REPORT OF SCOPING SURVEY OF

ANTI-CORRUPTION INITIATIVES

IN NIGERIA

ACRONYMS

ACTUS	–	Anti Corruption Transparency Monitoring Units
ACMAP	–	Anti Corruption Monitoring Program
ACSF	–	Africa Corporate Sustainability Forum
AICC	–	African Institute for Corporate Citizenship
ANCOR	–	Anti Corruption Revolution
AUCPCC	–	African Union Convention on Prevention and Combating of Corruption
ADB	–	African Development Bank
BAA	–	Business Action for Africa
BAAC	–	Business Action Against Corruption
BPP	–	Bureau for Public Procurement
CAC	–	Corporate Affairs Commission
CAMA	–	Companies and Allied Matters Act
CBC	–	Commonwealth Business Council
CBI	–	Convention on Business Integrity
CBN	–	Central Bank of Nigeria
CCB	–	Code of Conduct Bureau
CCT	–	Code of Conduct Tribunal
CENSORJ	–	Centre for Social Justice
CGP	–	Capacity of Governance Program
CLEEN	–	Centre for Law Enforcement Education
CPA	–	Criminal Procedure Act 2004
CPS2	–	Country Partnership Strategy between Nigeria, DFID, World Bank, ADB and USAID
CSO	–	Civil Society Organisation
DFID	–	United Kingdom Department For International Development
EGP	–	Economic Governance Program
ECOWAS Protocol	–	Economic Community of West African States Protocol on the Fight against Corruption
EFCC	–	Economic and Financial Crimes Commission
EFCC Act	–	Economic and Financial Crimes Commission (Establishment Act) 2004
EPSR Act	–	Electricity Power Sector Reform Act 2004
FAAC	–	Federation Accounts Allocation Committee
FATF	–	Financial Action Task Force
FEC	–	Federal Executive Council
FFR	–	Federal Financial Regulations
FIs	–	Financial Institutions
FIRS	–	Federal Inland Revenue Service
FIU	–	Financial Intelligence Unit
FOI	–	Freedom of Information
FRA 2007	–	Fiscal Responsibility Act 2007
FRC	–	Fiscal Responsibility Commission
GIABA	–	Inter Governmental Action Group against Money Laundering in West Africa
HOS	–	Head of Service
IATT	–	Inter Agency Task Team of Anti Corruption Agencies
ICPC	–	Independent Corrupt Practices and other related Offences Commission.

ICPC Act	–	Corrupt Practices and other related Offences Commission Act 2000
ICT	–	Information Communication Technology
IFES	–	International Foundation for Electoral Systems
IIPG	–	Insurance Industry Policy Guidelines
INEC	–	Independent National Electoral Commission
ISA	–	Investment and Securities Act
MAMSER	–	Mass Mobilization for Self Reliance, Social Justice and Economic Recovery
MDAs	–	Ministries Departments and Agencies
MER	–	Mutual Evaluation Report
MTEF	–	Medium Term Expenditure Framework
MLPA	–	Money Laundering [Prohibition] Act 2011
MRA	–	Media Rights Agenda
NAICOM	–	National Insurance Commission
NASB	–	National Accounting Standards Board
NDIC	–	Nigeria Deposit Insurance Corporation
NDLEA	–	National Drug Law Enforcement Agency
NEEDS	–	National Economic Empowerment and Development Strategy
NEITI	–	Nigeria Extractive Industries Transparency Initiative
NEPAD	–	New Partnership for Africa Development
NERC	–	Nigerian Electricity Regulatory Commission
NFIU	–	Nigerian Financial Intelligence Unit
NGO	–	Non Governmental Organisation
NIPEX	–	Nigerian Petroleum Exchange
NJC	–	National Judicial Council
NNPC	–	Nigerian National Petroleum Corporation
NSWG	–	National Stakeholders Working Group [NEITI]
OAGF	–	Office of the Accountant General of the Federation
OGIC	–	Oil and Gas Implementation Committee
PCC	–	Public Complaints Commission
PENCOM	–	Pension Commission
PPA 2007	–	Public Procurement Act 2007
PPCB	–	Police Public Complaints Bureau
PPDC	–	Public and Private Development Centre
PSRP	–	Public Service Reform Program
R2K	–	Right To Know
SAFAC	–	Southern African Forum against Corruption
SAHRIT	–	Human Rights Trust of Southern Africa
SARU	–	Strategy and Re-orientation Unit of the EFCC
SEC	–	Securities and Exchange Commission
SEEDS	–	State Economic Empowerment and Development Strategy
SERVICOM	–	Service Compact with all Nigerians
SGF	–	Secretary to the Government of the Federation
SJG	–	Security, Justice and Growth Program of the DFID
SNAP	–	Strengthening the National Assembly Programme

StAR	–	Stolen Assets Recovery Initiative
TI	–	Transparency International
TUGAR	–	Technical Unit on Governance & Anti-Corruption Reforms
UNCAC	–	United Nations Convention Against Corruption
UNCICP	–	United Nations Centre for International Crime Prevention
UNDEF	–	United Nations Development Fund
UNDP	–	United Nations Development Program
UNICRI	–	United Nations Interregional Crime and Justice Research Institute
UNODC	–	United Nations Office on Drugs and Crimes
UNODCCP	–	United Nations Office on Drug Control and Crime Prevention
UNTOC	–	United Nations Convention against Transnational Organized Crime
USAID	–	United State Agency for International Development
WBG	–	World Bank Group
ZCC	–	Zero Corruption Coalition

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2.8.1 SUMMARY OF RECOMMENDATIONS 82

ACKNOWLEDGEMENTS

The Technical Unit on Governance and Anti-Corruption Reforms –TUGAR will like to thank all individuals and organizations who have made the production of this initial and phased baseline possible. We express our gratitude to the several governmental agencies at both the Federal and State levels who responded to our questionnaires and participated in our strategic interviews and validation meetings to provide information for these publications. We also express our gratitude to the several CSOS and private sector entities that also provided very useful information for this study.

Our profound gratitude goes to the National Stakeholders Working Group (NSWG) and the Secretariat of the NEITI for their mentoring and supporting role. We are particularly grateful to the Chairman of NSWG NEITI Professor Humphrey Assisi Asobie whose continual emphasis on the need for a research\data –policy nexus within the anti-corruption agenda has substantially driven this study. The current study consisting of a phased mapping exercise and Gap Analysis will form the basis for further analytical work to provide data support for the anti-corruption agenda.

We also express our gratitude to the members of the Inter-Agency Task Team (IATT) of anti-corruption agencies for their cooperation and support and creating the demand for the study. We thank especially the following people who devoted their time and expertise to review various components of this Study as follows:

1. Professor Etannibi Alemika
   Department of Sociology and Anthropology
   University of Jos.
2. Mr. Emmanuel Akomaye [MFR]
   Commission Secretary -Economic and Financial Crimes Commission (EFCC).
3. His Excellency- Ambassador Olawale Maiyegun, Ph.D
   Director
   Department of Social Affairs
   African Union
   Addis Ababa, Ethiopia

TUGAR is committed to providing data and research support to the fight to combat corruption in Nigeria.

EXECUTIVE SUMMARY

Nigeria had enormous challenges in its years of military rule and the corruption situation deteriorated in the eighties and nineties, to a point as described by President Olusegun Obasanjo in his inaugural speech as "The rules and regulations for doing official businesses were deliberately ignored, set aside or bye-passed to facilitate corrupt practices, instead of progress and development, which we are entitled to expect from those who govern us. We experienced in the last decade and a half and particularly in the last regime but one, persistent deterioration in the quality of our governance, leading to instability and the weakening of all institutions"[1]. The situation was further analysed by the Nigerian Governance and Corruption Survey, approved by government and concluded in 2001. That survey established that corruption was widespread in Nigeria as at that date (2000).

There have been many changes in the Nigerian Anti Corruption framework since that survey. The Country has enacted more laws, adopted policies and set up new structures to deal with various manifestations of corruption. The Country has also signed and ratified a number of anti-corruption Conventions such as the United Nations Convention Against Corruption (UNCAC), African Union Convention on Preventing and Combating Corruption (AUCPCC) and the Economic Community of West African States Protocol on the Fight against Corruption (ECOWAS Protocol). The current study scanned and scoped the anti-corruption environment using the above named regional and global frameworks as benchmarks. The study is part of the ongoing effort of TUGAR to develop a baseline and database of anti-corruption initiatives in Nigeria.

The findings of the study indicate that in terms of legal regime and existing initiatives the Nigerian system appears to be largely compliant with the requirements of the United Nations Convention Against Corruption (UNCAC), African Union Convention on Preventing and Combating Corruption (AUCPCC) and the Economic Community of West African States Protocol on the fight against Corruption (ECOWAS Protocol). The structures, laws and institutions include ones that were already in existence prior to adoption of the International Anti Corruption Instruments. Indeed Nigeria has come a long way in policy, institutional reform and anti corruption programming from the position it was in the year 2000.

This report however identifies weaknesses and gaps both in the domestic law and practice. There are areas where the domestic legal regime requires new laws. The case of public access to information, whistle blower and witness protection, procedure for public access to assets declaration forms, non-conviction - based asset forfeiture regimes, and money laundering and anti-terrorism financing are examples. The Evidence Act, The Criminal Procedure Law, The Corrupt Practices and other Related Offences Commission Act, the Economic and Financial Crimes Commission (EFCC) Acts 2004, Code of Conduct Bureau (CCB) and Tribunal (CCT) Acts require modifications. Some of these required modifications will enhance institutional effectiveness and independence.

Summary of Key Findings

Prevention – Chapter 11 of UNCAC

There is in place, a regime for preventive measures which includes the Corrupt Practices and Other Related Offences Act 2000(ICPC Act), the enabling law of the ICPC. This law criminalizes several corrupt activities and provides powers for the agency to engage in preventive measures and education against corruption. The EFCC Act 2004 also creates a Commission to focus on financial and economic crimes, with extensive powers to implement and enforce several laws and to put in place mechanisms for prevention and education against financial and economic crimes. Both laws establish dedicated anti corruption agencies. The Fiscal Responsibility Act (FRA) 2007 and the Public Procurement

[1] President, Olusegun Obasanjo's inaugural speech, published in the Guardian Newspapers of 29th of May 1999

Act (PPA) 2007 provide regimes and comprehensive framework for regulation of fiscal planning, and management of public expenditure at the Federal level in Nigeria, which are fully compliant with requirements of UNCAC, AUCPCC and ECOWAS Protocol. While the PPA applies to the entire Federal Government structure as well as projects at other levels of government and sectors, where the Federal Government is contributing at least 35% of project costs, the FRA applies to the State and Local governments only on a few issues like debt and borrowing and the oil based fiscal policy rule. As a result of Nigeria's federalist structure, with independent State Governments, the provisions of these two laws will only apply fully to State operations, if State Assemblies pass them into law. Only eight out of 36 States of the Federation have passed similar laws, and amongst these eight, none has fully implemented any of these laws passed. States and Local Governments control about 55% of national revenues.

There is also the Nigeria Extractive Industries Transparency Initiative (NEITI) Act 2007, which creates a National Stakeholder Working Group [NSWG] and provides a multi stakeholder framework for actual audit of the extractive industry and monitoring of receipts and expenditure of revenues from extractive industries.

The Federal and State Civil Service Commissions are Constitutional bodies. The third Schedule to the 1999 Constitution vests the Commissions with powers to appoint, dismiss and exercise disciplinary control over persons holding offices at the federal and state services respectively. The Federal Character Commission which is created by the Federal Character Commission Establishment Act Cap F7 LFN 2004 regulates equity and representations of all sections of the country in the service in accordance with the Act. Three factors determine recruitment and promotions in the civil service in Nigeria. The first is the availability of vacancies as declared by the Ministries, Departments and Agencies (MDA's), the second is qualifications and the third federal character principle.

The Public Service Rules at the Federal and State levels include financial regulations, which guide financial record keeping and auditing which is overseen by the Office of the Auditor General created by the Constitution. Also the Constitution provides for a Code of Conduct Bureau and Tribunal which prescribes, administers and enforces the Code of Conduct for public officers.

There are several professional ethics rules for existing professions and business codes in the private sector in Nigeria, as well as a Code of Corporate Governance for public quoted companies
issued by Securities and Exchange Commission (SEC) and the Corporate Affairs Commission. There is the Code of Corporate Governance for Banks in Nigeria [Post Consolidation] and the provisions of the Companies and Allied Matters Act (CAMA) Cap C20 LFN 2004 providing requirements for reporting company operational and management procedures.

The Nigerian legal framework for prevention of corruption appears largely compliant with the UNCAC, AUCPCC and ECOWAS Protocol standards and principles. However the absence of an access to information regime, poor remuneration, absence of whistle blowers and witness protection regimen among others disclose significant gaps in the anti-corruption agenda.

Criminalization and Law Enforcement – (Chapter 111 of UNCAC and Article 4 and 5 of AUCPCC and Article 6 and 12 of ECOWAS Protocol)

UNCAC, AUCPCC and ECOWAS Protocol require criminalization of a wide range of corruption activities and the establishment of measures and mechanisms to support and enforce the offences created. Nigeria has largely complied with the provisions of UNCAC, AUCPCC and ECOWAS protocol on criminalization of corruption activities. The ICPC Act 2000, The EFCC Act 2004, The Money Laundering (Prohibition) Act 2004 (MLPA) 2004, the Advance Fee Fraud and other related Offences Act 1995, the

Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 1994 as amended, the Miscellaneous Offences Act, the Code of Conduct Bureau and Tribunal Act 1975, the Criminal Code and Penal Code Acts jointly and substantially criminalizes articles 15-27 and articles 28-41 of UNCAC, Articles 4&5 of AUCPCC and 6 &12 of ECOWAS Protocol. However some private sector activities required to be criminalized by UNCAC do not appear fully covered. Additionally many sectoral reform laws in Nigeria have criminalized several other corruption related activities that otherwise were not offences. These legislations include the Pension Reform Act 2004, Public Procurement Act 2007, and the NEITI Act 2007.

In respect of enforcement, many laws, mechanisms and powers necessary for detection, prosecution, and punishment exist in the Nigerian legal system. The Nigerian Police supports the enforcement powers and activities of the dedicated Anti Corruption Agencies, in addition to carrying out enforcement measures on its own. However as already indicated, Nigeria is yet to comply with obligations for Witness and Whistle Blowers Protection and also the local laws do not provide directly for reparation for victims of these crimes. Existing domestic law requires forfeiture of assets and proceeds of crime to and in the name of the Government of Nigeria, but has no provisions for the return of seized assets to original owners, even though there have been instances of such return in practice. However Section 22(2) of the EFCC Act makes such forfeiture subject to existing treaties and arrangements with other countries. In cases where such treaties provide for repatriation of assets to other countries, then the provisions of the treaty will supercede the requirement to forfeit to the Federal government of Nigeria. While this may cover repatriation to other countries with whom Nigeria has such a treaty, it does not cover return of assets to individual owners, and compensation for victims of crimes. The only exception in this respect is the singular case of Lagos State, one of the 36 States of the federation, where its new Criminal Justice Administration in the High Courts Law 2007 provides for victims compensation.

Nigeria has sufficient specialized enforcement institutions with coercive powers to enforce the laws, though in practice their independence may not be certain. Allegations of political interference are common and persistent. There are also weaknesses in co-operation amongst national authorities and between national authorities, private sector and the citizens sector, which has affected levels of mobilization of citizens in support of the crusade. This has been attributed to the absence of an overarching national strategy and action plan.

The new initiatives such as the Technical Unit on Governance & Anti Corruption Reforms – (TUGAR) and the Inter Agency Task Team of Anti Corruption Agencies (IATT) are intended to improve co-ordination and co-operation amongst local agencies, and other stakeholders. A national strategy to combat corruption is currently at the finalization stage. The enforcement of anti-corruption laws in Nigeria can and should be made stronger and more comprehensive by a review of the criminal procedure laws, witness protection regimen, evidence and administration of justice system reforms as well as improved independence of institutions.

Assets Forfeiture and Recovery, (Chapter V UNCAC Article 16 of AUCPCC and Article 13 of ECOWAS)

Article 14 of UNCAC requires State parties to establish regulatory and supervisory framework to combat money laundering and cooperation of agencies involved at local and international levels, and the establishment of Financial Intelligence Unit (FIU) to monitor movement of cash in and out of State borders. It requires that financial and non-financial institutions within State Parties collect information on origin of electronic fund transfers and scrutinize incomplete information. It further requires banks and non bank financial institutions to keep customer and where appropriate beneficial owner identification records and report suspicious transactions. Also AUCPCC and ECOWAS Protocol require that

competent authorities be given power to identify, locate and seize proceeds of crimes, and that State Courts be empowered to make necessary orders, including transfer of such assets to the country of origin. Additionally Article 23 of UNCAC, Article 6 of AUCPCC and Article 5 of ECOWAS Protocol obligates State parties to criminalize conversion, transfer or disposal of property which are laundered proceeds, concealing the nature/source and location and ownership of proceeds of crime, acquisition, possession or use of proceeds of crime, knowing its nature, participation/association with conspiracy to commit/facilitate/counsel offences of corruption.

The Nigerian system through provisions of the EFCC Act, ICPC Act and MLPA 2011 are to some degree compliant with the provisions of UNCAC, AUCPCC and ECOWAS Protocol. The Central Bank of Nigeria (CBN) has issued a Know Your Customer (KYC) guideline which is being implemented, and the National Insurance Commission (NAICOM) has a draft regulation in this respect which is expected to come into force in the current year. However the Nigerian regime does not provide directly for transfer of assets back to country of origin, except where a treaty exists in that respect and has no provisions for non conviction based assets forfeiture nor direct provisions for reparation for victims of such offences. Also the reporting regime for Designated Non-Financial Institutions and Businesses requires strengthening and increased monitoring. Further in other to determine levels of compliance by financial institutions to the reporting requirements, there is need for increased monitoring. Nigeria needs to continue to take steps to fulfil the recommendations of *the prima facie review* of the Nigeria' AML/CFT system by the Financial Action Task Force's (FATF) Regional Review Group on Africa and Middle-East as contained in the Inter Governmental Action Group against Money Laundering in West Africa (GIABA) Secretariat Analysis Second Follow up Report 2010. Also the provisions of the law relating to victims compensation, and transfer of proceeds of crime to its original owner requires strengthening and clarity.

International Co-operation and Technical Assistance and Information Exchange – Chapter 1V & V1 of UNCAC, Article 15, 16 & 19 of ECOWAS Protocol and Articles 18 &19 of AUCPCC

Chapter IV of UNCAC contains important provisions relating to International Cooperation between law enforcement authorities and technical assistance in the prevention and fight against corruption. It requires the establishment of a comprehensive system for mutual legal assistance between law enforcement authorities and covers such issues as extradition, gathering and transferring evidence and information, assisting investigations and prosecutions, joint investigation, the transfer of criminal proceedings and special investigative techniques and non application of bank secrecy laws. By these provisions, state parties have agreed to cooperate with one another in these aspects of the fight against corruption. Both AUCPCC and ECOWAS Protocol also provide for Mutual Legal Assistance in gathering and transferring evidence for use in court and to extradite offenders. Nigeria has substantially complied with the requirements of these conventions.

