



Foreign, Commonwealth  
& Development Office

## Review of implementation of Nigeria Policy on IFF, Recommendations of UNCAC 2<sup>nd</sup> Cycle Review and FATF Evaluation Visit

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## Abbreviations

ACAN	Anti-Corruption Academy of Nigeria
ACORN	Anti-Corruption in Nigeria.
ANEEJ	Africa Network for Environment and Economic Justice
AML/CFT	Anti-Money Laundering/Combating Financing Terrorism
AU	Africa Union
CAC	Corporate Affairs Commission
CAMA	Companies and Allied Matters Act
CBN	Central Bank of Nigeria
CCB	Code of Conduct Bureau
CCBTA	Code of Conduct Tribunal Act
CPI	Corruption Perception Index
CTR	Currency Transaction Report
DMB	Deposit Money Bank
DNFBP	Designated Non-Financial Businesses and Professions
DSSS	Department of State Security Service
ECOWAS	Economic Community of West African States
EDD	Enhanced Due Diligence
EFCC	Economic and Financial Crime Commission
FATF	Financial Action Task Force
FOIA	Freedom of Information Act
GIABA	Inter-Governmental Action Group Against Money Laundering in West Africa
IFF	Illicit Financial Flow
INTERPOL	International Criminal Police Organization
MER	Mutual Evaluation Report
MFB	Micro Finance Bank
MLPA	Money Laundering (Prohibition) Amendment Act 2011
MMIA	Murtala Mohammed International Airport
NACS	National Anti-Corruption Strategy

NACIWA	National Anti-Corruption Institutions for West Africa
NCCT	Non-Cooperating Countries or Territories
NAICOM	National Insurance Commission
NEITI	Nigeria Extractive Industries Transparency Initiative
NDLEA	National Drug Law Enforcement Agency
NFIU	Nigeria Finance Intelligence Unit
NIMASA	Nigeria Maritime Authority Administration and Safety Agency
NRAS	National Risk Assessment Secretariat
NSA	National Security Agency
OGP	Open Government Partnership
PEP	Politically Exposed Person
PPA	Public Procurement Act
SCUML	Special Control Unit on Money Laundering
SEC	Security and Exchange Commission
UNECA.	United Nations Economic Commission for Africa
UNCAC	United Nations Conventions Against Corruption
STR	Suspicious Transaction Report
TAP	Terrorism (Prevention) Amendment Act 2011
UNODC	United Nations Office on Drugs and Crime
UNSCR	United Nations Security Council Resolution
WGI	Worldwide Governance Index

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**Rev David Ugolor**  
*Executive Director*

## **Introduction**

The study assessed the extent to which the 2nd United Nations Conventions Against Corruption (UNCAC) review processes, Financial Action Task Force (FATF) Evaluation on Nigeria, Nigeria Policy on IFF, and National Anti-Corruption Strategy (NACS) and to ascertain how far recommendations from these processes and policies have been implemented in Nigeria and identify key challenges to implementation of these instruments and make clear recommendations for: Government, Civil Society Organisations and the international community on what should be done to ensure effective and more efficient implementation.

The study adopted a “two stage” conceptual approach. The first stage or the “constitutionality stage” assessed the extent to which Nigeria has implemented the recommendations from the UNCAC review. The second part of the study assessed the coherence of national policies and legislation to the National Anti-Corruption Strategy, Nigeria policy on Illicit Financial Flows (IFFs) and recommendations from the FATF Evaluation Visit. Desk Review and Key Informant Interview (KII) were used as methodology in conducting the study. The study, in this regard, assessed the extent to which the Nigerian national policies and legislation align with the various action plans developed after those reviews and visits.

## **AIMS AND OBJECTIVES OF THIS REVIEW**

This review has a double focus and therefore two major activities. A scoping study of major anti-corruption initiatives and a compliance analysis with Nigeria Policy on IFF, recommendations of UNCAC 2<sup>nd</sup> cycle review and FATF evaluation visit. The objective of the review is to assess the extent to which the 2nd United Nations Conventions Against Corruption (UNCAC) review processes, Financial Action Task Force (FATF) Evaluation on Nigeria, Nigeria Policy on IFF, and National Anti-Corruption Strategy (NACS) and related governance initiatives and structures across all sectors in the country inclusive of initiatives and structures from non-state actors. The aim of the exercise is eventually to determine the levels of compliance of Nigeria to international anti-corruption conventions to which Nigeria is signatory.

## **COUNTRY CONTEXT**

Corruption remains a major impediment to development in Nigeria. Despite years of concerted anti-corruption efforts, especially since the country’s return to democratic rule in 1999, the perceived level of corruption remains high. Public institutions are seen as ineffective in tackling corruption and in preventing the mismanagement and misuse of public funds. Nigeria

consistently ranks in the lowest 30 percent of countries on Transparency International's Corruption Perception Index (CPI). In 2019, the country ranked 146 out of 180 countries, with a score of 26 out of a possible 100. It also scored 24 percent on government effectiveness and 18 percent on controlling corruption on the Worldwide Governance Index (WGI). Further, a report by the High Level Panel on Illicit Financial Flows from Africa, chaired by former South African president Thabo Mbeki, found that Nigeria lost about US\$40.9 billion through illicit financial flows between 2001 and 2010.<sup>1</sup>

The development of a national strategy to combat corruption is rooted in the Nigerian constitution as well as the regional, continental and global anti-corruption treaties to which the country is a signatory. While the 1999 constitution states in Section 15[5] that "the State shall abolish all corrupt practices and abuse of power", Article 2(1-3) of the African Union Convention on Preventing and Combating Corruption alluded to mechanisms, measures, actions and coordinated and harmonized policies "between state parties for the purposes of prevention, detection, punishment and eradication of corruption".

