveals the use of professionals –a banking relationship manager and a property manager. Personal relationships involve family members as well as the two named business associates. The landscape is more complex once companies are introduced. The companies involved are all associated with, or connected to, business associates (excluding the bank manager) but not directly to the alleged corrupt act. The case files identify eight companies registered in Nigeria; two in BVI; one in Switzerland; and five in the US (three in California and two in NY).

⁴⁶ *Swiss traders' opaque deals*, Bern Declaration – now Public Eye- 2013.

⁴⁷ *A search through the UK companies house shows companies still registered to the named business associates that feature in this case.*

⁴⁸ *Sahara Reporters*, New York, Oct. 2015.

Chart 2: Schematic representation of the case of Former Oil Minister Diezani Allison-Madueke

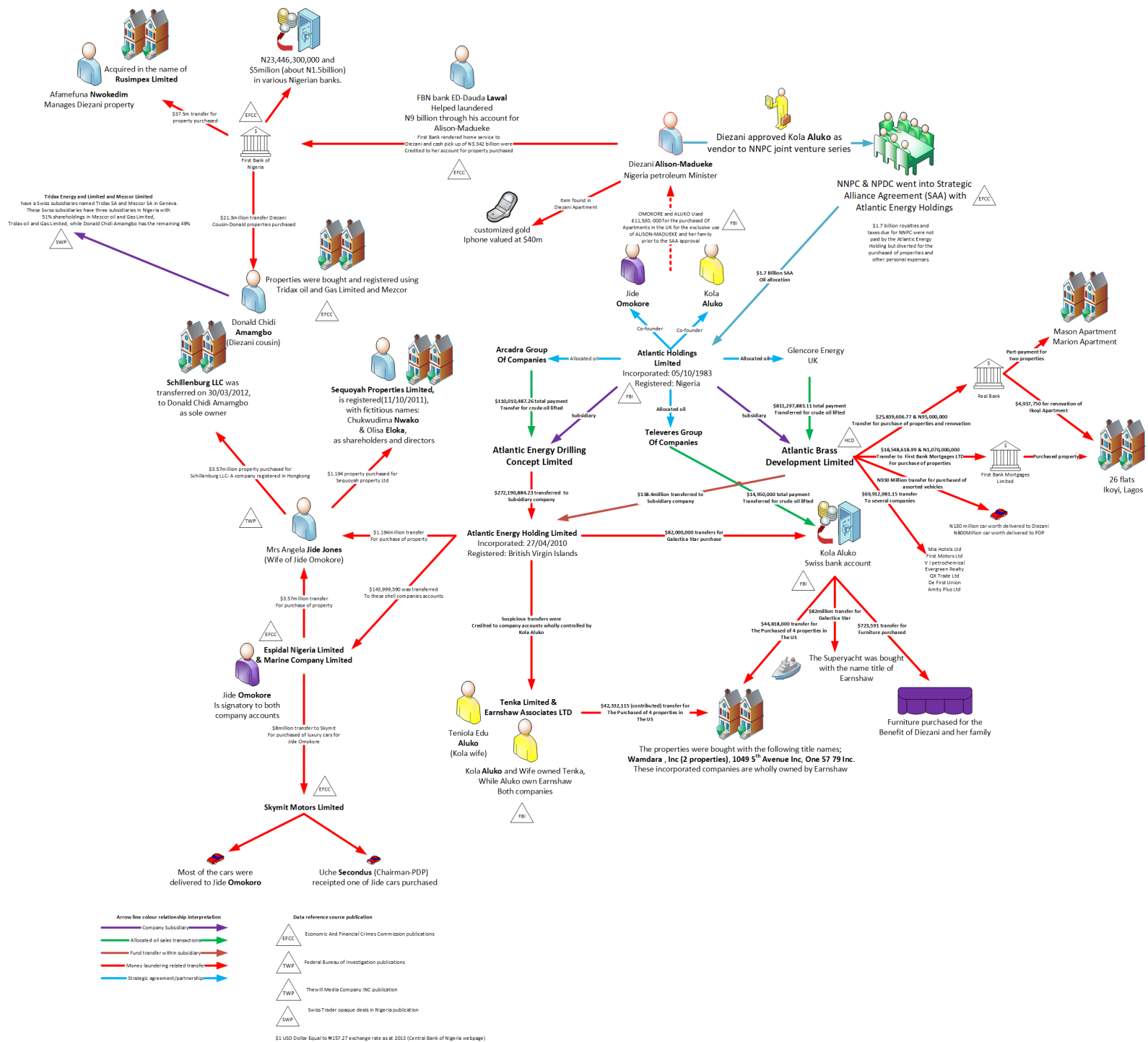
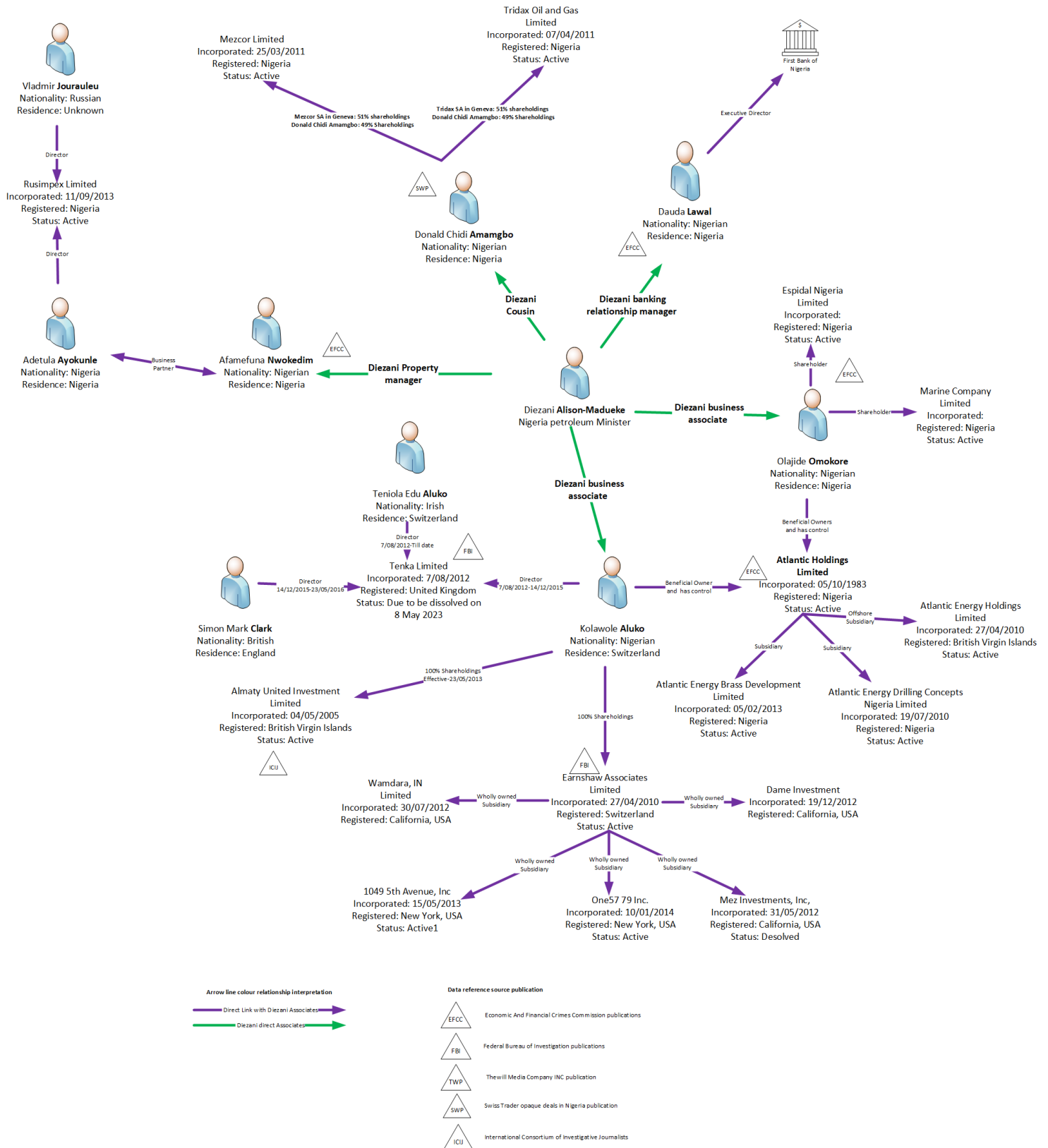


Chart 3: Schematic representation of the people and companies involved



3.4.3 SCHEMATIC MAPPING: CASE II

Rev. Jolly T. Nyame, was sentenced in 2018 to fourteen years in prison for criminal breach of trust. The former Governor of Taraba State was found guilty of using his influence to commit procurement fraud in connection with supplies and equipment attached to a range of projects and activity taking place between December 2004 and April 2007. These included stationery and office equipment, an ongoing contract for the rehabilitation of the Ibi Wukari Water Project, purchase of grain and preparations for a Presidential state visit. Two domestic companies were used for movement of funds, Salman Global Ventures Nigeria Limited (incorporated in March 2003) and Alusab International Nigeria Limited (no date available). From the available details it is apparent that State Government cheques were paid into bank accounts held with a commercial bank (Zenith Bank PLC) against which cash could be withdrawn, which on at least one occasion, was over the CTR reporting limit. Charts 4 and 5 use information primarily from the Federal Capital Territory (Abuja) high court judgment document for case charge No: FCT/HC/CR/82/07. Chart 4 shows the standard process for stationery procurement for one area of the case to show the correct procedures that should have been followed according to the government financial regulations and how these were circumvented. In this Chart the dark blue line shows where the correct process was followed, the green line shows the procedures that were circumvented, and the red dotted lines show the funds diversion that took place.

Chart 4: Schematic representation of the correct procurement rules in Taraba State

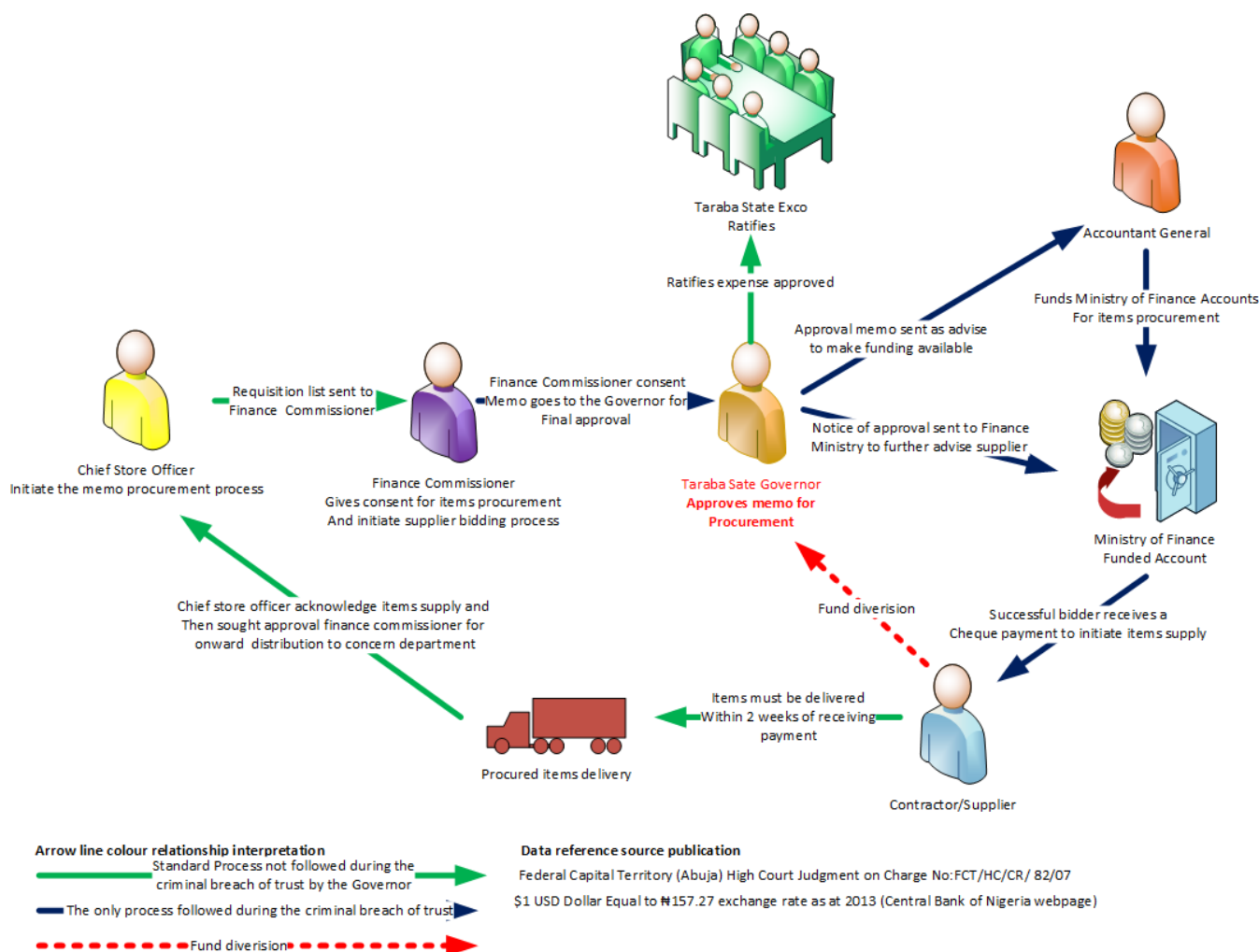
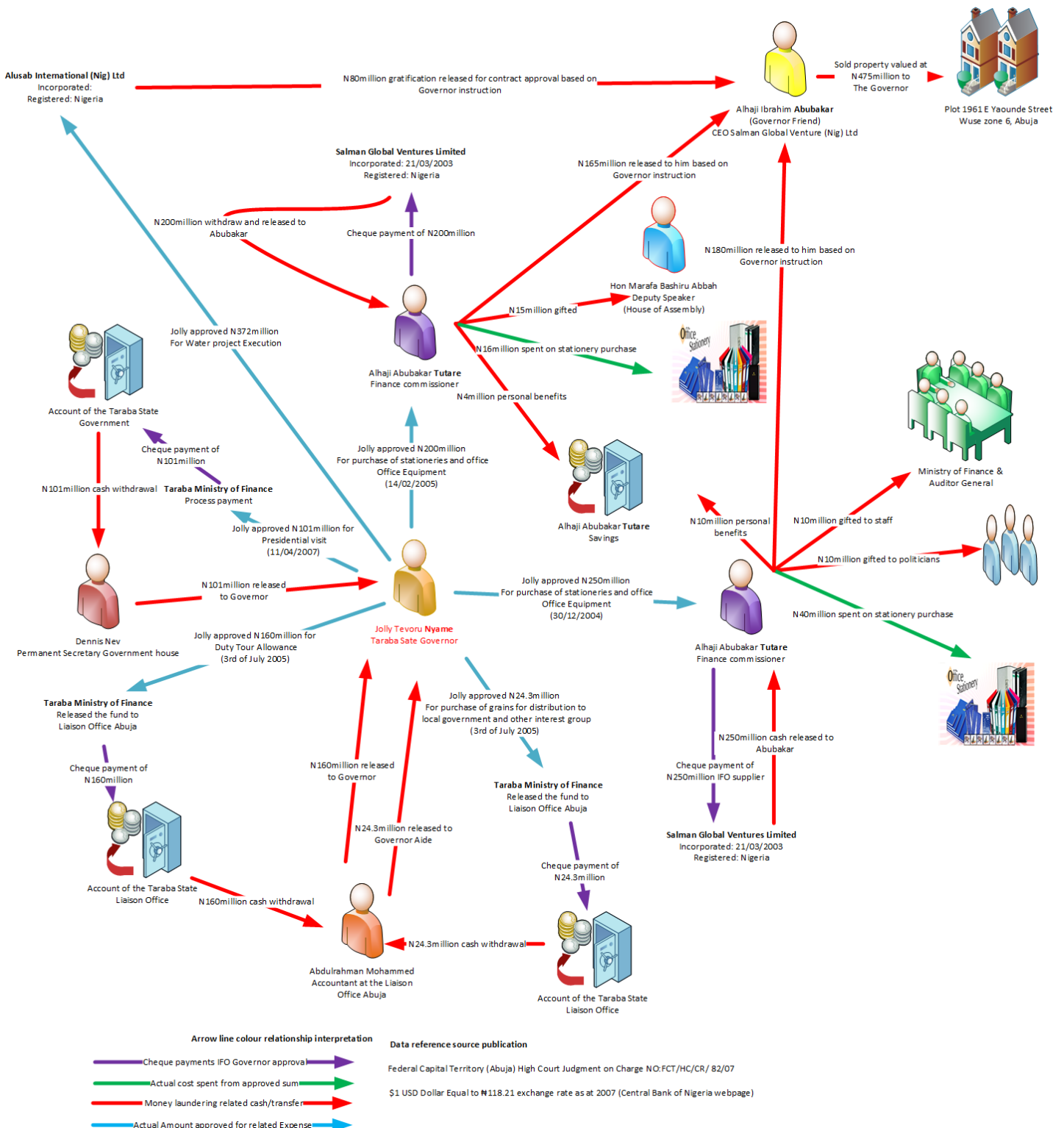


Chart 5: Schematic representation of the case of Jolly T. Nyame



For Chart 5, the purple lines illustrate the cheque payments in favour of the Governor; green lines show the actual amounts spent from the approved sum for the correct purposes; the red lines indicate the money laundering related cash flows and the blue lines are the actual amounts approved for related expenses.

3.4.4 SCHEMATIC MAPPING: CASE III

The case of Jolly T. Nyame involved diversion of funds that relied on others within the state office to collaborate in the scheme. Some of the funds went to pay off the work-related network of collaborators and some to purchase property through a Nigerian registered company owned by an associate. The third case explores this latter approach through the case of James Ibori, Governor of Nigeria's oil-rich Delta State from 1999 to 2007. This case exposes not only the involvement of family but also the misuse of different domestic and international companies to siphon public funds, moving through companies registered in Nigeria and then through more complex transactions (employing professionals), that challenged investigators in Nigeria.⁴⁹ As in the case of Nyame, use was made of hierarchical relationship within the same office, where government employees presented cheques to be cashed with the cash left at the bank, the proceeds of which were matched by the UK financial investigators, in cooperation with the EFCC, to the purchase of bank drafts in favour of various companies linked through the investigation to Ibori.

Ibori pleaded guilty in a London court in 2012 to conspiracy to defraud and money laundering offences and received a thirteen-year prison sentence. He *'used millions of dollars to support a lavish lifestyle that included six houses in London and a fleet of Range Rovers, Bentleys and Mercedes'*.⁵⁰ Papers were also produced by Mossack Fonseca in response to a request from the Seychelles government as part of a probe by the English Crown Prosecution Service into Ibori's alleged criminal activities.⁵¹ More recently in January 2020, the UK launched a fresh attempt to confiscate stolen assets from Ibori, listing in court assets totalling £178m.⁵² Identified assets included funds in accounts held in both Nigeria (Guaranty Trust Bank), the UK (Barclays International) and US (Citibank) in his name; accounts in the name of his sister and his girlfriend and accounts in the names of different companies to which he was connected. In their review of the Panama papers, the International Consortium of Investigative Journalists reported that: *Mossack Fonseca was the registered agent of four offshore companies connected to James Ibori, including Julex Foundation, of which Ibori and family members were beneficiaries. Julex was the shareholder of Stanhope Investments, a company incorporated in Niue in 2003. Ibori was also connected to Financial Advisory Group Ltd. and Hunglevest Corporation, although Mossack Fonseca's files do not specify the exact nature of his connection.*⁵³ Chart 6, provides an overview of part of the Ibori company network that uses information taken from the ICIJ and supplemented by information provided by the UK financial investigators. This case is more complex because funds were moved through a trust and companies located in offshore jurisdictions. Evidence seen by the research team indicates that some of the embezzled funds taken from the security vote account were extracted using cheques open for cashing that were used to purchase bank drafts in favour of various Nigerian companies.

⁴⁹ Shehu, AY (2015) NIGERIA: The Way Through Corruption to the Wellbeing of a People, National Open University of Nigeria, Lagos, Nigeria.