The EFCC Act in Section 6(j) empowers the Commission to deal with issues relating to extradition, deportation and mutual legal assistance between Nigeria and other countries relating to financial and economic crimes. The same section also provides for facilitation of rapid exchange of information and conduct of joint operations, and allows it to collaborate with bodies within and outside Nigeria on these activities provided for by the three conventions. The mandate it gives, includes tracing of proceeds of corruption, exchange of information, expertise and personnel, movement of proceeds of these crimes, monitoring systems to support identification of suspicious transactions, maintaining data and reports on persons and organizations involved with financial and economic crimes, undertaking research, public enlightenment, and co-ordination of all related activities. Additionally the Attorney General of the Federation and Minister of Justice is the designated Central Authority for Mutual Legal Assistance for Nigeria. Nigeria has indicated strong support for the Stolen Asset Recovery Initiative (StAR) pioneered by the United Nations Office of Drugs and Crime UNODC and the World Bank, and is an active member of the GIABA an FATF styled West African regional body.

Nigeria also has an Extradition Law, the Extradition Act Cap 125 LFN 2004. The Act is applicable to all Commonwealth countries, provided they also accord Nigeria the same privilege in their domestic laws. The provisions of the EFCC Act also extend to technical assistance and cooperation. It was affirmed at the time of producing this report that Nigeria treats extradition requests judiciously. There are existing technical co-operation and assistance initiatives; an example is the one between the European Union and Nigeria. However Nigeria at the time of ratification did not indicate that UNCAC or UNTOC shall be a basis for extradition. Further, to ensure clarity in MLA issues, there is need for a legal framework to guide the process and in the least a Navigational Guide fashioned from existing laws to facilitate timely response to MLA requests.

Non-State Actors

The Study found that often when government and even individuals refer to civil society in Nigeria they refer to NGOs. Nigerian civil society is however broader and includes professional associations, organised labour and interest groups; human rights groups and NGOs; primordial groups defined in ethnic, regional and religious terms; business organised interest and developmental associations, as well as community and neighbourhood associations. Others referred to as civic public associations include trade unions, students, churches and mosques; other civic associations / primordial public relations (Afenifere, Arewa Peoples' Congress Ohaneze Ndi Igbo e.t.c); indigenous development associations, and recently defiant militia or extremist religious groups like Boko Haram, MEND etc.

The study found a plethora of on-going initiatives in Nigeria at the levels of both international and local Non-State Parties. Amongst some NGO's, it found specific activities and initiatives focused on anti-corruption education, prevention and activities that have improved information sharing, reporting of corruption and participation of society in the crusade against corruption and in governance decision making in Nigeria. Amongst the donor community it found several interventions and support for governance and anti–corruption related reforms and initiatives. These activities continue to improve the levels of compliance of the Nigerian integrity system with UNCAC, AUCPCC and ECOWAS protocol.The study found private sector engagement to be limited and even the promising efforts of civil society to be insufficient.

The scoping and compliance exercise highlighted a number of good practices as well as entry points for further action in the area of establishment of independent anti corruption agencies, on going public service reforms, fiscal planning and procurement reforms, prescription of criteria for candidature and election, prescription of standards for transparency in political financing, criminalization of most internationally required offences, international co-operation etc. In summary it found that the letters of Nigeria's anti corruption laws and rules are in these respects significantly compliant with the UNCAC AUCPCC and ECOWAS Protocol provisions, whilst in some other respects like; access to information, whistle blowers and witness protection, remuneration, recruitment and promotion of public officers and to some limited degree assets forfeiture etc it fails to meet the required international standards. As a matter of fact some of the provisions within the UNCAC were already part and parcel of Nigeria's criminal law regime prior to the entry into force of UNCAC. There is also a sense in which the government has attempted to imbibe the letter of the continental and regional instruments on policy formulation and establishment of anti corruption institutions, though the challenge of lack of effective implementation of existing policy and laws persists, and needs urgent action capable of reversing the trend.

Nigeria has taken some steps lately to improve inter agency co-ordination, with the establishment of the Technical Unit on Governance and Anti Corruption Reforms (TUGAR) and the IATT. The ongoing interagency efforts to produce a National Strategy to combat corruption is additionally intended to enhance co-operation and co-ordination, as well as monitor progress in domestication and compliance with UNCAC, AUCPCC and ECOWAS Protocol. It is safe to say that Nigeria is armed with many of the

legislations required for compliance with UNCAC and that the few others needed are currently under consideration at the National Assembly. Nigeria has certainly improved its domestic regime for fighting corruption from where it was at its return to civil rule in 1999. However despite the existence of legal frameworks on anti-corruption in addition to enabling structures instituted by government such as ICPC, EFCC Code of Conduct Bureau etc as well as mainstreaming the issue of corruption, the results have not been encouraging[3]. Sadly this remains substantially the situation till date, such that even in the many areas where the domestic regime is substantially compliant with UNCAC, AUCPCC and ECOWAS, implementation has remained low.

SCOPE, AIMS AND OBJECTIVES OF THE STUDY.

This Study has a dual focus and therefore two major activities: a scoping study of major anti-corruption initiatives and a compliance analysis with major international anti-corruption conventions to which Nigeria is a signatory. The objective of the scoping assignment is to conduct a mapping and scoping of anti corruption 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 to construct a data base of anti-corruption initiatives, structures and key actors which would in turn enable and support further analytical work on the issue. The survey which covers initiatives at the Federal Level and six states selected from each of the six geo-political zones is benchmarked against three international anti-corruption instruments to which Nigeria is a signatory: the United Nations Convention Against Corruption (UNCAC), African Union Convention on Preventing and Combating Corruption (AUCPCC) and the Economic Community of West African States Protocol on the fight against Corruption (ECOWAS Protocol)
This first phase of the mapping and scoping exercise captures anti-corruption and related governance initiatives at the Federal Level with the following components: Policy Framework; Legal framework; Mandates and deliverables; Structure; Capacity Issues; and Cross cutting and related issues. The scoping also captured non-state actors initiatives on anti-corruption issues. The mapping and scoping exercise at the State level captured initiatives related only to the Public Finance System in the following States: Rivers, Lagos, Plateau, Kano, Enugu and Bauchi.

STUDY METHODOLOGY

TUGAR procured the services of A&E Law Partnership to carry out this exercise. The A&E Law Partnership developed a methodology which was approved by TUGAR. The study adapted some of the approaches applied in the Bangladeshi UNCAC compliance review process by focusing on the key corruption themes of the UNCAC i.e. Criminalization and Enforcement; Prevention; International Co-operation; Assets Recovery and Forfeiture; and the Role of Non State Actors. Specifically, the study methodology included the following:
The Team conducted a desk review of available information on the Nigerian Anti Corruption system. This was followed with development of information gathering instruments to help systemize information collection.

Instruments for Information collation

The instruments for information collection were separated along the lines of the key themes of this study, Prevention, Criminalization, International Co-operation and Technical Assistance, Assets Recovery and activities of Non State Actors and international organizations. There was also a separate instrument for information collection from States.

[3] National Integrity Systems Transparency International Country Report Nigeria 2004

CHAPTER 1

1.1. INTRODUCTION AND CONTEXT

The Federal Republic of Nigeria covers an area of 923.8,000 square metres with an estimated population of 148million people[4] and comprises thirty six states or federating units, and a Federal Capital Territory. Nigeria operates a presidential representative democratic republic. The President is both Head of State and Head of Government, within the context of a multi-party system with three distinct, but complementary arms of Government namely the Executive, the Legislature and the Judiciary. The Executive arm of Government, at the Federal level, consists of the President, the Vice-president and other members of the Executive Council of the Federation, while at the State level it is made up of the Governor, the Deputy Governor and other members of the State Executive Council. The President, the Governors and their Deputies, are elected, under the present constitution, for a four year term, renewable only once. There is no limit to the number of times Federal and State legislators can be re-elected. The Senate President is the Head of the Federal Legislature.

The Legislature is present at both the Federal and State levels. The Federal Legislature comprises a 109 - member Senate and a 360-member House of Representatives. The two, combined, is known as the National Assembly. At the State level, the Legislature is known as the House of Assembly and has only one chamber. The Legislature at both the State and Federal levels serve as watchdog to the excesses of the executive arm of government.

The Judiciary is the third arm of government. It interprets the laws and adjudicates in conflicts between the Executive and the Legislature, amongst citizens, and between citizens and public and /or private organizations and vice versa. It carries out these functions through the various established courts. The Supreme Court is the highest court of the land, followed by the Court of Appeal, the Federal and State High Courts as well as the Customary and Sharia Courts of Appeal, Magistrate Courts, Area Courts and Customary Courts in that order.

The country is the world's eighth largest exporter of crude oil with an estimated income of $20 billion generated annually[5]. Despite its oil riches, 70 percent of the country's population live below the poverty line on less than a dollar a day. The disparity between the economic statistics and the relative well being of the average Nigerian however, has placed Nigeria in the global spotlight in terms of weighing the impact of corruption on the character of the State and its ability to deliver basic goods and services to its citizens.

Nigeria's federal system of government has situated the issue of fiscal federalism as critical to the functionality of government. However the allocation of federal revenues has been a problematic aspect of fiscal federalism, largely because the States are unequally endowed and therefore some are more dependent on allocations from the Federal Government. This has also fuelled the notion that oil generated revenue makes up a 'national cake' which everyone should aim to obtain as much of as possible. This understanding has played a role in exacerbating corrupt practices and challenging attempts to address corruption within both the private and public spheres. The federal-character principle emerged as a balancing formula within the 1979 constitution to forestall the domination of the government or any of its agencies or resources by persons fromone or a few states, ethnic groups, or sections. Its application however has posed many challenges. Again the uneven rates of development among the States and sections was largely responsible for the tension and controversy associated with the application of this principle, complicated by the pattern of distribution of the major ethnic groups.

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[4]National Planning Commission, 2006 Population Census

[5]Ribadu, 'The challenge of corruption in Nigeria' being a paper developed for the Boston Globe, December 2006

Corruption in Nigeria is estimated to have cost the country at least USD 400billion from the country's oil earnings between 1960 when the country obtained her independence and 2009[6]. It certainly accounts for the level of poverty that majority of Nigerians face.

1.2 THE FIGHT AGAINST CORRUPTION IN NIGERIA

1.2.1 Public Sector Reforms

The situation was analyzed in the Nigerian Governance and Corruption Survey 2001 approved by government and concluded in 2001 with the Assistance of United States Agency for International Development (USAID) and the World Bank. That survey established that Corruption was widespread in Nigeria as at that date (2000).

This current study found that attempts to combat corruption have been most visible and gained momentum in Nigeria following the return to civilian rule in 1999. 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 a Budget Monitoring and Price Intelligence Unit was set up in the Presidency with a mandate which included reviewing existing procurement regulations and procedure; identifying reasons for leakages and coming up with an improved public procurement strategy for Nigeria. This unit came up with the Due Process Mechanism, which is essentially a process for contract award, review and oversight certification. This initiative has been strengthened with the passage of the Public Procurement Act [PPA] in 2007 and the establishment of the Bureau for Public Procurement-BPP.

Public sector reforms in Nigeria also focused on the Privatisation of Public Enterprises on the one hand and reforming public administration processes and the management of public finance on the other. The latter led to concrete practice changes in areas such as the adoption of the medium term expenditure framework (MTEF) in budgetary planning and spending, so as to encourage national planning and budget tracking; the publication of revenue allocations to all tiers of Government & the monetization of the benefits of public officials. The other trajectory that came with this has to do with reinforcing administrative capacity in the public service through changes in employment, retrenchment and remuneration policies.

1.2.2 Dedicated Anti-Corruption Agencies: The reforms spanned from energizing existing **dedicated** anti-corruption institutions to establishing new ones. The institutions include:

a) **The Independent Corrupt Practices and other related offences Commission**
The Corrupt Practices and Other Related Offences Act 2000 [ICPC Act] established the ICPC. The Commission's mandate empowers it to effectively adopt a 3-pronged approach similar to the ICAC Hong Kong model in fighting corruption. It gives ICPC full and effective powers to educate against, prevent, investigate and prosecute cases of corruption in the Public sector and to a limited extent in the Private Sector.[7]

b) **The Economic and Financial Crimes Commission**
The Economic and Financial Crimes Commission [Establishment] Act 2004 [EFCC Act] established the Economic and Financial Crimes Commission [EFCC]. This Act was amended in 2004 to provide for the establishment of a Nigerian Financial Intelligence Unit within the EFCC. The EFCC is a dedicated agency focused on prevention, education, investigation and

[6] 'The hidden cost of corruption in Nigeria; Kennedy, USAID policy paper, April 24 2009.

[7] Section 52 of the Independent Corrupt Practices and Other Related Offences Act 2000

prosecution of economic and financial crimes, as well as co-ordination, locally and internationally of all efforts focused on education, prevention and prosecution of economic and financial crimes.

c) Code of Conduct Bureau

The Constitution of the Federal Republic of Nigeria 1999 provides for a Code of Conduct Bureau and Code of Conduct Tribunal and gives constitutional authority to these bodies, which had existed by virtue of Decree No 1 of 1989. The Constitution and the Code of Conduct Bureau and Tribunal Act Vol. 2 Cap C15 LFN 2004, compels every Public officer to make declarations of assets to the Bureau in a prescribed format. It also gives power to the Bureau, to receive declarations of assets of all public officers, retain custody of the declarations and make them available for inspection by every Nigerian citizen on such terms and conditions as the National Assembly may prescribe.[8] However no such conditions have been prescribed and citizens are yet to be allowed to inspect declarations of Assets in Nigeria. The Bureau also has powers to enforce the code of conduct for public officers contained in the enabling law and the Constitution.

Nigeria has also signed many international instruments such as the United Nations Convention Against Corruption [UNCAC], The African Union Convention on Preventing and Combating Corruption [AUCPCC] and is now fully a part of the Global effort against corruption and financial crimes.

d) Nigerian Extractive Industries Transparency Initiative

The Nigerian subset of the Extractive Industries Transparency Initiative NEITI) was established with the mandate of ensuring transparency and accountability and eliminating corrupt practices in payment and receipts within the extractive sector.

e) The Technical Unit on Governance and Anti-Corruption Reforms (TUGAR) is a recent part of governments' anti-corruption intervention in Nigeria. TUGAR was conceptualized and established to address the need to generate coordinated country - specific data as a basis for isolating and addressing issues of corruption and governance in the country, while also facilitating coordination, synergy and strategic linkages among anti-corruption and oversight agencies.

f) The Bureau of Public Procurement ((BPP) is set up with the mandate to ensure probity, transparency and accountability in the procurement process.

g) The Public Complaints Commission (PCC) is the ombudsman with the mandate to investigate and redress complaints of citizens relating to administrative injustice and anomalies against the government or private entities.

h) The Auditor-General of the Federation and States are offices established by the Constitution to audit public accounts and present periodic reports to the National Assembly.

1.2.3 Anti-corruption and the Legislative arm of Government

The 1999 Constitution empowers the National legislature to by resolution, direct or cause to be directed investigation into any matter or thing into which it has powers to make laws, the conduct of affairs of any person, authority, ministry government charged with the duty of executing or administering laws enacted by it and or disbursing or administering monies appropriated by it.[9] According to S 88(2) these powers are

[8] Paragraph 3 (c) of Part 1 to the Third Schedule of the 1999 Constitution
[9] Section 88 1999 Constitution

exercisable for the purpose of making laws, exposing corruption, inefficiency or waste in the execution and administration of laws within its competence and in administration of funds appropriated by it. The Constitution also gives similar powers to the State legislature.[10] At the National Assembly the Public Accounts Committee of both chambers is responsible for consideration of the Auditor General's Report as well as investigation and oversight action where the need arises.

To align with the anti-corruption war, both chambers of the National Assembly established internal committees tasked with handling issues relating to corruption. Within the lower house (House of Representatives), the committee is known as the House Committee on Anti-Corruption, National Ethics and Values while the upper house (Senate) committee is called the Senate Committee on Ethics, Code of Conduct and Public Petitions.

1.2.4 Integrity Reforms in the Judiciary

There has been a lot of collaboration between the judiciary and international partners within the context of the ongoing 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. In pursuance of its Global program, The United Nations–Centre for International Crime Prevention (UNCICP) and the office of Drug Control and Crime Prevention (UNODCCP) and the Interregional Crime and Justice Research Institute (UNICRI) drew up a Global program against corruption. It was in pursuance of this program that Nigeria entered an agreement with CICP to implement the judicial integrity project in Nigeria for strengthening the Capacity and integrity of the Judiciary with pilot Programs in some states.

1.2.5 Co-ordination, Monitoring and Evaluation

However, except for integration in the Nigerian Economic Empowerment Development Strategy (NEEDS), the fight against corruption in Nigeria lacked an overarching strategy or road map, and this is partly why monitoring and assessment of progress has been challenging. Additionally co-ordination and collaboration amongst the many agencies, some of which have overlapping mandates has been difficult. Given the array of anti-corruption initiatives, it became obvious that to foster co-ordination of these agencies, it would be necessary to organise a broader inter-agency co-ordination effort. It was this gap which necessitated the establishment of the Technical Unit on Governance and Anti Corruption Reforms (TUGAR) and the Inter Agency Task Team (IATT) with TUGAR as it secretariat. TUGAR and the IATT was established by the Nigerian government in collaboration with the United Nations Development Program (UNDP) and the World Bank, to provide data support and ensure collaboration and cooperation amongst the various agencies with the mandate to fight corruption and ensure transparency and accountability in Nigeria. This new initiative is structured to enhance co-ordination, information flow, experience sharing and data coordination.

[10]Section 128 1999 Constitution

CHAPTER 2

2.1 BACKGROUND

This section of the report presents feedback from a mapping of anti corruption intervention in Nigeria from both programmatic and policy perspectives. It includes sector specific interventions as well as country level activities involving international anticorruption processes (e.g. application of the UNCAC, the AUCPCC and the ECOWAS Protocol – on such themes as Prevention, Criminalization and Enforcement, Asset recovery, Money laundering, and International Co-operation). The purpose of this part of the report is to provide strategic information that can eventually feed into a database of initiatives, structures and key actors and also support further analytical work on anti corruption intervention in Nigeria.

This part of the report is divided into six sections: a Historical Perspective and five other sections dealing with anti corruption initiatives as they relate to the following key thematic issues covered in UNCAC: **Prevention, Criminalization and Enforcement, International Co-operation, Assets recovery and forfeiture; Non-State Actor Intervention.** It will consider these issues and initiatives in the sequence of the UNCAC provisions, article by article. The final section in summary form collates some of the gaps identified by stakeholders while also proffering possible solutions and entry points for further anti corruption work in Nigeria.

2.1.1 Historical Perspective

Nigeria has at different times deployed several administrative measures, policies, initiatives and laws aimed at corruption prevention. The first serious administrative reform effort against corruption after independence in Nigeria occurred during the period 1975 – 1976, and was intended to improve the quality of the public service, identified as a major solution to corruption. The focus appeared then to be on corruption and inefficiency. It resulted in retrenchment of civil servants for offences ranging from inefficiency, fraud and embezzlement, to abuse of office. These were the processes accompanying the establishment of the Public Complaints Commission and the Code of Conduct Bureau and Tribunal.

This was later followed by the General Buhari and Idiagbon government led "War Against Indiscipline (WAI)". They uncovered corruption through a probe of Shagari's government, and imprisoned many that were found complicit, albeit without a finding of guilt by a competent court and in certain cases their loot were confiscated. It emphasized discipline and orderly conduct and ushered in a brief period of ethical rebirth. However, it appeared to lose focus when it spread to a war against journalists and free speech.