Article 2 (i-iii) of the ECOWAS Protocol on Corruption provides for the promotion and strengthening the development "in each state parties effective mechanisms to prevent, suppress and eradicate corruption" as well as promoting "the harmonization of national anti-corruption laws and policies." Article 5 of the UN Convention Against Corruption (UNCAC) which came into effect in December 2005 as the first legally binding international anti-corruption instrument and which Nigeria ratified on December 14, 2005 also stipulates that "Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability."

In order to build on the principles laid out in the United Nations General Assembly Resolution 70/1 of 25 September 2015, A/Res/71/213, A/Res/71/208 and Res 69/313 of 27 July 2015; as well as the United Nations Convention against Corruption (UNCAC) Resolutions 5/3/2013 and Res 6/2/2015; and the Report of the High Level Panel on Illicit Financial Flows from Africa, which was commissioned by the AU/UNECA Conference of Ministers of Finance, Planning and Economic Development.

The official data compiled through the 2019 survey by UNODC and NBS show a notable increase since 2016, from 52 to 63 per cent, in the overall proportion of Nigerians who had at least one contact with a public official in the 12 months prior to the survey. This can be interpreted as a positive sign for the provision of public services in Nigeria. The survey found that prior to the 2019 survey, 30 per cent paid a bribe to, or were asked to pay a bribe by, a public official. This

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<sup>1</sup> ANTI-CORRUPTION Advisory Notes Series | No. 19 | April 2019

means that, although still relatively high, the prevalence of bribery in Nigeria has undergone a statistically significant decrease since 2016, when it stood at 32.3 per cent.<sup>2</sup>

Civil society is often pointed to as a key player in a meta-system of checks and balances in a polity, a countervailing force to the power of the state. Increasingly, civil society role in the combat of corruption has become a critical component of a broader effort to hold governments accountable. Its activities have mutated from organizing protests, rallies to express displeasure over the rising tide of corruption in public offices, advocacy for institutional and legal reforms to the use of technology to track and report on the management of public finances. In fact, civil society actors played a significant role in a over 12 years campaign which lead to the development of the National Anti-Corruption Strategy (NACS).

Civil society's intervention to combat corruption in Nigeria has recorded some success stories amidst several challenges. Besides, government's institutions that have been strengthened from technical assistance rendered by actors in the sector, public consciousness about the ills of corruption increasingly improved. The current momentum that the discourse on asset recovery and its utilization has gained, to mention a few, is evident of the good work of civil society actors to rid the country off corrupt practices. However, despite long years of committing resources to this course, placement of the country at the lower rung of corruption ladder globally and everyday reportage of corrupt cases is suggestive of its intractability. Corruption continues to manifest itself in very complex forms which require more complex and tactical approach to deal with it.

To improve transparency and tackle corruption, the government adopted a two-pronged approach, embedding anticorruption measures in a comprehensive economic reform program, and conducting analytical studies to identify specific areas in which corruption was undermining public sector performance and growth. As part of this approach Nigeria Government signed on to Open Government Partnership (OGP) at the last Anti-Corruption Summit in London in 2016 as well adopted the National Anti-Corruption Strategy (NACS) with secretariat at the Federal Ministry of Justice for coordination.

### **Overview of the Legal and Institutional Framework of Nigeria in the Context of Implementation of the United Nations Convention Against Corruption.**

Nigeria signed the United Nations Convention against Corruption on 9 December 2003 and ratified it on 14 December 2004. Nigeria deposited its instrument of ratification with the Secretary-General of the United Nations on 14 December 2004. Nigeria was under review in the fourth year of the first cycle in 2014 (CAC/COSP/IRG/I/4/1/Add.2). According to Section 12(3) of the Constitution, Acts of the National Assembly passed in the implementation of treaties rank equally with other Acts and form an integral part of domestic law. The National Assembly has

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<sup>2</sup> <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>

passed several laws which add up to substantial domestication of the provisions of the Convention against Corruption.

The main legislations in relation to preventive anti-corruption measure and asset recovery include: the Corrupt Practices and Other Related Offences Act 2000 (ICPC Act); the Economic and Financial Crimes (Establishment) Act 2004 (EFCC Act); the Money Laundering (Prohibition) Act 2011 (as amended) (MLPA); the Code of Conduct Bureau and Tribunal Act 1991 (CCBTA); the Electoral Act 2010 (as amended) (EA); the Public Procurement Act 2007 (PPA); and the Freedom of Information Act 2011 (FOIA). Dedicated authorities to prevent corruption include the Independent Corrupt Practices and Other Related Offences Commission (ICPC), the Economic and Financial Crimes Commission (EFCC), the Code of Conduct Bureau (CCB), the Bureau of Public Procurement (BPP), and the Nigerian Financial Intelligence Unit (NFIU).

Nigeria is a member of numerous regional, interregional and international bodies and initiatives, such as the African Union Convention against Corruption, the Economic Community of West African States (ECOWAS) Protocol against Corruption, the New Partnership for African Development (NEPAD) Policy on Transparency and Accountability, the Intergovernmental Action Group against Money Laundering in West Africa (GIABA), and the Network of National Anti-Corruption Institutions for West Africa (NACIWA). In addition, the NFIU is a member of the Egmont Group.