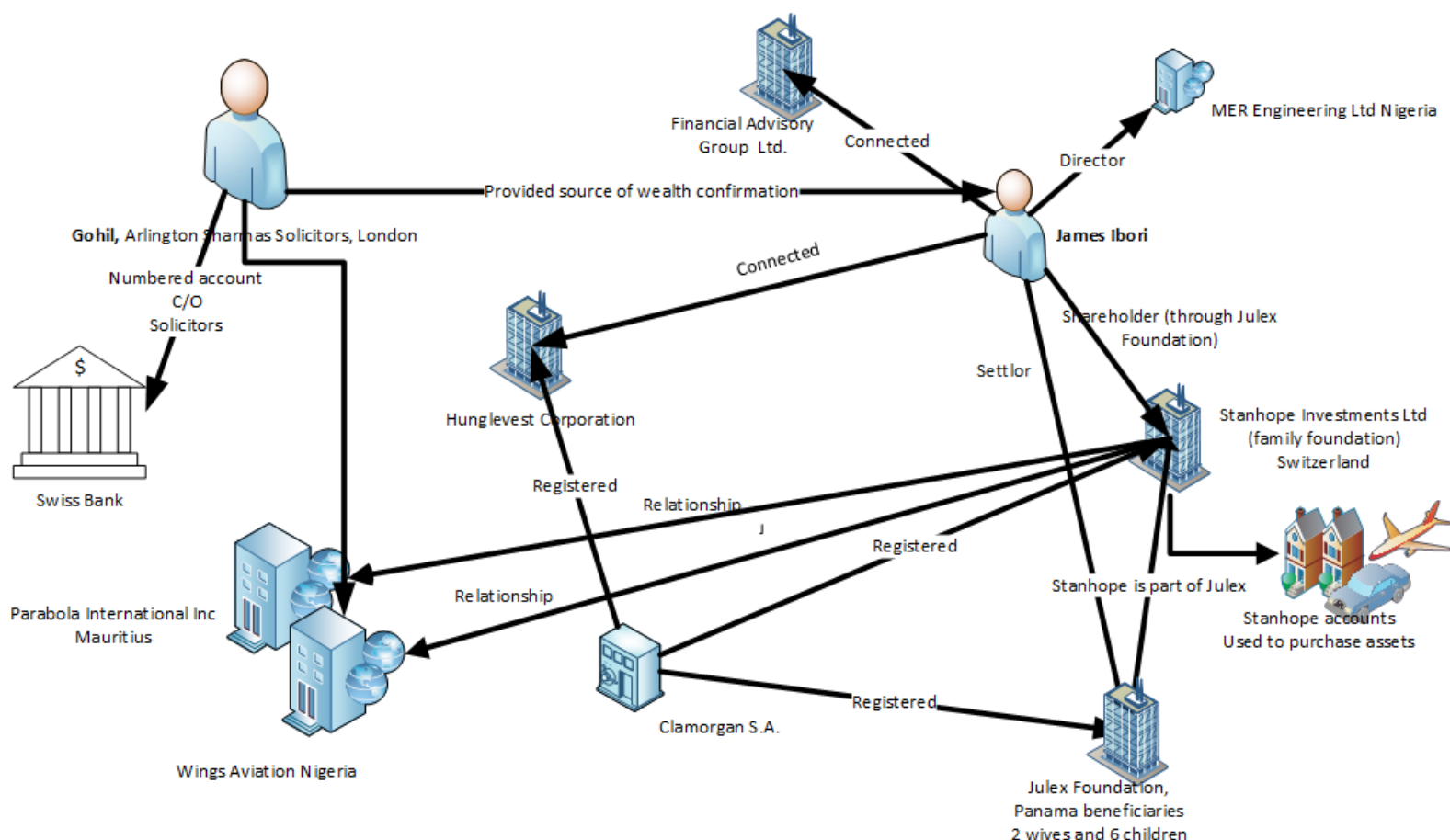
⁵⁰ Source: <https://offshoreleaks.icij.org/stories/james-ibori>

⁵¹ Source: <https://offshoreleaks.icij.org/stories/james-ibori>

⁵² See: <https://www.reuters.com/article/uk-britain-nigeria-corruption-idUKKBN1ZF1N6>

⁵³ See: <https://offshoreleaks.icij.org/stories/james-ibori>

Chart 6: Part of the Ibori company network



Source: Information supplied by financial investigators into Ibori case combined with information extracted from the International Consortium of Investigative Journalists available at: <https://offshoreleaks.icij.org/stories/james-ibori>

4 BO: LESSONS FROM THE ANALYSIS

4.1 BO METHODS

While the analysis of the information on grand corruption did not provide a large compendium of BO cases, it did provide clear evidence of the nature and extent of grand corruption and how easy it was to misuse funds for personal gain. We consider that the key lessons from the analysis concern: the methods employed to hide BO, the use of facilitators, and the role and movement of money. In relation to the first, the analysis confirms the disguise of beneficial ownership does occur in some of the commonly used methods of laundering the proceeds of corruption - albeit not always very effectively (Table 6). These cases also illustrate activities that should raise red flags for the regulated sector, generating information of use to investigators. For example, the speed between company registration and bank account opening should flag for the bank the need for additional checks (discussion with UK National Crime Agency; and also apparent from the Alison-Madueke case where companies were incorporated just prior to receiving large inward tranches of funds). Also companies that are created for a specific purpose (one or small number of large transactions) and then lapse to dormancy should prompt further investigation (discussion with former FBI agent).

TABLE 6: METHODS OF LAUNDERING

METHOD	EXPLANATION	NUMBER OF CASES EMPLOYING METHOD ⁵⁴
Family/Friends	The use of Family/Friends or close associates to divert funds (can be a company owned, a bank account, property purchase or cash withdrawal from bank).	16
Cash Movement	Withdrawal and or movement of large cash sums to disperse nationally/internationally or cash investing.	18
Property	Investment/Purchase in property, usually through a family/friend to hide BO.	17
Shell Companies	A company (registered in Nigeria or elsewhere) created (or old companies that have ceased trading) used to hold funds which can be related to an unexecuted contract.	24
Avoiding Regulations	Purposely avoiding regulations (ie cash withdrawal declarations over certain amount, falsified sign offs, tax avoidance).	12
Fuel Subsidy Fraud	Sending/Receiving Funds through Fuel Subsidy Scheme to divert public funds.	5
Bribery	Use of assets to coerce others into laundering activity, retain information, receive contracts, buy silence.	14
Material Purchase	Purchase of material items (Gold, Diamonds, Cars, Planes etc.), which can be sold on to others.	7
Phantom Contracts	Falsification of work contracts to initiate removal of funds.	19

⁵⁴ Note the analysis is based on the 60 cases, most involved many approaches and thus have been coded multiple times. Nine of the cases did not include information on methods and are excluded, these include the cases of six Governors, a director of a literacy programme, a police inspector and a government accountant.

From these sixty cases it is also apparent that being an influential patron in the region or country requires expenditure not only to keep up appearances but also to buy loyalty. This entails that not all the diverted funds are personal ‘net income’; part of it flows back into the local community in the form of patronage or godfatherly donations to alleviate economic hardship. For example, in 2019, in Kano State during the investigation and trial of the ex-governor, the EFCC officers barely escaped being lynched by the furious locals protecting ‘their’ governor and kept the officers hostage in their office (Compendium, 2019; p. 27). Likewise, in the case of Ibori *‘his kinsmen from Delta state travelled to protest against the trial’* and *‘When police went to look for him in his village to arrest him in his locality, clansmen came onto the street to protest’*.⁵⁵ Four of the cases of fuel subsidy fraud retain links to Diezani Alison-Madueke and a PDP polling ramp, to which the funds were being diverted to spend on influencing elections in 2015.

This still leaves enough money for direct personal enrichment of astonishing dimensions which has to be laundered as already illustrated. Despite such cases, unsurprisingly there is insufficient data to answer the question of the totality of laundering. From the cases relating to corrupt activity prior to 2015, we found little sophistication in disguising the criminal revenues. Many of the sixteen cases that involved the use of family or friends involved contracts being awarded to companies run by close friends/business associates or family – usually wives and sons acting as front figures for a shell corporation; in five cases relatives⁵⁶ were specifically mentioned. In these cases, often proceeds were placed in bank accounts in the name of a direct relative or close friend. Subsequent follow-up transactions, such as the purchase of assets, namely property (in Nigeria and sometimes overseas), high value goods (planes, yachts etc.), were also in the name of relatives or friends with little concern about risks of financial traces to these frontmen/women. In some cases, cash is withdrawn and hidden in property owned by the defendant/s. Bribery seems to be used in many cases to retain the loyalty of aides to high ranked officials conducting the fraud.

Our detailed analysis of the cases in **Section 3** certainly indicates the importance of personal relationships and trust in a *‘reward further down the track’*.⁵⁷ In a small number of cases companies were also created although it is not always clear the extent to which these were designed specifically to disguise ownership or as straightforward investments. In the cases of Ibori and Alison-Madueke, companies were also connected to business associates. Across the cases, purchase of property was widespread. Property and land ownership is particularly problematic due to the high degree of opacity of land ownership records and difficulty of access to records to investigators.⁵⁸ We were told of land ownership changing without changes to registry records and that property, particularly high value, can be held by shell companies with change in ownership achieved through buying out control of that company.⁵⁹ These findings are in line with the views of the UN Special Rapporteur on adequate housing⁶⁰ who recently reported that *‘Large amounts of illicit funds are widely reported to be diverted to the real estate sector as a means of money-laundering, despite prevention initiatives by the developers’ association and government agencies’*. The vulnerability of real estate to laundering was confirmed to us by a respondent from the Nigerian Association of Real Estate who also pointed out that *‘many of the developers are relatives of high- profile politicians’*. An all-in-the-family arrangement that underlines the deep-seated phenomenon of kinship ties smoothing economic transactions.

⁵⁵ Meeting with Nigerian Police representatives, Abuja.

⁵⁶ Including one case in which the wife of a co-defendant is named.

⁵⁷ Discussion with Former NCA officer, on-line.

⁵⁸ This point being made in discussions with The Nigerian police, the ICPC and with the CCB, all in Abuja.

⁵⁹ Discussion with the Nigerian Law police in Abuja and feedback on our interim report from a UK academic.

⁶⁰ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Human Rights Council 43rd Session 24 February to 20th March 2020 Agenda item 3, available at <https://undocs.org/en/A/HRC/43/43/Add.1>

4.2 USE OF FACILITATORS

Some of the high-profile cases showed the importance of professional enablers. Lawyers featured prominently in the cases of Alison-Madueke and of Ibori, enabling money to be moved in accordance with their client's instructions. In the case of the former, property was held in trust for the suspect with the lawyer acting on client instructions to disburse the rental receipts;⁶¹ and in the case of Ibori, his lawyer used their own firm's client account to move funds while agents were used to act as nominee directors of companies.⁶² Our analysis of the EFCC investigation into Alison-Madueke, showed that the First Bank of Nigeria confirmed having rendered 'home services' to the Minister, whereby an executive director of the bank collected US dollars and deposited Naira in a series of tranches into different accounts associated with Alison-Madueke. These included a mortgage account with the bank and accounts in three other commercial banks in the country.

There are twenty-four cases in which Nigerian companies have been specifically mentioned or arraigned as co-defendants. Eight of the cases make specific mention of banks, seven where the shell companies held accounts and a further one where a bank 'warehoused funds' (see [Appendix 2](#) for details). In addition to the information contained in Appendix 2 we note that in the case of Ibori, two Nigerian banks were identified: Oceanic Bank (now Ecobank) and PHB (now Keystone Bank). Ibori also operated six different foreign bank accounts at Barclays in London, two at Citibank in the USA, one with the Bank of Austria, one account at PKB in Switzerland, and several offshore accounts in the Channel Islands. The Nigerian police investigators told us that the staff working at the Nigerian banks involved were charged with money laundering offences including failure to report a suspicious transaction (we do not have any information on these specific cases including the outcome). We observe (see [Section 6](#) below) that such prosecution appears rare and failure to report continues to be a problem. For example, a bank audit officer commented during one of our workshops that the banks saw things happening but that, in their opinion, the banks did not want to share suspicions and risk losing valuable business (in apparent breach of the suspicious activity reporting requirement).

In another example of employing professional enablers, in September 2003, Alamieyeseigha (former Governor of Bayelsa State who was convicted and later pardoned) was found to have instructed a London-based firm, Fiduciary International Limited, to register a company called Santolina Investment Corporation in the Seychelles with him as sole shareholder and director. In January 2004, Santolina opened an account with Royal Bank of Scotland using an application signed by Alamieyeseigha himself. The account had an estimated turnover of £250,000. Between January 2004, when the account was opened, and March 2005, it received twenty-six deposits totalling approximately £2.7 million. Out of this £2.7 million, £1.6 million passed through a Nigerian-based Bond Bank from a state contractor called Temat Associates, which was owned by Ehigie Edobor Uzamere. Temat had a contract worth £5.3 million equivalent for the construction of internal concrete fencing to the new Governor's and Deputy Governor's lodges in Bayelsa State.⁶³

⁶¹ Meeting with representative of EFCC, Abuja.

⁶² Financial information from the Ibori case.

⁶³ Shehu, 2015, *op. cit.* note 49

4.3 CURRENCY EXCHANGE

The exploitation of the permissible purchase of hard currency is worth noting, not because it is a mechanism for hiding BO, but because it is a method of laundering. Purchase of foreign exchange is controlled by the Central Bank of Nigeria (CBN) through a system of licensed Bureau de Change (BDC) operators. The BDCs are authorised to conduct small scale foreign exchange activity for customers requiring funds as part of a Business Travel Allowance (BTA), a Personal Travel Allowance (PTA), and the meeting of other expenses such as school fees, medical expenses or other permitted reasons.⁶⁴ From our review of cases of grand corruption it is apparent that ‘laundering’ the proceeds of corruption has involved purchase of currency to pay fees for private school education (as in the case of Ibori) outside of Nigeria. It was also suggested to us that *‘private education is hiding illicit financial flows. These individuals [the children receiving the education] go on to get jobs that then see them as enablers’*.⁶⁵ The argument being that they secure roles in organisations that allow them to facilitate the continued movement of the proceeds of corruption on behalf of their families.

The total annual remuneration and benefits package for a state governor of some \$30,000 would not cover the annual average boarding fee at a private school in the UK.⁶⁶ Not only are public revenues being diverted to acquire private goods but they are being used to potentially secure ‘insider’ access to foreign banks and other institutions such as legal firms. Although only mentioned in a couple of the high-profile cases, it would not be too difficult for investigators to cross check requests for purchase of hard currency against asset declarations in the event that there was a suspicion of wrong-doing by a PEP.

The CBN is responsible for the supervision of banks⁶⁷ the 4,000 or so BDCs and micro finance banks but they *‘lack the resources to supervise these but that is a discussion for another day’* implying they are stretched in their supervision of the non-bank sector.⁶⁸ The parallel market in foreign exchange⁶⁹ has facilitated *‘various abuses including under-invoicing of exports and over-invoicing of imports’*.⁷⁰ We heard that, as in the Ibori case, off-market informal currency exchange between oil sector companies (seeking Naira to meet domestic commitments) and Nigerian nationals (seeking hard currency to move overseas) takes place.⁷¹

⁶⁴ See Revised Operational Guidelines for Bureaux de Change in Nigeria, Financial Policy and Regulations department, CBN, November, 2015 available at <https://www.cbn.gov.ng/out/2015/fprd/revised%20bdc%20circular%20and%20guidelines-corrected-final%202015.pdf>

⁶⁵ Discussion with former NCA officer, on-line.

⁶⁶ The National *‘Rise in UK private school fees slows as demand from Gulf parents ramps up’* Alice Haine, May 11th 2021, available at <https://www.thenationalnews.com/business/money/rise-in-uk-private-school-fees-slows-as-demand-from-gulf-parents-ramps-up-1.1220904>

⁶⁷ As at February 2021, there were 29 licensed banks in Nigeria (excluding microfinance banks, mortgage banks, specialised banks and other entities licensed by the CBN), comprising 22 commercial banks, five merchant banks and two non-interest banks.

⁶⁸ Discussion with representative of the CBN, Abuja.

⁶⁹ Nigeria operates a system of multiple exchange rates and they include the official exchange rate from CBN, an interbank lending rate, another used by international money transfer companies, importers and exporters (I&E) window established in April 2017, and a black-market rate – source: <https://www.export.gov/article?id=Nigeria-Foreign-Exchange-Controls>

⁷⁰ GIABA (undated) *Typologies Studies on Money Laundering and Terrorist Financing Through Informal and Illegal Foreign Currency Exchange Services in West Africa*, p 8 unpublished paper shared with us by a respondent from NFIU.

⁷¹ Discussion with former ICU officer, on-line.

4.4 CURRENCY DECLARATION REPORTS AND CASH EVACUATION

In compliance with FATF Recommendation R.32 for prevention of cross border cash-based laundering, Currency Declaration Reports are required for all cash sums above \$10k leaving the country. The most recent NFIU Report for 2019⁷² talks of introduction of a ‘web-based portal’ for the capture of this information at the country’s borders (p.30). There is no update for the data that we reported upon in our interim report and further discussed in our blog, Statistical challenges and ‘cash for penguins’⁷³ noting how we struggled to make sense of the data. For example, in 2014 (most recent data), a total of \$807.6m was declared by 26,300 persons leaving the country. This is over \$30k per person. Three quarters of these declarations listed Asia as the destination of which the majority was moving to China. Except for the British Virgin Islands, no offshore finance centres were mentioned in the data. As they are declared, it is assumed these flows are licit, yet in contrast only \$1.9m illicit cash was seized during the same year. As we have not been able to obtain a copy of this form it is unclear if these cash movements to China and elsewhere are in connection with goods purchased for subsequent import. We were informed at our workshop in Abuja that funds are physically carried by individuals and that Dubai is the current principal destination.

In our interim report, we attempted a broad reconciliation of data associated with legal flows: main trading partners being China and the Netherlands (for both exports and imports); India for exports and South Korea for imports. From the cash declarations, funds are being moved to China, the US, the UK and Germany. It might be expected that Nigerian entities would have claims and liabilities against some of these named countries and so we also investigated the Bank for International Settlements (BIS) data as a reliable and current indication of cross-border bank deposits from and to Nigeria (available as a separate report, see **Appendix 6**). This data only concerns bank balances at the end of a period and on a direct basis; we cannot see movements taking place through intermediate countries. Nor does it provide insight into the total assets of legal persons or of the money flows taking place. Despite such limitations we wondered if the figures may provide a first indication of the potential existence of undeclared assets if the volumes recorded by the banks are significantly different from those explainable by trade and legal financial flows. This analysis was inconclusive highlighting only the striking role of the UK in cross-border interactions of Nigerian-based parties, indicative of the extensive financial and commercial links between the two countries.

Cash evacuation is undertaken by banks through BDCs⁷⁴ under which hard currency (US dollars, Sterling and Euros) and other currencies (as approved by the CBN) are moved out of Nigeria. In this case the Central Bank is responsible for authorising the requested transaction having first inspected and sealed the notes. There is a limit on the amount to be evacuated at any one time, but that depends on CBN approval. Normally, commercial banks place requests to the CBN seeking to evacuate what is referred to as excess cash, old bills or lower denominations or mutilated notes in any

⁷² NFIU 2019 Annual Report, all available annual reports are found at: <https://www.nfiu.gov.ng/Home/AnnualReport>

⁷³ Available from the GI-ACE project web site at <https://ace.globalintegrity.org/penguins/>

⁷⁴ And such requests have been received from service providers including Travelexbusiness solution limited, Innovate1, pay Nigeria Ltd, CFS Nigeria Ltd, Armada Financial Services Ltd, etc.

currency, and after inspection of the cash,⁷⁵ the service can then evacuate such cash to any destination. Obviously, this portends some risks since the BO is not stated apart from the bank or service provider, although the NFIU report (2019, p.21) appears to indicate improvements in reconciliation between Nigeria and destination countries ‘with references to the beneficiary accounts’. Unfortunately, they do not elaborate further on subsequent action.

5 ADDRESSING THE PROCEEDS OF CORRUPTION THROUGH BO: NIGERIA’S ANTI CORRUPTION LEGAL AND INSTITUTIONAL FRAMEWORKS IN PRACTICE

5.1 THE APPROACH

Investigating the proceeds of corruption, including money laundering and the recovery of assets, requires a ‘follow the money’ approach predicated on access to robust and uniform data, and - particularly where we have noted the roles of family, companies and facilitators – BO data. This is premised upon the authorities undertaking extensive analysis of large amounts of data from a variety of sources. These will be across various stages of an idealised proceeds of corruption and AML regimes that begin with record keeping and ends with conviction and/or asset recovery. This approach requires laws and practice whereby various actors create and retain common records of financial transactions (including asset declarations). Access to this and other data by an investigating team is required, and the investigators must also be capable of analysing and making sense of all of the data and presenting it to a court for prosecution – ideally in sufficient numbers (capacity) to deter similar placed people from committing such financial crimes. The recovery of criminal proceeds involves similar procedural capability.

5.2 ISSUES AND BO-RELEVANT DATA

The interim report provides a description of the legal framework and the powers provided to the various ACAs through the country’s AML framework; see Tables 1 and 2 in **Section 2** above. Table 2 also identifies some of the main sources of institutional information available to investigative agencies. Our interim findings suggested that while Nigeria had responded to the requirements of the FATF by strengthening its AML/AC legislative framework, it had not always been effectively operationalised. Legislation had created agencies with overlapping mandates that had resulted in competition rather than collaboration (although an agency view would argue that an advantage of overlapping mandates was to eliminate gaps). Evaluation of operational efficiency of the agencies is severely hampered by inadequate data; information we were told was available but was rarely forthcoming, while that from the public domain was frequently not up to date. Sometimes data is collected without a clear purpose, making it less useful, and the same information may be separately collected by different agencies using their own methods, creating unnecessary inefficiencies. In the end “nothing matches with anything”.

⁷⁵ Usually conducted jointly by the CBN, NFIU, Customs, EFCC and the Department for State Security (DSS).

5.3 THE AGENCIES AND BO-RELEVANT DATA: ANTI-CORRUPTION

The enabling statutes that created anti-corruption agencies such as the BPP, the EFCC and the CCB contain stipulations for inter-agency collaboration in their anti-corruption functions and specifically that law enforcement agencies are empowered to request, obtain and use information from relevant authorities including CAC, land registry, financial institutions, etc. CAC indicates that a company registration certificate has a Tax Identification Number (TIN) with the Federal Inland Revenue Service (FIRS). We were told there is direct access to CAC database by agencies like the Bureau of Public Procurement (BPP) and FIRS, while others receive data on request and that while there is no legal bottleneck with respect to data sharing.⁷⁶ We also heard that cooperation is seldom seen in practice.⁷⁷

While the ACAs have statutory powers to request information in support of investigations, there is value in further sharing of information on asset declaration and BO disclosure between the CCB, the CAC and NEITI. Asset declarations are widely used to 'ensure probity' with recommendation that these forms be available for public scrutiny.⁷⁸ In Nigeria such declarations by public officers are made to the Code of Conduct Bureau as set out in the *Code of Conduct and Tribunal Act* (Cap.56, Laws of the Federal Republic of Nigeria). Page⁷⁹ notes that Nigerian law also exempts these documents from public scrutiny, including via Freedom of Information Act requests. Although there does not appear to be a law that specifically would prevent the CCB from making asset declarations open to the public, indeed by definition, making a 'declaration' implies placing information into the public domain.