The General Babangida and Gen Abacha years [1985 to 1998] saw the emergence of the Jerry Gana led Mass Mobilization for Self Reliance, Social Justice and Economic Recovery (MAMSER), and the War Against Indiscipline and Corruption (WAIC). Both initiatives achieved limited progress. Nigeria soon became a pariah State following the execution of Ogoni Political activists including Ken Saro Wiwa.

The corruption situation was analyzed by the Nigerian Governance and Corruption Survey approved by the President Obasanjo led government, with a comparative analysis of levels of perception of corruption in different sectors. The reaction to that survey report, included a potpourri of policy directives, laws, strategic initiatives and institutional approaches of the new democratic government focusing on this problem, good in themselves, but failing in providing a constructive central road map and co-ordination mechanism, to mobilize citizens support and through which synergy may be achieved or progress can be continuously measured. Some of these initiatives were mainstreamed into the National Economic Empowerment and Development Strategy (NEEDS).

Nigeria's NEEDS 1 proposed many preventive anti-corruption policies and practices, which have now been put in place. It had four key components;

a) Economic Management Reform i.e. fiscal discipline, public resources management/utilization, financial sector reforms (banking, insurance etc) tax reforms, customs restructuring and accelerated privatization and liberalization of the economy;
b) Governance reform and institutional strengthening – electoral reform, law reform, and strengthening the democratic process.
c) Public service reform – including public expenditure and budget reforms, with a focus on efficiency, responsiveness and service delivery; and
d) Transparency, accountability and anti-corruption reforms-including giving adequate and active support to the activities of the extractive industries transparency initiative (EITI), the establishment of ICPC, EFCC etc[11] .

Substantial progress has been achieved on the initiatives contained in NEEDS 1 here referred to. Progressive areas have included public expenditure and budget reforms, with a focus on efficiency, responsiveness and service delivery, and attainment of transparency, accountability and anti- corruption reforms including active involvement in the Extractive Industries Transparency Initiative, which has improved opportunity for citizen participation in policy making in that sector.

2.2. PREVENTION

Chapter 2 of UNCAC encourages State parties to use proactive measures to prevent corruption. These measures recognize the interplay of political and economic power, when it comes to decisions regarding the use of public funds. As such they focus on the demand side of corruption by providing a set of extensive proactive requirements for preventing corruption in the public and private sectors. These measures cover subjects such as preventive anti-corruption bodies, public sector ethics, public contracting and public finance management, public reporting and access to information, private sector standards (accounting, auditing), codes and measures to prevent money laundering. The Convention also requires state parties to consider measures to enhance transparency in the funding of political candidates and of political parties. This study found that the response to these obligations have been robust particularly in terms of establishment of dedicated institutions, law reforms within the public service and to a more modest degree in the private sector in Nigeria.

2.2.1 Preventive Anti Corruption Policies and Practices

Article 5 of UNCAC requires State parties to put in place preventive anti corruption policies and practices and maintain effective, co-ordinated anti corruption policies that promote the participation of society and reflect principle of rule of law, proper management of public affairs,public property, integrity, transparency and accountability. Neither AUCPCC nor ECOWAS Protocol has broad requirements like Article 5(1) to (3) of UNCAC, but they each require specific actions which upon implementation should lead to the frameworks and structures anticipated by articles 5(1) to (3) of UNCAC eg. Article 12 of AUCPCC mandates States to create an enabling environment that will enable civil society and media to hold governments to the highest levels of transparency and accountability in the management of public affairs, ensure and provide for the participation of Civil Society in the monitoring process and consult Civil Society in the implementation of the Convention. The ECOWAS Protocol in Article 5 (e) requires participation of civil society and Non Governmental organizations (NGOs) in efforts to prevent and detect acts of corruption, and goes on in sub-paragraph (a), (b) & (c) (i) to provide for other policies that create enabling environment for civil society to thrive.

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[11]Support to Innovation , Modernization and Change in the Civil Service ; the Nigerian Experience lecture Series No 1 Being text of a lecture presented by Dr Mahmud Yayale Ahmed, CFR , Head of Service of the Federation Federal Republic of Nigeria at the Civil Service Week of the Republic of Ghana and Africa Day of Administration June 2005

2.2.2 Administrative Reforms in the Public Service -The Bureau for Public Service Reforms (BPSR)

The biggest push for corruption prevention and public service reforms in Nigeria has been in the period 1999-2007. The Nigerian Public Service in general and Civil Service in particular has been undergoing gradual and systematic reforms and restructuring since May 29 1999 after decades of military rule. The Public Service Reform Program (PSRP) 2003-2008 led to the establishment of the BPSR in 2004, primarily to pursue government's objective of refocusing and rejuvenating the public service through reforms. It was established by executive order and is supervised by the Head of Service of the Federation (HOS). The Bureau serves as the incubator of reform initiatives and its major responsibility is to drive, co-ordinate and monitor on-going public sector reforms to ensure effective and efficient implementation. It is also the Secretariat of the Steering Committee on Reforms chaired by the Secretary to the Government of the Federation (SGF) with the Head of Service (HOS) of the Federation as Vice Chairman. Its mandate covers economic reforms through macro- economic stability, accelerated privatization and liberalization of the economy; governance reform and institutional strengthening; public service reform including civil service administrative reform, parastatals reform, public expenditure and budget reforms as well as Transparency, Accountability and Anti corruption reforms.

To achieve its mandate the BPSR developed functional linkages with other reform cells including Service Compact with all Nigerians (SERVICOM), Code of Conduct Bureau (CCB), Federal Inland Revenue Service (FIRS), Office of the Auditor General, on Accounting and Audit Reforms etc. It coordinated the public service severance training, pre-retirement training and ethical re-orientation in the Public Service. It also worked with the SGF and HOS to co-ordinate the reform of their various office operations and management and it has collaborated with the United Nations Office of Drug and Crime (UNODC) and the World Bank among others to introduce and co-ordinate reform initiatives in the service in the areas of Communication, Performance Management, Human Resource Management, Corruption prevention, and the new Performance Management System for the Federal Civil Service which will take effect from 2011. This system will support recruitment, hiring, promotion and retention based on objective criteria such as merit, equity and aptitude in compliance with Article 7(1) of UNCAC, Article 5(4) of AUCPCC and Article 5(b) of ECOWAS Protocol. It is also working with the Code of Conduct Bureau (CCB) and other stakeholders to improve performance skills, adequate remuneration, equitable pay scales and the aversion for corruption in the service in accordance with Articles 7 (1)(b)(c)&(d) of UNCAC and Article 5(8) of AUCPCC.

Pursuant to these efforts, the Federal Government has recently approved an improved salary scale for civil servants. It is doubtful however, if the new salary scale can be considered adequate in terms of Article 7(1) of UNCAC.

2.2.3 Service Charters

In further compliance with Article 5 and Article 10(b) of UNCAC, SERVICOM was established. SERVICOM is a Federal Government Policy initiative and program that promotes a social contract between the Federal Government of Nigeria and its people. SERVICOM supports the right of Nigerians to demand good governance and service delivery. It helps to concisely present service standards that citizens should demand from MDAs. Details of these are contained in SERVICOM charters which are now publicly displayed in all government agencies where services are provided. The charters tell the public what to expect and what to do, if the service fails or falls short of their expectation or the organization's mandate. It requires the government department to concisely communicate its mandate and the standard of service it provides, in a way that enables the public demand for accountability in that respect. Most government agencies in Nigeria have applied SERVICOM's guide in articulating and communicating their service charters to the public.

2.2.4 Oil and Gas Subsector

As far back as 1988, oil sector reforms led to the creation of 11 subsidiary units within the Nigerian National Petroleum Corporation (NNPC), the publicly owned corporation that controls Nigeria's oil industry, meant to function as semi-autonomous businesses. In 2000, President Obasanjo constituted the Oil and Gas Implementation Committee (OGIC) to devise a strategy for further addressing corruption within the oil sector and streamlining sector operations. OGIC issued its report in 2003 and draft reform laws were produced, but were not passed by the National legislature. The late President Yar'Adua revisited this agenda in 2007. He appointed a second OGIC to review the existing recommendations, draft laws and create a plan for their implementation. The resulting report and unified draft petroleum sector proposed legislation was approved by the President and the Executive Council of the Federation in September 2008. The proposed reform legislation, the Petroleum Industry Bill, now revised is currently before the National Assembly.

Meanwhile, the NNPC created an electronic portal and database called Nigerian Petroleum Exchange (NIPEX) to streamline oil sector procurement. Its development has proceeded slowly, and accounts from sector actors, indicate that it has not significantly improved the system. To be effective, NIPEX will need to provide at least enough transparency for competing companies to self-monitor the process and report unfair proceedings. Raising the approval thresholds might also help. At the moment NNPC processes huge numbers of approvals, creating bottlenecks and reducing its ability to thoroughly review each prospective contract[12].

2.2.5 Extractive Industry Transparency Initiative

In a bid to further prevent corruption within the natural resources sector, Nigeria signed on to the global Extractive Industry Transparency Initiative (EITI). The initiative requires implementing countries to undertake that transparency is crucial to effective financial management and accountability, and to recognize the need for a consistent and workable approach to disclosure of payments and revenues in the extractive sector. Pursuant to this mandate, the administration will allow for checks and balances by providing information about its actions, particularly receipts and expenditures in the extractive sector. This framework compels the Government to publish budgets, records of revenue collection, and statutes and rules dealing with the extractive industry. Nigeria has adopted the EITI Principles and domesticated same by the passage of the Nigerian Extractive Industries Transparency Initiative Act 2007 (NEITI Act) and the establishment of the substantive Secretariat.

2.2.6 Evaluation and Reviews

Article 5(3) also requires State parties to periodically evaluate relevant legal and administrative measures, with a view to determining their adequacy to prevent and fight corruption. Section 6 of the ICPC Act empowers the Commission to carry out regular systems review with a view to determining adequacy and effectiveness of systems to prevent corruption and recommend and enforce remedial actions. This study however indicates that this is not one of the areas in which ICPC has made substantial progress. The ICPC has recovered sizeable amounts of un-remitted tax revenue through spot checks, rather than planned system reviews. Also no initiatives existed until recently for effective independent monitoring and evaluation of the effectiveness of anti-corruption fight, nor a platform for co-ordination of activities amongst anti corruption agencies in Nigeria. The establishment of the Technical Unit on Governance & Anti corruption Reforms (TUGAR) and the formation of the Inter –Agency Task Team of anti corruption agencies (IATT) to which TUGAR is secretariat, is intended to partly remedy this situation.

2.2.7 The Inter-Agency Task Team (IATT)

The Inter-Agency Task Team (IATT) is the co-ordinating platform of various government agencies with anti-corruption or accountability mandates in Nigeria. The IATT came into being with the inauguration of TUGAR. The IATT is established as a mechanism to address the challenge of location of accountability

[12] ibid

and anti corruption mandates in multiple and operationally diverse institutions and agencies, which despite the overlapping mandates have very limited interface and co-operation. TUGAR serves as its secretariat. The IATT and its secretariat work to ensure collaboration and cooperation amongst the various agencies with varying mandates to fight corruption[13].

2.2.8 Technical Unit on Governance and Anti Corruption Reforms (TUGAR)

TUGAR has been set up to respond to the critical need for a dedicated institution or department to monitor the ongoing anti-corruption and governance initiatives, evaluate both the structure and their output for impact, access public feedback, and generate empirical data which will feed into the policy framework, and enable reforms.

The Unit is designed to ensure data – policy nexus using results derived from monitoring and evaluation tools such as research, surveys and studies. TUGAR's activities also facilitates coordinated data collation, analysis and synergy within government anti corruption initiatives on one hand and initiatives driven by the private sector and other non–state actors, such as civil society organizations on the other hand. It is currently at the centre of an effort of the Inter-Agency Task Team to produce a National Strategy for Combating Corruption in Nigeria.

The efforts of this initiative is beginning to produce results in the area of activity co-ordination and synergy, and it is hoped that it will support elimination of duplication of efforts amongst anti-corruption agencies(ACA's), enhance compliance with international standards and instruments, improve sharing of information amongst these agencies, as well as promote best practices amongst Nigerian anti-corruption agencies .

This is in compliance with Article 5 (4) of UNCAC which requires state parties to collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article.

2.2.9 Collaboration at the International Level

This collaboration envisaged under Article 5[4] of UNCAC includes participation in international programs and projects aimed at the prevention of corruption. One such on-going collaboration that Nigeria is involved in amongst many others is the Inter Governmental Action Group Against Money laundering in West Africa [GIABA] initiative and the ongoing work to formalize the West African Association of Anti Corruption Agencies [WAAACA], a network of Anti-Corruption Agencies in ECOWAS Countries and Mauritania in which Nigeria is playing a leading role.

2.2.10 Administrative Changes Resulting from International Co-operation

The Inter Governmental Action Group Against Money laundering in West Africa (GIABA).

Nigeria has played a prominent role in the establishment and implementation of the GIABA mandate. GIABA was established as an FATF-styled regional body in demonstration of the strong political commitment of member states of ECOWAS to combat money laundering and terrorism financing and to ensure co-operation with other concerned nations and international organizations to achieve this goal. GIABA supports its 15 ECOWAS members in implementing the recommendations to combat Money Laundering and Terrorist Financing. In addition to supporting improvements in their institutional capacity, GIABA conducts mutual evaluations of member States in accordance with Financial Action Task Force [FATF] standards and also in compliance with its enabling statutes. Member states of GIABA subject themselves to mutual assessment in line with international standards for preventing money laundering and

[13] Inter-Agency Task Team Fact Sheet

financing of terrorism. The assessment is to determine whether laws, regulations and measures required under the essential criteria, [Articles 12 to 14 of the GIABA Statute] are in force and effect.

A detailed mutual evaluation of Nigeria's Money Laundering (ML) and Counter Terrorism Financing Mechanisms (CTF) took place in 2007. Nigeria was rated partially compliant in 17 recommendations and Non Compliant in 17 recommendations. Nigeria has continued to provide additional information related to actions taken to improve compliance with the core and key recommendations as well as all the other recommendations rated partially or non- complaint[14]. The areas of non-compliance relate substantially to the systems for combating terrorism financing and money laundering.

In 2009 the FATF decided to subject Nigeria to a targeted review on account of the size of her financial system, which is in excess of 5 billion USD. Nigeria attracted poor ratings on 13 out of 16 key and core recommendations of mutual evaluation and in response Nigeria constituted a high–level Presidential Inter Ministerial/Agency Committee to respond to the review. Nigeria was the only member GIABA country targeted for this review[15].

Since commencement of the targeted review of Nigeria, the country has reported the implementation of some new measures and submitted a comprehensive action plan and time table on Nigeria's strategic plan to address the concerns of FATF. This includes representation of the Anti Terrorism Bill (ATB) as an Executive bill to the National Assembly.[16] , The Bill has just been passed into law by both houses of the National Assembly. Nigeria has also revised and submitted the amended Money Laundering Prohibition Act (MLPA) 2004 as an Executive Bill. The Money Laundry Bill has been passed into law as Money Laundry (Prohibition) Act 2011. These measures relate to the core challenges identified by the Mutual Evaluation Report (MER).

More recent international co-operation activities of Nigeria include the fact that Nigeria was a party to the Economic Corporation of West African States' Attorney General and Justice Ministers' Accra declaration on Collaboration Against Corruption issued in 2001. This collaboration is based on the need for all member States of ECOWAS to come together as a united body in the fight against corruption. In addition, Nigeria also joined in the development of the still inchoate sub-regional protocol against corruption-ECOWAS Protocol. Similarly, Nigeria as part of its commitment to the crusade against corruption is one of the leading continental powers behind the implementation of New Partnership for Africa's Development (NEPAD), which seeks to establish a platform for a new partnership between Africa and the rest of the world in many areas including efforts to sanction and eradicate corruption. Others include the United Nations Convention against Transnational Organized Crime (UNTOC) signed on September 29, 2003. The Convention represents a major step forward in the fight against transactional organized crime, and a major step signifying the recognition of UN Member States, that corruption is a growing problem that can only be solved through close international cooperation. The Convention is a legally binding instrument committing states that ratify it to taking a series of measures against transactional organized crime. These include the creation of domestic criminal offenses to combat the problem, and the adoption of new, sweeping frameworks for mutual legal assistance, extradition, law-enforcement cooperation, and technical assistance and training. State parties will be able to rely on one another in investigating, prosecuting, and punishing crimes committed by organized criminal groups. The Convention and its protocols deal with the fight against organized crime in general and some major activities in which transactional organized crime are commonly involved, such as money laundering and trafficking in persons.

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[14] http://www.giaba.org/index.php?type=c&id=49&mod=2&men=2

[15] GIABA Secretariat Analysis; Second Follow Report Mutual Evaluation of Anti Money –Laundering and Combating the Financing of Terrorism in Nigeria 2010

[16] GIABA Secretariat Analysis; Second Follow Report Mutual Evaluation of Anti Money –Laundering and Combating the Financing of Terrorism in Nigeria 2010

Nigeria has failed in some respects to fully comply with Article 5 of UNCAC. The absence of a cohesive anti-corruption strategy plan, or effective co-ordination amongst various agencies inclusive of agencies with overlapping mandates, the absence of internal as well as external independent monitoring and evaluation systems or initiatives, absence of public reporting obligations on government agencies including anti corruption agencies, limited access to information for citizens and the resulting failure to secure full citizens support and participation in the anti –corruption fight in Nigeria, are challenges and gaps in the anti-corruption agenda. Some of these challenges such as the issue of coordination, adoption of a holistic strategic approach and coordinated monitoring and evaluation are currently being addressed by some recent initiatives carried out on the platform of the IATT and the mandate of TUGAR.

2.11 Establishment of Appropriate Bodies that Work to Prevent Corruption – Article 6 of UNCAC

Article 6 of UNCAC requires State parties to ensure the existence of appropriate body or bodies that prevent corruption by implementing anti corruption policies referred to in Article 5 and overseeing and co-ordinating implementation of those policies. It also requires such bodies to increase and disseminate knowledge about corruption prevention. The AUCPCC in Article 5(h) requires State parties to take measures to establish and consolidate specialized anti –corruption agencies with requisite independence and capacity that will ensure that staff receive adequate training and financial resources for accomplishment of their tasks. Similarly Article 5 (3) of ECOWAS Protocol obligates State parties to establish, maintain and strengthen independent national anti –corruption authorities and agencies.

A number of institutions have been established over the years in line with the provisions of UNCAC, AUCPCC and ECOWAS Protocol. In the case of Nigeria some of the institutions predate the ratification of UNCAC. The Code of Conduct Bureau [CCB] and Public Complaints Commission (PCC) the Ombudsman both of which were established in 1975 are two of such institutions. Also the Office of the Auditor –General of the Federation charged with the responsibility of auditing the public accounts of the federation, predates the anti-corruption Conventions. Nigeria has a number of other major Anti-corruption bodies: The ICPC and the EFCC. Other bodies such as the NEITI, the Fiscal Responsibility Commission (FRC) and Bureau for Public Procurement (BPP) also exist with respectively complimentary mandates. Some of these institutions are constantly developing frameworks and practice guidelines to further improve their effectiveness. The Bureau for Public Service Reforms (BPSR) for instance has developed a National Strategy for Public Service Reforms (with DFID support), which took effect from 2010. The BPSR, with the support of the World Bank is currently setting up a performance based management system to cut across all sections of the Nigeria Public Service in cooperation with the Federal Civil Service Commission and the office of the HOS. This policy is expected to take effect in 2011.

a) Public Complaints Commission (PCC)

The Public Complaints Commission (PCC), Nigeria's ombudsman, is an autonomous body with powers to investigate citizen's' complaints against any governmental or private body. The PCC's Act regulates the Commission. The Chief Commissioner is appointed or removed by the National Assembly on the President's recommendation. The Commissioners remuneration and operations are funded directly from the Consolidated Revenue Fund. The commission refers cases to the National Assembly or State Governors for further action. Its reports, records of meetings, investigations or proceedings are privileged, and their production may not be compelled. However there has been no Chief Commissioner or other Commissioners appointed to the Commission for many years now, and the Commission is run by its civil service personnel. The general perception is that the PCC is ineffective given its broad mandate.