### **Overview of the Legal and Institutional Framework of Nigeria in the Context of Implementation of the Illicit Financial Flows (IFFs) in Nigeria**

In Nigeria, regulatory agencies and institutions have been established with responsibilities that cut across various dimensions of IFFs. In Nigeria, for example, some of the related institutions include: Nigerian Ministry of Finance; Central Bank of Nigeria; Economic and Financial Crime Commission; Independent Corrupt Practices and other related Commission; Federal Inland Revenue Service; Nigeria Custom Service; Nigeria Drug Law Enforcement Agency; Nigeria Extractive Industry Transparency Initiative; Nigeria's Code of Conduct Bureau; Special Control Unit against Money Laundering; Nigerian Financial Intelligence Unit[ Nigeria Police Service etc.

Despite the various institutions and their efforts aimed at curbing IFFs and related problems, the magnitude of the challenges experienced by these institutions overwhelms their implementation capacities. Most of these institutions face problems such as inadequate capacity (including equipment, adequate and relevant skills); shortages of funding (requiring them to rely on unpredictable foreign assistance); and in some cases, inadequate support from the judicial system.

In addition to these constraints, the situation is further complicated by a lack of coherence between the institutions, the duplication of responsibilities among the different agencies, ineffective coordination between them, and insufficient expertise to deal decisively with the IFF phenomenon. In some instances, therefore, tax authorities may not report tax crimes to law enforcement authorities even after they have reclaimed stolen tax funds from the perpetrator.



The cross-cutting conduit nature, in which illicit activities manifested from one country to another calls for stronger stakeholders collaboration between deprived countries and the international community (safe havens), to design more strategic framework (policies) which many countries across of the world were signatory. Policies such as, The United Nations Convention against Corruption 2003 (Merida Convention), United Nations Convention against Transnational Organized Crime 2000 (Palermo Convention) , Organization for Economic Cooperation and Development (OECD) and the World Bank Group, the London Summit and the etc. However even with these policies perpetrators of illicit financial flows still hide wealth from tax authorities and law enforcement agencies and move them into safe havens.

### **Overview of the Legal and Institutional Framework of Nigeria in the Context of Implementation of the Financial Action Task Force (FATF) Recommendations**

The Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) conducts Mutual Evaluations of Member States in accordance with FATF standards and also in compliance with its enabling Statutes. The Evaluations are based on the FATF Recommendations. Member States of GIABA agree to subject themselves to a mutual assessment process in conformity with international standards for preventing money laundering and financing of terrorism as contained in Articles 12 to 14 of the GIABA Statute. The scope of the Evaluations is to assess whether the necessary laws, regulations or other measures required under the essential criteria are in force and effect, that there has been a full and proper implementation of all the necessary measures, and that the AML/CFT system as implemented is effective. GIABA has adopted the FATF procedure in the evaluation of Member States.

The evaluated country is rated depending on the efficacy of measures put in place to detect, prevent or sanction cases of money laundering and terrorist financing. A report is issued after completion of the mutual evaluation. It is then discussed and adopted at GIABA Plenary. Once the report is adopted by the Plenary, it will be published on GIABA website unless the country raises objection to the publication of the report. In such a situation, the Secretariat would publish a note to indicate that the country has chosen not to publish its report. The mutual evaluation onsite visits are based on the calendar approved from time to time by the GIABA Ad Hoc Ministerial Committee. The Ad Hoc Ministerial Committee is made up of three Ministers from each Member State namely the Ministries of Justice, Finance, and Interior. <sup>3</sup>

### **Overview of the Legal and Institutional Framework of Nigeria in the Context of Implementation of the National Anti-Corruption Strategy (NACS)**

The approval of the National Anti-Corruption Strategy (NACS) by the Federal Executive Council on 5th July, 2017, evidenced the continuous strides of the present administration to combat corruption in Nigeria. The main objective of the NACS is to identify and close existing gaps in the

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<sup>3</sup> <https://www.giaba.org/about-giaba/ongoing-activities.html>

anti-corruption initiatives currently in place. The strategy is an insight into the government's fight against corruption. The strategy is proposed for implementation at three levels in five concurrent pillars. The three levels of implementation include:

Strengthening the legal and institutional framework designed to prevent and combat corruption. This focuses on the Anti-Corruption, Law Enforcement and Regulatory Agencies and the processes of tackling corruption in Nigeria. This framework helps to coordinate and monitor if the laws, institutions and measures put in place are working as intended. It also identifies and rewards compliant behaviour as well as detects and sanctions deviant behaviour.

Mainstreaming anti-corruption principles into governance and service delivery at national level (MDAs): The focus is on safeguarding accountability, transparency and integrity in the management of public property and public affairs in order to reduce the negative impact of corruption on governance and government service delivery. The strategy level seeks to monitor the MDAs on how to administer public property, manage public affairs and deliver services.