The CCB, which has responsibility for enforcing the provisions of the Act, and its supporting legislation is potentially hugely powerful. From our interim report we noted the comments from the IMF⁸⁰ about the significant gap between the number of public servants covered by the Act and the number of reports received. The CCB faces many challenges (which include lack of resources, staffing, technical ability, and so on) that means it has been unable to verify most of the asset declarations made by public officials and has limited means to be able to follow up on those public servants who fail to lodge returns. One of the ways of ensuring adherence to the rules and their enforcement is to have specific guidelines on elements of the Code, such as conflict of interest rules and gifts and allowable circumstances thresholds. The guidelines will clarify the blurred lines on these issues for both public officers and the public.

⁷⁶ Comment from Nigerian NGO at virtual workshop

⁷⁷ Comment from UK academic at virtual workshop and the same point being made by NEITI who stated in their feedback on our interim report: *We believe some collaborations exist, the scale and effectiveness of these linkages are few and weak at best.*

⁷⁸ Transparency International 'Asset Declarations: an effective tool to fight corruption?' Working paper No 1, 2014 available at https://images.transparencycdn.org/images/2014_1_WP_AssetDeclarations_EN.pdf; for a discussion on the importance of public scrutiny of these declarations also see Kotlyar and Pop 'Asset declarations: A threat to privacy or a powerful anti-corruption tool?' September 26, 2016 available at <https://www.worldbank.org/en/news/opinion/2016/09/26/asset-declarations-a-threat-to-privacy-or-a-powerful-anti-corruption-tool>

⁷⁹ Page, M. (2020) *Dubai Property: An Oasis for Nigeria's Corrupt Political Elites*, March, Carnegie Endowment for International Peace, Working Paper.

⁸⁰ Data from the IMF indicated that in 2018, of the 4-4.5m 'public officers' only 17,000 declarations had been received arguing that compliance was hampered due to manual record keeping.

We were informed that, even when declarations were made, it was quite easy to circumvent the intent of the legislation through what was referred to as ‘fraudulent resignation’ from companies where the remaining owners are family members thus effectively keeping the company within control.⁸¹ The ICPC went on to note that this arrangement had also been used ‘to help people escape punishment.’ The CCB complained to us that banks do not disclose information in response to requests from them and instead require that the agency obtain a court order ‘even though the powers are in the Constitution’. It is also interesting that the ICPC noted that BO was a new concept (for judges) and that ‘courts have to be brought on board’. In this context they provided the following example:

‘A public officer was not a member of a company or a signatory on their accounts but Naira 1m came in and Naira 980k left their account as movements between them and the company: the court response was “I do not see a connection between the person and these funds.” Judges are still too conservative to believe these things are happening’.

Although the CCB can request information from the NFIU, we question why the NFIU was not proactively sharing intelligence generated from analysis of STR/CTR data with the CCB as an obvious way of enhancing the activity of that agency.⁸² We were also informed that there was deliberate underfunding of the CCB ‘by [the] political elite so that it can’t be effective’.⁸³ Unfortunately, it appears to be in the interests of too many politically powerful actors to ensure that changes to this agency’s mode of operation remain limited.

5.4 THE AGENCIES AND BO-RELEVANT DATA: REGULATION

5.4.1 THE CENTRAL BANK OF NIGERIA [CBN]

The CBN was clear that they operate a system of risk-based monitoring of the regulated sector including on-site visits and the implementation of sanctions for non-compliance.⁸⁴ It describes using the standard risk basis of geography, products, type of customers, delivery channels and ownership structures of banks. Despite this, it is apparent that banks are not sufficiently compliant with AML/AC regulations and the CBN does not have the manpower resources to police the range of banks, wider financial institutions and cash exchange businesses. As in other countries, the financial sector is highly innovative, requiring high capability and technical skill on the part of a supervisor to understand the details of the activity of their private sector organisations. It is evident that despite close monitoring and rationing of foreign exchange transactions by the CBN, in a number of the high-profile cases, funds were moved offshore without its knowledge. In other cases, as commented by the participants at our workshop, bags of cash were taken from the CBN in plain sight, indicating complicity within the bank itself.

⁸¹ Meeting with ICPC, July 2019

⁸² From our analysis of the cases of grand corruption, the CCT provided information connected with the prosecution of only two of the 60 cases.

⁸³ Nigerian civil society organisation, comment at virtual workshop

⁸⁴ Discussion with representative of the CBN.

A revised AML/CFT regulation sanctions regime was implemented in February 2019 which the Central Bank views as tight and successful with ‘zero tolerance’ for mistakes. The regime operates at the individual level of the Chief Compliance Officer (CCO) and uses both fines against individuals and companies alongside a person ‘blacklisting’ (barring from office). In the event of failure in KYC procedures identified during an inspection visit or because of a bank being identified as part of an investigation, the CCO and the directors of the banks can be fined (based on a sliding scale according to the number of customers).

We asked the CBN for details of fines levied in connection with AML breaches. Unfortunately, no information was shared with us beyond the totals of fines levied as sanctions for breach of AML/CFT regulations.⁸⁵ Total figures do not indicate who was fined, for which breach and the amount of fine levied, nor indeed if these relate to banks, to individuals or, indeed, to other parts of the regulated sector. For comparison, the regulator in the UK, the Financial Conduct Authority, routinely discloses the broad details of regulatory breaches of AML regulations together with the sanction imposed (see **Appendix 4**). In suggesting that CBN disclose similar information we are aware of the potential irony that in the UK case against James Ibori, prosecutors stated that ‘*Ibori and associates used multiple account at Barclays, HSBC, Citibank and Abbey National (now Santander)*’⁸⁶ and that none of these banks had been fined by the UK regulator.⁸⁷ In contrast, we note that the UK Financial Conduct Authority (FCA) did sanction Guaranty Trust Bank (UK) Limited⁸⁸ (a UK subsidiary of Nigerian Guaranty Trust Bank) for breaches of its Principle 3 (management and control) with a fine of £525k for failing to do thorough anti-money laundering checks on potential clients from high-risk countries. This looks like a disparity of treatment.

5.4.2 SPECIAL CONTROL UNIT AGAINST MONEY LAUNDERING (SCUML)

Outside of the formal banking sector, the designated non-financial institutions fall under the regulation of a single agency, SCUML, established in 2005 to meet FATF Recommendation 28 to monitor, supervise and regulate these groups. The agency has an immense task in monitoring a diverse and geographically dispersed range of some twenty-two different regulated sectors with a limited number of staff. They also seem to have issues with staff turnover and the need to constantly retrain staff to raise awareness of global money laundering trends. SCUML is potentially as important an agency as the CAC due to their records – although as we argued in our interim report, the agency appears badly under-resourced for the scale and potential significance of its mandate. They told us that they were challenged in explaining what the organisation is and what it does as, in their words, they ‘*are not popular*.’ Given lack of resources, SCUML are very reliant on companies registering with them, only collecting details of legal ownership,⁸⁹ working closely with the self-regulatory organisations on business sensitisation to raise awareness of requirements. Also, their ability to be able to risk assess DFNI was ‘*very much work in progress*.’ The agency either requires resources appropriate to enable it to fulfil its role or the scale and scope of its activity should be reduced to a manageable level. This probably would mean a concentration on education and awareness raising only. Although SCUML is operationally domiciled within the EFCC, the latter separately noted the need to improve the regulation of the DNFI

⁸⁵ Totals were: 2015: N58m; 2016 N66m; 2017 N32m; 2018 N96m; and, 2019 N314m

⁸⁶ Taken from Spotlight on Corruption <https://www.spotlightcorruption.org/james-ibori-confiscating-the-corrupt-assets-of-a-nigerian-governor/>

⁸⁷ It is interesting that one of the main companies used by James Ibori had a bank account with Barclays Lagos and it was that branch that introduced Ibori to the relationship manager in Barclays London with the cover letter provided by Ibori’s London based Lawyer (discussion with former ICU officer, on-line)

⁸⁸ Available at <https://www.fca.org.uk/publication/final-notices/guaranty-trust-bank-uk-ltd.pdf>

⁸⁹ A copy of the business registration form is available: <https://scuml.org/registration2/> which only contains space of the inclusion of up to three Director’s names.

sector. In one of the virtual workshops, SCUML confirmed that they are now targeting their activity at high-risk entities of real estate and construction together with metal dealers. The problem of high staff turnover remains as a structural weakness.

5.4.3 THE SECURITIES AND EXCHANGE COMMISSION (SEC)

One other important part of company information concerns the role of the Securities and Exchange Commission (SEC). Typically, stock exchanges are heavily regulated and listed companies' activities, accounts, transactions etc. are highly transparent. Currently they appear to be very much on the periphery of AC work, for example some of the representatives at our Abuja workshop expressed problems in understanding the scope of responsibility of the SEC. The representative from this regulatory authority noted their main area of focus is on investor protection and that it is the role of the Stock Exchange to check that the information provided by listed companies correctly reflects ownership details for large shareholdings. As it is normal practice for nominees to hold shares as this facilitates trading, the SEC does regulate the Stock Exchange data and specifies the need for BO data where nominees are listed as company shareholders. The SEC did however comment that they were '*battling with stock brokers over bringing of nominee accounts to the stock exchange, they should disclose their shareholding*'.⁹⁰

5.4.4 THE NATIONAL INSURANCE COMMISSION (NAICOM)

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

5.5 OTHER INSTITUTIONAL INITIATIVES: THE NIGERIAN EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (NEITI)

As described in our interim report, NEITI⁹¹ with assistance from OpenOwnership (under the Open Government Partnership), has been working on a register of company ownership in the oil and gas sector since 2014⁹² and now has a searchable register available. A search of this register reveals information on the legal person or company that holds the legal title but not the natural person who benefits from ultimate control.⁹³ It therefore currently falls short of meeting the beneficial ownership data standard. NEITI remains reliant on the companies themselves accepting liability and bearing the consequences for providing inaccurate information.⁹⁴ They are working with the Mining Cadastre Office (regulator of the solid mining sector) and the Department of Petroleum Resources (DPR) on a template that would be sworn to by the BO disclosing officer in a company under the Oaths Act.

⁹⁰ It is usual for a significant proportion of shareholders in a listed company to hold a very small proportion of shares (though obviously the nominees may hold greater proportions) and to have limited control rights. Many listed companies in the UK do not have to hold a PSC register, as they are subject to separate disclosure standards.

⁹¹ NEITI's Oil and Gas Industry Audit Report (2018) and associated appendices include information for 71 companies with audited data, the NLNG and 12 companies with incomplete information (selected as above their materiality threshold – the report notes 33 companies account for 98.67% of total revenue – p16). From their website we identified some of the largest companies as being split between Joint Ventures (14) and Production Sharing Contracts (41). The 2018 annual report from the Department for Petroleum Resources (DPR) provides a list of 164 different oil and gas companies listed as operating in Nigeria.

⁹² NEITI volunteered to be part of the pilot run by EITI, World Bank 2020, Enhancing Government Effectiveness and Transparency: The Fight Against Corruption, October

⁹³ In addition, we tried to investigate the ownership structures for the 10 largest oil companies but found very little ownership information in the public domain.

⁹⁴ Email exchange with NEITI.

NEITI is aware that verification methodologies⁹⁵ are critical particularly where information is to be submitted or maintained through annual confirmation statements. Any failure to provide needed information (assuming it can be identified) should be treated as a red flag and subject to further investigation. They also pointed out that they had dealt with issues raised in our interim report: *‘prioritization of access, accuracy, timeliness, and open/usable format and creation of unique identifier for individual records and authorization for altering or amending already established records are not only already taken care of in the NEITI portal, but are also factored into ongoing conversation with CAC in respect of CAMA 2020’*.⁹⁶ This is good to see as data held by an automated system is only as good as the data entry field available at the time of the record creation.

NEITI confirmed that improvements in records management would help data sharing between agencies: *‘Deploying a uniform framework across agencies with regards to BO will take care of a significant chunk of the identified gaps’*.⁹⁷ We would argue that using a standardised data collection template for capturing BO data that could also be shared with the tax authorities would help the latter in efforts to improve tax compliance and increase revenue collections. NEITI also thought that the Presidential Advisory Committee against Corruption (PACAC) had developed a data collection platform that linked the agencies in the Inter-Agency Task Team (IATT) located in the Technical Unit on Governance and Anti-corruption Reform (TUGAR). This platform was apparently being used to collect a range of data and that adding to or modifying that framework to capture BO data would be the way to improve records management. We could not find any information about this platform.

6 BACK TO THE BASICS: BO, DATA, AND RECORDS

6.1 RECORDKEEPING AND INFORMATION-SHARING

It is clear to us both from the analysis in **Section 4** and the study of the agencies in **Section 5** that addressing the proceeds of corruption is hampered both by poor data, including BO-relevant data, and by inadequate information-sharing procedures. The role of BO in corruption, money laundering and asset recovery investigations is crucial. As the World Bank⁹⁸ noted in 2020:

“In many corruption investigations, investigators must first uncover who actually benefits from the ownership of an asset – for example a company or real estate that is involved in a corrupt scheme – since the beneficial owner may be hidden behind multiple layers of shell companies or nominee company directors. Beneficial owners with criminal intent can conceal their identity through a variety of different mechanisms, for example: by creating complex and opaque legal ownership structures with corporate owners registered in jurisdictions with weak transparency regulations, by using nominees or informal proxies (e.g. family members or friends) as company directors or shareholders, or by going through professional intermediaries who protect the identity of their clients, either with complicity or unwittingly”.

⁹⁵ Further information can be found at OpenOwnership’s verification briefing (May 2020): <https://www.openownership.org/uploads/OpenOwnership%20Verification%20Briefing.pdf>

⁹⁶ Written feedback from NEITI representative on our interim report.

⁹⁷ Written feedback from NEITI representative on our interim report.

⁹⁸ World Bank. 2020. *Enhancing Government Effectiveness and Transparency: The Fight against Corruption*. Washington: World Bank, p. 250.

As described in our interim report, a great deal of information is collected on BO by different agencies but what is missing is the institutional capacity to bring it together in a timely and usable form. To be useful (and in compliance with FATF R.24), records have to be accessible (on-line if possible), accurate, shared in a timely manner and in an accessible format. We were told of agencies finding it difficult to share data and that record keeping differs between agencies. We have looked at the content of data capture forms to see what information is requested and held by different agencies. Of particular interest is the personal identification information (variables, fields and format) that is collected by multiple agencies and that could usefully be shared in furtherance of both BO identification and prevention of corruption if standardised, validated, maintained and accessible.

6.2 BO STANDARDS

In our interim report we noted that concern about BO was one of the most frequently raised themes from our visit. Our understanding of the BO data was aided through our discussions with OpenOwnership, an NGO that helps countries generate quality data on company ownership that complies with international standards. OpenOwnership has been supporting CAC with the creation of their on-line register. They confirmed that the BO data in Nigeria is framed around FATF Recommendations. While FATF certainly set a minimum standard and had an effective stick with their grey/blacklisting, OpenOwnership also convinced us that the Recommendations alone do not provide a useful framework for effective disclosure. As is the case in several countries, implementation of FATF Recommendations has often been for purposes of compliance with the international community and has not always resulted in a genuine Anti-Money-Laundering strategy.⁹⁹

Under the new registration portal, BO disclosure is set at 5% of rights or share capital, and all that needs to be disclosed is the beneficial owner's name and address. We were informed that the ambitious 5% threshold was selected in part due to the size (market capitalisation) of some of the companies in the extractive sector. Whilst low threshold levels can be regarded as good, OpenOwnership noted that these levels are not always an improved outcome in terms of BO identification if data quality is compromised. They advise that it is better to get the main ownership information accurately recorded and available first before moving to smaller shareholdings, a point that we would fully endorse. Table 7 provides the main elements of the BO data standard used by OpenOwnership, crucially emphasising that missing data would provide cause for further investigation as a potential red flag.¹⁰⁰ As yet, no BO information is provided in the public access version of CAC the register.

⁹⁹ Following a stakeholder consultation, Open Ownership have recently updated their principles for effective disclosure (<https://www.openownership.org/principles/>), which provides a helpful way to assess (plans for) a disclosure regime. They also have available a Definitions and Thresholds briefing (<https://www.openownership.org/uploads/definitions-briefing.pdf>) which discusses the importance of definitions and how robust definitions must lie at the foundation of any disclosure framework, as well as contextualising some of the debates about thresholds (low is good, but lower is not always better, especially regarding data quality) on which there is sometimes an undue focus.

¹⁰⁰ The complete data standard can be found at: <https://standard.openownership.org/en/v0-2-0/index.html>

TABLE 7: ELEMENTS OF THE BENEFICIAL OWNERSHIP DATA STANDARD

DATA ABOUT INDIVIDUALS	DATA ABOUT COMPANIES	DATA ABOUT RELATIONSHIPS
Name	Name	The type of relationship, e.g., shareholding, voting rights
Official identifiers, like tax ID	Official identifiers, like official registration numbers	The level of interest, e.g., percentage of shares held and whether it's held directly or indirectly through another entity
Nationalities and tax residencies	Jurisdiction in which the company is registered	Start and end date of the relationship
Date and place of birth	Founding and dissolution date	
Place of residency and contact address	Address	
Whether they are a politically exposed person		

Source: World Bank 2020 (footnote 6), p.254

6.3 COMPANY REGISTRATION

Disclosure of significant control and beneficial ownership is now enabled within Nigeria's Companies and Allied Matters Act (CAMA) 2020, a piece of legislation that has had a slow and tortuous journey through the legislative process (details of the CAMA were included in the Interim Report). As discussed above, the CAC is developing a comprehensive company registry and a database for BO.

CAC are aware that they have legacy issues with the quality of some of their records, noting that prior to 2012 there had been no checking of details that were supplied to register a company. Indeed, it was only after 2012 that each director of a company had to submit a formal ID. They realise that data captured prior to 2012 may, therefore, not be correct but felt they could not insist it is updated. CAC did indicate that they were considering starting afresh noting the restrictions they face working to the originally designed data capture form. While this is probably desirable it is far

from realistic. CAC records are now searchable provided the company name is known.¹⁰¹ Other key details about companies (outside of the company name, registration number, and registration address) are behind a paywall and remain opaque. Although the register is 'public' that has currently only been achieved in a limited sense. As was the case in the UK,¹⁰² there has been little or no effort to verify whether information supplied to CAC is accurate or required updates/annual submissions are made. The challenge for the CAC will be their own internal capacity to police the information that is being supplied to them as the new law provides only administrative sanctions (imposition of a small daily accumulating fine) for non-compliance. We heard about the corrupt using friends and shelf (shell) companies to disguise the beneficial ownership, with the police suggesting the latter was '*created using nominees or fictitious names*' and the EFCC posited that '*Most of [the legal] owners of companies are not the BOs*'.

The automation and opening up of the CAC registry are of huge importance not only for law enforcement but also for civil society; hence it is important that the information being captured matches the needs of the users of that information. It should be developed as an information source with its purpose in mind.¹⁰³ We understand that the CAC have been conducting user research across multiple departments as part of creating the new BO registry and we encourage them to share the data they collect. As already noted from our analysis of cases of grand corruption, twenty-four featured the use of companies either as shell companies or as investments in and of themselves, often multiple companies were used, all of which were Nigeria domiciled.

In our interim report we shared our analysis of the Nigerian companies listed with property holdings in the UK. As we noted then, we do not infer that any of the companies or their owners have engaged in any wrongdoing. As we had located these companies, we searched the CAC registry using the names of the thirty-one companies¹⁰⁴ registered on the UK land registry database who were listed as owning two or more properties. The results of this exercise are shown in **Appendix 3**. We used the public search tool for CAC and noted that currently there is no information shown on BO as in all cases selecting: 'View Persons with Significant Control (PSC)', returns the message '0 persons with significant control'. Only the very basic information is provided on the public access site (registration number, date of registration, current trading status and registered address). It is assumed that paid content would supply further information including details of shareholders. Of these companies, two could not be located. Of the remaining twenty-nine, there is only one marked on the CAC registry as being active and that one was incorporated in 1930. All the rest are listed as inactive with registrations spread over the period from 1971 to 2018,¹⁰⁵ with four occurring in 2007, three in 2008 and three in 2014. Combining these two data sets does provide some additional information. For property with a value listed (being that provided at the point of registration), the total holdings were valued at £22.4 million. Ten companies had all their investments registered on a single date. One company registered their purchases in the UK two months after their company was registered in Nigeria. Proximity of these two events could be a red flag prompting further investigation.

¹⁰¹ Records can be accessed from <https://search.cac.gov.ng/home> with the search engine driven by company name. there is a link to 'view persons with significant control of this company' which we did not find populated.

¹⁰² We note that in the UK Companies House have recently announced reasonably comprehensive plans for verification that followed their reform consultation, which sets out plans to improve quality and accuracy of information held on the UK's People with Significant Control Register: <https://www.gov.uk/government/news/reforms-to-companies-house-to-clamp-down-on-fraud-and-give-businesses-greater-confidence-in-transactions>.

¹⁰³ Also see For Whose Benefit? Reframing Beneficial Ownership Disclosure Around Users' Needs Tom Keatinge and Anton Moiseienko, RUSI occasional Paper November 2020 available at https://static.rusi.org/243_uo_web.pdf

¹⁰⁴ The UK Government published draft legislation in 2018 that would require the ultimate owners of UK properties to be declared. But it is still waiting to be presented to MPs in parliament.

¹⁰⁵ One appears to be a re-incorporation of a new slightly different named company – matched to the Land registry through the address.

Many of the problems that were identified for us by our respondents concerning data access, information sharing and cooperation are all 'solvable'. Information creation and sharing is something that has to become assimilated as normal, moving beyond record keeping that is meticulous but 'process driven'.¹⁰⁶ We further understand that both Open Government Partnership and the CAC are promoting the integration of the NEITI BO register within the overall CAC BO register.¹⁰⁷ Given the concerns over the oil sector set out in our interim report, we would support the integration of data from NEITI with that of CAC as means of further strengthening Nigeria's central registry of company data.