The Commission has published its annual report for most of the years of its existence. This and other publications are available to the public free or at minimal cost. It is one of the very few Nigerian agencies that make their reports publicly available. It is noteworthy that of the 11,143 complaints before the commission in 2002, 5,604 were still pending. Only about one half had been fully resolved[17]. In 2008 the Commission received 22,270 complaints, and it claims to have resolved 15,119 whilst 7,151 are still pending. The irony is that whilst the Commission is unable to purchase vehicles to facilitate investigation as a result of lack of budgetary appropriation, annually the national budget provides the salaries of its Commissioners who Government has not appointed and this is promptly returned to the treasury at the end of each budget year.No one appears able to give an explanation as to why Government has failed to appoint Commissioners for the PCC.

b) Nigerian Extractive Industry Transparency Initiative (NEITI)

The NEITI Act 2007 currently requires extractive industry companies doing business in Nigeria, under penal sanction to make full disclosure of revenue and cost of operation to NEITI Auditors. This has made possible comprehensive audits of the oil and gas sector in Nigeria.

The NEITI established in 2004 is administered by a multi stakeholder working group –the National Stakeholder Working Group- (NSWG) with representatives from both the private and public sectors and civil society. One of its major activities in addition to improving awareness has been the conduct of the audit of the Country's oil and gas sector. The first NEITI Audit of the sector 1999-2004 was the first comprehensive Oil & Gas sector transparency audit conducted since Nigeria struck oil in 1956[18]. It was a three-tier audit; a, physical audit of oil output, exports, and domestic consumption; a financial audit of payments made by oil companies and revenues received by the government; and a process audit looking at operations and procedures in terms of financial management and procurement relating to joint ventures. The audit report touched on many issues, ranging from production records to matching them with resulting public revenues. It compared what the companies claimed to have paid the Nigerian government on the one hand and what the Nigerian Government claims to have received from the same companies on the other hand. Following that report, NEITI and its stakeholders, developed a remediation plan intended to plug the huge gaps identified, implementation of which though slow, is still ongoing. The 2nd NEITI Audit Report [2005] has also been released and disseminated while 2006-2008 is currently being finalized.

Though the initial efforts of NEITI have been focused on the oil and gas sub-sector, NEITI is currently preparing for an audit of the solid mineral sector in Nigeria. NEITI is however yet to initiate concrete initiatives addressing its statutory mandate to monitor oil revenue expenditure at all levels of government.

c) Economic and Financial Crimes Commission (EFCC)

The Economic and Financial Crimes Commission (EFCC) was established in 2002. Its function and powers include measures to initiate, and co-ordinate preventive action. It is the agency responsible for co-ordinating all efforts to prevent financial and economic crimes and implementation of all related laws in Nigeria, including rapid exchange of scientific and technological information in support of this mandate. The Nigerian Financial Intelligence Unit (NFIU) is domiciled within the EFCC (as an autonomous unit), and serves as the country's central agency for the collection, analysis and dissemination of information regarding money laundering and the financing of terrorism. The EFCC andthe Money Laundering Acts provide several reporting requirements for financial and other designated non financial institutions including a) Know your customer (KYC); b) Customer Due Diligence; c) Currency Transaction Reports; and d) Suspicious Transactions reports. The NFIU collates and analyzes the various financial reports,

[17] Public Administration in Nigeria UN 2004 Study

[18] Inter-Agency Task Team (Anti Corruption Agencies) Fact Sheet 2010

from relevant organizations in accordance with FATF recommendations. The amendment to the EFCC law in 2004 widened the sectors and businesses covered by these regulations and reporting systems to include designated non-financial institutions, like casinos, professional firms, hotels, jewellery dealers, cars & luxury goods dealers and supermarkets.

Nigeria, as a result of some of these efforts was taken off the list of non co-operative countries by the FATF.[19]

To improve citizen participation in the fight against corruption, the EFCC Strategy and Re-orientation Unit (SARU) focuses on multi-sectoral collaborations and currently runs what it calls an Anti-Corruption Revolution (ANCOR) coalition with branches in all States of the Federation. These branches provide the geographical spread needed for SARU to reach citizens of each state with initiatives that improve anti –corruption knowledge and skills. At the moment SARU is engaged in a project to build capacity of the State Chapters of ANCOR and provide them with tools to begin monitoring and reporting on public procurement activity in all federal MDA's in their states.

d) Independent Corrupt Practices and Other Related Offences Commission (ICPC)
The Corrupt Practices and other related offences Act, the enabling law of the ICPC, provide preventive powers for the Commission. The Commission is empowered to deploy preventive and educational tools against corruption. The enabling law empowers it to examine the practices, systems and procedures of public bodies and where in the opinion of the commission, such practices, systems or procedures aid or facilitate fraud or corruption, to direct and supervise a review.[20] Additionally it is to instruct advice and assist any officer, agency or parastatals on ways by which fraud or corruption may be eliminated or minimized and on systems or procedures to reduce the likelihood or incidence of bribery, corruption and related offences. The act also empowers the Commission to educate the public against corruption and mobilize public support in compliance with Article 5(3) of UNCAC and Article 4(3) of the ECOWAS Protocol against Corruption.

The ICPC has established Anti Corruption and Transparency Units (ACTUS) in most Ministries, Agencies and Departments at the Federal level of Government, providing opportunity to reach the different MDA's with initiatives that address MDA specific challenges. The ICPC also facilitates and mentors a National Anti Corruption Coalition, Anti Corruption Community Development (CD) Groups within the National Youth Service Corps, and some local government integrity initiatives all focused on increasing education against corruption. ICPC has in pursuit of this mandate developed a curriculum for civic education in schools.

2.12 Independence of Anti Corruption Agencies - Article 6(2) of UNCAC

Article 6 (2) of UNCAC requires State parties to grant its anti corruption body or bodies necessary independence, to enable it carry out its duties free from undue influence. It requires the agencies to have the necessary material resources and specialized staff, as well as training that such staff may require to carry out their functions. Also Article 5(h) and 5(3) respectively of the AUCPCC and ECOWAS Protocol have similar provisions.

Whilst the ICPC has statutory independence, and security of tenure of its Commissioners and staff [21] the same cannot be said for the EFCC. The EFCC Act while providing for the appointment and removal of

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[19] 'NIGERIA EXPERIENCE IN COMBATING CORRUPTION.': paper presented by Emmanuel Akomaye at The Ad hoc Experts Group Meeting On 'Deepening Judiciary's Effectiveness in Combating Corruption' Addis Ababa, Ethiopia 19-21 November, 2007).

[20] Section 6[b] and [c] of the ICPC ACT

[21] S 3 (7)-(14) of the ICPC Act

members of the Commission states that a member of the Commission may at anytime be removed by the President for inability to discharge the functions of his office[22], whether arising from infirmity of mind, body, misconduct or any other cause, if the President is satisfied that it is not in the interest of the Commission or the public that the member should continue in office. The inadequacy of this provision was borne out by the manner of removal of the former chairman of the EFCC Mallam Nuhu Ribadu. The anti-corruption agencies have predictable and regular budgets in accordance with article 6[2] of UNCAC. However the agencies lack financial independence and autonomy as their budget is drawn from the Executive and not directly from the Consolidated Revenue Fund.

The two agencies rely heavily on police officers who are under the disciplinary control of the Inspector General of Police and the Police Service Commission. For its first four years, ICPC received an average of N400,000,000[Four Hundred Million] to N500,000,000 [Five Hundred Million] (a little more than $3m (USD) each year as its total budget to fight corruption in a country of over 140 million people. The ICAC of Hong Kong in the same period received about Ten Million US Dollars per annum for a population of about Six million people. This was also the case with the EFCC about the same time, but this situation has since improved. ICPC's budget in 2009 was N2,325,564,386.00 (Two Billion Three Hundred and Twenty Five Million, Five Hundred and Sixty Four Thousand, Three Hundred and Eighty Six Naira) whilst the EFCC budget is above N12 Billion(Twelve Billion Naira). The same issues of lack of financial independence affect NEITI, BPP and the FRC. In the case of EFCC and ICPC many have argued that they be allowed to keep back a percentage of the proceeds of crime, that they recover as a way of improving their financial independence. Nigeria is not fully compliant with the obligation to grant full independence to anti corruption agencies and to provide them with sufficient resources and capacity to achieve their mandate as required by Article 6 of UNCAC, Article 5(h) and 5(3) of AUCPCC and ECOWAS Protocol respectively.

2.2.13 Systems of Recruitment, Promotion and Discipline of Civil Servants Based on Merit, Aptitude and Equity - Article 7 of UNCAC

Each State party is required by Article 7 of UNCAC to adopt, maintain and strengthen systems of recruitment, retention, and promotion of civil servants and other public officials based on efficiency, transparency and objective criteria such as merit, equity and aptitude. Article 5 (a) & (b) of ECOWAS Protocol requires emphasis on methods of recruitment based on merit and that state parties take measures aimed at guaranteeing reasonable standards of living, as well as transparency and efficiency in recruitment of personnel into the public service. The AUCPCC in Article 7(4) requires state parties to ensure transparency, equity and efficiency in the management of tendering and hiring procedures in the public service.

The Federal Civil Service Commission is responsible for appointment, promotion and discipline of staff in the federal service. Appointment into the Federal Civil Service ought to be determined by three major factors of availability of vacancy, qualifications and thirdly federal character. Over the years the federal character factor has become dominating and been wrongfully applied. Existing vacancies in the federal service are allotted state by state, to the effect that in a cadre, though a vacancy exists, only persons from particular States that do not yet have enough persons in that cadre will be considered. This has contributed in lowering competency levels, standards, moral of personnel and increasing inefficiency and waste in the service. The application of the federal character system is unlike the affirmative action principle applying in some other jurisdictions, which will allow only a percentage of positions [15-20] to be filled on grounds of representation of marginalized groups, whilst others are filled based on merit. In the Nigerian public service three major factors determine promotion. The first is that the officer must have spent the required minimum number of years in his/her grade and this varies from grade to grade. The second is the availability of vacancies or jobs at a higher level [23] and the third is federal character, In practice, performance on the job plays very limited role in promotion, since vacancy for candidates from

[22]Section S 3 of the EFCC Act 2004

[23]Ibid and Public Service Rules (Revised to 1st January, 2000): Rule 02102

the applicant's state must first exist and in addition, number of years spent on the previous rank is the dominant criteria. This is in addition to the problem of unregulated appointments into the service. A pilot study in 2003 revealed that there have been unregulated appointments and entries into the Federal Service since 1979[24]. Nigeria is obviously not in compliance with Article 7 of UNCAC. This and more are perhaps why the BPSR and the Office of the HOS are introducing the new performance management system to commence in 2011 in order to remedy some of these lapses.

One major problem of the Civil Service is the very poor remuneration package of civil servants. According to the Director of Recruitment and Appointment in the Federal Civil Service Commission in 2003, the civil servants are the most disadvantaged and depressed wage earners in Nigeria. The salaries and allowances of civil servants are very poor in relation to the rising cost of living and the amount required for reasonable subsistence. The gap in salaries between the public and private sector was 300 – 500%[25] in 2003. This study found that the new salary scale approved by the President in July 2010, if and when implemented, will pay a middle level officer at level 12 who currently earns N53,000 about N86, 000 to99,000(Eighty Six Thousand –Ninety Nine Naira] [about $650 USD) per month. For some civil servants, this may represent more than 40% increase in the current pay. However it is doubtful that this can be considered adequate pay within the context of the cost of living in Nigeria.

Nigeria lacks any specific initiatives or procedure for selection and training of individuals for public positions considered especially vulnerable to corruption and rotation where appropriate, of such persons to other positions as provided for by Article 7(1)(b) of UNCAC. The public service however has regular training programs for its employees.

2.2.14 Funding of Political Parties and Selection of Candidates

Articles 7(2) and 7(3) of UNCAC and Article 10 of AUCPCC requires State parties to establish a system to ensure transparency in selection of candidates and funding of political parties and candidates for electoral office. The 1999 Constitution of Nigeria in Sections 65-66, 106-107,131 and 177 prescribe the criteria for qualification for election of candidates into the offices of President and Vice President, Governor and Deputy Governor and membership of national and State Assemblies.

Additionally Sections 85-86 of the Electoral Act 2006 provides for offences relating to political party finance and empowers the Independent National Electoral Commission (INEC) to limit the amount of money or other assets an individual or group can contribute to a political party. It also provides for monitoring of political party finances, limits on election expenses and political party reporting obligations in that respect. S 225 of the Constitution requires all political parties to submit to INEC and to publish at any time and in any manner required by INEC a statement of their assets and liabilities. They are also required to submit to INEC detailed annual statement and analysis of sources of funds and other assets together with a similar statement of its expenditure in such form as INEC may require. By S 226 of the Constitution, INEC shall prepare and submit to the National Assembly a report on the account and balance sheet of every political party. The Commission is further empowered to carry out such investigation which will enable it form an opinion on such submitted accounts.

The constitution also precludes the political parties from receiving and holding on to funding from abroad and gives INEC powers to give directives to the parties regarding books, and records of financial transaction. By S. 161 of the Electoral Act, INEC has powers to issue regulations, guidelines or manuals for the purpose of giving effect to these provisions and their administration thereof. INEC pursuant to this provision has since issued a Political Party Finance Manual updated in 2007.

Section 38 of the Companies and Allied Matters Act (CAMA) precludes companies from directly or indirectly making political donations and provides that company officers/directors or members who vote for the breach of this obligation, will be liable to refund the company the full amount and be guilty of an

[24]Public Administration in Nigeria UN 2004 Study
[25]Ibid

offence punishable with a fine equal to the amount of the donation or gift. While the law and existing regulations appear compliant, there is a huge gap between the law, rules and the practice.

One major challenge in monitoring political financing is the extent and accuracy of reports. In Nigeria limited documentation and formalization of political party finances by officers of political parties pose a challenge. In many jurisdictions the imprecision and incomplete reports may sometimes be intentional to hide financial supporters or to decrease the overall amount of money spent on election campaign[26]. There has been some civil society monitoring of electoral finances in Nigeria. An example will be the International Foundation for Electoral Systems (IFES) supported Socio Economic Rights Initiative monitoring, documented in the report Titled Beyond the Ceiling[27]. This study found a general perception that implementation of the INEC rules/guidelines is ineffective in practice in Nigeria.

2.2.15 Promoting Integrity and responsibility amongst public officers Article 8 of UNCAC

Article 8(1) & (2) of UNCAC requires State parties to promote integrity, honesty and responsibility amongst public officials. Each party shall endeavour to apply codes of conduct for the correct, honourable and proper performance of public functions, including a system for public officers to declare their assets to relevant authorities. It requires states to put in place measures and systems that facilitate public officers reporting acts of corruption, as well as disciplinary or other measures against public officers who violate the codes of conduct.

a) Code of Conduct Bureau (CCB) and Code of Conduct for Public Officers

The 1999 constitution in its fifth Schedule has a Code of Conduct to regulate the conduct of public Officers in Nigeria and two closely aligned institutions are created to enforce this Code.

The CCB is established to maintain a high standard of morality in the conduct of government business and to ensure that actions and behaviour of public officers conform to the highest standards of public morality and accountability. Its functions include receipt and verification of assets declarations[28], enforcing conflict of interest rules and the Code of Conduct for Public \Officers. The Bureau receives and investigates petitions and complaints regarding breaches of the Code of Conduct, corruption and abuse of office. It confirms their veracity and where there is evidence in support of petitions, it refers them to the Code of Conduct Tribunal for adjudication. Where petitions relate to issues outside its mandate the Bureau will refer such petitions to appropriate agencies. It has the mandate to monitor the conduct of public officers to ensure that they conform to the code. This is in compliance with Articles 8(1) and 8(2)(5) of UNCAC, Articles 7(1),(2) & (3)of AUCPCC and Article 5 of ECOWAS Protocol against corruption.

The Bureau conducts education programs with a view to creating aversion to corruption within the public service. As already indicated earlier in this report, the Code of Conduct Bureau and Tribunal Act also gives power to the Bureau to issue Asset declaration Forms to all Public Officers, enforce the declaration, retain custody of the declarations and make them available for inspection by every Nigerian citizen on such terms and conditions as the National Assembly may prescribe.[29] However no such conditions have been prescribed by the National Assembly and citizens are yet to be allowed to inspect declarations of Assets in Nigeria. This secrecy over assets declaration information has negatively affected verification, and denied the system the positive influences that citizen's engagement would have brought, and indeed limited its effectiveness.

Additionally the PPA 2007 provides for the BPP to issue codes of conduct for public procurement officers and other stakeholders like procurement monitors. These codes have been issued and are currently in force.

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[26] Independent National electoral Commissions Political Party Finance Manual Updated April 2007

[27] A report on Campaign Finances ,State and Administrative Resources for the 2007 Presidential Election

[28] Sections 2 and 3Code of Conduct Bureau and Tribunals Act CAP C15 Vol 2 laws of the Federation of Nigeria 2004.

[29] Paragraph 3 (c) of Part 1 to the Third Schedule of the 1999 Constitution

b) Public Complaints Commission (PCC) and Promoting Integrity among Public Officers

The Public Complaints Commission is the Nigerian Ombudsman and has the structure, functions and powers to handle administrative complaints, and abuses. It receives complaints and investigates administrative infractions and abuses, recommends remedial action to relevant agencies and refers any criminal infractions to appropriate agencies. It reports on its activities to the public. Some common issues are recurring in its public interface such as the workings of the National Health Insurance, pension payments, service delivery issues relating to public utilities and consumer protection issues.

No system exists in Nigeria to facilitate public officers reporting of corrupt actions, except S 23 of the ICPC Act which makes it criminal for a public officer to fail to report an act of corruption. There is however no evidence that anyone has ever been prosecuted for such an offence. Nigeria has no whistle blowers or witness protection system and those who report acts of corruption are afforded no protection or special support by the law or the State. This is a huge gap in Nigeria's anti corruption framework and contributes in part to limited citizens' support of the efforts of anti corruption agencies in Nigeria.

2.2.16 Public Procurement Reforms - Article 9 of UNCAC

This Article requires State Parties to the Convention to take steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making that are effective in preventing corruption, and take account of appropriate thresholds. Both the AUCPCC and ECOWAS Protocol have very limited provisions on public procurement. Article 7(4) and 11(3) of AUCPCC requires State parties to ensure transparency, equity and efficiency in tendering procedures, and to take measures necessary to prevent companies from paying bribes, whilst Article 5(b) of ECOWAS Protocol requires state parties to ensure transparency and efficiency in the procurement and disposal of goods, works and services. Both instruments, unlike UNCAC do not provide for how these may be achieved.