Mainstreaming anti-corruption principles into sub-national public administration and the society as a whole: This strategy is to monitor the efforts of both level 1 and 2 to ensure concrete interventions are well incorporated and passed to the people. It also addresses disclosed gaps and provides suggestible recommendations. More so, the five concurrent pillars are:

- (a) Prevention of Corruption: The key objective is to reduce gaps and vulnerabilities to corruption and institute a regime of transparency, integrity, and accountability measures in the private, public and Civil Society Organizations.
- (b) Enforcement and Sanctions: The rationale is to detect, investigate and prosecute cases of corruption, ensure speedy adjudication in the judiciary and provide effective sanctions therewith.
- (c) Public Engagement: The aim is to educate citizens on how to identify the signs of corruption as well as avenues to report cases of suspected corruption safely. This creates channels for safe public reporting of ethical breaches and corruption with measures put in place for credible handling of complaints.
- (d) Campaign for Ethical Reorientation: This strategy aims to promote the establishment of ethical standards where they do not exist and improve the enforcement of such standards where they exist.
- (e) Recovery of Proceeds of Corruption: This strategy seeks to focus on recovery and management of proceeds of crime as a deterrent to corruption and a vehicle for mobilizing public support for the anti-corruption agenda.

From the foregoing, the rationale is to reduce the negative impact of corruption and safeguard transparency and accountability at each level of government. Each level of government is given a mandate to establish a Ministerial Committee to implement the NACS. The anti-corruption regulatory agencies are also required to develop an implementation plan that clearly defines key activities, expected deliverables and timelines for all its operating units. Finally, NACS

implementation will be monitored through periodic reports and assessments of the stages of strategy implementation, challenges and its recommendations.<sup>4</sup>

The effectiveness of anti-corruption efforts is hampered by a range of longstanding challenges, largely stemming from poor governance. Coordination and collaboration among various institutions at both strategic and operational levels remains problematic. The National Anti-Corruption Strategy (NACS), approved in 2017, aims to improve coordination and provide strategic direction for anti-corruption policy development and implementation. However, operationalisation of the NACS has been slow due to a lot of factors.

**Observations on the implementation of the articles. Chapter II: preventive measures**  
***Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)***

At the time of the country visit, Nigeria's National Anti-Corruption Strategy (NACS) and a coordinated national Ethics and Integrity Policy were yet to be approved. Nigeria joined the Open Government Partnership (OGP) in 2016, and the National Action Plan (NAP, January 2017–June 2019) was adopted subsequently.

**Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)**

Nigeria has established the Federal Civil Service Commission (FCSC) with a mandate to recruit, dismiss and exercise disciplinary control over civil servants. Vacancies are published on the FCSC public website. The Salaries and Wages Commission (SWC) determines remuneration and pay scales for public officials but does not take into account the corruption risk of respective positions. In line with the OGP NAP, Nigeria also committed to ensure full implementation of the Open Contracting Data Standards in the public sector.

Anti-Corruption Academy of Nigeria (ACAN) was specifically created to provide ethics and compliance trainings to civil servants. Anti-corruption bodies, including ICPC, individual ministries, departments and agencies also provide training to some officials. In addition, the government-owned training institutions, such as the Public Service Training Institute The Constitution's Fifth schedule contains the Code of Conduct for Public Officers. Section 56(1) states that conviction of an offence involving dishonesty or fraud or having been found guilty of a contravention of the Code of Conduct are criteria for vacation of office and disqualification for election to public office.

**Public procurement and management of public finances (art. 9)**

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<sup>4</sup> <https://nials.edu.ng/index.php/2015-12-10-16-05-04/seminar/282-a-highlight-of-the-national-anti-corruption-strategy-nacs-for-nigeria>

Public procurement in Nigeria is regulated by Public Procurement Act 2017 which establishes and entrusts the Bureau of Public Procurement to monitor and supervise the correct implementation of the rules as well as determine whether a procuring entity has violated the PPA (sections 5–6). Nigeria applies a decentralized procurement system (PPA, section 15), but at the time of the country visit, an e-procurement portal was being piloted in order to centralize all public procurement advertisements.

### **Public reporting; participation of society (arts. 10 and 13)**

The Freedom of Information Act (FOIA) provides the right to access information (section 1(1)), without showing any specific interest (section 1(2)). FOIA also outlines the detailed grounds for denial (sections 11–12, 14–17, 19).

While asset declarations are not made public, at the time of the country visit, a bill for access to public officers' asset declaration foresaw that possibility for a citizen with a well-founded suspicion of breach of the Code of Conduct.

The Service Compact Initiative (SERVICOM) has established desks within each MDA to facilitate the access to information as well as service delivery. However, SERVICOM is not established by law and the staff manning the desks is employed by each respective MDA. Most public institutions, including ICPC, EFCC, NEITI, TUGAR and NFIU, publish their reports online, albeit not always in a timely manner

### **Private sector (art. 12)**

The Corporate Affairs Commission (CAC) was established pursuant to the Companies and Allied Matters Act (CAMA) and has issued regulations on compliance and reporting standards for private sector entities. The Convention on Business Integrity (CBI) was formally launched in 1997. Most private companies have since signed the CBI and committed to respect the standards of integrity. Nigeria is also a member of the Extractive Industries Transparency Initiative (NEITI). In response, extractive industry private sector entities have established internal compliance departments.

### **Measures to prevent money-laundering (art. 14)**

The NFIU was previously established through Sect 1(2)(c) of the Economic and Financial Crimes Commission (EFCC) Act. The Nigeria Financial Intelligence Unit Act 2018 which establishes the NFIU as an independent entity has been enacted. Nigeria has established a domestic regulatory and supervisory regime for a wide range of financial institutions (FIs) and designated non-financial institutions (DNFIs) (MLPA, sects. 3–5). The DNFIs are defined in a non-exhaustive list in Section 25 of the MLPA.