6.4 ASSET AND INCOME DISCLOSURE

The 2020 World Bank Report¹⁰⁸ talks of the powerful tool that can be created by pairing asset declaration and BO disclosure in exposing unexplained wealth. Standardising data collection fields and using a single agreed reference number, such as National ID, across all agencies would facilitate cross-referencing information as and when necessary. Cognisant of data protection, a number of important agencies collect personal information about the citizens of Nigeria. It was not clear to us that agencies willingly shared that information with each other. In contrast, we found a general lack of transparency and a systematic data deficiency that manifested itself as a tendency toward secrecy, replacing smooth interagency cooperation with 'agencies working to their own agendas'.¹⁰⁹

Section 15 of the Code of Conduct Act is extremely powerful, stating that:

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 on 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 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.*

¹⁰⁶ Discussion with former ICU officer, on-line.

¹⁰⁷ Meeting on Deepening Understanding of CAMA 2020 Beneficial Ownership (BO) Provisions hosted by Transparency and Information Development initiative (September 2020).

¹⁰⁸ Rajni Bajpai and Bernard Myers, Enhancing Government Effectiveness and Transparency : The fight against corruption, October, 2020 The World Bank (Example 2: Nigeria's challenges in achieving inter-agency cooperation to obtain and use data, p 274) available at https://documents.worldbank.org/en/publication/documents-reports/documentdetail/235541600116631094/enhancing-government-effectiveness-and-transparency-the-fight-against-corruption?cid=gov_tt_gov_en_ext

¹⁰⁹ Group meeting with NFIU representatives, Abuja.

The previous Word-document asset declaration has recently been replaced with an on-line declaration system, although it is not clear that any of the old information has been manually uploaded to this new system or if it has simply started afresh writing off the previous information. The old forms were designed to be filled in once (affirmed every four years) and although there is space to refer to a prior appointment, as a paper-based document, cross checking against information on previous submissions would be near impossible. Assets to be declared reflect those in existence at the time of the first form creation with a focus on cash holdings at hand and in banks, all of which are highly fluid.

Of value is the information on the holdings of investments, but the required fields are ambiguous in terms of the information being sought and there is no provision for newly developed (and volatile) investment vehicles such as crypto-currency,¹¹⁰ exchange traded funds or collateralised debt securities. For example, for 'moveable property or assets' there is a requirement to provide four pieces of information – date acquired, total value, annual income and how acquired, for four asset classes – vehicles, boats/other means of transport, machinery, etc., and furniture. However, 'value' can reasonably refer to current value as at the date the form is completed, historic value as at the date of purchase or book value if the asset is being written down over its life cycle. Similarly, items such as furniture cannot produce an 'annual income' or acquisition stream. Clearly the intention here is not to ascertain income but establish how some officials can use illicit income to acquire expensive furniture. Lack of clarity in wording of requirements leads to misleading or ambiguous responses.

There is provision within the form to indicate 'filed' although there is no clarity over the basis for that filing e.g., full name, family name, rank or date, leaving that open to the interpretation of the filing clerk. The old manual system failed to include any standard identifier such as a Tax Number, Bank Verification Number (BVN)¹¹¹ or National Identity Number (NIN).¹¹² The on-line system creates a unique CCB identity based on one of four possible types of information of which two (e-mail or phone number) are transferable and changeable. Two are more permanent and thus more reliable criteria, a BVN or NIN, either of which would allow for cross reference to other databases. Indeed, it would be preferable if both these more permanent identifiers are used as searchable criteria on the CCB database. Longer term, the asset declaration system should allow for updating by means of at least annual submission (rather than the current four-yearly) including a 'no-change' rather than 'on change' of role or on promotion as is the present system. Ideally updating requirements could match the provisions of the CAMA legislation (see Section 7.2) for notification of change in company ownership.

The current broad scope renders the CCB ineffective and argues instead for a system that should only target the top of the pyramid, a few thousand people, ignoring the others. *'Better a modest system that can actually work than an ambitious one that is a dead letter.'*¹¹³ This 'less is more' approach could equally be applied across the rest of the reporting regime.

¹¹⁰ A point also made by Page op. cit., note 77. We also note that CBN issued a circular in 2017 to financial institutions that required them to 'ensure that you do not use, hold, trade and/or transact in anyway in virtual currencies' and that existing customers 'that are virtual currency exchangers' have effective AML/CFT controls in place. In the case of doubt, the relationship is to be terminated and an STR reported (<https://www.cbn.gov.ng/out/2017/fprd/aml%20january%202017%20circular%20to%20fis%20on%20virtual%20currency.pdf>). In February 2021 the CBN updated its guidance requiring that 'all DMBs, NBFIs and OFIs ...identify persons and/or entities transacting in or operating crypto currency exchanges within their systems and ensure that such accounts are closed immediately' (<https://www.cbn.gov.ng/Out/2021/CCD/Letter%20on%20Crypto.pdf>).

¹¹¹ A Bank Verification Number (BVN) that links biometric data to bank accounts has been operating since 2014.

¹¹² The National Identity Management Commission Act S 27 requires bank account holders to have a biometrically supported eleven digit National Identity Number (NIN) as a requirement for the operation of an account. This number is separate from the BVN that was introduced by the central bank. Information taken from an NFIU report on the operation of BVN, shared with the research team.

¹¹³ Feedback on interim report from UK academic.

6.5 LAND REGISTRATION

Land registration records remain an ‘Achilles’ heel’ in attempts to improve knowledge of BO to reduce opportunity for corruption. As already mentioned, (Section 6.3), we undertook an analysis of the properties on the UK Land Registry that are held by companies registered in Nigeria. However, there is no equivalent central system of registration to the UK Land Registry in Nigeria and in consequence the authorities are hampered by poor land registry records. Registers are held at state level and systems remain largely paper based although there have been moves to digitise some of the registries, for example in the Federal Capital Territory¹¹⁴ and in Lagos State. We heard how the data is compromised as transfers of property are not always formally recorded either to avoid payment of registration fees, or to deliberately obscure ownership: *‘Most suspect[s] of financial crimes especially public officials and civil servants do not register their interest in landed properties. They mostly deploy the services of lawyers or agents who act on their behalf,’*¹¹⁵ becoming the nominee owners.

We heard that high-value property ownership is often held by shell companies set up for the purpose. Property ownership movement may be achieved through changes in control of the holding shell company. That practice makes it very difficult to track the beneficial owners of property.¹¹⁶ We also heard of the use of power of attorney in order to move property ownership as a means of obfuscation.¹¹⁷ Even though law enforcement are empowered to request information from the land registries in support of their investigations we were informed that little was available and *‘Data is updated very slowly or changes in ownership are made but without land registry being informed. Ownership of properties can change several times and the original owner is still recorded on the records.’*¹¹⁸

At our workshop in Abuja, some of the participants were quick to criticise SCUML, questioning its effectiveness: *‘Given laundering through real estate and [the] number of empty houses, how effective have you been?’* Our observation is that this is as much a problem for the system of land registry as it is for SCUML. Making it straightforward to comply and minimising the burden imposed is one way of ensuring that compliance requirements are followed by the law-abiding agencies and citizens. This applies not only to company records but also to land registries: for example, the CCB talked of the prohibitive cost of preparing deeds, stamp duty and registration fees and the length of time involved, citing some four to five years. We were informed by both the police and the EFCC that prohibitive fees put off those who would otherwise comply, and that their investigations are hampered when legitimate owners and transactions cannot easily be removed from the scope of enquiries.

¹¹⁴ In the FCT the title registration form is a fillable PDF for the Federal Capital Territory Administration, Department of Land Administration - Application for Grant/Regrant of a Statutory Right of Occupancy for an Individual and for an organisation. Available from https://agis.fcta.gov.ng/wp-content/uploads/2018/03/New_Application_Individual.pdf; for Lagos State information is available from <https://landsbureau.lagosstate.gov.ng/2017/05/16/directorate-of-land-registry-2/>

¹¹⁵ Discussion with EFCC representative, Abuja.

¹¹⁶ Comments on interim report by UK academic.

¹¹⁷ Discussion with OpenOwnership, on-line. ss Discussions with the police; with the same point being made by the ICPC, Abuja.

¹¹⁸ Discussions with the police; with the same point being made by the ICPC, Abuja.

6.6 FINANCIAL REPORTING IN THE REGULATED SECTOR

6.6.1 FINANCIAL SERVICES

We described the operation of the AML reporting regime in our interim report where we noted the extensive reporting requirements placed upon financial institutions within Nigeria. These pertain both to Suspicious Transaction Reports (STRs) (2011 CBN Regulations s.5.6 and the 2013 Regulations Par III, s.9 (1)) and to Currency Transaction Reports (CTRs) (2011 Regulations s.5.7). Additionally, s.18 (4) of the 2013 Regulations requires banks to provide monthly reports on all transactions with PEPs to both the CBN and the NFIU. These regulations should be equally observed by all financial institutions (FIs) covered by them. Those with correspondent relationships will additionally have to ensure that their activity meets with the regulatory requirements of both CBN and the regulator in the correspondent country.

In our interim report we commented on our inability to locate recent numbers of reports, although we have now seen data for the first half of 2020 that indicates a total of 6,425 STRs and 5.155m CTRs having been received by the NFIU although we still do not have data for the intervening years from 2015. It is noted that banks provide most reports and that there is very little being reported by other parts of the financial sector, especially BDCs. In that report we also questioned the ability of the NFIU¹¹⁹ to be able to usefully process the huge numbers of CTRs that are reported. This presumption was refuted by both the police and the NFIU; the EFCC specifically stated that *'CTRs very helpful and highly important because most laundering occurs via cash movement'*.¹²⁰ Despite this, we maintain that the volume of bank generated CTRs can complicate meaningful analysis through the creation of background 'noise' obscuring or masking finer details, reducing the ability of agencies to proactively use intelligence from STRs. Indeed, both the 2018 and 2019 NFIU Annual Reports indicate more reactive intelligence dissemination than proactive; in 2019 the ratio was five to one. Moreover, the data presented allow for little analysis beyond that of simple frequencies. There is always a fundamental tension between the objectives and requirements of those tasked with collection and submission of information and those seeking to make use of that information. There is a balance to be struck in terms of reasonableness of expectations and of cost placed upon those required to adhere to provisions and the desire of law enforcement to collect as much information as possible.

Theoretically the system of KYC checking (2013 CBN AML/CFT Regulations (s.13-16)) is robust: financial institutions obtain BO information at client onboarding and are responsible for the maintenance of this information. Their access to the database of the CAC will make this process quicker and more efficient.¹²¹ Similarly, they must check for a business registration certificate with SCUML. This certificate is needed as a precondition to opening a bank account and to allow owners to withdraw funds from their business banking account. These checks will disclose legal owners of businesses but not necessarily BOs (particularly in the case of SCUML where their data only concerns legal ownership).¹²² Also sight of a receipt or authorised copy of a certificate appears acceptable: this can mean that agencies do no further due diligence on their own account assuming one of the other agencies will have already undertaken appropriate checks.

¹¹⁹ NFIU Newsletter Vol 1, Issue 1, January – June 2020. We also note that the NFIU activity report for 2019 is now available although there remains a gap in information between the 2015 report and that one.

¹²⁰ Although strictly speaking cash movement is not 'laundering' as no disguise has taken place.

¹²¹ Discussion with bank Chief Compliance Officers, Abuja; and the same point being made at the Abuja workshop discussion.

¹²² Discussion with SCUML, Abuja.

There is no requirement under the regulations for financial institutions to report any errors or observed discrepancies in information obtained as part of client onboarding in respect of company ownership to the CAC. In addition to client due diligence (CDD), the regulated sector itself also creates and maintains records in connection with monitoring the activity of PEPs. Banks operate enhanced due diligence (EDD) processes and file monthly returns on all transactions involving PEPs to both the CBN and NFIU as required by the 2013 CBN AML/CFT Regulations (s.18(4)).¹²³ We were informed that this was difficult for banks as the regulator does not maintain a list of PEPs¹²⁴ with one bank placing reliance on an international database whilst others maintain their own internal databases¹²⁵ for on-boarding and that this information is not shared amongst banks.¹²⁶ In other words, although s.18 (1 (a) – (j)) sets out the classification of PEPs, not all the PEPs have the same significance.

When regulations are placed upon the private sector, making reporting requirements simple and at reasonable cost will promote compliance.

6.6.2 CURRENCY EXCHANGE SERVICES

Given the low level of national foreign currency reserves, a specific risk factor for Nigeria arises from the parallel foreign exchange market.¹²⁷ The CBN had been operating a system of rationing foreign currency for the BDC operators.¹²⁸ Because of the differential between highly restricted supply and commercial and personal demand, there is a flourishing and open black market. The 2015 Regulations set limits on amount and frequency (s.7.5) of individual transactions with details of documents that are required for the transaction and the records that are to be obtained (s.7.10) and kept for a period of six years. The fact the authorities require foreign currency transactions to be endorsed on the passport of the individual buyer shows there is a clear desire to prevent individuals from visiting multiple BDCs, although it is possible to hold more than one passport. As noted, the CBN lacks the resources to properly police this sector and *'these rules have not been complied with for many years.'*¹²⁹ As of July 2021, the CBN has mandated these sales be restricted to the commercial bank sector. It remains unclear what impact this change will have on improving compliance with AML reporting requirements or if it will simply further divert demand to the unregulated parallel market. Data from the NFIU reveals the limited suspicious transaction reporting from the BDCs themselves, although we heard from the EFCC that STRs had been used *'in cases involving the use of Bureau de Change or Real Estate'*. We were not informed what had triggered the generation of the STR or how the information was used in any investigation other than to indicate both as an area of risk.

¹²³ Central Bank of Nigeria (Anti-money Laundering and Combating the Financing of Terrorism in Banks and other Financial Institutions in Nigeria) Regulations, 2013.

¹²⁴ IMF 2019 noted that banks make requests of the Central Bank for lists of PEPs but that the CBN do not see this as falling within their remit. We understand from the Central Bank, however, that they do circulate lists of high-risk PEPs to all banks

¹²⁵ Discussion with former bank compliance officer.

¹²⁶ Discussion with bank Chief Compliance Officers, Abuja.

¹²⁷ See note 69.

¹²⁸ Operators are licensed for 'small scale' business in connection with customers requiring funds as part of a Business Travel Allowance, a Personal Travel Allowance, and the meeting of other expenses such as school fees, medical expenses or other permitted reasons. See Revised Operational Guidelines for Bureaux de Change in Nigeria, Financial Policy and Regulations department, CBN, November, 2015 available at <https://www.cbn.gov.ng/out/2015/fprd/revised%20bdc%20circular%20and%20guidelines-corrected-final%202015.pdf>

¹²⁹ See Aderonke Alex-Adedipe and Feyijuwa Akinyanmi 'Cessation of the sale of foreign currency by the Central Bank of Nigeria to Bureau du Change operators, July 30th 2021, Pavestones, available at https://pavestoneslegal.com/cessation-of-the-sale-of-foreign-currency-by-the-central-bank-of-nigeria-to-bureau-du-change-operators/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration

6.7 OTHER INFORMATION SOURCES

6.7.1 WHISTLEBLOWING AND PETITIONING

Provisions encouraging victims, witnesses and even offenders to cooperate with law enforcement in corruption cases and protecting their security, anonymity or other threatened interests are critically important. One of the strong provisions of the ICPC Act is the non-disclosure of parties in proceedings under the Act. Section 64 provides that the identity of a person who provides information to the Commission will be protected, but the extent of such protection is not spelt out.

A Whistleblowing policy was approved by the Federal Executive Council Nigeria on 21 December 2016. The aim of this policy is to enhance transparency and accountability in order to improve confidence in management of public funds. The purpose is to recover public funds and the policy is managed through the Federal Ministry of Finance who operates a whistle blowing portal (although we could not have access to this). The focus is on misappropriation of public funds/assets, fraud, bribes, diversion of revenue, illegal payments and or movements of cash, etc. Reward for reporting fraud is 2.5-5% of recovered proceeds with assurance of protection.¹³⁰ Within six months of the policy being launched, 2,251 reported cases were under investigation.¹³¹ By February 2017, some \$151 million and N8 billion of stolen funds were recovered.¹³²

It is apparent that whistleblowing and petitioning¹³³ play an important part in triggering investigations by the EFCC and ICPC. The real teeth seem to be the public nature of the whistle-blowers' reports and the action demanded by the Nigerian system in response. There is evidence that such disclosures can be motivated by personal animosity and of the whistleblower being subject to reprisal attack.¹³⁴

6.7.2 SOCIAL MEDIA

In addition to reports received, it is worth being reminded that information obtained from Google Maps and social media may prove as useful as other more elaborate investigative techniques and legal powers. *'Good sources of intelligence include looking at which estate agents in London, LA, NY and DC cater 'high end' and if property purchase is in the names of individuals or in LLCs. [It is] also possible to data mine social media for specific individuals of interest as families often flaunt their wealthy lifestyles.'*¹³⁵ We demonstrated simple use of this approach using data from the UK registries, during our workshop in Abuja.

¹³⁰ "To qualify for the reward, the whistle-blower must provide the government with information it does not already have and could not otherwise obtain from any other publicly available source to the government. The actual recovery must also be on account of the information provided by the whistle-blower."

¹³¹ About 95 reported through the website; 1, 550 through dedicated phone line; 194 through email; and 412 through text/SMS messages with more than 154 actionable tips on various offences.

¹³² The largest amount of \$136, 676, 600.51 was recovered from an account in a commercial bank where the money was kept under a fake name; \$15 million and N7 billion recovered from one person; N1 billion from another person. Furthermore, \$9.8m and £74,000 cash recovered in a building owned by former NNPC GMD; another \$43m, £27, 000 and N23m cash recovered from a flat in Ikoyi; 47 Sport Utility Vehicles/buses allegedly bought for N1.5billion proceeds of N27 billion insurance premium of deceased workers of PHCN recovered.

¹³³ The use of petitioning in triggering investigations was considered by Onyema, E., Obidairo, S., Ayinla, S., Oredola, H., and Roy, P. (2018) *Anti-corruption agencies as debt recovery agents: the unintended consequences of anti-corruption efforts in Nigeria* SOAS ACE Working Paper 017.

¹³⁴ "On May 22, 2015, Mr. Aaron Kaase, a Principal Administrative Officer (Press and Public Relations) of the Police Service Commission (PSC) complained to the EFCC, as well as the ICPC, alleging N275 million fraud against the PSC. The ICPC investigated and cleared the chairman of the PSC, Mr Mike Okiro, of any criminal infraction. It was, however, reported that Akaase was suspended indefinitely without salaries. He also allegedly faced threats to his life and family daily. Similarly, the University of Ilorin (UNILORIN) management suspended two lecturers for alleged "insubordination and causing disaffection within the university". But the duo alleged that they were being victimised for exposing corruption in the institution". Source <https://thenationonlineng.net/whistle-blowing-loot-recovery/amp/>

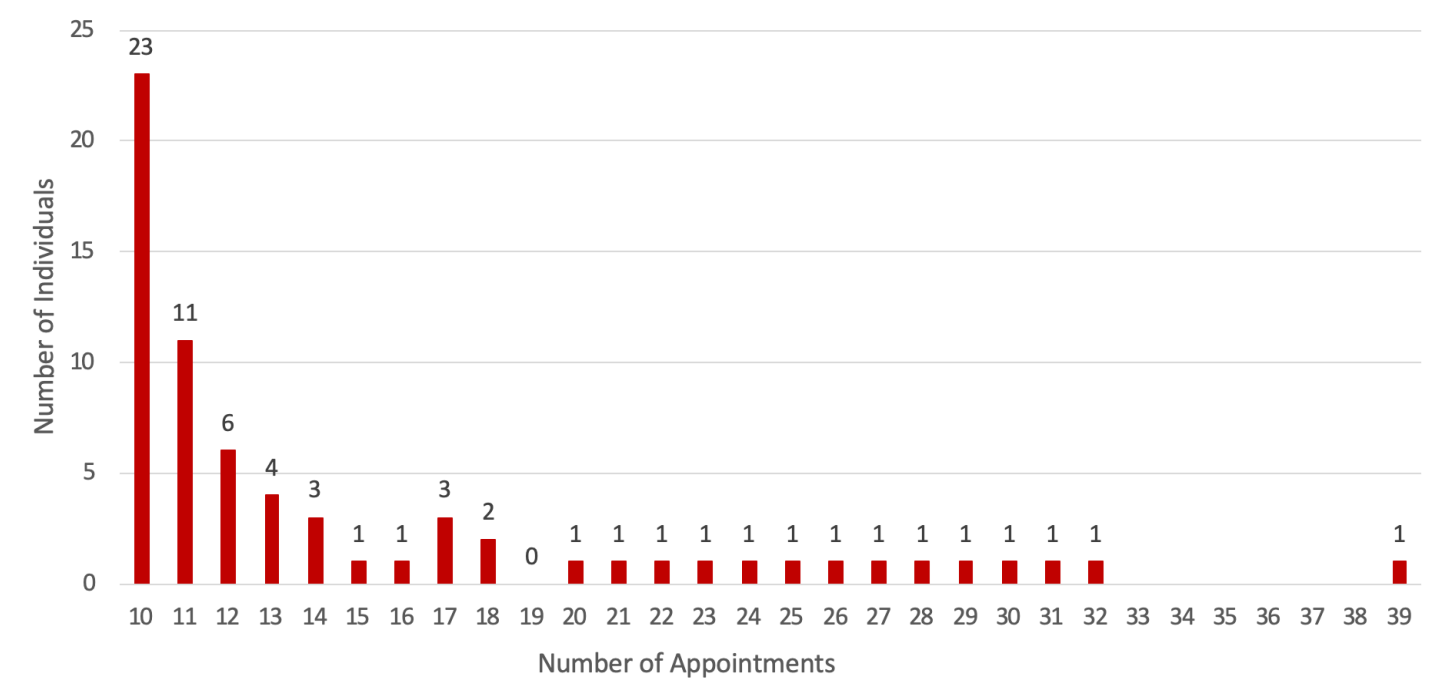
¹³⁵ Discussion with former FBI officer, Washington.