Following the country procurement assessment activity and report authorized by Nigerian government in 2000, the government set up a Budget Monitoring and Price Intelligence Unit (BMPIU) often referred to as Due Process Office, which administratively introduced reforms in the public procurement process in Nigeria. It also formulated a draft Public Procurement Bill passed into law in 2007. The PPA 2007 introduced a new process for implementing public procurement, which requires prior, wide and simultaneous distribution of information (advertisement) on opportunities, and provides for institutions, bodies and structures for implementing this new process. It provides for an apex procurement policy approval body with non state actors representation called the National Council on Public Procurement. This body was yet to be inaugurated at the time of this report more than two years after the Act became operational. The Act also creates an industry regulator and oversight agency called **the Bureau of Public Procurement- BPP.** The Act ensures advance establishment of criteria for selection and public distribution of procurement information[30]. It provides for the rules, methods and several tools for achieving a fair, transparent, accountable and competitive system, where decisions are based on objective criteria, in full compliance with UNCAC and other international instruments. It also provides mechanisms for monitoring and evaluation, which includes regular bi-annual procurement audits, submission of reports to the National Assembly, review of procurement procedures of all agencies to which the law applies, and conduct of socio economic surveys to determine impact. Additionally S 19 of the Act provides for mandatory citizen observation/monitoring of public procurement activity, in compliance with Articles 5 & 9(1)a, b& d and 12 of UNCAC, , Article 5(e) of ECOWAS Protocol and Article 12 of AUCPCC requiring citizen participation. The PPA provides also for codes of ethics for procurement officers and other stakeholders. Today all projects at the federal level in Nigeria must comply with the process laid out by this Act, and the rules made pursuant to it. Also, contracts above a given threshold will additionally undergo pre-award certification by the independent regulator to ensure full compliance with

[30] S 16, 19, 23, 24 and 25 of the Public Procurement Act 2007

laid down rules and principles. However the PPA 2007 is yet to be fully implemented as the National Procurement Council created by the Act is yet to be inaugurated.

As a result of Nigeria's fiscal federalist structure backed by the 1999 Constitution; this law is not applicable to the 36 Nigerian States and 774 Local Governments which together control about 54% of National resources. However at the time of field work only two of the six focal states in this study, Bauchi and Rivers, have passed a similar procurement law, The other 4 States in this study were at various stages of preparation of or consideration of similar legislative proposals by their executive and legislative arms of government.. This study result indicates that both Bauchi and Rivers States which have passed a procurement law are still at the very preliminary stages of implementation. Bauchi State, two years after passage is yet to finally approve and gazette its draft regulations and standard documents, whilst Rivers State is still setting up its procurement regulatory body.

2.2.17 Fiscal Planning and Responsibility Reforms (Fiscal Responsibility Commission)

Article 9(2) of UNCAC obligates State Parties to take steps to promote transparency and accountability in the management of public finances, including adopting procedures for adoption of national budget, timely reporting on revenue and expenditure, efficient and effective risk management and internal control, and a system of accounting and auditing standard related oversight. Whilst AUCPCC and ECOWAS provisions do not appear to address procedures for adoption of national budgets, they both require accounting systems and standards for recording and reporting tax income and expenditure of National resources treated under Article 9(3) below. Also Article 5(4) of AUCPCC requires state parties to establish, maintain and strengthen auditing and follow up systems in public income, tax receipts and expenditure.

To increase access to public finance information the Federal Ministry of Finance in 2003 commenced Publication of the Distribution of Revenue Allocation by the FAAC, and pursued vigorously the passage of the fiscal responsibility bill now passed into Law as the Fiscal Responsibility Act [FRA] 2007. The law provides for a consultative and collaborative framework for fiscal planning and budgeting process, involving both government and non state actors. This is guided by a Medium Term Expenditure Framework (MTEF) comprising of a three year rolling plan. It provides amongst other things that annual budgets be based on the MTEF, and prescribes new conditions for contracting public debts. It gives specific public reporting responsibilities to the Ministry of Finance. As a result, the Ministry through the Budget Office currently holds annual medium term strategy sessions, with participation of non state actors, intended to identify, prioritize and cost projects. The budget is prepared in accordance with the MTEF. The Ministry publishes on its website the National budget and budget implementation reports and has improved participation of citizens in fiscal planning in accordance with Article 9(2) of UNCAC. The FRA also establishes a Fiscal Responsibility Commission to monitor and enforce implementation of its provisions. The Commission has powers to make rules and regulations, is now fully operational, and was at the time of preparation of this report putting in motion a process for auditing the excess crude account of the Federation. However full and timely disclosure and wide publication of fiscal and financial information as required by the FRA is not yet being complied with.

2.2.18 Auditor General of the Federation and States

The Office of the Auditor General of the Federation was established by the Audit Act 1958 CAP 17 LFN 2004. Its role, importance and mandate was reinforced by the provisions of S 85-89,108 of the 1999 Constitution, as well as S 24 of the Finance (Control and Management Act) 1958. This is also the case with Office of the Auditor General in most of the 36 states of the Federation which are established by the various regional and later State Public Finance Management Control laws and Sections 125 -129 and 301 of the 1999 constitution. Their functions are also supported by the financial regulations both at the Federal and State levels of government.

The office has the function and power to audit and report on the public accounts of the Federation and States and to submit its report to the National and State Assemblies. Sections 85(2) and 125(2) of the Constitution grants the Auditor(s) General of the Federation and States respectively or any persons authorised by them, access to all books of accounts, records, returns and other related documents. However in respect of government statutory corporations the Auditor General will provide such bodies with a list of auditors qualified to be appointed as external auditors and from which the bodies shall appoint an auditor. Additionally the Constitution gives the Auditor General power to conduct periodic checks of all government corporations, commissions, authorities and agencies including bodies established by acts of parliament. The Auditor General may also by directive of the legislature conduct investigations into anything or matter with which the legislature has power to make law, or the conduct of affairs of any person, authority, ministry or department. The constitution grants the Auditor General further powers to procure all evidence it may think necessary, acquire such evidence on oath, summon any persons in Nigeria to give evidence or produce any document in their possession, and issue warrants compelling attendance of any person who has failed to willingly attend following its summons. However in reality the independence of the Office of the Auditor General is not being felt. This study found that the Auditor Generals office does not appear to have achieved its full potentials, and the failure of the Constitution and other laws to provide a deadline for submission of the Accountant General's report to the Auditor General has contributed to the failure of the Office to conduct regular audits.

Article 9(3) requires State parties to take such civil and administrative measures as may be necessary, to preserve the integrity of accounting books, records, financial statements or other documents relating to public expenditure and revenue and to prevent the falsification of such documents. Article 5(4) of AUCPCC requires State parties to adopt measures to create, maintain and strengthen internal accounting, auditing and follow–up systems, in particular, in the public income, custom and tax receipts, and expenditures. Also article 5(f) of the ECOWAS Protocol requires revenue collection systems that eliminate opportunities for corruption and tax evasion.

2.2.19 (i) Government Accounting Records and Procedures

Aside from the Nigerian Constitution, other important pieces of legislations and regulations which govern the federal budget and its process include the *Finance (Control and Management) Act, 1958*, Cap F26, Laws of the Federation, the *Financial Regulations, 2009, and the Central Bank of Nigeria Act*. The first is the organic finance law of the Federal Government. It contains a guide for the management of the budget and public finances. It defines the roles of the Ministry of Finance and the Office of the Accountant General of the Federation (OAGF) in public financial management. However, the Act is old and several of its provisions are either archaic or do not apply to the presidential system of government, which Nigeria currently operates. Consequently, since 2001, the Federal Ministry of Finance and the Office of the Accountant General of the Federation have been spearheading efforts to enact new legislation to repeal and replace it. A new draft law, the Public Finance (Control and Management) Bill was submitted to the National Assembly in 2009, but is yet to become law, if and when passed into law this will complement the FRA 2007.

In November 1997, the Conference of Auditors General for the Federation and States issued a document titled, *"Public Auditing Standards"*. The document covers a wide scope including general standard of care and independence, field work standards, and reporting standards. While this document may have represented a milestone at the time of its issuing (which was during the era of military rule), there is no doubt that it falls far short of current international requirements.This has been followed by the revisions of The Federal Financial Regulations (FFR). The Federal Government has revised the FR three times since 1999, the latest being in January 2009. This revised rule book has brought some improvements. It contains the details

of the civil and administrative measures aimed at securing the integrity of accounting records and financial statements, that together with the Fiscal Responsibility Act provisions achieve substantial compliance with Article 9 (2) of UNCAC and also Article 5(4) of AUCPCC on the integrity of accounting records, except off course that no statutory time limit is yet given to the Accountant General to submit his reports to the Auditor General for Audit.

The provision of the FFR includes guidelines on revenue, records keeping, preparation of financial statements, stores control, internal audit, external audit, and reporting. They also provide proformas for receipts, vouchers, cashbook, and registers, monthly and other returns, charts, etc. The rules also cover custody of government assets and property, including the handling of title deeds and documents, and try to ameliorate some of the difficulties created by the age long parent legislation.

2.2.19 (ii) State Public Finance Systems

A thorough review of six selected State Government preventive measures carried out in this survey reveals that the organization of the internal audit function varies across states. In Lagos state for instance the function belongs to the Ministry of Finance rather than the Office of the Accountant General (Treasury). Out of the six pilot states evaluated in this study, only two States (Bauchi and Rivers States) had at the time of the field work enacted Public Procurement and Fiscal Responsibility Laws. The others have their bills at various stages of preparation and consideration. [31] The Bauchi State Fiscal Responsibility Law 2008 took effect on September 15, 2009. Like the federal equivalent, it provides for the preparation of MTEF to be approved by the Legislature, and also provides that the framework will be the basis for the annual budget. However, the State Government has not yet established the structural and institutional mechanism for its implementation. Awareness and implementation of the Bauchi State Budget Monitoring Price Intelligence and Public Procurement Law 2008 is very low.

Increasingly, some of the states are attempting to improve institutional effectiveness, through the use of information communication technology (ICT) mechanisms, as seen through the establishment of websites, which provide some measure of feedback in terms of state level interventions on corruption. Except for Bauchi State that additionally has a yet to be fully operational Debt Management Office Law, the Public Finance Systems of the other states covered by this study, are completely governed by erstwhile regional public finance management laws, and public service rules. Though Bauchi State has a Due Process and Price Intelligence Unit, it is yet to establish all required internal structures within its MDA's or to fully begin application of the provisions of its procurement law. Rivers State has also passed both a procurement and fiscal responsibility law. This subject is dealt with in greater detail in the report on Mapping of PFM framework at the Federal level and in six pilot States already referred to as volume two of this report.

2.2.19 (iii) Nigerian Accounting Standards Board.

The Nigerian Accounting Standards Board (NASB), a government regulatory body, has been issuing commercial accounting standards for the country for over two decades. For upwards of five years now, the Government has been working to expand the role of the Board to include issuing standards for both private and public sector accounting. To this end, the Financial Reporting Council Bill has been introduced to the Legislature. If and when enacted into law, it will replace the Accounting Standards Board with a reporting Council, which will have expanded powers and mandate.

The Central Bank of Nigeria Act empowers the CBN to act as banker to the Federal, State, and Local Governments, and for their institutions and corporations. In some circumstances, like the application of the oil based fiscal savings rule provided for in S. 35 of the FRA 2007 the CBN may also act as fund management agent of the governments. The CBN pursuant to the FRA should maintain the account

[31] Delta and Bayelsa states, not part of the sample, have enacted their fiscal responsibility and public procurement laws.

created under S. *162 of the 1999 Constitution*, which pools all revenues jointly accruing to the federal, state, and local governments. This role helps to track the funds and prevent loss of public funds that could arise from the creation of multiple holding accounts. Besides, the CBN keeps the Federation Accounts into which is paid all funds accruing to the Federal Government (as distinct from joint revenues accruing to all tiers) from all sources. It keeps also the central capital development fund, which funds federal MDA projects. MDAs currently can only access this fund subject to full compliance with the PPA and the implementing rules issued by the BPP.

2.2.20 Public Reporting and Participation - Article 10 of UNCAC

Article 10 of UNCAC requires State Parties to take measures necessary to enhance transparency and adopt procedures and regulations that allow the public access to information regarding the functioning, organization and decision making processes of public bodies. The measures also include simplification of such procedures to facilitate increased public access, with due regard for protection of privacy and personal data. State Parties are also required to make accessible information and reports on risk of corruption in its administration. Additionally it requires that public bodies publish such information which may be in the form of periodic reports. Article 12 of AUCPCC requires State parties to create an enabling environment that will enable civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public finances, whilst Article 5 (i) of the ECOWAS protocol requires State parties to establish and consolidate freedom of the press and the right to information.

In the Nigerian public service the SERVICOM program, already referred to above attempts to formulate and disseminate service standards that citizens expect from public departments, institutions and bodies. However it does not always disseminate procedures, criteria and conditions for accessing service as it disseminates policy objectives of each MDA. Also, it does not set out to comprehensively and regularly review existing operational procedures of each institution, department or agency of government with a view to ensuring that they provide access to information on functioning, organization and decision making processes of public bodies to citizens as required by UNCAC. Its greatest success has been in capturing and communicating agency mandates to provide public services.

There is no service wide procedure, rules or statutory provisions which requires public bodies to publish periodic reports. Some public bodies are required by their enabling laws to submit reports to the legislature, but even in many of such cases these reports are not publicly available. In most instances information detailing standards and performance of public departments and bodies including anti-corruption agencies is not generally available to the public. In the case of agencies like the EFCC where the law establishing it requires it to submit reports to the National Assembly, such reports are not made public, even by the legislature. Though ICPC published one annual report in 2005 four to five years after establishment, it is yet to publish another such report till date. In contrast, the PPA provides for wide publication of details of contracts and access to information relating to public procurement with a few limitations. As a result, the BPP regularly publishes a journal containing some details of contracts awarded, even though not enough information as required by the language of the Act. Also the NEITI has a mandate to publish and disseminate its audit reports and has done so in respect of the concluded audit reports. The intent of the provisions of Article 10 UNCAC is to enjoin all public bodies to subject themselves to performance evaluation, and to regularly publish performance reports, as well as publicise information relating to its functioning and decision making processes. This appears to be the intendment of the FRA as it relates to fiscal and financial information.

Some MDAs have occasional press briefings, where they give some information of their activities to the public. The Federal Executive Council regularly presents press briefing of decisions in its weekly meetings. While many Nigerian MDAs now have websites, these websites do not always have current or detailed

information of their mandate, processes and activities. Official publications on risk of corruption have been few and far between. Except for the 2001 USAID and the World Bank supported Nigerian Governance and Anti-Corruption Survey Report few other reports in this regard have been published by government. The Independent Corrupt Practices Commission (ICPC) publishes *The Anti-Corruption Digest,* and has published annual reports in 2005. Both publications focus on the activities of the Commission. They are not an in- depth analysis of corruption and the risks it poses. In addition, the Economic and Financial Crimes Commission (EFCC) publishes the *EFCC Alert* and the *Zero Tolerance* magazines. As with the ICPC journals, the EFCC magazines are not analytical reports on the risks of corruption.

2.2.21 Strengthening Judicial Integrity - Article 11 of UNCAC

Article 11 of UNCAC requires State Parties to take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary, including measures relating to their conduct. Additionally Article 11 requires similar measures to apply to prosecutors in such countries as in Nigeria where they are not part of the Judiciary.

The National Judicial Council (NJC) is established by S 153 of the 1999 Constitution of Nigeria. By S 292 of the Constitution, certain judicial officers may be removed by the President or Governor acting on an address supported by two third majority of the Senate or State House of Assembly in the case of a State.[32] In the case of other Judicial officers who do not fall within this category, they may only be removed by the President or Governor acting on the recommendation of the NJC that a judicial officer is unable to discharge the functions of his office, whether as a result of infirmity of mind or of body or for misconduct or contravention of the Code of Conduct. Additionally paragraph 21 (b) & (d) of the Third Schedule to the Constitution grants the NJC power to recommend to the Governor and President the removal of Judicial Officers from office.

The Nigerian Judiciary has adopted the Code of Conduct for Judicial Officers modelled along the Bangalore Principles of Judicial Conduct There have been several instances when, based on complaints, the NJC has set up Panels to investigate allegations of misconduct against Judicial officers, and where found culpable, have recommended and ensured their removal from office. The Justice Kayode Esho Panel looked into corruption within the Judiciary and indicted a lot of serving officers judicial officers for corruption and recommended their dismissal.

The NJC also has the power to institute initiatives that help to prevent corruption in the judiciary. However the secretive nature of its operations, as well as the often non transparent, non competitive process of appointment and discipline of Judges in Nigeria, does not entirely accord with Article 11 or other requirements of UNCAC.

There currently exist no measures to apply the principles in Articles 5-10 of UNCAC to prosecutors as required by article 11 of UNCAC. No code exists to regulate conduct of prosecutors as is the case with judges, other than the regular code of conduct for public officers and the Professional Ethics for lawyers who have been admitted to the Nigerian Bar. Aside from these, no other measures have been taken to maintain their integrity or prevent corruption amongst them. Prosecutors earn the same salaries as other civil servants which is far below that of judicial officers, and work in more difficult and dangerous circumstances, with limited or no protection for their lives and properties unlike the case with judicial officers.

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[32] Chief Justice of Nigeria, President of the Court of Appeal, Chief Judge of the Federal High Court, Chief Judge of the High Court of the Federal Capital Territory, Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, President of the Customary Court of Appeal of the Federal Capital Territory, Chief Judge of a State, Grand Kadi of a Sharia Court of Appeal or president of a Customary court of Appeal of a State fall within this category

2.2.22 Private Sector Corruption - Article 12 of UNCAC

There is a close connection both in cause and impact between public and private sector corruption. This underscores the need for private sector involvement in anti - corruption efforts. Article 12 of UNCAC requires State Parties to take steps to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector, and provide proportionate, administrative and dissuasive sanctions and criminal penalties to punish non-compliance. It provides that measures to achieve the above may include; development of codes of conduct for proper and honourable performance of business activities and all relevant professions, the prevention of conflicts of interest and promotion of good commercial practices amongst businesses, and also measures providing transparency in identity of legal and natural persons involved in establishment and management of corporate entities. Additional measures include those that ensure that private entities have internal auditing controls and certification procedure sufficient for their size and structure.

Additionally Article 12 requires that countries put in place laws and regulations regulating maintenance of books and records, financial statement disclosures, as well as accounting and auditing standards to prohibit the following ; establishment of off the books accounts; the making of off the books or inadequately identified transactions , recording of non-existent expenditure, entry of liabilities with incorrect identification objects, use of false documents, internal destruction of bookkeeping records earlier than allowed by law, and disallowing tax deductibility of expenses amounting to bribery or other expenses incurred in the course of corrupt conduct. Article 11 of AUCPCC requires State Parties to adopt legislative and other measures to combat acts of corruption and related offences committed in and by agents of the private sector, and to prevent companies from paying bribes to win tenders.

In Nigeria the Companies and Allied Matters Act [CAMA] provides a statutory framework for regulation of the operation of private companies. It provides specific guidance on their formation, registration, ownership, transfer of ownership, reporting and general guidance on accounting and reporting of company affairs, and allows access to information on identity of owners and managers of corporate entities at a flat fee. However in practice, the Commission for many years has not been effective in monitoring compliance. Recently it has introduced requirements to induce compliance in some respects, e.g. currently only companies that have complied with requirement to file annual returns are allowed to make changes in their composition or file resolutions and other documents at the registry. It has also announced it will now implement the requirement for position of a company secretary for every registered company and has given a deadline for compliance. The challenge however, is that with Nigeria's huge informal sector many businesses operate outside the Corporate Affairs Commission Framework.