Further, the Special Control Unit against Money-Laundering (SCUML) was established to analyse and disseminate information relating to designated non-financial businesses and professionals (DNFBPs). SCUML works in close cooperation with the EFCC and the NFIU, but reports to the Federal Ministry of Industry, Trade and Investment. All suspicious transaction reports (STRs) are to be filed with the NFIU which is required to analyse the STRs; DNFBPs are to report currency transaction reports to SCUML; and DNFBPs are to report cash transactions exceeding \$1,000 to SCUML.

#### **Observations on the implementation of the articles under review Chapter V: asset recovery**

##### **General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)**

Nigeria has received and successfully responded to requests related to asset recovery and return. The Mutual Legal Assistance Act (MLA Act) and its guidelines have been established to facilitate international cooperation including asset recovery. The Central Authority Unit within the Federal Ministry of Justice facilitates speedy international cooperation and mutual legal assistance.

At the time of the country visit, an amendment to the MLA Act (Mutual Assistance in Criminal Matters Bill 2017, MLA Bill) was pending at the National Assembly to expand its coverage of States parties beyond the Commonwealth.

##### **Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)**

The NFIU receives and analyses financial data consisting of currency transaction reports (CTRs) and suspicious transaction reports (STRs) and disseminates the information to domestic law enforcement authorities and other FIUs. In addition to NFIU, SCUML was established in 2005 to enhance anti-money-laundering measures for DNFBPs in Nigeria (reference above article 14).

##### **Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)**

All legal persons, including foreign States as well as their embassies and missions in Nigeria, have *locus standi* and can therefore initiate civil action and sue for compensation or damages in Nigeria. The Administration of Criminal Justice Act 2015 (ACJA) provides a court with the power to order the defendant or convict to pay compensation or expenses to the victims (sect. 319). As there is no disaggregation of victims, a State that has been harmed can also receive such payments but is also required to retain local counsel.

Forfeiture of proceeds of crime is governed by the Advance Fee Fraud and Other Fraud Related Offences Act 2006 (sect. 17) and EFCC Act (sect. 24b). Nigeria has several legal provisions on non-

conviction-based forfeiture (e.g. sect. 17 (6) of Advance Fee Fraud and Other related Offences Act, sect. 330 of ACJA).

EFCC Act provides for measures to identify, trace, freeze, confiscate and seize proceeds of crime as well as collaborate with other States (sects. 5(j) and 6, para. 1(d)). EFCC Act sections 5(k), 28 and 29; MLPA section 6, paragraph 5(b); and ICPC Act section 46 permit competent authorities to freeze or seize property upon a request from other States also on suspected involvement in any crime. In addition, section 44(2)(k) of the Nigerian Constitution provides for preservation of property for confiscation on the basis of a foreign arrest or criminal charge. The management of recovered assets is also outlined in sections 153–157 ACJA.

### **Return and disposal of assets (art. 57)**

The final return and disposal of assets is outlined in ACJA section 321 and the compensation of bona fide third parties in section 319(1) b. On the disposition of confiscated property, Nigeria has concluded memorandums of understanding with several countries, such as France, Italy, Spain, Switzerland and Venezuela (Bolivarian Republic) (EFCC sect. 6(k)). At the time of the country visit, a guidance note for judges on the disposal of assets was being drafted.

### **Observation on implementation of Nigeria Policy on IFF**

Illicit financial flows had been identified as a significant barrier to a national sustainable development and the implementation of the Sustainable Development Goals (SDGs), which measures to curb its conduit are complex and multi-dimensional in nature. The need to address the menace of “IFFs and corruption”, lead to the Nigerian government introducing several policies which include: single windows trade platform in all of the country’s ports of entry and ensuring company registration and the Federal Inland Revenue Service (FIRS) were linked to the Corporate Affairs Commission (CAC) website, Voluntary Assets and Income Declaration Scheme (VAIDS), tax amnesty scheme for tax offenders, the Bank Verification Number (BVN) scheme, enactment of laws granting independence to the National Financial Intelligence Unit against money laundering and related crimes.

After the release of popular Report of the High Level Panel on Illicit Financial Flows from Africa Commissioned by the AU/ECA Conference of Ministers of Finance, Planning and Economic Development, Nigeria through its relevant agencies organized and international conference tagged ***Abuja Declaration on Promoting International Cooperation to Combat Illicit Financial Flows (IFFs) and Enhancing Asset Recovery to Foster Sustainable Development between 5<sup>th</sup> -7<sup>th</sup> June, 2017***, at the State House Banquet Hall, Abuja, Nigeria. The Conference tagged ‘Abuja IFF/AR’ was organized by the Government of Nigeria, in partnership with some development partners including the Government of the Kingdom of Norway.

The Conference focused on the policy measures, tools and strategies to effectively tackle illicit financial flows and strengthen asset recovery, with emphasis on propelling the implementation

of the recommendations of the African Union/UN Economic Commission for Africa High Level Panel on IFF to foster the achievement of the Sustainable Developments Goals (SDGs). Participants at the Conference included officials, experts, lawyers, parliamentarians, business executives, drawn from Africa and other parts of the World, as well as Members of the Diplomatic Corps, Regional bodies, Intergovernmental Organizations, United Nations Agencies, Financial Institutions, Professional associations and Academia, Private Sector and Civil Society Organizations.