6.7.3 COMBINING INFORMATION

One of the conclusions of this study’s tangential examination of the movements of money as we tried to gain an indication of the destination of criminal assets is that those who can move assets offshore will do so. Particularly around times of heightened economic instability that adversely affect the value of Naira; for example at and around elections. From our analysis of UK land registry data, we saw a 2015 spike in ownership of London properties when wealthy Nigerians, mostly PEPs, sought to protect their assets from currency devaluation and the uncertainties of a new regime. Such activity is not per se illegal although it may not be desirable and is certainly destabilising.

Our interim report provided details of the analysis that we undertook with respect to both Companies House and the UK Land Registry (both available as separate documents, see [Appendix 6](#)). As in our interim report, we restate here that we do not infer any wrongdoing by the companies that we investigated. In our analysis of companies registered in the UK with Nigerian affiliations, hypothesising that multiple company ownership may be used as a way of removing or disguising criminal proceeds, we focused on individuals who have more than ten appointed roles in a combination of director, secretary and/or individual PSC roles. Of course, this might equally be reflective of using a small number of company formation agents and professional nominees, of ‘professional straw persons’ or, of highly entrepreneurial individuals. Chart 7 indicates that some sixty-eight individuals hold multiple company appointments. These range from twenty-three each holding more than ten appointments through to one individual holding thirty-nine separate directorships. The single individual holding thirty-nine appointments lists their normal place of residence variously as the UK, South Africa, and the UAE. Some of the persons listed are quite young, two with birth dates in 1992 (one with thirteen appointments and the other with ten) and one in 1995 (eleven appointments). While none of this information in and of itself indicates illegality, it could certainly indicate a red flag prompting further investigation.

Chart 7: Company Creation in the UK

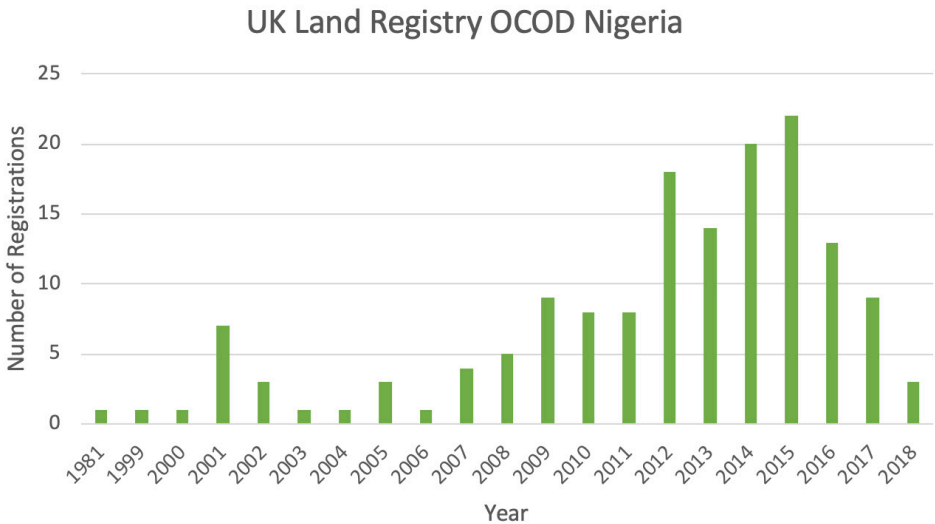


The UK Land Registry provided us with Overseas Companies Ownership Data covering some 152 registered properties owned by companies in Nigeria, with three companies together accounting for eighteen properties (Table 8).

TABLE 8: MULTIPLE OWNERSHIP DATA	
NUMBER OF ENTRIES PER COMPANY	NUMBER OF COMPANIES
1 Entry	58
2 Entries	15
3 Entries	6
4 Entries	7
5 Entries	1
6 Entries	1
7 Entries	1
Total Companies	89

As discussed in our interim report, most noticeable from this data is the rise in purchase registrations over the period 2012 - 2015 (74 of the 152 occurred during that period). Purchases are concentrated in London and the Southeast with most taking place from 2012-16 (chart 8). For the 68 properties where price information is available, the lowest price paid was £35,000 and the highest £3.5 million. Purchase activity has reduced from 2016. As with our cross referencing of this data to the records of CAC discussed above and included in **Appendix 3**, combining different data can uncover potential red flags that could usefully be followed up.

Chart 8: UK Land Registry Overseas Companies Ownership Data



7 BO-RELEVANT DATA: THE OVERALL ISSUES

7.1 WHAT'S THE ISSUE? THE ROLE OF BO-RELEVANT DATA

7.1.1 THE EXPECTATION

One immediate observation from the research, and fundamental to any accessible and effective BO process is the state of the data in terms of uniformity, comprehensiveness and accuracy. Seen as a technical matter, it is often the responsibility of low-grade officials and frequently involves manual completion or inputting. Records, record-keeping and records management are often not appreciated for what they are: effectively the basic building blocks of a BO system.

Underpinning this there needs to be a proactive approach to records management across the public sector. There needs to be a record of the information used to inform decisions, held by government institutions or completed by individuals or non-governmental or private sector institutions. In order to ensure that the 'record' is authentic, complete and accurate and has not been tampered with, the records need to be managed within a controlled environment. This environment is more than simple physical security, but encompasses laws and regulations, procedures and systems for the registration, classification, tracking, access and retrieval, auditing, scheduling, destruction and transfer of official records. Records management can provide this controlled environment. Furthermore, with governments increasingly turning to computerised systems, records management becomes ever more technically and intellectually demanding. Organisations and governments need qualified records personnel to take full advantage of a rapidly advancing technological environment, and to avoid the increasing possibilities for making poor record keeping systems worse.¹³⁶

7.1.2 THE PRACTICE

In the case of data capture processes the inconsistencies continue. A great deal of information (almost too much in some cases) is collected on BO by different agencies. What is missing is the institutional capacity to bring it together in a timely and accessible form for those who need to make use of the information. We were told of agencies finding it difficult to share data and that record keeping differs between agencies. We looked at the content of data capture forms (Table 9) to see what information is requested and held by different agencies (available as a separate document, see [Appendix 6](#)). Of particular interest is the personal identification information (variables, fields and format) that is collected by multiple agencies.

What we found is that the basics remain inconsistent. Immediate observations from this data are that some agencies separate fields for first, middle and family name (e.g., land and personal tax), whereas others ask for 'full name' as a single field (company registration application and asset declaration). The asset declaration form does not ask for any identifying information beyond name. The taxpayer ID number (TIN) is used across the tax data forms and by SCUML. Personal identification numbers (passport, driver's license or national ID) are requested for the individual taxpayer information form (to register for tax) and for application for company registration and by the NFIU. Asset declaration

¹³⁶ Cain, P., Doig, A., Flanary, R. and Barata, K. 2001. Filing for corruption: Transparency, openness and record-keeping. *Crime, Law and Social Change*. 36, pp 409-425.

forms are rendered less useful because of the limited compliance already discussed. Prosecuting agencies use their own record numbering systems. Court cases do not use a single unique identifier that would enable cases to be followed through the different courts and assets recovered to be tied back to those cases. Instead, there are separate systems for each court, with cases assigned different identifiers as they move through the system.

One of the major issues from the perspective of law enforcement was that where available, records currently captured by the registries (land and companies) only contained information on legal ownership; going further to state that *'most of the owners of companies are not the BOs'*. As already noted, very often land registry records would not be updated either to avoid fees or to deliberately disguise ownership. Until recently, to comply with due diligence, banks appointed lawyers to undertake manual searches of the largely paper-based registry records maintained by CAC. As already noted, this system is now automated, albeit behind a paywall. In discussion with us, the compliance officers noted that companies supplied certified copies of documents to the banks but that these still have to be verified with the CAC.

TABLE 9: TEMPLATES REVIEWED

AGENCY	LEVEL	TITLE OF FORM	FORMAL CODE	FORMAT OF FORM	NUMBER OF DISTINCT DATA FIELDS
NFIU	Federal	STR submission form		N/A	N/A
CCB	Federal	asset declaration form	CCB.1	Code of Conduct Bureau downloadable word document with free form fields for use by government employees [note now replaced by an on-line form]	12
EFCC	Federal	asset declaration form	CCB.2	Schedule confidential form A EFCC Act 2004. Paper based with free form fields for use by accused person	24
Land register	Federal	Application for grant/ regrant of a statutory right of occupancy - individual		Department of Land Administration, Individual application for right of occupancy. Downloadable PDF, unclear if form is for manual or electronic completion	19
Land registry	Federal	Application for grant/ regrant of a statutory right of occupancy - organisation		Department of Land Administration, organisational application for right of occupancy. Downloadable PDF, unclear if form is for manual or electronic completion	12
SCUML	Federal	Business Registration form		Web based Business Registration form	16
Customs		CTR submission form		N/A	N/A
CAC	Federal	Application for Registration of a Company	CAC1.1	Application for Registration of Company, Downloadable PDF for electronic completion	15
FIRS	State	Non-Individual Taxpayer Registration Form	001B	Acquisition of a Taxpayer identification Number (TIN) within the State. Downloadable PDF to be filled in manually and submitted with copy of CAC certificate	12
FIRS	Federal	Company Income Tax Return	001	Declaration of profit for company tax, Downloadable PDF for manual completion	10
FIRS	Federal	Value Added Tax Return	002	VAT reconciliation at headquarter level for company together with support branch forms with same code and part of same document. Downloadable PDF form for manual completion	9
FIRS	Federal	Capital Gains Tax Return	003	Company level capital gains reconciliation. Downloadable PDF form for manual completion	10
FIRS	State	Individual Taxpayer Information Form	001A	Acquisition of a Taxpayer identification Number (TIN) within the State. Downloadable PDF to be filled in manually and taken to an office in person	13
FIRS	State	Personal Income Tax Form	FORM A	Declaration of annual income for assessment, Downloadable PDF to be filled in manually and taken to an office in person	12

7.2 RECORDS

As already noted in [section 6.3](#) above, a requirement to disclose persons with significant control and BO is now included within Nigeria's Companies and Allied Matters Act (CAMA) 2020. Relevant Sections of the Act are s.119-123 (disclosure of persons with significant control) and s.791 (disclosure of significant control in a limited liability partnership); s.868 explains significant control.¹³⁷ Under the provisions of the Act, s.119 (1) an individual who gains significant control over a company must, within seven days, disclose to the company details of the shareholding. On receipt of the information (s.119 (2)), the company is required to notify the CAC within a period of one month and include the same information within the next annual return. S.119 (3) provides for the updating of the register by CAC. The provisions are enforceable by a fine (daily during the period of default) that is to be determined by the CAC under its regulations (s.119 (5)). The same provisions apply under s.791 to Limited Liability Partnerships. An obvious weakness in the legislation is that the penalty for non-compliance is limited to a fine which may restrict its overall effectiveness.¹³⁸ Nevertheless, a strength may be that the reporting requirements apply to circumstances in which shares are acquired and subsequently sold within the fourteen-day notice period (s.120 (4)), this could provide a potential flag for further investigation.

Discrepancies are not necessarily a sign of sinister activities or intentional wrongdoing. A discrepancy may be a consequence of a huge range of factors, such as missing paperwork, slow filing systems, lateness or lack of knowledge or understanding of filing requirements among smaller companies.

In [Section 6.6.1](#) we suggested that FIs could be required to report discrepancies in PSC data that they uncover as part of the CDD to the CAC. Obviously adequate resourcing of the CAC to check and verify records would be a preferable way of uncovering discrepancies. The registrar should have to not function by reliance on relevant persons to report discrepancies. As noted above annual confirmation statements and notification of change in persons with significant control is included within CAMA. This is part of the process already in place to ensure that information held remains accurate and up to date. In addition, making the register fully public will help with the process of identifying discrepancies. Discrepancies are not necessarily a sign of sinister activities or intentional wrongdoing. A discrepancy may be a consequence of a range of factors, such as missing paperwork, slow filing systems, lateness or lack of knowledge or understanding of filing requirements among smaller companies. The CAC should have adequate resources to be able to execute its function and ensure companies are compliant with the Act.

¹³⁷ A person with significant control means any person directly or indirectly holding at least 5% of the shares or interest in a company or limited liability partnership.

¹³⁸ We note that the fine of an officer is standard penalty under the UK Companies Act 2006 for failure to file information.

Although the register's website is now in operation, the information provided remains limited and is still missing in respect of BO. We would encourage CAC to stand by their statement expressed to us at our workshop that the agency is committed to [an] open and transparent register of BO open to all with access to company data available free of charge extend[ed] to include BO information beyond that currently collected on legal ownership'. If existing information has been uploaded to the on-line register, such information would have been gathered in accordance with the requirements of the 1994 Act, to which information on beneficial owners will have to be added. Moreover, each of these pieces of information – old and new - should be verified by the CAC, otherwise, the information could be inaccurate and thus unreliable. Despite their clear enthusiasm for the register, it is questionable whether the CAC have the capacity to police the system.

We noted in **section 5.5**, that NEITI has a searchable register available. However, currently it contains only certain information on companies with interest, but not yet the details of the direction of the ownership nor does it provide information on the natural persons who have ultimate control. NEITI remains reliant on the companies themselves providing accurate information having neither the resources nor the mandate to authenticate its accuracy.

7.3 INFORMATION SHARING: THE INVESTIGATORS AND PRACTITIONERS WORKING GROUP

The authorities in Nigeria have set up formal strategic level anti-corruption groups (such as TUGAR¹³⁹ and PACAC¹⁴⁰) and the EFCC also suggests that its Board provides a strategic level forum. It was only in 2021 that members were appointed.¹⁴¹ EFCC informed us that this board comprises senior officers from a broad range of organisations, pointing to its existence as evidence of cooperation. One problem with large board structures is that they struggle to reach agreement; Hassan¹⁴² refers to the structure as 'unwieldy.' It is evident that joint training events provide informal links and channels of cooperation, however, we identified a requirement for an investigators and practitioners working group as operated in the UK. Creation of a working group would provide a recognised forum to share information on trends, case development etc. In making this point we note that the EFCC stated that there is an informal procedure used to share intelligence between employees of different agencies, by a call being placed or an email sent. While employees of the organisation may use personal contacts to solicit or share information, such relationships are of their nature transitory, hence the importance of an operational-level group that would also not have to go through the slower formal procedure of writing to request information.

An operational-level working group comprising only Police, EFCC, ICPC, SCUML and NFIU should have regular monthly meetings with the NFIU feeding into this group from their meetings with the compliance officers' forum. To facilitate discussion and consensus building, this group should be kept small in its membership, ideally comprising only two representatives from each of the five named agencies. This group should be chaired by the NFIU as the central organisation responsible for quality of intelligence and as coordinator with the financial sector. Through its collaboration with the NFIU, the CBN should facilitate the wider sharing of general trends with the regulated sector so that they can update their red flags. In making this recommendation we know that the NFIU currently chairs the Authorized Officers (AO) Forum, discussed below.

¹³⁹ Technical Unit on Governance and Anti-Corruption Reforms

¹⁴⁰ Presidential Advisory Committee Against Corruption

¹⁴¹ Buhari finally constitutes EFCC board — first since 2015 Taiwo Adebulu, The Cable, 21st June, 2021. Available at <https://www.thecable.ng/buhari-finally-constitutes-efcc-board-first-since-2015>

¹⁴² Idayat Hassan (2021) Charting the way forward for Nigeria's Economic and Financial Crimes Commission: a path towards institutional efficiency and independence, ACE SOAS Consortium, July, available at <https://ace.soas.ac.uk/wp-content/uploads/2021/08/ACE-ThinkPiece-001-210726.pdf>, p. 3.

7.4 INFORMATION SHARING: THE NFIU

The NFIU is able to receive and process a great deal of information about the financial transactions of individuals and companies. The Authorized Officers (AO) Forum is the main platform for coordination between the NFIU and other stakeholders. This group meets once per quarter and comprises twenty-nine agencies including the NFIU. On average there are some fifty persons in attendance. The objective of this large group is to enhance cooperation and information sharing. We would suggest that a meeting of this size risks being overly burdened with protocols and unnecessary bureaucracy with a membership comprising agencies beyond those with an anti-corruption mandate.¹⁴³ There are in essence, two key relationships that the NFIU has: first, with the individual compliance officers within the banks that are making the reports; and, second, with the prosecutors within the EFCC, IPCP or police who will receive, process and ultimately (if appropriate) act upon the information. Critical is the feeding back of activity that has occurred – from the prosecuting agency back to the NFIU and from the NFIU back to the reporting financial institutions. This feedback loop not only improves the quality of information being submitted by the regulated sector but also assists the NFIU in preparing more focused activity reports.

The NFIU make use of the goAML¹⁴⁴ reporting system and were able to use this system as a means of linking STRs to BVNs to identify where multiple accounts had been created.¹⁴⁵ In our interim report, we argued about the positive value of ‘subjective’ STR reporting by the financial institutions. They require knowledge of normal patterns of banking that might be expected by categories of clients, countries involved, etc. enabling the flagging, in the first instance, of

¹⁴³ The NFIU confirmed membership of the AO Forum as comprising:

Corporate Affairs Commission	CAC
Code of Conduct Bureau	CCB
Defence Intelligence Agency	DIA
Department of State Security	DSS
Economic and Financial Crimes Commission	EFCC
Federal Competition and Consumer Protection Act	FCCPC
Federal Inland Revenue Service	FIRS
Federal Ministry of Justice	FMOJ
Federal Road Safety Commission	FRSC
Independent Corrupt Practices and other related offences Commission	ICPC
International Police	INTERPOL
National Agency for Food and Drug	NAFDAC
Nigerian Army Intelligence Corps	NAIC
National Agency for Prohibition of Trafficking in Persons	NAPTIP
Navy	NAVY
Nigeria Copyright Commission	NCC (COPYRIGHT)
Nigeria Communication Commission	NCC (COMM.)
Nigeria Customs Services	NCS
National Drug Law Enforcement Agency	NDLEA
National Identity Management Commission	NIMC
Nigeria Immigration Service	NIS
National Lottery Regulatory Commission	NLRC
Nigeria Police Force	NPF
Nigeria Security and Civil Defense Corps	NSCDC
Office of the National Security Adviser	ONSA
Securities and Exchange Commission	SEC
Standard Organization of Nigeria	SON
Federal Ministry of Finance	FMOF
Nigeria Financial Intelligence Unit	NFIU

¹⁴⁴ The UNODC standard system of reporting.

¹⁴⁵ Follow up conversation with a representative of the NFIU (on-line).

unusual account activity. The NFIU disagreed arguing that the CTR as threshold rather than discretionary reports were more valuable as they get over the reluctance of banks ‘to report on their customers’ with the suggestion that the banks were unwilling to report and thus lose a potentially profitable transaction. Further, they argued that the volume of CTR data was important to help analysts look for patterns in transactions, generating intelligence for dissemination to law enforcement for action and that it is this information that leads to prosecution and conviction.¹⁴⁶ As already noted, this is not supported in the NFIU data that shows five times the number of reactive to proactive reports being generated.

The most recent NFIU 2019 annual report¹⁴⁷ indicates that of the total 12,716 STRs filed by the regulated sector, 99% came from the banking sector. Although there is little detail on the content of the STRs, the average size of the reported STR was 45.31m Naira or \$110k. From the same report there were 7.8m CTRs reported (99% from banks) with an average transaction size of 50.9m Naira or \$123.8k. As we did not have sight of the standard fields used in the STRs/CTRs forms we repeat the recommendation made by the IMF¹⁴⁸ that the STR template should include a field on BO when the object of a report is a legal person and to indicate if an individual subject is a PEP.

8 CONSEQUENCES

8.1 FOR INVESTIGATION

The NFIU is an intelligence agency, that intelligence must be turned into evidence by the prosecuting agencies, who are responsible for correctly obtaining data from banks, registries etc. that can be presented in court. Despite noting the cases thrown out by the courts due to lack of evidence, we found that investigations appear to be well developed. EFCC shared with us that they make use of CAC records (annual filings,¹⁵⁰ changes in shareholdings and directors) to tie individuals to companies through the company bank account (through the BVN). They focus on travel expenses and payment of school fees. They note ‘the beneficial owners of the company are hardly on record’¹⁵¹ and highlighted the importance of NIN/BVN of individuals disclosed in the record filings. From our workshop we heard that there had been problems with the setting up of the BVN system and were told of instances where a single person had managed to set up multiple BVNs in different names. This was separately confirmed by the NFIU but that, through comparing the databases, the agency had been able to flag these accounts for deactivation with the Nigerian Interbank Settlements System.¹⁵²

¹⁴⁶ Comments made at virtual workshop by a representative of the NFIU.

¹⁴⁷ Nigerian Financial Intelligence Unit 2019/2020 Annual Report, Available at https://www.nfiu.gov.ng/Home/DownloadFile?filePath=C%3A%5CNFIU%5Cwwwroot%5Cdocuments%5Car2_F8754Z. This report for the first time separately reports suspicious activity.

¹⁴⁸ IMF (2019) Nigeria – selected issues report (April).

¹⁴⁹ EFCC noted that they are now also focussing on intelligence-based investigation having recently created a Directorate of Intelligence which should improve overall efficiency.

¹⁵⁰ For evidence of tax compliance.

¹⁵¹ EFCC respondent

¹⁵² NFIU (2018) Bank Verification Number (BVN) Suspicious Activity Incidences: A Call for Financial System Integrity in Nigeria, October, Report shared with the research team.

As in other countries, there is confidence that the focus on ‘follow the money’ will eventually reveal the BO.¹⁵³ To do so ‘involves gathering large amounts of data and undertaking extensive analysis of huge amounts of documents’.¹⁵⁴ While the NFIU indicated they had the analytical capacity, the police argued that they lacked appropriate analytical software. Indeed a police investigator commented that the biggest problem was a disorganised system with no central database. Those databases in existence were not up to date, and they noted: ‘Senior staff may think [the] system works but this may not be the experience on the ground’.

As discussed in our interim report and in **Section 6.4**, we found a general lack of transparency and a tendency toward secrecy, challenging smooth inter-agency cooperation.¹⁵⁵ A major challenge is a lack of trust – agencies did not want to share data or information because they thought they were being scrutinised and thus judged. While the EFCC have powers to obtain information from all organisations as part of their functions, they disclosed:

‘It happens sometimes that the Commission is investigating a case and there is also an ongoing investigation on the same case by another agency. We get to know of this information during [the] investigation. For example when we invite a suspect or a witness he or she will tell us that they were also invited by other law enforcement agencies investigating the case’.