Article 12 (2) b of UNCAC requires State Parties to promote the development of standards and procedures designed to protect the integrity of private businesses, including codes of conduct for proper and honourable performance of the activities of business and all relevant professions. All professional bodies in Nigeria are established by statute and their enabling laws provide powers for the administrative structures to issue codes of conduct as well as a mechanism for complaint and imposition of sanctions on erring members. Examples of Professional Bodies who fall into this category include the Nigerian Bar Association and the Nigerian Medical Association. In some cases these professional codes are outdated and levels of enforcement vary amongst the professions. Generally, enforcement has been ineffective. In the case of businesses, such rules can only be in place by voluntary election or where there is a regulatory framework with a regulator empowered by statute to issue and enforce rules of conduct.

By virtue of CAMA, Shareholders and Boards of Directors should ensure that such controls are imposed on the accounting records of companies. However many of the businesses operating within the scope of CAMA are either owned by or dominated entirely by one person or family. This has its limitations for shareholders holding company management to account or presenting reports and records that contain

credible information and meet statutory requirements, when owners are themselves managers. This has led the CBN to introduce limits on percentage ownership of equity and board membership by individuals or family members, in the banking sector. Also industry regulators often issue regulations that can control procedure for maintaining accounting records, compel disclosure and subject such records to inspection and verification, as is seen in the case of the Banks and the Central Bank of Nigeria. However even in this case, levels of compliance and verification of compliance remains a challenge.

Prior to the last four years, many areas of business endeavour were not deregulated in Nigeria. However in the current period the increasing deregulation of different sectors has provided opportunity for emergence of sector specific regulatory bodies and the issuance of sector specific business rules and codes. This has been the case with the banking sector for a while. The deregulation of the Pension Sector came in 2004 with the Pension Reform Act 2004 and subsequent establishment of the Pension Commission and licensing of Pension Fund Administrators and Custodians. The Pension sector business and regulatory environment in Nigeria has developed quickly to a point, where it now has its own whistle blowers guidelines issued in June 2008.

Similarly the Electricity Power Sector Reform Act of 2004 sought to deregulate that sector and established the Nigeria Electricity Regulatory Commission (NERC), and the commission has issued business rules/codes and some private operators have been licensed, but the failure of government to divest from the subsidiaries of the former integrated monopoly now Power Holding Company of Nigeria (PHCN) PLC, and to take a few fundamental steps to provide required environment for private participation, has slowed the growth of this sector and limited application of the rules.

The Petroleum Industry Bill [PIB], the petroleum sector reform bill is currently in the National Assembly and if passed will usher in a similar framework. A draft Warehouse Receipt Financing law has been prepared and may soon be submitted by the Executive to the National Assembly for passage. Similar regimes are yet to be introduced in the transport sector, and though Port concessioning has occurred, the Ports Reform bill has not yet been passed to provide a sector regulator, nor has the proposed transport Commission or Railway Reform Bills been passed.

Nigeria lacks an Anti-Trust Framework that will regulate competition and corporate behaviour in that respect. Enactment of the pending proposed regulatory reform laws, will improve ability of public bodies to make rules that can prevent and deter corruption in these specific sectors, To this extent therefore and until such regulatory frameworks exist businesses in non-deregulated sectors can only in addition to provisions of the Companies Act, seek voluntary pacts like the Convention on Business Integrity, which is yet to be adopted by many private companies. However in respect of fully regulated sectors like Banking and Pension, compliance with Article 12 of UNCAC in respect of business codes is regularly improving. This is not the case with sectors that do not have such frameworks even where in such sectors without regulatory frameworks, the conduct of sector professionals are regulated by their various professional codes of conduct. In practice this has not proved adequate, because many professional codes in Nigeria are outdated and sometimes inadequate to deal with the unique issues arising in the specific and rapidly changing business environment. Additionally professional codes will not apply to non professionals, who may be participants in these sectors, and this is where comprehensive sector specific business codes in compliance with Article 12 (2) will become handy.

In respect of Article 12(e) Nigeria has a system to check conflict of interest of public officers, while in service. The Code of Conduct for public officers has specific provisions on Conflict of Interest. Further, provisions of S. 57 of the PPA 2007 fall into this category. In the case of public procurement, the PPA requires disclosures of interests of current or former directors of the MDA or even the Bureau in its S 16(6) (f), and further prohibits conflict of interests in its S 57.

2.2.23(a) Banking and Finance Sub-Sector

In furtherance of governmental action to prevent corruption, with the collaboration of the EFCC, the Central Bank adopted the "Know Your Customer' (KYC) Directive and Money Laundering Examination Procedure/Methodology Guidance Note. Both of these provide procedures for checkmating the maintenance of anonymous accounts, particularly accounts with foreign transaction activity. As a compliment to this the National Insurance Commission (NAICOM) reviewed and revised the Insurance Industry Policy Guidelines (IIPG) of 2004, so that the Customer Due Diligence (CDD) and Know Your Customer Guidelines (KYCG) for insurance companies would be in conformity with the provisions of the Money Laundering Act. Sections 74, 75, and 100 of the Rules and Regulations of the Investment and Securities Act (ISA) currently require capital market operators to obtain proper customer identification information before entering into a business relationship. As a result of some of these and many other efforts, the country was admitted into the elite Egmont Group of Financial Intelligence Units in June 2007 and has also enjoyed improved rating by several international rating agencies and a stream of Foreign Direct Investment[33] particularly in the financial sub-sector prior to the international banking crisis.

There has been a high level of focus on the implementation of sound corporate governance, especially in the banking and related sectors. The Central Bank (CBN) and Nigerian Deposit Insurance Corporation (NDIC) have statutory mandates in regulating this sector and ensuring compliance by bank directors to good corporate governance. A survey by the Securities and Exchange Commission (SEC) reported in its publication in April 2003 showed that corporate governance was at a rudimentary stage then, as only about 40% of quoted companies, including banks had recognised codes of corporate governance in place, Specifically for the financial sector, poor corporate governance was identified as one of the major factors in virtually all known instances of a financial institutions distress in the country, at that time.[34]

This study found that as a result of this situation, SEC and the Corporate Affairs Commission (CAC) jointly issued a Code of Corporate Governance in October 2003 targeted primarily at the Board of Directors of publicly quoted companies. Similarly in the same year the Bankers Committee approved the Code of Corporate Governance for Banks and Allied Institutions in response to similar challenges posed by the banking consolidation. The CBN in March 2006 revised the initial Code of Conduct for banks and financial institutions and issued its Code of Corporate Governance for Banks in Nigeria Post Consolidation (Effective April 3, 2006). This time the provisions were wider, addressing the anticipated challenges that consolidation will bring and going beyond board requirements to cover such areas as equity ownership, ineffective audit committees, inadequate operational and financial controls, absence of robust risk management system, disposal of surplus assets, transparency and adequate disclosure of information, quality of board membership, including a requirement for the Chief Executive Officers to make monthly returns to CBN on all whistle blowing reports and corporate governance related breaches. They are also to annually certify to the CBN, that they are not aware of any other violations of corporate governance codes, except as already disclosed. Currently the 2003 Code of Corporate governance rules jointly issued by the CAC and SEC have been substantially revised, and the revised rules has successfully been subjected to stakeholder consultation, but is yet to be gazetted or come into force at the time of producing this report.
As part of the GIABA Mutual Evaluation of Anti-Money Laundering (AML) and Combating of Terrorism Financing (CFT) mechanism and in response to previous evaluation reports and identified gaps, Nigeria has provided additional resources for the supervision of the non-core banking sector. This is reported in the GIABA second follow up report which indicates that the Nigerian SEC has begun regular inspection of registered market operators. It inspected 50 capital market firms, while the National Insurance Commission conducted inspections of 10 insurance firms during the reporting period. Although Nigeria intends to adopt a risk-based approach in the supervision of reporting entities, the skills required for the conduct of risk-based approach supervision is lacking within the regulatory agencies. There is need to provide adequate resources to enhance these skills[35].

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[33] ibid
[34] Code of Corporate Governance for Banks in Nigeria post consolidation March 2006
[35] GIABA Secretariat Analysis; Second Follow Report Mutual Evaluation of Anti Money –Laundering and Combating the Financing of Terrorism in Nigeria 2010

As reflected in the GIABA report referred to above Nigeria has drafted a comprehensive Regulation titled *"Anti-money Laundering/Combating of Financing of Terrorism (AML/CFT) Regulation" to address issues of customer due diligence.* This Regulation came into force in December, 2009 and addresses some of the deficiencies noted in the mutual evaluation report (MER). Other measures covered in the Regulation relate to: reporting of suspicious transactions; development of internal control measures; cross-border correspondent banking; application of risk-based approach by banks and applicable sanctions. At the time of this report all banks in the country were mandatorily updating customer information. This Regulation concentrates on commercial banks, since it was issued by the Central Bank. The Securities and Exchange Commission has completed the drafting of AML/CFT guidance for the Securities sector, which is still being reviewed by the national authorities, and has not come into force at the time of producing this report.

In respect of Accounting and Auditing Standards in private sector, the Nigerian Accounting Standards Board continues to provide guidance and issue standards for maintaining accounting records in Nigeria, however effective monitoring and supervision depends on the level of integrity, and sometimes expertise of those who control the company.

There are a number of principles, recommendations and guidance and implementation tools available to companies. They have been developed in cooperation with companies and tested in real corporate environments. One of such is the United Nations Global Compact, a multi stakeholder initiative, sending a strong signal that the private sector shares responsibility for eliminating corruption. Principle 10 of the Compact, which has Nigeria as one if its partner's[36] states: *"Businesses should work against corruption in all its forms, including extortion and bribery."* The adoption of the 10th Principle commits the partners not only to avoid bribery, extortion and other forms of corruption, but also to develop policies and concrete Programs to address it. This study indicates that individual businesses in Nigeria appear to be lagging behind in these kinds of efforts.

Nigeria is also a part of the Business Action Against Corruption (BAAC). The Nigerian chapter of the BAAC initiative was launched in 2006 with support from the country's major anti-corruption agencies. It is implemented by a working group made up of the African Institute for Corporate Citizenship (AICC) – Africa Corporate Sustainability Forum (ACSF), the Commonwealth Business Council (CBC), the Convention on Business Integrity, Nigeria (CBI), the Human Rights Trust of Southern Africa (SAHRIT) and the Southern African Forum against Corruption (SAFAC). The aim of BAAC is to find practical ways of creating effective and sustainable partnerships between business, governments and civil society organisations in tackling corruption. Nigeria's interest in preventing corruption is equally reflected by partnership with the G8 "Compact to Promote Transparency and Combat Corruption". This is a global initiative whose aim is to eradicate corruption in contractual relationships between the G8 industrial nations and developing countries.

2.2.24 Public Participation in the fight Against Corruption - Article 13 of UNCAC

Article 13 of UNCAC, Article 9 &12 of AUCPCC and Article 5(e) of ECOWAS Protocol requires that State parties to the convention promote the active participation of individuals and groups outside of public sector in the prevention and fight against corruption, promote public participation/contribution to decision making, ensure effective public access to information, undertake public information activities that contribute to non–tolerance for corruption, and protect the freedom to seek ,receive ,publish and disseminate information relating to corruption, subject only to restrictions to protect the legitimate reputation of others. Article 12 (3) of AUCPCC emphasizes consultation and participation of civil society in monitoring of implementation of the convention in addition to other issues. Article 5(i) of the ECOWAS Protocol obligates State Parties to take measures to grant freedom of the press and the right to information.

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[36] 'Nigerian anti-corruption initiatives' by Ijeoma I. Opara, Texas Southern University, Thurgood Marshall School of Law Bepress Legal Series 2006 paper 1392

Nigeria has an Official Secrets Act and a National Security Agencies Act in its law books[37], seeking to prevent public disclosure of governance information. The Freedom of Information Bill has just been passed at the National Assembly. Nigeria has legal and administrative challenges to access to information, in addition to many years of a culture of secrecy over public finance and related information. However the recent Fiscal Responsibility, Public Procurement and NEITI Legislations and institutional frameworks already discussed above bring Nigeria closer to complying with requirements of Article 13 of UNCAC, and Article 12 of AUCPCC. The three laws have transparency provisions that support access to information as well as participation of citizens in public finance decision making. As a result, the application of the Official Secrets Act may have been substantially and indirectly reduced, but changing attitudes amongst public officers may yet take much longer. The requirements of the FRA for full and timely disclosure and wide publication of fiscal and financial information is yet to be implemented within the relevant MDA's.

The legislations setting up the EFCC and ICPC and other public bodies or departments, do not have similar provisions relating to public access to information.

In all the states covered by this study, the situation allows for far much lower access to information and participation for citizens in governance, than is the case at the Federal level, even in the two states where Fiscal Responsibility and Procurement laws have been passed. Thus many sections of society feel distanced from government and the anti corruption crusade continues to fail to capture the attention and support of most Nigerians in these States.

In respect of the Public Procurement and Fiscal Responsibility regimes, all of the MDA's interviewed at the federal level and in the two states where the laws exist, agree on the need for further capacity building, as a prerequisite to bridging the gap between the regulatory framework as is and the practical application of the laws. Also gaps exist not only in such critical prevention areas as system review, but also in developing and implementing strategic education initiatives. The agencies need sufficiently skilled persons to engage and sustain partnerships with broad range of stakeholders, and to improve internal operational mechanisms for compliance to UNCAC, AUCPCC and ECOWAS Protocol obligations.

2.3 CRIMINALIZATION AND LAW ENFORCEMENT

The workability of any anti corruption framework depends largely on its ability to pre-empt certain actions based on the threat of punitive sanctions (criminalization), as well as its effectiveness in terms of addressing the administrative and institutional input required to make the law work (law enforcement). The UNCAC addresses the twin requirements of criminalization and law enforcement in its **Chapter III.** This chapter requires each State Party to take several legislative and administrative steps with a view to (i) reforming criminal law and (ii) establishing appropriate measures and procedures to establish an effective enforcement mechanism. Specifically chapter III requires State Parties to criminalize the following specific activities: Bribery of National Public Officials; Active Bribery of Foreign Public Officials; Embezzlement, Misappropriation and Other Diversion of Property; Laundering of proceeds of crime; and Obstruction of Justice. The chapter further urges state parties to consider the criminalization of the following acts: Passive Bribery of Foreign Public Official; Trading in Influence; Abuse of function ; Illicit Enrichment; Bribery in the Public Sector ; and Embezzlement in the Public Sector . Additionally this chapter requires them to establish systems that enable the criminal, civil or administrative liability of legal persons for participation in and committing of crimes specified in the Convention and sanctions that are effective, proportionate and dissuasive.

[37] CAP 03 LFN 2004 and CAP N 74 VOL 11 LFN 2004

Articles 4 & 5 of AUCPCC and Article 6 of the ECOWAS Protocol also require criminalization of these activities- At the domestic level, these tasks fall principally to EFCC and the ICPC, with the police force sharing part of the role as well. This study found that from 2005, these organisations began to pursue cases against high-level officials including governors of States in the period 2003-2007. The ICPC has the following specific functions: investigative powers over corrupt practices, enforcement and prosecution powers against offenders, and educational and public awareness powers to educate the public about the evils of corruption and why it should be eliminated. The ICPC and EFCC Acts are aimed at prohibiting corruption and prescribing punishment for those who violate their provisions.

2.3.1 Bribery of Public Officials.

Article 15 of UNCAC requires State Parties to criminalize "bribery of public officials" i.e. intentional promise/offering/giving to or solicitation/acceptance by any public official of an undue advantage in order that the public official act or refrain from acting in the exercise of his or her official duties. This is similar to Article 4(a) & (b) of the AUCPCC and Article 6 (1)(b) of the ECOWAS Protocol. Prior to the enactment of the ICPC Act. S 98 and 99, of the Criminal Code and S 12 of the Code of Conduct Bureau and Tribunal Act had also provided for such offences. While S 98 and 99 of the Criminal Code criminalizes and provides penal sanctions (imprisonment and fine) the Code of Conduct Bureau Act provides administrative/quasi criminal sanctions for this same activity.

The ICPC Act criminalizes the offences of accepting/giving or receiving directly or indirectly gratification/bribery, or an undue advantage as required by Articles 15, of UNCAC.[38] Also S 57 (8) & (9) of the PPA 2007 criminalizes use of public office to secure an unfair advantage in procurement related transactions. Prior to the ICPC Act, there were not many cases of prosecution under S 98, 98(a) & (b) of the Criminal Code, though these kinds of corrupt activity existed, but however since the establishment of the ICPC,, reports, investigations and prosecution of these offences has substantially improved. This study however found that not many convictions have been recorded by the ICPC particularly with regards to politically exposed persons, but there are many prosecutions pending in Courts in respect of these kinds of persons and offences.

2.3.2 Bribery of Foreign Public Officials and Officials of Public International Organizations.

Article 16 of UNCAC requires State parties to: (1) Criminalize active bribery of foreign Public officials and official of public international organization" and it also requires criminalization of "passive bribery of foreign public international organizations and or their officials, whether directly or indirectly. The AUCPCC and the ECOWAS Protocol do not provide for this. The ICPC Act fails to criminalize similar activities. However a combined reading of S 12,13 and 404(1)a of the Criminal Code criminalizes corruption of foreign government Officials, or officers of international organizations or any non citizens of Nigeria ,where the act constituting the offence occurs partially or wholly in Nigeria or partly elsewhere, or if whilst outside Nigeria they procure or counsel an offence in Nigeria and thereafter enter Nigeria . However this will apply subject to the Diplomatic Immunities and Privileges Act which provides for immunity of diplomats, their families and related persons. There is no evidence of prosecutions under these sections prior to the return to civil rule in Nigeria in 1999.

2.3.3 Embezzlement, Misappropriation or Other Diversion.

Article 17 of UNCAC States that State Parties are required to criminalize "embezzlement, misappropriation or other diversion" if committed intentionally by a public official for his/her benefit or for the benefit of another person/entity in respect of any property/funds/securities/things of value entrusted to him/her by virtue of his/her position. Article 4(d) of AUCPCC and 6(1)(e) of ECOWAS Protocol also make similar provisions. S 383 of the Criminal Code generally criminalizes stealing, which includes conversion, fraud, and misappropriation by any persons including public officers. S 22(5) of the

[38] S 8 & 9 of the ICPC Act 2000

ICPC Act criminalizes virement or other diversion of funds committed by public officers in respect of funds appropriated for a purpose, while S 19 (d) of ICPC Act criminalizes acts which will include embezzlement and misappropriation as required under Article 17 of UNCAC. Both the Nigerian Police Force and the ICPC have several pending cases in this area, and in the case of the Police force records exists of several pending and concluded prosecutions in the Magistrate Courts under S 383 of the Criminal Code. Many of these cases however are unreported and the records have not been aggregated from different courts.

2.3.4 Trading in Influence

Article 18 of UNCAC requires State Parties to criminalize "Trading in influence" i.e. intentional promise/offering/giving to or solicited/acceptance by a public official or any other person of an undue advantage in order that the public official or that other person abuse influence with a view to obtaining from an administration or public authority of the State an undue advantage. This is also the case with Article 4(g) of AUCPCC and Article 6(1)c of ECOWAS Protocol. The ICPC Act criminalizes active and passive trading in influence, solicitation, offering or acceptance of undue advantage in its S 8-11 and 18.