In recognizing the challenge that Illicit Financial Flows and Asset Recovery have increased in scope and complexity, the Conference underlined the need to harness the full potential of the existing institutional and policy frameworks as transformative instruments for economic growth and poverty reduction. The steady increase in funds of illicit origin flowing from developing countries to developed countries in particular and between developing countries (South-South) was highlighted with concern raised on the increasing danger it poses to the sustainable development, the rule of law, and security of nations.

The Presidential Advisory Committee Against Corruption (PACAC) considered key thematic areas of IFF for implementation by Nigeria Government, as policy recommendations to be implemented as a response to the Africa High Level Panel on IFFs. They are; a) Combating Cross Border Flow of Corrupt and Criminal Assets; b) Understanding Illicit flows in Commercial Transactions; c) Holding IFF Facilitators and Intermediaries Accountable; d) Enhancing Asset Recovery and Asset Return; e) Management and Application of Return Asset for SDGs and Human Rights as well; f) Framework for International Cooperation and Financing for Development.

### **Observation on implementation of Nigeria Policy on FATF Evaluation Visit**

The FATF welcomes Nigeria's significant progress in improving its AML/CFT regime and notes that Nigeria has established the legal and regulatory framework to meet its commitments in its Action Plan regarding the strategic deficiencies that the FATF had identified in February 2010. Nigeria is therefore no longer subject to FATF's monitoring process under its on-going global AML/CFT compliance process. Nigeria will work with GIABA as it continues to address the full range of AML/CFT issues identified in its Mutual Evaluation Report.<sup>5</sup>

The last Mutual Evaluation Report relating to the implementation of anti-money laundering and counter-terrorist financing standards in Nigeria was undertaken by the Financial Action Task Force (FATF) in 2007. According to that Evaluation, Nigeria was deemed Compliant for 2 and Largely Compliant for 7 of the FATF 40 + 9 Recommendations. It was partially compliant or Non-Compliant for 5 of the 6 Core Recommendations. On 13 February 2019, the EU Commission adopted a new list of 23 third countries that had been identified as having strategic deficiencies in their anti-money laundering and counter-terrorist financing frameworks as defined under the Fourth and Fifth Anti-Money Laundering Directives. Nigeria has been included on this list. This

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<sup>5</sup> <https://www.knowyourcountry.com/nigeria1111>

list currently includes all countries currently on the FATF AML deficiency lists together with 11 additional jurisdictions.<sup>6</sup>

### **Compliance with FATF Recommendations**

Despite the various measures taken by the Nigerian government to combat financial crimes, Nigeria is a major drug trans-shipment point and a significant center for financial crime and cyber-crimes. Nigeria has made concerted efforts in recent times to address some of the challenges it faces implementing its AML/CFT regime. The Nigerian Financial Intelligence Unit (NFIU) is the national AML/CFT coordinator for Nigeria.

As part of follow up to the successes recorded, stakeholders were drawn from the financial and non-financial sectors of the Nigerian economy at the 2nd Round Mutual Evaluation assessment workshop organized by the Nigerian Financial Intelligence Unit (NFIU) on July 9 – 11, 2019, in Abuja, Nigeria. This workshop was convened as part of the final preparation for the Financial Action Task Force's (FATF's) Mutual Evaluation exercise and onsite visit scheduled for September to October 2019, the workshop afforded an opportunity for stakeholders to collectively review Nigeria's submissions to the awaited assessors and reconcile gaps.

FATF's styled regional body, the Intergovernmental Group Against Money Laundering (GIABA), conducted the second round of evaluation of Nigeria's mechanisms and systems for anti-money laundering and countering financing of terrorism (AML/CFT). The assessment was based on the new methodology for assessing technical compliance with the FATF Recommendations and the effectiveness of AML/CFT systems. The technical compliance component assesses the availability of necessary laws, regulations or other required measures for combating money laundering and terrorist financing in the country, and whether the supporting institutional frameworks for implementation are in place. The effectiveness component was to assess whether the AML/CFT systems are working, and the extent to which the country is achieving the defined set of outcomes.

The Head of FIUs concluded that legislative changes in Nigeria addressed the issues that led to its suspension in 2017. Consequently, the suspension on Nigeria was lifted. The NFIU can now participate in all Egmont events and activities with the full rights of a member. There are no international sanctions currently in force against the country. Nigeria is no longer on the FATF list of countries that have been identified as having strategic AML deficiencies.

NFIU has developed to ensure local government autonomy, in the bid to extricate the third tier of government from the firm grip of state governments. The issue of local government autonomy has constitutional flavour requiring the National Assembly to adjust the law to operationalize the proposal.

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<sup>6</sup> <https://www.knowyourcountry.com/nigeria1111>



## **WHAT WE HAVE IMPLEMENTED FROM THOSE RECOMMENDATIONS SO FAR AND VARIOUS POLICIES DEVELOPED TO CLOSE THE IDENTIFIED GAPS?**

ICPC has developed documents on preventing corruption in various sectors and institutions. ICPC and EFCC both have anti-corruption academies that deliver lecture trainings including to the staff of the various anti-corruption agencies and to public officials. Nigeria created a dedicated unit to carry out anti-corruption studies including risk assessments: the Technical Unit on Governance and Anti-Corruption Reforms (TUGAR), which publishes analytical reports on gaps and the compliance of Nigerian anti-corruption initiatives vis-à-vis regional and global anti-corruption instruments. Also, Presidential Advisory Committee Against Corruption and dedicated OGP Secretariat were created for advisory and coordination of reforms.