To improve their efficiency, the EFCC pointed out that ‘collaboration with sister agencies through sharing of information.... will reduce [the] cost of investigation’ and ‘Rivalry among agencies is a concern and that [with respect to the FIU] there is a need to harmonize the two so that both can comfortably fulfil their mandate’.¹⁵⁶

We highlight here the importance of being able to call on the technical expertise available in other agencies at the operational investigator/practitioner level as well as the sharing of intelligence and knowledge so that at the beginning of an investigation the lead agency is not always having to start afresh. From the perspective of operational efficiency it is equally important to ensure that agencies share information on cases that are underway so that one agency does not inadvertently interfere with or hamper the operations of another.

8.2 FOR THE CRIMINAL JUSTICE PROCESSES

Our interim report provided extensive discussion of some of the problems within the court system which primarily appeared to have arisen from the reluctance of the courts to fully apply the powers granted through the Administration of Criminal Justice Act, 2015.¹⁵⁷ We were told that judges had ‘insurmountable workloads’ and ‘congested dockets’ - which combined with high levels of bureaucracy simply facilitate and compound delaying tactics.¹⁵⁸ Our review of the

¹⁵³ Respondent from EFCC, also stated by the respondent from the Nigerian police and from the NFIU.

¹⁵⁴ Nigerian Police contribution at workshop

¹⁵⁵ See for example, Rajni Bajpai and Bernard Myers, Enhancing Government Effectiveness and Transparency : The fight against corruption, October, 2020 The World Bank (Example 2: Nigeria’s challenges in achieving inter-agency cooperation to obtain and use data, p 274) available at https://documents.worldbank.org/en/publication/documents-reports/documentdetail/235541600116631094/enhancing-government-effectiveness-and-transparency-the-fight-against-corruption?cid=gov_ft_gov_en_ext

¹⁵⁶ Respondent anonymised.

¹⁵⁷ As mentioned in our interim report a related issue has to do with the case of the former Governor of Abia state, Orji Uzo Kalu, who was convicted by a judge of the Federal High Court who at the time of judgment had been promoted to the Court of Appeal. The judgment was given based on approval given to the judge by the President of the Court of Appeal to conclude pending cases at the High Court. Unfortunately, the Supreme Court quashed the judgment on the grounds that a judge who had been promoted to a higher court cannot give judgment in a case in a lower court. Trial in the case must start all over again. This is viewed as a major setback for the enforcement of the Administration of Criminal Justice Act (ACJA) 2015.

¹⁵⁸ Comments from ICPC (meeting in Abuja), A Nigerian NGO (feedback on our interim report) and by the IMF (meeting in Washington)

cases of grand corruption pointed to continued delays in the prosecution of cases with too many adjournments taking place, sometimes caused by congestion where judges were assigned too high a case load or did not prioritise corruption cases over other criminal activity¹⁵⁹ but more often due to appeals or failure of either defendants or witnesses to appear in court. More worrying was the fact that a quarter of the cases were dismissed (no case to answer) and acquitted with the judges citing a lack of evidence from prosecution or witnesses. Reviewing transcripts of some of the judgements it is also evident that the EFCC have been chastised by judges for failing to prove their case.¹⁶⁰ However, we were told¹⁶¹ of judges 'not being upright' of 'technical difficulties' and of 'pressure from the political cycle' all associated in the minds of our respondents as being the reason for acquittals being granted.¹⁶² There were also examples where plea bargaining with the EFCC was occurring outside of the court process or apparent contrition by the defendant and the return of the alleged proceeds of corruption resulted in the case being adjourned.

Countering financial crime is highly technical and the police and ICPC both expressed frustration with the courts' failure to grasp the complex financial structures and intercompany relationship evidence. According to the ICPC, they had argued for special courts but there was resistance to this suggestion from amongst the judiciary who would rather see more judges appointed. The ICPC explained that chief judges at state level (where most of these cases are heard) were to have designated at least one judge to deal with financial crimes and corruption cases but that their court time was frequently filled by other cases. This problem is familiar in the UK where suggestions have been made about 'ticketed judges' possessing specialist technical financial knowledge.¹⁶³ Two respondents told us about court records being manual with long-hand recording of proceedings.¹⁶⁴ The work of organisations such as the Cleen Foundation who digitise and index court records and proceedings is crucially important although investment in court stenographers would also provide a low-cost, low-technology improvement.¹⁶⁵

8.3 FOR ASSET RECOVERY

As a principle for effective change, asset recovery is now a priority issue. Key here is the ability of the prosecutors to identify and tie assets to offenders, hence the importance of BO information. Our interim report considered the current arrangements for asset recovery associated with criminal conviction together with the arrangements for non-conviction based recovery. There are a number of guides that have been produced by international organisations on operational best practice in asset recovery. Rather than repeat here those recommendations and approaches we have, instead, produced an index of these resources broken down by process key stage. Our summary of sources is available as a separate document see **Appendix 6**).

¹⁵⁹ Observation to emerge from our workshop in Abuja.

¹⁶⁰ See for example Court case AB/EFCC/03C/2016 against a senator accused of stealing N400m and FCT/HC/CR/92/2012 against a senior policeman charged with embezzlement

¹⁶¹ Meeting with Police respondents in Abuja.

¹⁶² There are a range of news reports drawing attention both to failures in the justice system (<https://www.cnbc africa.com/news/west-africa/2018/07/06/op-ed-heres-why-nigerias-justice-system-isnt-working/> "Nearly ten years ago the Central Bank of Nigeria conducted a deep assessment of the country's banks. The 2009 exercise exposed large-scale fraud committed by a number of CEOs. . . ." "Only one case has been prosecuted successfully. The others appear to be stuck in an unending cycle of dismissals, appeals and re-trials. . . . the Nigerian justice system isn't working." Available at <https://www.cnbc africa.com/news/west-africa/2018/07/06/op-ed-heres-why-nigerias-justice-system-isnt-working/> And, "The Chief Justice of Nigeria (CJN), Walter Onnoghen alluded to this recently stating that "corruption in the judiciary is not limited to bribe-taking but includes giving of judgments or orders based on any consideration other than legal merit." The Guardian, 8 May, 2018, available at <https://allafrica.com/stories/201805090683.html>

¹⁶³ Law Commission Consultation on Reform of the UK Proceeds of Crime Act 2002.

¹⁶⁴ Meeting with the ICPC (Abuja) and with the IMF (Washington).

¹⁶⁵ Suggestion by a UK academic.

Consistent with the provisions of UNCAC,¹⁶⁶ asset recovery should be the last part of a package of policies. First of these is to remove the opportunity for corruption to occur in the first place. In the event that corruption occurs, measures are needed that focus on the direct recovery of property. These measures should prevent the proceeds of corruption from either entering the financial system within Nigeria or from being physically moved out of the country. In the event of the latter, UNCAC Articles 54-55 focus on international cooperation in order to recover assets.

There have been many reports from within Nigeria on how to improve asset recovery. The much-anticipated Proceeds of Crime Bill seeks to strengthen Nigeria's asset recovery legislation with non-conviction-based confiscation powers, the introduction of unexplained wealth orders (UWOs), and a Proceeds of Crime Recovery and Management Agency. This is still in process although the Bill passed its second reading in the Senate in June 2021. Possibly in response to frustration with the slow passage of this legislation, the Attorney General took control of the custody and management of all finally forfeited assets under the Asset Tracing, Recovery and Management Regulations, 2019. These regulations were to provide a comprehensive framework for the management of recovered assets, including creation of a centralised database. We could find no information in the public domain about sums recovered. We note that the Attorney General launched an Asset Recovery and Management Unit¹⁶⁷ under his office in 2020 and all law enforcement agencies are expected to use that platform for the purposes of coordinating asset recovery in the country. There is a chart on the website that shows 'Distribution of Recovered Assets by State'. The axes on this chart are not labelled with either units or with the year. Underlying data is behind a firewall, accessible only to the AC and related agencies (ten in total).

Once detained by either the EFCC or the ICPC, a suspect is required to complete an asset declaration form.¹⁶⁸ It is an offence punishable by up to five years imprisonment to fail to disclose or to knowingly make a false declaration. Only the suspect themselves know if they have fully disclosed all their assets (legally the onus is on the suspect to prove non-ownership of any subsequently identified assets). We heard from a senior police investigator that success in profiling assets of a suspect is 'disorganised' and 'it is difficult to find out what assets individuals own'. Considering this, for the suspect, failure to make a full disclosure could be a risk worth taking. It might be more cost effective to encourage voluntary cooperation and disclosure by 'discounting' the final sentence in the event that assets are recovered, and a guilty plea entered.

We have already noted the powers that the EFCC possess to gather information on assets from the various registries. Given the speed with which assets can be dissipated it is clearly in the interests of the agencies to ensure that such information is easily accessible by financial investigators. There is certainly a need to speed up the current system wherein the EFCC, for example, have to 'write to various land registries across the country to get information that will lead to identifying assets'.¹⁶⁹ Moving more quickly will prevent individuals taking advantage of opportunities of asset dissipation, an area that was particularly frustrating to the ICPC who several times mentioned delays in securing court orders.

From the police's perspective, obtaining asset freezing orders can also be subject to delay allowing time for dissipation. Both the police and the EFCC identified difficulty in obtaining forfeiture orders as defendants are mostly acquitted on technicalities. The EFCC stated the need to make explicit provision in the EFCC Act on forfeiture of assets. They were

¹⁶⁶ UNCAC Articles 51-59 cover asset recovery measures, an overview is available at https://www.unodc.org/documents/NGO/UNCAC_Chapter_IV_Asset_Recovery_UNODC.pdf

¹⁶⁷ Asset Recovery Database available at www.armu.ng

¹⁶⁸ Under section 27 of the Economic and Financial Crimes Commission (Establishment) Act, 2004, where a person is arrested for committing an offence, he or she must make a full disclosure of his or her assets and property by completing the declaration of assets form as specified in Form A of the Schedule to the Act. The completed form shall then be investigated by the EFCC. It is an offence to make a false declaration or refuse to make full disclosure or any disclosure at all. This form https://www.imolin.org/doc/amlid/Nigeria_EFCC_Act.pdf requires an extraordinary amount of information.

¹⁶⁹ Meeting with representative of the EFCC (Abuja).

aware of and used the non-conviction based forfeiture powers currently available within the provisions of Section 17 of the Advance Fee Fraud And Other Fraud Related Offences (AFF) Act 2006. These provisions are applied when it is suspected that the asset in question is the proceeds of a crime. Replacement of this provision by the specific '*addition of Non-Conviction Based forfeiture into the Money Laundering Act*' would simplify prosecution.¹⁷⁰ In addition, the EFCC can initiate an investigation where it is suspected that individuals are living beyond their means.¹⁷¹ The ICPC stated that they make use of the non-conviction powers under Section 48 of ICPC Act – illicit enrichment shifts the burden of proof (on the balance of probability) onto the defendant.¹⁷² They provided an example of a case when they had filed for non-conviction based forfeiture for 12m Naira as proceeds of crime under the ICPC Act without needing to take the person to court. They argued strongly for their (somewhat underhand) approach of going for assets to incapacitate e.g., to reduce the funds available to the defendant to challenge the case in court. Only having secured the assets would the ICPC follow with a criminal prosecution. Whilst acknowledging the needs of justice, successful pursuit of non-conviction-based asset recovery would send a strong signal to PEPs that might otherwise be tempted to exploit their position for personal enrichment.

8.4 FOR RECOVERED ASSETS

There has been a historic lack of accountability over assets that have been recovered and it remains difficult to understand precisely what assets have been recovered by either the EFCC (apart from disclosure to the newspapers) or the ICPC. Few reported figures seem to reconcile with each other, and amounts recovered differ depending on the report. Sums that are mentioned in the press are usually initial estimates, not the actual proceeds recovered by the government once the asset has been disposed of and monetary value realised. Indeed, the EFCC, under Ibrahim Magu, was criticised for misplaced focus on 'headline grabbing' seizures of physical assets rather than concentrating on securing high-profile convictions.¹⁷³ While some efforts have been made in this direction, there has been concern over the management of recovered assets due to the lack of transparency,¹⁷⁴ and to fears of their dissipation.¹⁷⁵ As in other countries, assets that have been traced and secured tend to be high value tangible financial assets and inanimate property.¹⁷⁶ Looking forward we note there is no mention of less commonly used assets such as crypto-currency or other more sophisticated financial investments.

The law enforcement agencies seem to agree on the need for a strategy/mechanism for the management of such assets. For example, this comment from the police: '*there is a problem of the management of frozen assets as nothing is set out in law as to how assets should be handled*'. We heard of problems caused by the absence of an asset management agency resulting in assets seized under interim forfeiture orders being left to deteriorate¹⁷⁷ as cases proceeded through the courts. We acknowledge the current asset recovery audit by the judicial panel of inquiry headed by Justice Ayo

¹⁷⁰ Respondent anonymised.

¹⁷¹ Follow up discussion with representative of the NFIU.

¹⁷² CISLAC/ Transparency International Nigeria (2019, p 12) reference the Supreme Court in the case of DAUDU V FRN, that the burden of proof lies on an accused person to explain properties he acquired which were disproportionate to his known legitimate earnings. (2018) 10 NWLR (PT. 1626) 169, 183 E-F

¹⁷³ Discussion with former NCA officer, on-line.

¹⁷⁴ <https://www.opengovpartnership.org/members/nigeria/commitments/NG0008/>.

¹⁷⁵ See for example Transparency International Blog Returning Nigerians' stolen millions August 3rd 2018: https://www.transparency.org/news/feature/returning_nigerians_stolen_millions

¹⁷⁶ Although in discussions at our workshop reference was made to the difficulty in tracing the benefit of ownership of some assets such as cattle. Recovery agencies in other countries have experience of seizure of live assets – for example in its early days, the UK Asset Recovery Agency recovered racehorses which were handed over to specialists for their care until arrangements could be made for their sale.

¹⁷⁷ Discussion with former NCA officer, on-line.

Salami and the Presidential Committee on Recovered Asset Disposal but observe that its work has not been open to public scrutiny.¹⁷⁸ Whilst useful, an audit is backward looking. Of greater importance is a cohesive system that demonstrates that those who break the law will be pursued and that assets recovered in Nigeria will be properly accounted for, managed and ultimately disposed of in accordance with the provisions of the Constitution.

As commented by Page,¹⁷⁹ to increase transparency, details of the types of recoveries, together with those obtained via criminal conviction and by non-conviction based recovery should all be recorded and reported. In addition to these details, we recommend that records should be made available of the number of investigations, amounts seized, retained or returned. Such transparency not only builds public trust but would go a long way to reassuring agencies in other countries that recovered assets will not simply disappear once they are returned to Nigeria. The latter is important in speeding up the return of stolen assets such as those confiscated by America, the UK and Switzerland.¹⁸⁰

9 FINDINGS: BO AND ANTI-CORRUPTION RESPONSES

This report has highlighted the role of BO in facilitating anti-corruption investigations and the tracing and recovery of the proceeds of corruption. At the same time, it has highlighted the problems faced by the authorities in making effective use of BO information. The most frequently occurring themes that emerged from the data collected from our time in Abuja were: data deficiency; international cooperation; intelligence and information; BO and delays in courts. Once all data collection had taken place, we could refine those themes: disguise of BO; national cooperation; management and records; intelligence and information flows; and, red flags and risks (**Appendix 1** shows the frequency with which these were coded). Here we summarise the issues under our own headings.

9.1 ILLICIT MONEY FLOWS

The Nigerian authorities face challenges in minimising the opportunity for illicit financial flows (IFFs) that arise from the structural characteristics of the economy. Most obvious of these are: the size of the informal economy and the prevalence of cash transactions; the reliance on oil and extractive industries for both export earnings and government revenue; and the low tax base of the rest of the formal economy. These structural deficiencies cannot be eliminated in the short term. Curbing illegal activity also relies on an ability to monitor legitimate economic activity. The low tax base¹⁸¹ draws attention to the apparent problem in identifying taxpayers (natural and legal persons) and thus in assessing the business activities within the country. Areas to be addressed in the medium term, therefore, include improving transparency and accountability in public procurement, tax compliance and supporting NEITI's efforts to increase transparency in the dominant oil sector.

¹⁷⁸ We note here that this is not the first attempt in this regard. There was a short-lived civil asset recovery task force (CART) comprising the NPF, PACAC, EFCC, ICPC, SPIP. The SPIP – Special Presidential Investigation panel for the Recovery of Public Property was itself disbanded in September 2019. <https://fmic.gov.ng/president-buhari-dissolves-special-presidential-investigation-panel-for-recovery-of-public-property/>

¹⁷⁹ Page op. cit. note 79.

¹⁸⁰ The UK and Nigeria agreed a joint MOU for the return of assets for their deployment against projects as part of a Presidential infrastructure development fund. Details are available at <https://www.gov.uk/government/publications/return-of-stolen-assets-confiscated-by-the-uk-agreement-between-the-uk-and-nigeria>; Similar information and details of other MOUs is available on the asset recovery section of the Federal Ministry of Justice <https://justice.gov.ng/category/asset-recovery/>

¹⁸¹ The personal income tax rate is 24% and corporate tax rate 30%, however the total tax to GDP ratio (from all sources) is only 5.9%, one of the lowest ratios of any nation.

9.2 AGENCIES AND INTER-AGENCY WORKING

The institutional landscape is complex with overlapping mandates and duplication in effort. Consistent with the findings of others, we observe an absence of collaboration, coordination, and information-sharing amongst various anti-corruption agencies that is longstanding, structural and cultural in organisational terms. This has diluted agencies' effectiveness in relation to the investigation, prosecution and recovery of the proceeds of corruption. We acknowledge committees such as the authorised officers' forum but argue that its size and scale hinder effective information exchange. Further, the inclusion of so many departments that are not central to AML/AC work serves to dilute focus. For example, why include the Nigerian Copyright Commission and Nigerian Communication Commission and not the Central Bank or the National Insurance Commission? Our review of the legislative landscape indicates complex and overlapping legislation with new agencies being created as a response to on-going deficiencies. It would be better to address outstanding resourcing problems within existing agencies. Agencies face difficulty in medium term planning because of unreliable budget allocations. The example shared with us was from the ICPC who have an internal multi-year strategic action plan supported by an annual budget allocation. As funds are released via instalments they are not always released as and when due or may be reduced if Federal Government revenues are lower than expected, as can frequently happen due to oil price volatility.

Creation of overlapping mandates creates inter-agency tension and inefficiencies within a resource-constrained environment. It is clear, for example, from prosecuted cases that both the EFCC and the ICPC address the same corruption pool e.g., a PEP charged with money laundering would fall within the mandate of both the ICPC and the EFCC. Thus those agencies can end up competing rather than collaborating. Other potentially significant agencies such as SCUML are far too under-resourced to carry out their mandate. SCUML either requires resources appropriate to enable it to fulfil its role or the scale and scope of its activity should be reduced to a manageable level. We heard of a lack of support for a unifying POCA from certain AC agencies over concerns of loss of autonomy and power. This reluctance to pursue closer working relationships is compounded by highly formal hierarchical structures that slow down decision-making and reduce opportunities for operational collaboration as requests and permissions must be sought in writing.

9.3 DATA

The general lack of transparency and tendency towards secrecy compound a systematic data deficiency. A major impediment in evaluating Nigeria's performance against the FATF criteria, or indeed at all, lies in the lack of availability of reliable data.

There are doubts both over the quality and accessibility of information of anti-corruption agencies, both in terms of data that they collect and of the data supplied to them. Basic data is either not collected, not kept up to date and/or not published. This in turn affects sharing of information as AC agencies fear that the information they could provide may expose some type of internal deficiency.¹⁸² There would appear to be a high level of apparent compliance capturing a lot of general rather than criteria data. General data is not useful in a way that would provide insight into the effectiveness of the anti-corruption regime. For example, the NFIU discloses the number of CTR and STR reports received by the business sector without reference to the number of reporting institutions. Similarly, a total value figure for all reports is provided in precise Naira (and sometimes with Kobo – fifty Kobo are equivalent to less than £0.001), although its usefulness is debatable. The EFCC disclose some information about prosecutions but these cases are not linked to outcomes because of which they can reappear year after year. The most important deficit, mentioned regularly, is the absence of a Unique Reference Number which is tagged to the first entry of a person on the law enforcement system and which remains attached until a person disappears out of the system.

¹⁸² Discussions for NFIU in Abuja.

9.4 BENEFICIAL OWNERSHIP

The issue of BO has been undermined by a lack of, or poor, corporate registry data. The CAC will require continued support as it moves to include BO information on its registry portal. Integrating the CAC registry with that of NEITI would be a positive future development. The challenge for the future is not the creation of the register but the verification of supplied information and of ensuring adequate resources for the policing of compliance. Sustainability of the register will be enhanced through identification of those agencies most likely to benefit from the use of BO information and any added value in use of shared intelligence or powers between agencies on an inter-agency basis.

The authorities are hampered by poor land registry records in Nigeria. Registers are held at state level and systems remain largely paper based although there have been moves to digitise some of the registries, for example in the Federal Capital Territory and in Lagos. The data is compromised as transfers of property are not always formally recorded, either to avoid payment of registration fees, or to deliberately obscure ownership.

The CCB should only focus on the very top level of public servant, dispensing with the current reporting regime that covers so many individuals as to be unenforceable. Change of ownership data from the CAC and NEITI could be routinely shared with the CCB.

9.5 ASSETS RECOVERY

In the absence of Proceeds of Crime legislation, asset recovery remains a major problem. Historic lack of transparency over assets recovered compromises assessment of the effectiveness of the agencies. Despite the Asset Tracing, Recovery and Management Regulations, 2019, we could find little data on assets recovered under these interim regulations. It is hoped that it is available and being shared across the government agencies, but this data would be better placed in the public domain to enhance public trust in the process.