2.3.5 Abuse of Office.

Article 19 of UNCAC obligates State Parties to: consider criminalization of intentional abuse of functions or position in violation of laws by a public official, while discharging official functions, for the purpose of obtaining an undue advantage for any person or entity. Article (c) of AUCPCC requires criminalization of any acts or omissions in discharge of his or her duties as a public official or any other person, undertaken for the purpose of illicitly obtaining benefits for himself or for a third party. Prior to UNCAC, S 98 and 104 of the Criminal Code had criminalized this conduct in Nigeria. Additionally Sections 8, 10 and 19 of the ICPC Act and Sections 57 and 58 of the PPA 2007, criminalizes similar acts of abuse of official position in the public service, as it relates to Public Procurement.

2.3.6 Illicit Enrichment.

Both Article 20 UNCAC and related provisions of Article 8 AUCPAC and Article 6(3) of ECOWAS Protocol require criminalization of illicit enrichment (locally or internationally committed) i.e. increase in asset of a public official that cannot be reasonably explained in relation to his lawful income. S 7 of the Bank Employees Declaration of Assets Act CAP B1 LFN 2004 criminalizes illicit enrichment for bank officials, and allows the president to extend its application to other categories of persons, but no such extension has been done till date. This provides the best opportunity to make these provisions applicable to all categories of persons in Nigeria.

By virtue of Sections 6 and 19(5) of the EFCC Act and S 35 of the Miscellaneous Offences (Public Order and Nuisance) Act CAP 184 LFN 2004 possession of pecuniary resources or property disproportionate to income of an accused for which he cannot satisfactorily account may corroborate testimony of witnesses and be taken into account by the court. It is also an offence punishable under the Miscellaneous Offences Act.[39] Interviews with senior EFCC personnel indicate that these have been very useful provisions in many of the cases they are prosecuting in Nigeria, particularly the cases involving erstwhile bank chief executives, and may have influenced some pleas of guilt and conviction that have been recorded in these and other cases.

2.3.7 Bribery in the Private Sector.

Article 21 of UNCAC, Article 4(e) AUCPCC, and Article 6(5) ECOWAS Protocol requires criminalization of bribery and undue influence by officials of private sector organizations. Sections 433, 434, 435 & 436 of the Criminal Code Act, criminalizes similar offences particularly as it relates to trustees, and officers of companies, corporations and false accounting in the private sector. S 15(1)d of Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act CAP F2 LFN 2004 criminalizes similar infractions

[39] S 35 of the Miscellaneous offences Act CAP 184 LFN 2004

relating to failed banks, while S 17 of the ICPC Act criminalizes bribery generally encompassing the private sector and or as it relates to agents. No doubt the emphasis of the ICPC Act is on public sector corruption and little effort was made by its provisions to be fully encompassing of infractions in the private sector that do not involve public sector actors.

2.3.8 Embezzlement of Property in the Private Sector.

Article 22 UNCAC and Article 11(1) AUCPCC obligates State Parties to criminalize embezzlement in the private sector. In Nigeria Sections 433, 434,435 and 436 of the Criminal Code criminalizes similar offences particularly as it relates to trustees, and officers of companies, corporations and destruction of records and false accounting in the private sector. However in the case of trustees of property(S 434), as different from officers of a company or corporation S 435 &436 provides that criminal proceeding should not be undertaken against an accused in respect of these offences, if a civil proceeding has already been taken in respect of the same incidents, except with the prior sanction of a court or Judge in chambers. Additionally S 437 makes it a defence to any of the charges, if the accused had, prior to the trial disclosed the facts constituting the offence pursuant to compulsory process of court in any proceedings. This provision encourages confession of the facts, but appears to save such an accused person from conviction and sentencing. However Sections 382, 383 - 388 of the criminal code dealing with stealing and conversion criminalizes embezzlement in the private sector, particularly since it is immaterial that the person stealing or converting the property is in lawful possession of what is stolen. The ICPC Act does not cover embezzlement and conversion in the private sector. The provisions relating to embezzlement in the private sector are not compliant with UNCAC and AUCPCC.

2.3.9 Obstruction of Justice

Article 25 UNCAC, requires criminalization of use of threat, intimidation, force, and promise of undue advantage to interfere with or induce the giving of testimony and production of evidence during proceedings or interference with the exercise of official duties by a Justice of a Court or law enforcement officer. Sections Sections 15 and 25 of ICPC Act criminalize making or causing any person to make false statement to officers of the Commission. S 21 of the Money Laundering (Prohibition) Act criminalizes wilful obstruction of the agency or its authorized personnel, and S 38 of the EFCC Act also criminalizes wilful obstruction of the EFCC or its personnel. In both cases such obstruction could be by threat or inducement, and may include the use of force.

2.3.10 Liability of Legal Persons.

Article 26 of UNCAC and Article 11 of ECOWAS protocol provides for establishment of criminal, civil or administrative liability of legal persons for participation in any offence, with effective sanctions (administrative, criminal or non criminal). There are several provisions under Nigerian law providing for criminal and civil liability of legal persons to crimes relating to corruption, financial crimes and abuse of office. They include; S 58 of the Public Procurement Act 2007 and Sections 10, 11, 15, 18 and 19 of the Money Laundering [Prohibition] Act. The Money Laundering [Prohibition] Act 2004 criminalizes infractions by "any person in the private sector". This will include companies which are legal persons by Nigerian law[40]. The Money Laundering Act also criminalizes actions of directors, managers, secretary and staff who help in commission of an offence by a corporate body and provides punishment. The NEITI Act criminalizes false rendering delay and failure to render statements of accounts and information by extractive industry companies[41]. The general language of most provisions in the EFCC, ICPC, MLPA and NEITI Acts impose civil and criminal liability on companies which in Nigeria are legal persons.

2.3.11 Immunity of Some Public Officials.

The President, Vice President, Governors and their Deputies enjoy immunity from prosecution while in office and is derived from the constitution[42].

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[40] S 18 Money Laundering [Prohibition] Act 2011

[41] S 16 of the NEITI Act 2007

[42] S. 308 1999 Constitution

The ICPC Act however provides for appointment of an independent counsel by the Chief Justice of the Federation, upon application by the ICPC to investigate allegations against such category of persons and such independent counsel is to report to the State or Federal legislature as the case may be. There appears to have been only one request to the former Chief Justice of Nigeria in 2006 for such appointment. That request appears not to have received attention.

2.4 ENFORCEMENT

Prior to UNCAC, the AUCPCC, ECOWAS Protocol, and Nigeria's return to civil rule in 1999, corruption offences have always been part of the fabric of our criminal laws. Though limited in scope, substance and sanctions, the provisions in the criminal code touched on such areas as bribery, undue influence, wrongfully obtaining public contracts, diversion of public funds[43], stealing, corruption of foreign government officials [44]some aspects of private sector corruption,[45] , and provisions relating to trustees, directors and company book of accounts. Enforcement which was largely by the police and the Hon Attorney Generals Offices at both State and Federal levels remained weak. However enforcement has improved since return to civil rule in 1999 with the establishment of dedicated anti corruption agencies.

The Nigerian legal system has specialized institutions and agencies that undertake law enforcement functions. Some of these institutions enforce anti corruption and financial crimes related laws, while others enforce all laws. Principal amongst the enforcement agencies are the Police, Prisons, The office of the Attorney General and Minister of Justice at the Federal Level and the offices of the Attorneys General and Commissioners of Justice at State level, and the Courts. Anti Corruption specific institutions include the ICPC, EFCC, Code of Conduct Bureau and the Code of Conduct Tribunal.

2.4.1 The Nigerian Police Force

The Nigerian Police force is established by S. 3 of the Police Act Cap P19 Laws of the Federation of Nigeria. Section 4 of the Act provides that the Police is employed among other things for the prevention, detection and investigation of crimes and due enforcement of all laws and regulations for which they are directly charged. The Police have the primary duty for investigation of crimes including corruption cases. S 23 of the Police Act grants the Police power to conduct prosecution of offences before any court. This power is subject only to power of the Attorney General under Sections 174 and 211 of the 1999 Constitution to discontinue or take over and continue any prosecution. Consequent upon this provision majority of criminal cases in Nigeria which come before Magistrate Courts are prosecuted by the Police including corruption cases. Additionally S 10 of the Criminal Procedure Act (CPA) and S.24 of the Police Acts grants police officers powers to arrest without warrants. By virtue of S 28 of the Police Act, a senior police officer can issue a search warrant and any police officer can enter into any house, shop warehouse or premises to search and seize stolen property or proceeds of a crime. Further, S 29 and 30 of the Police Act enables Police Officers to detain and search persons suspected of committing a crime. The above and other provisions of the Police Act, Criminal Procedure Act (CPA), Criminal Code, and related laws accounts for why the Police is the key law enforcement agency supporting the law enforcement functions of all anti corruption agencies in Nigeria. In several of the anti-corruption agencies, it is police officers seconded to those agencies who directly carry out the investigation of offences.

2.4.2 Independent Corrupt Practices and other Related Offences Commission

The Commission is established by S. 3 of the ICPC Act. S 5 of the ICPC Act gives the Commission power to receive reports, investigate allegations of corruption and prosecute offenders. According to ICPC's first published annual report 2002-2005, the ICPC between 2002-2005 received a total of 1846 petitions, fully investigated 80 of those petitions and charged 49 cases to court. As at the date of publication of that report, 962 complaints were still under investigation, 659 had not been investigated at all and 139 petitions had been found to have no merit.

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[43] S 98& 99 of the criminal code
[44] S 12, 404,of the Criminal Code
[45] Sections 383, 390(7) 434,435, 436 of the Criminal Code

2.4.3 Economic and Financial Crimes Commission

The EFCC was established for the prevention, investigation and sanctioning of financial and economic crimes in Nigeria. The functions of the EFCC include enforcement and due administration of the EFCC Act and some other legislations namely the MLPA 2011, the Advance Fee Fraud and Other Fraud related offences Act 1995, the Failed Banks (recovery of debts) and Financial Malpractices in Banks Act 1994 as amended, the Banks and other Financial Institutions Act 1991 as amended, the Miscellaneous offences Act, the Criminal and Penal Codes and any other law or regulations relating to economic and financial crimes. By S 6 and 18(3) of the EFCC Act and S 35 of the Miscellaneous offences Act CAP 184 LFN 2004 illicit enrichment is criminalized in compliance with Article 20 of UNCAC and Article 8 of the AUCPCC. Also the EFCC Act in S 17 criminalizes concealment of retention of property knowing it to be proceeds of a crime in compliance with Article 24 of UNCAC. The MLPA administered by the EFCC criminalizes laundering of proceeds of crime in compliance with Articles 21 and 22 of UNCAC.

Additionally the EFCC has powers of investigation, arrest, prosecution, assets tracing and forfeiture in accordance with law. EFCC from inception until April 2010 has received 10,000 petitions; it has over 8,000 cases under investigations; over 500 cases under prosecution; has conducted over 5000 arrests; recovered assets valued at over 15b USD before the Cecilia Ibru case this year; and secured over 200 convictions[46]. It has been successful in bringing a number of criminal elements (including several high profile functionaries) to book, in the enforcement of several financial crime related laws.

Additionally the EFCC is empowered to investigate, prevent, and prosecute officials who engage in, *"money laundering, embezzlement, bribery, looting and any form of corrupt practices, illegal arms deal, smuggling, Money Laundering illegal oil bunkering, illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency.*

2.4.4 Code of Conduct Bureau and Tribunal

The Code of Conduct Bureau and Tribunal Act established a Code of Conduct Tribunal, a quasi-judicial body to hear and adjudicate on infractions and impose sanctions. The Tribunal has powers to impose sanctions including; vacation of office, seizure of assets, and disqualification from office for violation of the code of conduct. The Code of Conduct Bureau and Tribunal's Act provides for specific infractions in respect of which the Tribunal can impose sanctions. These include conflict of interest, collection of double emoluments, receiving benefits from government contractors, Bribery and Corruption, Inducement, abuse of office, gift and benefits in kind for anything done or omitted to be done in discharge of duties, membership of society or group incompatible with dignity of his office, failure to declare assets, false declaration, and owning and running of foreign accounts.

Between January and June 2009 the Code of Conduct Bureau received 129 petitions/complaints, out of which 60 files were closed as lacking merit, 30 complaints were referred to other agencies whose mandates relate more to the areas of the complaint, 7 cases were taken before the Tribunal and 32 cases were referred for legal advice to the office of the Honourable Attorney General of the Federation[47].

2.4.5 Nigeria Extractive Industries Transparency Initiative and Enforcement Powers

The NEITI Act criminalizes failure to disclose production and revenue related information and gives NEITI coercive powers to obtain, interpret and disseminate such information. By S 16 of the NEITI Act every Extractive Industry entity who gives false information, renders false account, delays or refuses to give information to government or any of its agencies commits an offence punishable with a fine of not less than N30,000,000 (Thirty Million Naira), in addition to paying the actual amount of revenue due to government. Also the President may pursuant to recommendations of the NSWG suspend or revoke the license of such a company, and all directors of the company will be liable to imprisonment for at least two

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[46] Inter Agency Task Team (Anti Corruption Agencies) Fact Sheet. 2010

[47] Ibid.

years and a fine of not less than N2,000,000. However, a director who can show that the offence was not committed with his consent or connivance or that he exercised all such due diligence to prevent commission of the offence is exempt from the prescribed punishment. Though NEITI has witnessed instances of failures in disclosure, NEITI appears to have successfully applied persuasion and is yet to prosecute any organizations under this law.

2.4.6 Inter-Agency Relationships in Corruption and all Criminal Cases

There various institutions directly or indirectly involved in the administration of justice in Nigeria. These institutions include the Judiciary, the Police, the Ministries of Justice, the Prisons Service and Legal Practitioners. The judiciary performs its traditional role of trying cases brought before it and imposing punishment while the Police and other enforcement agencies perform the role of investigation, prevention, arrest and pre-arraignment detention.

The Police also perform the role of prosecutors in the lower courts. The Ministry of Justice performs the role of prosecutor and is generally responsible for the administration of justice. The Prison Service carries out orders of the court in relation to sentences and imprisonment of persons. The Legal Practitioners play the role of either prosecuting or defence counsel in criminal proceedings. In Nigeria, criminal jurisdiction is vested in several courts. Nigeria operates a federal system and therefore there are both Federal and State courts systems, which converge at the appellate courts level. In terms of hierarchy and criminal jurisdiction, the lowest level is the Magistrate Court, followed by the High Court, the Court of Appeal and the apex court, the Supreme Court. Appeals lie from the Magistrate Court to the High Court, then to the Court of Appeal and finally to the Supreme Court.

The Magistrate Court and the High Court are generally the courts that exercise original jurisdiction in criminal matters. The scope of the jurisdiction of the Magistrate Court in each state is determined by the provisions of each state magistrate's courts law. In Nigeria more than 80% of criminal proceedings take place at the Magistrate Courts[48]. Thus apart from serious offences attracting capital punishment and felonies, many criminal proceedings (including some corruption related cases) and trial of misdemeanours take place in Magistrate Courts.. The criminal justice system is accusatory and based on the general principle that an accused is presumed innocent until proven guilty[49].

Under the 1999 Constitution of the Federal Republic of Nigeria, the power to institute criminal proceedings lies with the various States Attorneys General and the Attorney General of the Federation. The Police also have powers[50] subject to the powers of the Attorneys General to institute and prosecute criminal cases. Infact, the police prosecute the bulk of criminal offences brought before courts of summary jurisdiction such as the Magistrate Courts. The criminal justice procedure laws unlike the civil justice procedural framework in Nigeria have generally not undergone any reform in more than 40 years[51]. This is critical within the context of enforcing laws and sanctions in the case of corruption related offences, which increasingly involves the use of modern technology. Criminal justice administration in Nigeria is faced with a number of challenges which also affect the prosecution of corruption cases including[52] congestion of courts; overcrowding in prisons and other detention centres; delayed trials; outdated criminal procedure legislation; outdated evidence law, poor investigation and policing techniques; lack of infrastructure; poor data storage and retrieval system; out dated sentencing procedures; Corruption; and Inadequate funding and poor working conditions for prosecutors.

The Administration of justice in Nigeria has generally been the focus of several recent interventions at different levels. In recent years and particularly, since the return of constitutional democracy in 1999 a lot

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[48] Onimim Briggs/Chudi Ojukwu- ISRCL Edinburgh 2005
[49] ibid
[50] ibid
[51] ibid
[52] ibid

of resources have been channelled into the reform of the justice sector both at the Federal and State levels. Some of the State and Federal courts have made some appreciable progress in reforming their respective court systems. One of these projects is the DFID –assisted Nigeria Access to Justice Program. The DFID 'Access to Justice' program has as its goal "to enhance access to, and quality of safety, security and justice for poor people".

Another good example is the adoption of the Code of Conduct for Judicial Officers by the judiciary in its operations and activities. These principles seek to establish acceptable standards for ethical conduct of judges and to afford the judiciary a framework for regulating judicial conduct. Given the crucial relevance of judicial functionality in criminalization and law enforcement, this adoption is quite useful.

In spite of the many laudable attempts going on in Nigeria to reform administration of justice, the system remains challenged in several fronts. One of the major problems in criminal justice system is the very limited co-ordination between the various agencies responsible for the administration of justice in the country. At present the police prosecute independently of the Ministry of Justice and the office of the Attorney General. The Police only forward cases concerning certain classes of offences for advice to the Ministry. The prison service in terms of administrative structure is not located within the justice sector. It is an agency in the Ministry of Internal Affairs. To complicate matters further, the different agencies are controlled at different levels of government. The police and the prisons are federal agencies while the Judiciary and the Ministries of Justice are hybrids between federal and state. The general consequence is that policies do not have the desired impact and implementation is problematic due to the challenge of effective coordination between the different agencies. There is therefore a need to e create an effective single unit coordinating and complementing the affairs of these agencies. This was precisely the problem that led to the enactment of the Administration of Justice Commission Act Cap A3 Laws of the Federation of Nigeria 2004.

It is clear from the provisions of the Act, that it was intended as vehicle of coordination and reform of especially the criminal justice system. It established the Administration of Justice Commission with responsibility among other things for general supervision of the administration of justice in Nigeria.

The Commission is charged with the duty of supervising and monitoring activities of key institutions of the justice sector. The commission is composed of the Chief Justice of Nigeria as Chairman and the following persons as members- (a) the Attorney General of the Federation, (b) the Minister of Internal Affairs, (c) the Inspector General of Police, (d) the Director of Prisons17 (e) the President of the Nigerian Bar Association. The commission is also replicated at the state level, where it is chaired by the State Chief Judge, Attorney General of the State, Commissioner of Police of the State, Chairman of the State branch of the Bar Association and the State Controller of Prison as members. The commission was charged with the general supervision of the administration of justice in Nigeria and to ensure:

a. *the courts system in Nigeria is generally maintained and adequately financed;*
b. *Judges and Officers of the courts conform with the Code of Ethics of their office*
c. *criminal matters are speedily dealt with*
d. *congestion of cases in courts is drastically reduced*
e. *congestion in prisons is reduced to the barest minimum*
f. *persons awaiting trial are as far as possible not detained in prison custody*
g. *the relationship between the organs charged with responsibility for all aspects of the administration of justice is cordial and there exists maximum co-operation amongst the organs for effectiveness of the system of administration of justice in Nigeria"*

Despite the existence of this body both at the federal and at the State levels, the Nigerian Bar Association (NBA) had expressed concerns[53] about its effectiveness. The NBA called for revitalizing the Administration of Justice Commission pointing out that doing so would greatly enhance the performance of agencies involved in prosecuting corruption by institutionalizing the very many Justice Sector reforms initiatives across Nigeria.