- The NACS and National Ethics and Integrity Policy have been adopted for implementation;
- The National Action Plan (NAP, January 2017–June 2019) that was adopted then has been successfully implemented, while the 2<sup>nd</sup> NAP has been developed and adopted for implementation.
- National Ethics and Integrity Policy was adopted and launched as part of activities to commemorate 20 years of ICPC to commemorate 60 year independent anniversary;
- TUGAR in collaboration with the Code of Conduct Bureau is sensitizing public officials across the country on the code of ethics in Ministries Departments and Agencies;
- Digitalization of recruitment processes has brought some transparency and integrity into the processes as part of the recommendations from the review.
- Integrity Reforms in the Judiciary: There has been a lot of collaboration between the judiciary and international partners within the context of the on-going reforms in the public sector. Most of these initiatives target the improvement of institutional capacity and judicial integrity in selected states. International partners such as Department for International Development (DFID) have focused on facilitating access to justice through the review of existing laws and staff capacity development.
- Nigeria Open Contracting Portal (NOCOPO) is about opening up public procurement in Nigeria through increased disclosure of procurement information to all stakeholders with a view to ensuring improved transparency and accountability, improve competition, prevent corruption, enhance active citizen participation towards achieving better service delivery and improved ease of doing business in Nigeria. This NOCOPO portal, conceived by the Bureau of Public Procurement (BPP) in line with Section 5(r) of the Public Procurement Act, 2007, was co-created with Civil Society Organisations in fulfillment of Commitment 2 of the Nigeria National Action Plan of the Open Government Partnership which is "Full implementation of Open Contracting and adoption of Open Contracting Data Standard in the public sector".
- Attorney General of the Federation has issued a circular on the establishment of a dedicated FOI Desk Officers among MDAs.
- Whistle Blower policy was introduced to encourage more public participation

- Presidential Initiative on Continuous Audit was established to promote accountability in government spending, strengthen existing systems and develop new frameworks to block leakages in government spending.
- Reactivation and strengthening of ACTU among the MDAs has increased.
- Increased in signing of MoU by ACAs with CSOs are well noted in project collaboration and implementation.
- With regard to the public finances, MDAs are called on a yearly basis to make proposals for their own budget which are collated by the Budget Office. Based on this, the National Assembly discusses the National budget in public hearings, where civil society participates.
- The Fiscal Responsibility Act 2007 (FRA) provides that the National Budget follow the previously approved Medium Term Expenditure Framework (MTEF) which is established in consultation with non-governmental organizations.
- The Government policy provides the creation of the Government Integrated Financial Management Information System (GIFMIS) and the Implementation of the Treasury Single Account (TSA) to monitor the financial activities of MDAs from a single platform.
- Nigeria has also committed to the plan to ensure more effective citizen's participation across the entire budget cycle.
- The new CAMA has been signed into law that covers area on Beneficial Ownership Register;
- Beneficial Ownership Road Map was developed and launched by NEITI
- NAP 2 was developed and adopted for implementation.
- NFIU has signed about 40 memorandums of understanding with local and international agencies to exchange and disseminate intelligence information as appropriate. In addition, the Inter-Ministerial Committee, which includes anti-money-laundering stakeholders, is in place at the national level for cooperation and information exchange among Nigerian ministries, departments and agencies.
- The Amended MLA Act was signed into law to further address number of current discrepancies and bring Nigeria's asset recovery legislation largely in line with the Convention regarding enhanced due diligence (EDD), the enforcement of foreign orders, the rights of bona fide third parties etc. Nigeria shares information with other countries through the Egmont group, as well as the International Criminal Police Organization (INTERPOL) I-24/7.

#### **KEY CHALLENGES TO IMPLEMENTATION OF THESE INSTRUMENTS**

- Delayed in considering adopting the bill of the Whistleblower Protection Act, as well as the Public Interest Disclosure and Witness Protection Bill (art. 8, para. 4)
- Endeavour to extend the applicability of asset declaration to all public officials, as well as the declaration of interest from which a conflict of interest may result (art. 8, para. 5)
- In ability of the Code of Conduct Bureau to make the declarations available to the public (art. 8, para. 5, and art. 10 (a))

- Give a suspensive effect to the inauguration of the Procurement Council as provided in the Public Procurement Act 2007 (art. 9, para. 1 (d))
- Take appropriate measures, with sanctions as needed, to ensure timely reporting on revenue and expenditure to the parliament (art. 9, para. 2)
- Consider clarifying and collating the reasons for denial in the FOIA (art. 10 (a))
- • Enhance the provision of specialized training for the judiciary on the risks of corruption to which the profession is exposed on a more systematic basis (art. 11 (a))
- Prohibit all elements as described under article 12, paragraph 3, of the Convention when they are carried out to commit an offence established in accordance with the Convention (art. 12, para. 3)
- Ensure that the lists of DFNI and DNFBPs are updated regularly or consider including a catch-all clause in order to ensure that the list remains relevant (art. 14, para. 1(a))