9.6 THE INTERNATIONAL DIMENSION

High profile cases of corruption can and have involved multiple jurisdictions when funds are moved out of Nigeria into more 'desirable' locations. The UK authorities understand the UK is as attractive to criminals who want to know that their funds are 'safe', as it is for legal investments. The UK government is addressing known deficiencies in their asset registries such as Companies House.¹⁸³

In our interim report we conjectured that some of the Nigerian individuals who are linked to multiple companies, and the companies they control, might be involved in laundering the proceeds of corruption. On the assumption that some of these individuals and companies warrant further investigation, we have considered the possible use of Unexplained Wealth Orders (UWOs) in the UK as an investigative tool for these circumstances.

As indicated in the relevant Code of Practice:¹⁸⁴

¹⁸³ For details of the UK Government response, refer to Companies House register reform consultation, which sets out plans to improve quality and accuracy of information held on the UK's People with Significant Control Register: <https://www.gov.uk/government/news/reforms-to-companies-house-to-clamp-down-on-fraud-and-give-businesses-greater-confidence-in-transactions>

¹⁸⁴ Code of Practice Issued Under Section 377 of the Proceeds of Crime Act 2002 (2019) para. 170.

A UWO provides an enforcement authority with the ability to require an individual or company to provide specific documents or information in order to establish whether the asset(s) in question have been legitimately obtained. As such, it provides an alternative means of obtaining information and allowing for the consideration of action against persons and their property about whom little information is available.

Where a politically exposed person (PEP) is the beneficial owner of a company, the company itself can be treated as a PEP. This follows from the fact that the definition of a PEP includes not only a person entrusted with prominent public functions, but also a person 'otherwise connected with' such a person: that is, connected otherwise than as a family member or a 'close associate' (who must be a natural person).¹⁸⁵ The phrase 'connected with' is defined¹⁸⁶ in accordance with the Corporation Tax Act 2010 s.1122. Under that section a person who controls a company, either alone or with one or more other persons, is connected with the company. A company is a legal person and is expressly included in the definition of a person who holds property for the purposes of a UWO.¹⁸⁷

To obtain a UWO against a company, the enforcement authority (e.g., the National Crime Agency) must satisfy the court both of the connection between the company and the PEP who is believed to be the beneficial owner, and 'that there are reasonable grounds for suspecting that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property'.¹⁸⁸ According to the Code of Practice:¹⁸⁹

Applicants should be able to explain the basis for their suspicion by reference to disclosable intelligence or information about, or some specific behaviour by, the individual or company concerned (including open-source material from overseas where there may be public registers relating to property and public servants' income).

Although the asset declarations made by Nigerian officials may be less than ideal for this purpose, for the reasons considered above, the relatively modest salaries received by Nigerian officials could easily be established from open sources. If our interpretation is correct, this may provide grounds for application of UWOs in these circumstances.

Participants at our workshops wanted to see more on how Nigeria could recover its stolen assets. We have sympathy with this position. However, without a clear link to a BO, potential legal redress can be difficult to navigate. Establishing who owns what, is not always straightforward. Take the following hypothetical example shared with us:

*Person A can issue a contract to a UK company to process oil. Person A will award the contract in response for patronage. Not all companies will play ball due to the 2010 Bribery Act but someone will. They pay funds to the BVI, transfer to a Beneficial Owner account in the Seychelles, move to the IOM and then into London to a company with them as a shareholder. As a UK company will be less likely to attract attention or result in a SAR. At no stage has any money left Nigeria. Does the property belong to Nigeria? As Nigeria has not lost anything the contract is awarded for the oil processing.*¹⁹⁰

¹⁸⁵ Proceeds of Crime Act 2002 s 362B(7)(a)-(c) and (8), incorporating the definition of 'closely associated' from Dir 2015/849/EU art 3(11).

¹⁸⁶ *Ibid*, s 362B(9)(b)

¹⁸⁷ *Ibid*, s 362H

¹⁸⁸ *Ibid*, s 262B(3)

¹⁸⁹ Code of Practice para. 177.

¹⁹⁰ Discussion with former NCA officer, on-line.

Of course, this example requires that the contract is fulfilled by someone with the capacity to deliver in terms of the contract specification and importantly the company accepting the contract will have broken domestic UK law.

We heard from both Nigerian and UK investigators about problems with cross-border support and investigation. The Nigerian police talked of the historic collaboration relationship built on a one-to-one basis with officers from the UK Metropolitan Police Force and its value, although more recently that relationship appears no longer to exist.¹⁹¹ Once money moves overseas, agencies in Nigeria believe that unless they get international cooperation and support, they cannot proceed further with the case, despite the existence of Mutual Legal Assistance Treaties in criminal matters (MLATs). We were informed that some MLATs *'...had not been written ...as they will expose senior politicians.'*¹⁹² The requirements in terms of quality of forensic evidence in the receiving countries is high, there was evident frustration of requests being received that *'would ask for things that can be located on the internet in basic policing'*.¹⁹³ Further, it is not always straightforward to ensure that requests are routed to the right desks for approval and response.¹⁹⁴ We are aware of the UK supporting the FCDO-funded international centre of excellence with capacity to both support overseas efforts and to enhance cooperation with priority jurisdictions which would include Nigeria.¹⁹⁵ It is to be hoped that this arrangement will deliver results. From the Nigerian perspective we heard that if cooperation is offered it is generally because it is seen to be in the interests of the overseas state and thus focussed on their benefit rather than on that of Nigeria as a victim state.¹⁹⁶

9.7 RED FLAGS AND RISKS

Red flags are usually placed in transactions which are considered as tokens of opaque or 'irrational' financing which is an aspect of foreign peregrination of funds and which raises a suspicion of illegal money flows. This is the consequence of its criminal origin, which makes it necessary to make one or more offshore circuits. Throughout this report we have highlighted areas of risk that should give rise to red flags. For example, from the review of cases of grand corruption we highlighted the speed between company registration and bank account opening or companies that are created for a specific purpose (one or small number of large transactions) and then lapse to dormancy. There is some evidence of the permissible purchase of foreign exchange being used as a mechanism to move proceeds overseas thus pointing to the need for greater oversight of these applications. It is also possible to combine data from different sources to highlight unusual or unexplained activity that might warrant further investigation such as searching registry records from the UK alongside those held by the CAC. Failure or delay in provision of updated information to the CAC following changes of company ownership is also a possible flag for further investigation. The NFIU is well placed to share up to date trends and other SARs generated intelligence with the regulated sector so that they can update their own internal monitoring.

¹⁹¹ Discussion with former NCA officer, on-line.

¹⁹² Discussion with former NCA officer, on-line.

¹⁹³ Discussion with former NCA officer, on-line.

¹⁹⁴ For a discussion of the issues, see Jackie Harvey (2020) Tracking the international proceeds of corruption and the challenges of national boundaries and national agencies: the UK example, *Public Money & Management*, 40:5, pp 360-368, DOI: 10.1080/09540962.2020.1714211

¹⁹⁵ HM Government Economic Crime Plan 2019-2022, July 2019 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816215/2019-22_Economic_Crime_Plan.pdf

¹⁹⁶ Discussion at our workshop in Abuja.

10 SUMMARY

10.1 SUMMARY: THE COUNTRY CONTEXT

Before we discuss our recommendations, we wish to re-emphasise that the issue of BO and the associated agencies should be seen against the background of the governance of Nigeria. It is the subject of an extensive number of books, articles and reports, for example:

- From the 'top down' perspective this quote from the *2018 Carnegie Report*:¹⁹⁷ "Corruption is the single greatest obstacle preventing Nigeria from achieving its enormous potential. It drains billions of dollars a year from the country's economy, stymies development, and weakens the social contract between the government and its people. Nigerians view their country as one of the world's most corrupt and struggle daily to cope with the effects...In Nigeria's political and institutional sectors, electoral corruption and kleptocratic capture of political party structures unlock corruption opportunities across a range of other sectors...the symbiotic relationship between legislative and bureaucratic corruption...influences a disproportionate share of government expenditures."
- From the 'bottom up' perspective this quote from the *2019 UNODC Survey*:¹⁹⁸ "While the prevalence of administrative, mainly low-value, bribery has decreased, the survey results suggest that the Government's anti-corruption agenda, which tends to be focused on large-scale corruption, has so far only marginally affected this type of bribe seeking behaviour. Consequently, a greater effort should be made and more attention paid to the eradication of bribe-seeking of this nature. The implementation of these actions, like those proposed by the National Anti-Corruption Strategy, which are specifically aimed at mainstreaming anti-corruption principles into governance and service delivery at all levels, can support this change."

As the cases involving State Governors illustrate, the ease of circumvention of procurement rules,¹⁹⁹ particularly in the oil and allied industries sector, and the evidence of embezzlement of funds and diversion of government revenues for the funding of election campaigns underline the continuing absence of a sense of public interest and the lack of political will to implement lasting and effective reforms. We would argue that the political system is like this because of a suspicion of, or lack of trust in, the authority of the state not only by those outside the system but also inside the system. The system is underpinned by those within allowing an inefficient and uncoordinated state to be managed through state capture by an elite mainly serving its own interests. This group exploits lax enforcement of legislation on, for example, taxation, with the proceeds providing the resources for a self-perpetuating system of patronage. Whatever the cause, the consequence is, as described at our workshop in Abuja one of '*a natural lack of compliance on behalf of Nigerians*' or, as the former NCA officer expressed it, '*poor compliance with what are considered normal standards of governance*.'

¹⁹⁷ Page, M. T. 2018. *A New Taxonomy for Corruption in Nigeria*. Washington, DC: Carnegie Endowment for International Peace.

¹⁹⁸ UNODC. 2019. *Corruption in Nigeria: Patterns and Trends*. Vienna: UNODC.

¹⁹⁹ The former FBI agent suggested looking through open tenders for patterns in allocation (especially if companies winning contracts were incorporated in BVI, Cayman Is. Jersey, Guernsey etc). It would also be beneficial to see further collaboration with open contracting, particularly with the transparency of contracting at state level that is being supported by the World Bank, although a Nigerian NGO commenting on our interim report noted that efforts to secure the consent of the States would be hindered by '*suspicion and bad politics*'.

We would suggest that, while the data do not support a supposedly united and coordinated network of collaborating high office holders, the system runs on mutually beneficial tolerance and complicity. The main observed pattern is of extracting funds initially via phantom contracts to a shell company account (usually owned by a friend/family member), from which cash is then withdrawn or transferred to several other accounts (sometimes abroad) to either retain or invest (material purchase, property, gifting family/friends). Corruption networks tend to be close and trusted social contacts (including professionals) or family.

10.2 SUMMARY: THE AGENCIES AND DATA

From our meetings and follow up consultations we do not think that lack of capability is an issue within the relevant agencies. Indeed, increasing numbers of staff from within the NFIU, EFCC and police appear not only to have benefitted from joint training exercises with their counterparts in donor countries but also have obtained advanced degrees from universities in Nigeria and in other countries. However, the inability to achieve an effective anti corruption response is not, we feel, the consequence of a single cause, but as the consequence of several issues:

- The Government has faced, and will continue to face, competing priorities for budgetary expenditure. As already noted, sharing intelligence and technical resources to ensure investigations and subsequent prosecutions are achieved in a cost-efficient manner is going to be more important in the future;
- Nigeria is a formal, hierarchical society and it may well be that individuals at an operational level do not feel empowered or able to contribute to strategic decision making or to challenge upwards against what might clearly be wrong. Many of the suggestions that we have made have already been commented upon by others. More significantly, both NEITI and the NFIU, for example, have produced reports detailing improvements that could be implemented in the AC regime, but felt that they did not have the mandate to act on their recommendations without authorisation from higher authority;
- In a number of cases of grand corruption, it is evident that banks (and BDCs) have failed to report what would appear to be suspicious transactions at a point where proceeds were still in Nigeria. The fact that banks are failing to adhere to requirements points to a deficiency in enforcement²⁰⁰ of the AML regime by the Central Bank and of its risk -based system of supervision;
- Despite information sharing and inter-agency cooperation being phrases that are woven through FATF requirements for combatting financial crime, within Nigeria, information remains a commodity to be jealously guarded as a potential power-source;
- BO information is not always accessible or useable. For example, the police noted that if they write to agencies such as the Securities Exchange Commission (SEC) or the Corporate Affairs Commission (CAC) for information, they '*never get the actual names but only legal not beneficial owners*'. With regard to the analysed cases, it is likely that the work of investigators would have been speeded up with access to BO data, particularly in connection with the identified companies.

²⁰⁰ Also see the CBN circular on Administrative Sanctions for violation of various anti-money laundering laws and regulations, Central Bank of Nigeria, FPR/DIR/GEN/CIR/07/001, April 9th 2018.

10.3 SUMMARY: OVERVIEW OF THE RECOMMENDATIONS

The political penetration by a small elite of the administrative space not only ensures a reciprocity of acceptability of corruption but also the inability of agencies – if they so wished (and those individuals that we met clearly did want to change things) – to establish any continuity or consolidation of an anti-corruption response. Within the current climate, We feel that some operational and management reforms could improve the capacity and operational effectiveness of relevant agencies.

As indicated at the start of this report, there cannot be a single ‘silver bullet’ that we can recommend in connection with how greater knowledge of BO information would help in the fight against corruption. This is because the system itself mitigates against any willingness to achieve substantive institutional or procedural reform. As we draft this report, the release of the Pandora papers in September 2021 drew attention to twenty-one affluent Nigerians with substantial assets held offshore who had held positions of influence.²⁰¹ Further, the outcome of the second Mutual Evaluation of Nigeria that took place in 2019 has still not been released. Our interim report lists multiple instances where there is legislation or regulation in place, but the implementation of this has suffered, either through tokenism – blindly following the law without concern for the result, or a genuine lack of capability or a silent unwillingness to pick up and use the available legal tools even if they are imperfect.

We also recognise that, globally there is tension between those who would want to have access to information on asset ownership, and the need for privacy on the part of the individual. Whilst disclosure of BO is important in a number of destination countries (with the UK being a particular advocate), in countries with weak security or rule of law environments, it is not straightforward as disclosure of the details of high-net-worth individuals can fuel crime – they become targets.²⁰² A BO register cannot be seen as an end point in itself, its usefulness requires that accurate and timely ownership information is available to the competent authorities (FATF Recommendation 24). The challenge for Nigeria, as in other countries is being able to obtain information and verify the accuracy of the information provided (put simply are the names of the BO(s) real?) in addition to ensuring that the information is available to relevant agencies.

In terms of Recommendations, our analysis suggests that (i) some improvements can be made to BO data; (ii) such changes can improve the use of BO data in anti-corruption responses by relevant agencies; and, (iii) the first two recommendations would be helped by incremental changes both to agencies’ work and to inter-agency working.

²⁰¹ See for example Pandora Papers: Investigation Reveals How Nigeria's Ex-Governors, Minister Kept N117Billion Assets In Two Tax Haven Banks Sahara Reporters October 11th, 2021

²⁰² Meeting with representative from Financial Integrity, Washington.

11 RECOMMENDATIONS

11.1 RECOMMENDATIONS: DATA

Data use and harmonisation: there should be a national agreement or protocol on data content and recording. This would be underpinned by a proactive approach to records management across the public sector. This could be developed to specify what information should be recorded, how, by whom, how verified, how stored, how updated, how accessed, etc., to a uniform set of standards. When such data is used for any law enforcement investigation or intelligence function that incidence should be associated with a unique reference number for tracking and management purposes. The agreement or protocol should be set in a context of explaining what the added value would be to information sharing, the work of agencies, the prosecutions, and the recovery of assets. The agreement or protocol will govern both natural persons and legal persons data.

Reporting of transactions: this should not simply be an automated process, although STRs have been criticised as a mechanism for tracking illegal account activity; account monitoring by banks can indicate unusual account activity. Banks can form an opinion if they are seeing ‘appropriate transactions for the scale of the business’ as they ‘will see the direction of the movements and the payees so even [if they] cannot know the BO, [they] can see the way the funds are being moved.’²⁰³ Inability to prioritise resources in terms of risk profiles can result in a high level of compliance and ‘stringent’ data capture without really contributing intelligence that would enhance the AC regime. In connection with reporting of potentially suspicious transactions it is important for banks to carefully look at the justification for payments of Naira deposits or for international funds movements.

Creating capacity: to pay attention to this detail within the banks might mean moving away from the required reporting of all cash transactions and of all PEP activity. As was shared with us in our workshops – financial institutions must ask questions. Operational level staff should be empowered to act on and report their suspicions. More senior officials should record their reasons if no further action is taken to avoid any conflict of interest where the subject of the report is assumed to be ‘of good character’ as happened in the Alison-Madueke case. As observed to us: ‘Compliance is only as strong as the weakest person’.²⁰⁴

In making this recommendation we are mindful that globally there is now a tendency by law enforcement to place less emphasis on STRs. Indeed fewer are made, as stated by one UK academic at one of the virtual workshops: ‘the fact that whistle-blowing generates more cases than STRs is pretty universal, including in rich countries. STRs in general are an idea that has failed’. By restricting the number of PEPs that must be tracked and instead concentrating on a smaller number of the most senior individuals, banks would be able to use their internal compliance and risk teams to properly monitor unusual or large-scale account activity.

²⁰³ Discussion with the CBN representative, Abuja

²⁰⁴ Discussion with former NCA officer, on-line.

Data-sharing: Many of the problems that were identified for us by our respondents concerning data access, information sharing, and cooperation are all 'solvable'. Information creation and sharing is something that must become assimilated as normal, moving beyond record keeping that is meticulous but 'process driven' to record keeping that is useable and useful. We further understand that both Open Government Partnership and the CAC are promoting the integration of the NEITI BO register within the overall CAC BO register. Given the concerns over the oil sector set out in our interim report, we would support the integration of data from NEITI with that of CAC as means of further strengthening Nigeria's central registry of company data. CAC should push ahead with implementing the provisions of the CAMA with respect to BO as a priority. We support the efforts of NEITI and recommend that the data captured by the CAC be harmonised with that from NEITI so that the two databases could be easily searched, and change of ownership data shared with relevant authorities, in particular the FIRS and the CCB. The CCB should only focus on the top level of public servants, dispensing with the current reporting regime that covers so many individuals as to be unenforceable.

Data access: to improve transparency and assist in data management and record keeping a unique case record or identification number should be created that would link cases prosecuted and convicted to assets recovered rather than the present system whereby the case number is tied to the court, changing as a case moves through the court system.

Data management: the inconsistency and unreliability of data urgently calls for the establishment of a central database which should be fed from sectoral registries and data bases and to the recognition of records management as an important discipline role within the civil service.

Data cleaning: verifying historic data as it is transferred onto the CAC portal will be a significant piece of work that should be properly resourced. A process that includes: removal of old data of companies that no longer exist; validating/refreshing data on companies in existence; and adding a new layer of BO data to companies currently in existence.

11.2 RECOMMENDATIONS: USING IMPROVED DATA

11.2.1 LAWS

The Constitution of the Federal Republic of Nigeria is the primary legal framework on which every other legislation must be premised. To be implementable and effective, no such legislation shall conflict with the Constitution. The National Assembly (NASS) has the responsibility to make laws as upheld by the Supreme Court in the case of *Attorney General of Ondo State v. Attorney General of the Federation & 35 Ors* that Section 15 sub-section 5 of the Constitution directs the National Assembly to abolish all corrupt practices and abuse of power. The National Assembly can exercise such powers effectively only by legislation. Therefore, the NASS authorities should move to finalise the POCA legislation without delay.

Although adequate resourcing of the CAC to check and verify records is the preferable way to uncover discrepancies, the authorities could consider an amendment to the AML/CFT Regulations (2013 s.13-16) to require the regulated sector to report discrepancies between PSC information available through CAC and the information that they obtain through independent checks when on-boarding new or transacting with existing customers.

11.2.2 AGENCIES

It is hard to assume that the multiplicity of problems in the respective agencies can be addressed through one single approach. Rather, a multiplicity of approaches could ameliorate the identified deficiencies in their operations, and these may include the following steps:

Capacity: To limit opportunity for corrupt proceeds to enter the financial system in Nigeria, we would suggest that continued investment should be made in the technical capacity within the Central Bank so that they have a greater understanding of the evolving risks faced by the regulated sector and are able to properly apply a risk-based approach to their supervision. In line with other countries, information on regulated entities (and individual officers) subject to regulatory sanction should be shared in public notices. In the same vein, the capacity of other regulatory and law enforcement agencies should be addressed according to their specific needs as discussed in this report.

Case selection: there should be a transparent system of case selection focusing on those that have caused the greatest public damage and have the greatest chance of success. EFCC use the digital case management system developed by the UNODC – GoCase²⁰⁵ and are in the process of developing an in-house case management system and the ICT department has been upgraded to help with this. Currently the EFCC ‘select cases based on the recommendation of the vetting committee, this ensures that we prioritise our investigation in line with our budget and resources’. The committee considers whether the case is within the role of the commission, the impact of the alleged offence to the economy and the effect of the crime on the reputation of the country. Cybercrime cases for example are usually given high priority because of the damage to the reputation of the country as well as pipeline vandalism in the oil sector because of its effect on the economy. They also focus on those cases that send the strongest message such as high-profile cases of corruption. Although there is also a suggestion that too much attention has been placed on cybercrime²⁰⁶ to the detriment of cases of corruption. This positive message is at odds with the findings of Hassan²⁰⁷ who drew attention to the agency’s difficulties in remaining independent from political interference.

Evidence management: the EFCC (and/or ICPC) should pay attention to evidence management, ensuring that evidence is correctly obtained, timing its presentation in court effectively, and ensuring that (only) the strongest evidence that clearly ties the charge to the defendant is presented. Disorganisation can compromise the trial and chance of conviction.

Prosecution: We note that the EFCC uses a Standard Operating Procedures (SOP) to guide and standardise investigation and procedure processes. The prosecution can simplify the process of trial by presenting the strongest evidence against a single charge, rather than a large amount of weaker evidence against multiple charges as appears evident in several of the cases of grand corruption. Indeed, it is not necessary to present all available evidence to the court, only that which absolutely links the defendant to the charge, for a conviction to be secured.

²⁰⁵ Further information: <https://gocase.unodc.org/>

²⁰⁶ This same observation also appears in ‘Innovative or Ineffective? Reassessing Anti-Corruption Law Enforcement in Nigeria’ (2021) GI-ACE Working Paper No. 9 by Matthew Page (Chatham House)

²⁰⁷ Idayat Hassan (2021) op.cit note 142.

Interference: pursuit of cases from prosecution through the courts should be clear and unbiased and the agencies should not be restricted by political party interests. Removal of political influence ensures that investigators should be able to pursue cases irrespective of political affiliation of the suspect. This also would address the charge of 'mutual softness'.²⁰⁸

11.2.3 INTER-AGENCY WORKING

With respect to AML/CFT policies and coordination, which stand out as the main thrusts of the FATF Recommendations 1 and 2, and based on the outcome of our findings, several measures call for specific attention, including:

Management of investigation: we would support and emphasise current initiatives to create and task working groups from the different agencies to focus on particular cases. However these groups should be kept small to work well – effective operational collaboration is more than just turning up at a task force meeting.

Competence sharing: we highlight here the importance of the ability to make use of the technical expertise in other agencies at the operational investigator/practitioner level as well as the sharing of intelligence and knowledge so that the lead agency is not always having to start an investigation from the beginning. From the perspective of operational efficiency it is equally important to ensure that agencies share information on cases that are underway so that one agency does not inadvertently interfere with or hamper the operations of another. Moving more quickly will prevent suspects from disposing of or dissipating their assets, an area that was particularly frustrating to the ICPC.

Information access and sharing: CAC and NEITI should open up their data to CCB and FIRS and that CCB limit the scope of their activity to the most senior civil servants only. Asset declaration forms should include information of assets held without inclusion of specific valuations and that asset declaration reports by senior government officials should be in the public domain. Sharing of this information would facilitate linking of assets to BOs. We recommend that the data captured by the CAC be harmonised with that from NEITI so that the two databases could be easily searched and data shared with relevant authorities.

We support public access to the details of BO to enable civil society organisations to add an additional level of checking of accuracy of data and encourage CAC to stand by their commitments to free and open access. To encourage reporting to the land registries, fees should be made reasonable, and the process kept simple and straightforward. This is an example where it is better to have less but accurate information to balance ease of doing business against efforts to counter corruption.

An operational-level working group comprising only of the Police, EFCC, ICPC, SCUML and NFIU should have regular monthly meetings. To facilitate discussion and consensus building, this group should be kept small in its membership, ideally comprising only two representatives from each of the five named agencies. This group should be chaired by

²⁰⁸ Mutual softness refers to avoidance of over-diligence in pursuit of corruption so as not to provoke retaliation when the political leadership changes hands.

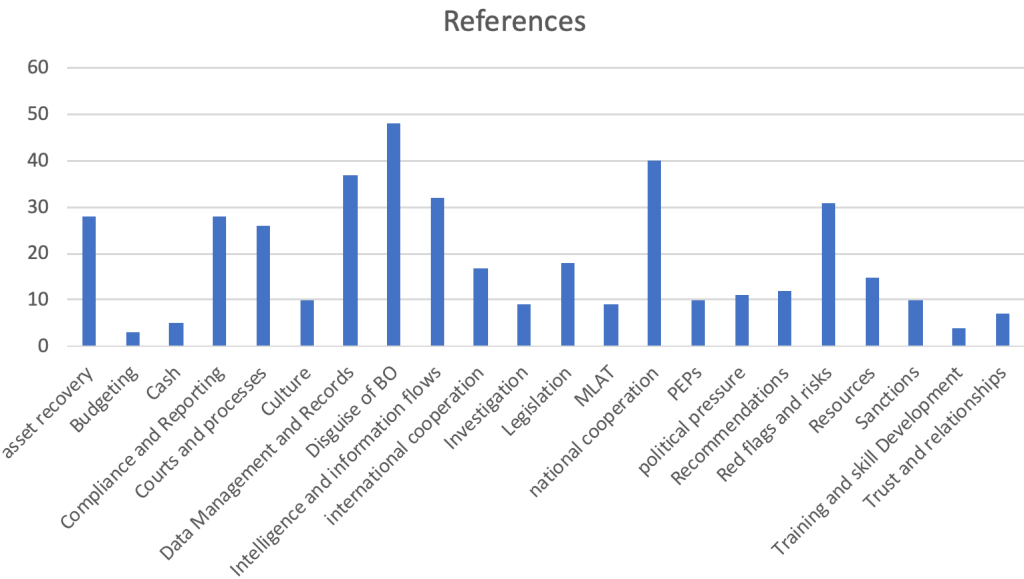
the NFIU as the central organisation responsible for quality of intelligence and as coordinator with the financial sector. Through its collaboration with the NFIU, the CBN should facilitate the wider sharing of general trends with the regulated sector so that they can update their red flags.

APPENDIX 1: ANALYSIS OF INFORMATION

We held a series of meeting with groups of respondents at which we asked a range of questions broadly covering: the role of the agency within the sector; methods of investigation and protocols followed; the information collected, methods of storing and sharing; the other agencies with whom they interact; examples of cases; resourcing; training; challenges faced in carrying out their roles; and what they would like to see changed. Additionally, we hosted a two-day workshop that was attended by nominated contacts from these agencies. The list of agencies that helped us with our work is included in [Appendix 5](#).

From the visit to Abuja, notes were separately recorded and transcribed by two of the researchers and organised and analysed using firstly eyeball analysis to identify broad themes and the results were compared for consistency and agreement. Notes recorded during the meetings that took place in Washington were separately taken by two researchers and agreed for consistency. The meetings that were held online were transcribed by one researcher. All the scripts were then added to NVIVO and used to support and expand the original coding undertaken following the visit to Abuja.

The Chart below is based on all coded data and shows that the most commonly occurring themes were: disguise of BO; national cooperation; management and records; intelligence and information flows and red flags and risks.



APPENDIX 2: BANKS INVOLVED IN CASES OF GRAND CORRUPTION IN NIGERIA

From the cases held on our database we reviewed where banks were specifically mentioned in the case documentation²⁰⁹ as follows:

FIRST NAME SUSPECT	CASE NUMBER	DATE LAST MENTIONED	ACCOUNTS IDENTIFIED	BANK NAMED
Chimaroke Nnamani	FHC/L/09C/2007	Case closed 20/02/2018	Rainbownet Nigeria Limited, Cosmos FM, Capital City Automobile Nigeria Limited and Renaissance University Teaching Hospital	unamed
Olisah Metuh	FHC/ABJ/CR/05/16	Convicted 25/02/2020	Destra Investments Ltd	Diamond Bank plc
Alex Badeh	FHC/ABJ/CR/46/2016	Case terminated December 2018	Rytebuilders Technologies Limited	Zenith Bank plc
Mohammed Dele Belgore	N/A	03/04/2020	Not identified \$115m paid into account by Diezani Alison-Madueke	Fidelity Bank plc*
Orji Uzor Kalu	FHC/ABJ/CR/56/07 AND SC.622C/2019	Convictions nullified 08/05/2020	Slok Nigeria Limited	inland Bank plc
Rita Ofili-Ajumogobia	ID/3671C/16	02/11/2018	Nigel & Colive Ltd	Diamond Bank
Oni Ademola Dolapo	FHC/IB/32C/2015	Convicted 07/10/2016	De-City-Life enterprise; Oni Iyabo Mary	FCMB (First City Monument Bank)
Chidi Adabanya	FHC/ABJ/54/2012	Rearraigned January 2015	Forstech Technical Nigeria Limited	Stanbic-IBTC Bank
Essai Dangabar	FCT/CR/64/2012	Convicted 17/10/2019	Accounts in name of defendants and unnamed companies	FCMB; Main street bank; Access Bank; Skye bank; Ecobank; Zenith Bank and Fortis micro-finance bank

²⁰⁹ Excluded from this analysis: the case of Erastus Akingbola, (no case reference) former MD of the collapsed Intercontinental bank plc in which bank funds to purchase its shares to ramp up the price plus other charges of reckless granting of credit without security; the case of Francis Atuche (no case reference) former Managing Director of the defunct Bank PHB charged with granting credit, manipulating shares and banking fraud; the case of Ayodele Festus and 5 other CBN staff (FHC/IB/31C/2015) accused of stealing defaced bank notes meant for destruction; the case of Bolade Ajuwan (FHC/IB/35C/2015) and 6 other CBN and Zenith staff officials accused of stealing defaced bank notes meant for destruction; the case of Tunde Ayeni (no case reference) Former Chairman, Board of Directors, Skye Bank Plc; (now Polaris Bank) charged with fraudulent diversion of depositors' funds domiciled in the defunct Skye Bank Plc.

FIRST NAME SUSPECT	CASE NUMBER	DATE LAST MENTIONED	ACCOUNTS IDENTIFIED	BANK NAMED
Musiliu Obanikoro	N/A	06/02/2019	Sylvan McNamara - company	Not identified
Ibrahim Abdulsalam	N/A	01/03/2020	Delosa Ltd, Air Sea Delivery Ltd, Sea Schedules Systems Ltd, Randville Investment Ltd and Multeng Travels and Tours Ltd. Conduit companies Blue Opal Limited, Sebore Farms & Extension Limited, Pagoda Fortunes Limited, Tower Assets Management Limited and Crust Energy Limited	Not identified
Robert Azibaola	N/A	Acquitted 01/04/2020	One Plus Holdings	Zenith Bank plc
Saidu Usman Dakingari	KB/HC/27C/2017	29/06/2020	\$115m in account 'warehousing'	Fidelity Bank plc*
Patience Jonathan	FHC/L/CS/620/18	Closed 01/07/2019	Account in her name	Skye Bank (now Polaris bank)
Folorunsho Folarin Coker	N/A	05/03/2018	Lagos state number plate production authority account	Zenith Bank
Nanle Dariye	N/A	01/07/2019	Apartment le Paradis	Unnamed bank failed to make a CTR
Haruna Momoh	N/A	28/10/2020	Bank arraigned as co-defendant Limited	Stanbic-IBTC bank
Daniel Etete	N/A	01/06/2020	Account No. 2018288005 to receive \$401.5m	Unnamed bank
Prof. Maurice Iwu	N/A	24/10/2019	Bioresources Institute of Nigeria Limited, Ac No 1018603119	United Bank for Africa

APPENDIX 3: ANONYMISED SEARCH OF THE CAC DATABASE AGAINST COMPANIES IDENTIFIED IN THE UK LAND REGISTRY DATA

COMPANY NAME ([ANONYMISED])	NUMBER OF ENTRIES	APPROX £ VALUE (IF LISTED)	YEARS OF PURCHASE	Location	PUBLIC DETAILS FROM CAC REDACTED (NO PSC RECORDS LOCATED)
AM Ltd	2	None listed	07/02/2014 (2)	Bournemouth	RC – 7****2 inactive Feb 1 2008
AG Ltd	2	74,000	24/08/2017 & 03/11/2017	London and Thurrock	RC – 9****8 inactive Jul 25 2011
BA Ltd	2	1,600,000	16/12/2015 & 02/10/2017	London	RC – 1****6 inactive Feb 26, 2014
BO Ltd	5	2,630,000	26/08/2011 (2); 26/09/2014; 13/12/2016	London	RC – 5****3 inactive Dec 24 2003
BH Ltd	3	1,220,000	23/12/2008 & 26/03/2010 (2)	London	RC – 7****6 inactive Aug 13 2007
CJ Ltd	4	640,000	22/03/2007; 13/11/2012; 02/08/2013; 13/02/2014; 20/01/2015	London	RC – 4****9 inactive Dec 11 2002
CG Ltd	4	855,000	08/09/2015; 13/04/2016; 21/04/2016; 15/02/2017	London and Sussex	RC – 6****4 inactive Jun 11 2007
EE Ltd	2	64,500	19/03/2013 (2)	London and Essex	RC – 1****7 inactive Aug 8 2018
EI Ltd	4	492,500	29/11/2016; 02/12/2016; 28/12/2016; 16/01/2017	London	RC – 1****6 inactive Nov 18 1991
FP Ltd	3	1,645,000	06/01/2010; 25/06/2010; 25/06/2015	London	RC – 1****5 inactive Jul 9 1990
FR Ltd	4	35,000	16/08/2013; 20/09/2013; 25/11/2013; 05/12/2013	Cambridge	RC – 6****6 inactive Nov 22 2006
FG Ltd	2	710,000	04/02/2010 & 12/02/201	London	RC – 7****4 inactive Dec 10 2008
FB Ltd	7	None listed	17/03/2014 (3); 20/03/2014 (2); 08/04/2015; 14/04/2015	Nottingham and Middlesbrough	RC – 2****7 inactive Dec 4 1992
GE Ltd	2	699,950	19/12/2011 & 05/02/2014	London	RC – 6****3 inactive Oct 14 2005

COMPANY NAME [ANONYMISED]	NUMBER OF ENTRIES	APPROX £ VALUE (IF LISTED)	YEARS OF PURCHASE	Location	PUBLIC DETAILS FROM CAC REDACTED (NO PSC RECORDS LOCATED)
HI Ltd	2	None listed	09/07/2012 (2)	London	RC – 1*****8 inactive May 15 2012
IT Ltd	2	None listed	12/07/2011 (2)	London	Not found
JE Ltd	2	185,000	24/12/1999 & 07/07/2000	London	RC – 1*****3 Inactive Nov 26, 1990
L Ltd	3	543,000	22/06/2015 (3)	Essex	Not found
LI Ltd	2	1,750,000	08/07/2010 & 19/04/2011	London	RC – 314213 inactive Jun 4 1997
MH Ltd	2	1,275,000	07/12/2004 & 08/01/2018	London	RC – 114409 inactive Jun 17 1988
MW Ltd	3	None listed	22/10/2014; 23/10/2014; 1 6/01/2015	Birmingham	RC – 764153 inactive Aug 1 2008
MC Ltd	2	None listed	27/05/2015 & 08/07/2015	London	RC – 1177204 inactive Mar 11 2014
MM Ltd	2	700,000	14/03/2002 & 31/05/2002	London	RC – 8**5 inactive Jun 23 1971
MB Ltd	3	None listed	14/04/2009 (2) & 07/05/2009	St Albans and Surrey	RC – 6***8 inactive Feb 20 2007
PL Ltd	4	3,000,000	21/08/2015 (4)	Medway	RC – 1*****2 inactive Mar 17 2014
PC Ltd	3	605,197	20/07/2001 (2) & 11/02/2002	London	RC – 2****2 inactive May 9 1994
SP Ltd	4	1,394,000	03/01/2001; 05/12/2001(2); 04/04/2008	London	RC – 1***4 INACTIVE Oct 3 1974
SH Ltd	6	None listed	03/09/2012 (6)	London	RC – 3***3 inactive Jun 17 1999
TE	2	None listed	08/01/2016 (2)	London	RC *** active Feb 14 1930
TS Trust	4	None listed	14/05/2012 (4)	London	RC – 3***0 Inactive May 18, 2010
UC Ltd	2	2,305,150	25/06/2014 & 12/10/2015	London	RC – 6****4, inactive Mar 19, 2007
TOTAL VALUE WHERE LISTED		22,423,297			

APPENDIX 4: FINES LEVIED BY THE UK FINANCIAL CONDUCT AUTHORITY IN RELATION TO BREACHES OF AML REGULATIONS FROM 2013 TO DATE

INSTITUTION / INDIVIDUAL	DATE	PENALTY AMOUNT	SPECIFIC BREACH	PERIOD	SOURCE
Sapien Capital Limited	May 2021	£178k	Inadequate systems and controls to identify and mitigate the risk of being used to facilitate fraudulent trading and money laundering in relation to clients registered in BVI and Cayman Islands and failing to exercise due care in applying AML policies and procedures	February 2015 to November 2015	https://www.fca.org.uk/publication/final-notices/sapien-capital-limit-ed-2021.pdf
Commerzbank	Jul. 2020	£37.8 m	Failure to put in adequate AML systems and Controls in relation to Due Diligence	October 2012 to September 2017	https://www.fca.org.uk/news/press-releases/fca-fines-commerzbank-london-37805400-over-anti-money-laundering-failures
Standard Chartered Bank	Apr. 2019	£102.2m	Failure in risk sensitive policies and procedures in connection with two high risk business areas: UK Wholesale Banking; and its branches in the UAE	November 2010 to July 2013 (UK correspondent banking) and in its UAE branches November 2009 to December 2014	https://www.fca.org.uk/news/press-releases/fca-fines-standard-chartered-bank-102-2-million-poor-aml-controls
Former Chief Executive of Sonali Bank (UK) Ltd	Dec. 2018	£76.4k	Failure to assess and mitigate the AML risks arising from a culture of non-compliance by staff	June 2012 to March 2014	https://www.fca.org.uk/news/press-releases/fca-publishes-decision-notice-against-former-ceo-sonali-bank
Canara Bank	Jun. 2018	£896.1k	Failure to maintain adequate AML systems and controls across all levels of business and governance	November 2012 to January 2016	https://www.fca.org.uk/news/press-releases/fca-fines-and-imposes-restriction-canara-bank-anti-money-laundering-systems-failings
Deutsche Bank	Jan. 2017	£163.1m	Failure to maintain an adequate AML control framework (mirror trades with its Russian based subsidiary DB Moscow to convert roubles to dollars to facilitate the covert transfer of funds out of Russia)	January 2012 to December 2015	https://www.fca.org.uk/news/press-releases/fca-fines-deutsche-bank-163-million-anti-money-laundering-controls-failure
Standard Bank Plc	Jan. 2014	£7.6m	Failure of AML policies and procedures in relation to corporate customers connected to PEPs in connection with EDD	December 2007 to July 2011	https://www.fca.org.uk/news/press-releases/standard-bank-plc-fined-%C2%A376m-failures-its-anti-money-laundering-controls
Guaranty Trust Bank (UK) Ltd	Sep. 2013	£525.0k	Failure in AML controls for high risk customers (provides financial services acting as a gateway to the UK financial system, 70% of these HR customers were based in countries recognised as posing a higher risk of money laundering)	May 2008 to June 2010	https://www.fca.org.uk/news/press-releases/fca-fines-guaranty-trust-bank-uk-ltd-%C2%A3525000-failures-its-anti-money-laundering
EFG Private Bank	May 2013	£4.2m	Failing to establish and maintain effective AML controls for high risk customers including PEPs (provides private banking and wealth management services to HNW clients including some from overseas jurisdictions identified as higher risk for ML and/or bribery and corruption)	December 2007 to January 2011	https://www.fca.org.uk/news/press-releases/fca-fines-efg-private-bank-%C2%A342m-failures-its-anti-money-laundering-controls

APPENDIX 5: MEETINGS AND DISCUSSIONS

Abuja, Nigeria (July 2019)

Meetings took place in the offices of the organisations and in the Hilton Hotel, the two-day workshop was held at the Reiz Continental Hotel)

Association of Chief Audit Executives of Banks in Nigeria (ACAEBIN) (workshop)
Central Bank of Nigeria (CBN) (meeting and workshop)
Code of Conduct Bureau (CCB) (workshop)
Corporate Affairs Commission (CAC) (workshop)
EFCC (meeting, June 2021)
Federal Ministry of Justice (MoJ) (workshop)
Independent Corrupt Practices and other Related Offences Commission (ICPC) (meeting and workshop)
Nigerian Bar Association (workshop)
Nigeria Extractive Industries Transparency Initiative (NEITI) (workshop)
Nigerian Financial Intelligence Unit (NFIU) (meeting and workshop)
Nigerian Police Force (NPF) (meeting and workshop)
Real Estate Developers Association of Nigeria (REDAN) (workshop)
Representatives of the group of chief compliance officers (meeting)
Special Control Unit Against Money Laundering (SCUML) (meeting and workshop)
Securities and Exchange Commission (SEC) (workshop)

Washington, USA (January 2020)

Meetings took place in the offices of the organisations

Former FBI agent (meeting)
Global Financial Integrity (meeting)
Global Integrity (meeting)
International Monetary Fund (meeting)
Open Contracting (meeting)

Virtual Workshops

8th July 2020 hosted by the Royal United Services Institute (RUSI) attended by forty-four delegates from a range of UK government bodies, Nigerian and UK NGOs and private sector organisations together with FATF and GIABA.

7th December 2020 hosted by Northumbria University attended by seventeen delegates from a range of Nigerian government bodies and NGOs.

On-line meetings

Former Nigerian bank compliance officer (in person November, 2019)
Former National Crime Agency, International AC projects, UK (March, 2020)
Former National Crime Agency, International Corruption Unit, UK (March, 2021)
Human and Environmental Development Agenda, Nigeria (April, 2020)
Representatives of the National Crime Agency, International Corruption Unit, UK (June, 2020)
Representative of the NFIU (April, 2021)
Representatives of OpenOwnership (April, 2020)

APPENDIX 6: ADDITIONAL REPORTS AND DATABASES

The following additional reports and data are available through the project website hosted by GI-ACE
(<https://ace.globalintegrity.org/projects/benowner/>)

International Normative Framework

Interim Project Report

Interagency mapping and management information for the main AC agencies in Nigeria.

Database: Cases of Grand Corruption.

Visio: Schematic mapping of three cases of Grand Corruption.

Analysis of data from the Bank for International Settlements (BIS)- Q1 2019

Analysis of data from UK Companies House: Companies Registered in the UK with Nigerian Affiliations – December 2019

Analysis of data from UK Land Registry: Overseas Companies Ownership Data – December 2018

Database: Data captured by various agencies.

Asset Recovery Best Practice - a resource guide for practitioners

This report should be cited as: Harvey, J, Bello A, Doig, A, van Duyne, PC, Gonul, S, van Koningsveld, J, Shehu, A, Sittlington, S, Sproat, P, Turner, S and Ward, T, (2021) Tracking Beneficial Ownership and the Proceeds of Corruption: Evidence from Nigeria, Final Project Report, Northumbria University, Newcastle, October.