### **Technical assistance needs identified to improve implementation of the Convention**

- Capacity-building (arts. 5, 6, 7, 9, 10, 11 and 13):
- For the anti-corruption academies (training risk assessors, conducting risk assessments) (art. 5)
- Policy advisories in policy analysis (art. 5)
- Training and mentoring (art. 5)
- To the anti-corruption bodies (art. 6)
- Institution-building (arts. 5, 6, 7, 8, 9, 10, 11 and 13)
- Capacity-building for the institutions in developing and deploying strategic action plans, internal code of ethics and business processes (art. 5)
- Capacity-building in data management, i.e. storage, interpretation and deployment (art. 5)
- Relevant skills enhancement trainings in accordance with job description (art. 5)
- Building capacity of agencies on data storage and retrieval (art. 7)
- Policymaking (arts. 5, 6, 8, 9, 10, 11, 12 and 13)
- Good practice examples in deploying multisectoral anti-corruption strategies at different levels of government (art. 5)
- Legislative assistance (arts. 6, 7, 8, 9, 12 and 13):
- To amend the EFCC Act to ensure independence and security of the Chairman and the Board (art. 6)
- To provide financial autonomy to anti-corruption agencies (art. 6)
- Facilitation of international cooperation with other countries (art. 5)
- Good practice examples in international cooperation (art. 5)

### **RECOMMENDATIONS FOR: GOVERNMENT, CSOs AND THE INTERNATIONAL COMMUNITY**

1. There should be more transparency in the national asset recovery regime. The Asset Recovery and Management Unit of the Attorney General's Office should furnish the public

with monthly reports on assets recovered, the value of the assets and the specific purposes for which they are utilized and recovered assets should be invested in legacy projects whose impact can be felt by the broad citizenry that would stand the test of time and not on piecemeal projects and initiatives.

2. The National Assembly should prioritise and intensify efforts to pass the various Bills before it that are expedient to ensure transparent, accountable and effective recovery and management of looted assets in Nigeria including the Proceeds of Crime Bill and the Whistle-blower Protection Bill.
3. Government and civil society should place more emphasis on preventing the fresh looting of assets and flight of such assets out of the country, rather than the current reactive regime in which more effort is invested in tracing, recovering and managing looted assets. One way to do this is to deepen budget and procurement transparency and accountability work at all levels of government.
4. Amend the Constitution to separate the Office of the Attorney General and that of the Minister (Commissioner) of Justice at both federal and State levels to ensure efficiency, reduce political influence on exercise of public defender functions by the Attorney General, and increase independence fairness and perception of fairness by the public in exercise of the Attorney Generals functions.
5. A level of financial independence and adequacy in funding is needed in the fight against corruption. Perhaps operational funding for the major Anti-Corruption agencies and the Office of the Auditor General can be made a first charge on the consolidated revenue fund, in the alternative amendments to their statutes should be made allowing them to keep back as operational expenses at least 25% of public funds or value of public assets recovered as proceeds of crime. Sufficient funding of anti-corruption initiatives is fundamental to fulfilment of the country's commitment to combating corruption within the context of our local and international obligations to fight corruption.
6. To enhance the broader institutional framework for anti-corruption in Nigeria, emphasis should place on empowering constitutionally created governance institutions like the office of the Auditor-General and Code of Conduct Bureau. These institutions should be properly funded and enhanced.
7. The involvement of civil society in processes for the recovery and management of looted assets should be institutionalised. This should be included as an integral element of the on-going legislative reforms in the asset recovery regime in the country.
8. Intensify cooperation among the financial institutions and watchdogs in Nigeria and internationally, especially in regards to money laundering crimes including theft, corruption and tax evasion in the oil industry and other revenue generating industries;
9. Urgently establish companies' registry within Nigeria's Corporate Affairs Commission and make it public; as well improve data availability on freely searchable public and private companies' ownership. Disclose fully company's ownership structures, licencing, names of directors and management, public accounts and shareholder structures.

10. The Public Procurement Act should be extended to provide a legal framework for defence procurement and asset disposals or alternative legal provisions should be drawn up to regulate defence procurement and asset disposals.
11. Eliminate duplication of mandate between EFCC and ICPC for more effective implementation of anti-corruption policy as well ensure full independence from political interference to anti-corruption agencies.
12. Ensure that coherent statistics on prosecutions and investigations, including forfeited and confiscated assets are produced and updated regularly;
13. Asset declaration forms should be treated as public documents within the meaning of section 109 of the Evidence Act. The asset declarations of top government functionaries should be posted on the website of the Code of Conduct;
14. Popularise the implementation of the National Anti-Corruption strategy, and ensure that it provides mechanisms for creatively aligning different institutions and agencies in the Nigerian integrity framework, and supports private public partnerships against corruption in a manner that ensures; effective collaboration, co-ordination and synergy, as well as delineation of sectoral program priorities, within and outside the public service, whilst serving as the broad umbrella road map under which mass mobilization of citizens behind the crusade is pursued and achieved.
15. Create incentives and mechanisms for professional bodies to intensify efforts at coordinated ethics development, effective and efficient enforcement of all professional ethics and the introduction of sector specific private sector initiatives to prevent and combat corruption.
16. Efficiency and effectiveness in Judicial process in cases of corruption is needed to ensure deterrence, measures here should include; criminal procedure and evidence law reforms, stronger codes of conduct for prosecutors and judicial officers, improved conditions of service, for prosecutors and judges, improving skills and capacity for prosecuting agencies and the judiciary and periodic independent evaluation of progress in pending cases, and above all the process of appointment of judicial officers should be made more and emphasize public or at least peer scrutiny of nominees for appointment.
17. CSOs should initiate and support prevention and education programmes against corruption. In doing this, CSOs should engage, support and partner with anti-corruption agencies in the fight against corruption, CSOs at all levels should organize against corruption. By so doing, CSOs should continue to blow the whistle against corruption, and must always demand for accountability from the anti-corruption agencies