Other challenges include the absence of an effective Whistle Blower and Witness Protection Program; the need to improve upon investigative and prosecutorial capacities and competence; the absence of sufficient security and poor conditions of service for prosecutors; the need for specialized courts for prosecuting corruption related offences; and the sceptical public perception on justice administration that limits citizens cooperation with anti corruption agencies.

2.5.0 ASSETS RECOVERY AND FORFEITURE

2.5.1 Obligation to set up a regulatory and supervisory framework for combating Money Laundering - Article 14 of UNCAC

Article 14 UNCAC, requires State parties to establish regulatory and supervisory framework to combat money laundering and ensure cooperation of agencies involved at local and international levels. It further requires states to consider the establishment of a Financial Intelligence Unit [FIU] to serve as a national centre for monitoring, analysis, collection and dissemination of information regarding potential money laundering and movement of cash in and out of State borders. It requires that financial and non-financial institutions within State parties collect information on origin of electronic fund transfers and scrutinize incomplete information. It further requires banks and non –bank financial institutions to keep customer and where appropriate beneficial owner identification, and ensure record keeping and reporting of suspicious transactions. Neither AUCPCC nor ECOWAS Protocol has similar requirement to establish a specific regulatory institution for money laundering, though they equally criminalize and provide for prevention of money laundering related offences.

In Nigeria section 6 of the EFCC (Establishment) Act 2004, grants the EFCC the function of co-ordination of and enforcement of all economic and financial crimes laws and enforcement functions conferred on any other person or authority. It also provides for the adoption of measures to eradicate economic crimes including preventive and regulatory actions. Additionally S 2[c] of the Act provides that the EFCC is the designated Financial Intelligence Unit [FIU] with the responsibility of coordinating the various institutions involved in the fight against money laundering.

The MLPA 2011 provides for money laundering offences in Nigeria. The offence is described in Section 15 of the Act as the conversion of, transfer of resources or property derived from illicit traffic in drug or psychotropic substances or any illegal act in order to disguise its illicit origin, or helping a person involved to evade the legal consequence. It also prohibits collaborating to conceal or disguise the genuine origin, movement or ownership of properties or proceeds from such crimes. The MLPA places a limitation on the amount of cash payment for any one transaction by an individual or organization, and imposes a mandatory duty of disclosure upon financial institutions within seven days to either the National Drug Law Enforcement Agency (NDLEA), the Central Bank, judicial authorities or officers of the Nigeria Customs and Immigration Service or such other persons as the Central Bank may from time to time by order published in the gazette specify[54]. Under this law money laundering is a crime punishable with imprisonment ranging from 2-3 years imprisonment or a fine of N250,000 [two hundred and fifty thousand naira] ₦1,000,000 [one million naira[55]].

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[53] 'NBA president's Agenda': Culled from the Bar Association website.

[54] S 8 of the Money Laundering Act 2011

[55] S 15 of the Money Laundering Act 2011

Pursuant to this law and provisions of other laws, the Central Bank of Nigeria (Banking Industry Regulator) and the Nigerian Deposit Insurance Corporation [NDIC] in collaboration with the EFCC have adopted the "Know Your Customer' (KYC) Directive and Money Laundering Examination Procedure/Methodology Guidance Note. Both of these provide procedures for checkmating the maintenance of anonymous accounts, particularly accounts with foreign transaction activity in Nigeria. This Guidance Note applies to banks and non bank financial institutions and even non-designated institutions like professional practice firms.

Additionally in compliance with Article14 of UNCAC, and pursuant to its statutory functions, the EFCC has established the Nigerian Financial Intelligence Unit [NFIU] operating as an independent Unit within the EFCC. The NFIU is responsible for receiving, analysing and distributing to related agencies analysed reports of suspicious transaction and other related information for combating money laundering and other crimes. This along with the recently constituted Inter-Agency Task Team framework is expected to enhance the ability of Nigerian agencies to exchange information and cooperate in enforcement of existing laws and regulations in accordance with Article 14 (1) (b) of UNCAC.

The EFCC Act in Section 6 requires the EFCC to maintain a liaison and cooperation with the office of the Attorney General, the Nigerian Customs Service, the Immigration and Prison Service Board, Central Bank of Nigeria, the Nigeria Deposit Insurance Corporation, the Nigerian Drug Law Enforcement Agency, all government security and law enforcement agencies and such other financial supervisory institutions in the eradication of economic and financial crimes.

As already indicated in this report Nigeria is a member of the Egmont Group of Financial Intelligence Units. Nigeria has a strong engagement with GIABA and the FATF and other regional and international groups for combating money laundering and related offences in compliance with Article 14 (5) of UNCAC.

The Federal Government of Nigeria in September 2005 by executive decision No. 286 set up the Special Control Unit against Money Laundering (SCUML). This unit is domiciled in the Federal Ministry of Commerce and Industry (FMCI). Operationally however it is managed by the EFCC which has the expertise. S 5 of the Money Laundering (Prohibition) Act 2011 empowers the FMCI to supervise, monitor and regulate the operations of the Designated Non-Financial Institutions (DNFIs) against Money laundering and terrorist financing. DNFIs are defined by the Money Laundering(Prohibition) Act to include dealers in jewellery, cars and luxury goods, chartered accountants, audit firms, tax consultants, clearing and settlement companies, legal practitioners, supermarkets, hotels and casinos or such other businesses as the FMCI may from time to time designate. SCUML has a national advisory council made up of representatives of listed DNFIs, and constitutes a platform for engaging the different DNFIs.

Compliance with the reporting requirements is not as high as expected, particularly amongst DNFIs. This study indicates that ignorance of statutory provisions, the challenge of overcoming professional standards of client's privilege, an extended family and ethnic system commanding higher loyalty than the State, poor public record keeping and poor individual identity records and systems continue to limit levels of compliance. There is also need for rapid improvements in information sharing and collaboration and the use of information communication technology within government, and amongst private and citizens sector actors.

2.5.2 Criminalization of Money Laundering - Article 23 of UNCAC

Article 23 of UNCAC, Article 6 of AUCPCC and Article 5 of ECOWAS Protocol obligates State parties to criminalize conversion, transfer or disposal of property being laundered proceeds; concealing the

nature/source and location and ownership of proceeds of crime; acquisition or possession or use of proceeds of crime knowing its nature. It also requires criminalization of participation or association with conspiracy to commit, facilitate or counsel offences of corruption. Sections 2, 11, 15-17 of the MLPA of 2011 prohibit these activities. Section 17 & 18 of The Economic and Financial Crimes Commission [Establishment] Act 2004, criminalizes and provides penal sanctions for money Laundering and related offences. This is also the case with Sections 13 and 15 (a, b & c), of the ICPC Act.

The Offences created by these local laws cover reasonably the acquisition, possession or use of property knowing at the time of receipt that such property is proceeds of a crime. It also covers the participation in, association with, conspiracy, attempts or aiding, and abetting or counselling commission of such offences as required by Article 23 of UNCAC. Additionally the language of Sections 17 & 18 of the Money Laundering [Prohibition] Act 2011 [MPLA] covers the requirement by Article 24 of UNCAC for criminalization of concealment, when committed internationally after commission of an offence, where a party has not participated in the crime.

2.5.3 Freezing, Seizure and Confiscation of Assets - Article 31 of UNCAC

Article 31 of UNCAC, Article 16 of AUCPCC and Article 13 of ECOWAS Protocol obligate State Parties to adopt measures to ensure the freezing, seizure and confiscation of proceeds of crimes by relevant authorities. UNCAC requires state parties to take measures to the greatest extent possible to enable confiscation of proceeds of crime established in accordance with the convention or property of a value corresponding with such proceeds.

This is also the case with instrumentalities or property used or destined for use in commission of such offences, whether or not such property has been converted to other forms, in which case a corresponding measure of value should be seized. Where such properties have been co-mingled with other goods or property, such goods should also be seized.

In compliance with UNCAC, S. 20 of the EFFC Act provides for the forfeiture of such assets to the Federal Government upon conviction. Additionally it provides that all properties already subject of an interim order of the trial court, shall be forfeited to government upon conviction of the accused person.[56]. The Act additionally a provides for forfeiture of all property real or personal representing gross receipts obtained directly or indirectly by a person from violation of the EFCC Act, within Nigeria, even where it represents proceeds from an offence under the laws of a foreign country[57].

The EFCC Act provides for the forfeiture of every means of conveyance, including aircraft, vehicles, vessels used or intended to be used to transport or facilitate sale, receipt, possession, or concealment of proceeds of such crime, except for cases where the owner is not a consenting or conniving party or where the offence is committed while the medium is in unlawful possession of another[58]. The Act also grants the Commission power to seize property under this Act, where the seizure is incidental to an arrest or search or in the case of property liable for forfeiture[59]. S 27 & 28 of the Act empowers the EFCC to obtain a declaration of assets of every person arrested in relation to an offence under this Act, and to trace and attach all the assets of any such person acquired as a result of the crime.

The Act further empowers the EFCC to sell and dispose confiscated assets subject to final court orders. It provides a legal basis for court based confiscation, seizure and forfeiture of assets including the power for courts to make necessary orders. However the Nigerian legal regime does not yet provide for non conviction based asset forfeiture.

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[56] S 21 of the EFCC Act
[57] S 24 of the EFCC Act
[58] S 25 of the EFCC Act
[59] S 29 of the EFCC Act

Additionally S 34(2) empowers the Chairman of the EFCC or any person authorized by him, to by order compel a bank or financial institution to supply any information, produce any books, and to stop all outward payments, operation or transactions in case of accounts of persons arrested under the Act. In all these, the emphasis appears to be in forfeiting the assets to the Federal Government. There is no mention of return of assets to original or legitimate owners; rather there are copious provisions on vesting same on the Federal Government, except where there is a treaty stating otherwise. The line of existing court decisions on this subject however, suggest that the courts recognize property/asset rights and will usually order return to victims upon sale. These provisions are however court and case dependent, and does not empower non conviction based assets forfeiture.

On a progressive note, the EFCC Act covers a wider breadth essentially spanning the offences listed under article 23 of UNCAC. It goes further to provide for offences relating to financial malpractices, such as failing to comply with the provisions of the Act or authenticating any statement put forward in fulfilment of the Act. It also provides for sanction of offences relating to terrorism, either by participating in, helping to commit or transferring funds to help in the commission of a terrorist act, without fully dealing with the issue of terrorism financing. The Commission is charged with the responsibility of enforcing other legislations relating to crimes, including the Money Laundering (Prohibition) Act[60]. Its functions include the investigation of all financial and economic crimes such as advanced free fraud, money laundering, counterfeiting, illegal charge transfers, futures market, contract and computer credit scam, failed bank cases among others[61].

Repatriation of assets diverted and stolen by top-level public officials and politicians through corrupt practices has become a pressing issue to many developing countries. However, success in repatriation has been so far limited.. The Government of Nigeria has so far succeeded in recovering about $1billion of the estimated $4-5.5billion USD looted by late General Abacha[62]. The recovered amounts (transferred to Government's account at the Bank for International Settlements) originated from the diversion of funds from the Central Bank. In this case Switzerland's cooperation reflected in the provision of mutual legal assistance based on national law and a declaration of reciprocity. The EFCC in Nigeria confirms that Nigeria accords similar privileges to other State Parties to UNCAC. International cooperation particularly between the EFCC and other transnational bodies have reportedly led to the recovery and return of $242 million to a Brazilian bank, $4 million to a Hong Kong National and $ 500,000 to sundry US citizens[63]

S 9 of the MPLA further mandates financial institutions to establish amongst others, an internal mechanism for combating Money laundering and to appoint compliance officers who shall be responsible to see that the requirements of the Act are effectively complied with.

Section 5 (1) (j) EFCC Act provides for the collaboration with governments within and outside Nigeria in issues concerning

(i) identifying the whereabouts of persons suspected to be involved in economic and financial crimes,
(ii) movement of persons and properties derived from such crimes,
(iii) exchange of personnel
(iv) establishing a monitoring regime to identify suspicious persons and transactions
(v) Coordinating all units investigating economic and financial crimes in the country

Section 5 (1) (j) EFCC Act also provides a window of opportunity to a governmental agency tackling corruption to collaborate with similar national and international bodies.

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[60] S 6(2) of the EFCC Act
[61] S 7 of the EFCC Act
[62] Presentation by Nigeria's former president, Chief Olusegun Obasanjo, at the Transparency International Global roundtable in Berlin
[63] 'Nigeria's struggle with Corruption': Being an abridged and edited version of presentation to US Congressional House Committee on International Development, Washington, DC on 18 May 2006.

There is a blanket provision for scrutiny of suspicious transaction, not necessarily those of public officials and their relations. Again, beyond the requirements of UNCAC, the Code of Conduct Bureau and Tribunal Act prohibits maintaining foreign accounts by Public Officers. Thus there are governmental efforts to prevent and deter the laundering of proceeds of crimes in Nigeria.

2.5.4 Non Conviction Based Assets Forfeiture

It is worthwhile at this juncture to reiterate that Assets recovery is governed by the EFCC Act, 2004 and the ICPC Act 2000, and both statutes require conviction before assets can be forfeited. However, the laws provide for interim forfeiture of the assets under investigation through an ex-parte process.

Part of recent efforts to improve assets recovery and forfeiture regime in Nigeria is the on –going effort to introduce non conviction based forfeiture into our national jurisprudence. The global trend towards civil forfeiture has been prompted by the tendency of organized criminal groups to use their resources to distance them from the criminal activity and to hide the illicit origin of their assets[64]. When it is difficult to obtain the conviction of such individuals, these proceeds derived from crime are often effectively out of the reach of the law, and the criminals are able to peacefully enjoy their ill-gotten gains. This damages public confidence in the anti-corruption crusade and undermines the general deterrent purpose of criminal law. Non-conviction based forfeiture therefore, is very useful to the extent that it enables States to recover illegally obtained assets from an offender through direct action against his or her property, without the requirement of a criminal conviction. The State will still have to prove within the balance of probabilities that the offender's assets are either the proceeds of crime or represent property used to commit a crime i.e. instrumentalities.

The recent move to legalize civil asset forfeiture met with some setback as the Bill which was presented as an Executive Bill was rejected by the House of Representatives through a voice vote after the first and second readings. No official reason was given for the decision. The study results indicate that this may have been as a result of the lack of a broad based stakeholder ownership of the process as well as perhaps wrong perception that the law Enforcement Agencies are out to use the assets forfeiture law to 'go after' some predetermined persons or to violate constitutionally protected property rights. The legislature does not appear convinced by examples of this legislation in other jurisdictions.

At the global level however, Nigeria has expressed strong support for the Stolen Asset Recovery (StAR) Initiative. The StAR initiative was launched jointly by the UNODC and the World Bank Group (WBG) and its success is likely to depend critically upon forging and strengthening partnerships among developed and developing countries, as well as other bilateral and multilateral agencies with an interest in the problem[65]. The objective of the UNODC-WBG partnership is to use both institutions' convening power to enhance cooperation between developed and developing countries on StAR as well as persuade all countries to ratify and implement the UNCAC. This agenda is meant to be pursued in close partnership[66] with other agencies working on related topics. Other areas of interest for StAR include the building of partnerships aimed at enhancing legislative, investigative, judicial, and enforcement capacity in developing countries.

2.6.1 PARTICIPATION OF NON STATE ACTORS IN THE FIGHT AGAINST CORRUPTION

Civil Society in Nigeria is the arena of organized social life constituted by an array and complex network of associational groups that intervenes in social, economic and political processes, but not covertly interested

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[64] Managing Proceeds of Asset Recovery: The Case of Nigeria, Peru, the Philippines and Kazakhstan: Ignasio Jamiu, working paper series 6, ICAR

[65] ibid

[66] World bank governance and anti corruption strategy paper, March 2007

in the capture of political power. When the issue of political power becomes germane to the activities of civil society, it moves into the realm of political society[67].

Commentators on the nature of civil society have identified the following typologies of Civil Society in Nigeria: organised professional associations: labour and interest groups; human rights groups and NGOs; primordial groups defined in ethnic, regional and religious terms; business organised interest and developmental associations, as well as community and neighbourhood associations. In addition to the above, attention has been drawn to other typologies so as to illuminate the terrain of civil society in Nigeria: civic public associations such as trade unions, students unions, churches and mosques; other civic associations (secret organisations, spiritual churches and Islamic movements; primordial public relations (Afenifere, Arewa Peoples' Congress Ohaneze Ndi Igbo e.t.c) and indigenous development associations, and recently defiant militia or extremist religious groups like Boko Haram, Movement for the Emancipation of the Niger Delta (MEND) etc. The relationship between these groups and government is dependent on the context or issues involved. It can be co-operational, conflictual, integrative, interrogative or non-existent. It is when the political authority lacks legitimacy that state-civil society relations tend to be largely conflictual and antagonistic[68]. A common factor however is that they are neither State actors, nor businesses.

The challenge is that when individuals and even government refers to civil society in Nigeria, they more often are referring to NGOs. The Human rights groups and NGOs in Nigeria have a more recent history, having been largely borne in the last two decades by the fight to rid Nigeria of Military rule. Many have now transformed to issue based interest groups pursuing improvements in several developmental issues and efforts. They are predominantly pro-democracy human rights, and pro good governance focused. They often associate on efforts to deepen democracy, but they are by no means cohesive. A smaller number currently appear to focus specifically on corruption and financial crime related efforts and it is the initiatives and work of this group that is referred to more in this scoping study. The major challenge facing Nigerian NGOs working on corruption issues and over sighting the anti-corruption agencies is to mobilize other sections of civil society to join the fight against corruption.

The study found a plethora of on-going initiatives in Nigeria at the levels of both international and local Non-State Parties. Among some NGOs it found specific activities and initiatives focused on anti –corruption education, and prevention activities that have served to improve information sharing, reporting of corruption activity and participation of society in the crusade against corruption and in governance decision making in Nigeria. These activities continue to improve the levels of compliance of the Nigerian integrity system with Articles 10 and 13 of UNCAC.

The Zero Corruption Coalition (ZCC) one of the pioneer NGO coalitions against corruption in Nigeria has worked to improve skills and capacity to fight corruption in Nigeria. Its advocacy programs for compliance with international anti-corruption instruments led to the introduction of the Whistle Blowers Bill in the National Legislature some years back, but the bill was unsuccessful. It has also improved information sharing about corruption activities in Nigeria using list-serve and other internet resources. It has published simplified citizen's information manual on the mandates and activities of the key anti-corruption agencies, such as the EFCC and ICPC. Its activities also, include the simplifying and disseminating results of the Nigerian Extractive Industries Transparency Initiative [NEITI] Oil & Gas sector Audits. It continues to monitor and report on levels of domestication of International anti-corruption Instruments to which Nigeria is signatory[69].

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[67] Dr Said Adejumobi Defining Civil Society, a lecture presented at the Strategy Meeting on Civil society Reforms by Open Society Initiative for West Africa in collaboration with Centre for Development of Civil Society. Held on 8th August 2005 in Chida International Hotel Abuja

[68] ibid

[69] [www.zccnigeria.com.31/07/2010]

Media Rights Agenda leading the FOI coalition has been at the fore front of the advocacy for passage of a Freedom of Information [FOI] law in Nigeria and maintains an information sharing platform for many groups involved in the FOI campaign. The FOI campaign has attracted many organizations among who are mainstream Civil Society Organizations, professional bodies, trade unions, media groups and other non state actors. The effective national campaigns mounted by this group and targeted advocacy at the National Assembly saw to the passage of the FOI Bill in 2007. Regrettably that law lapsed, when the then president Olusegun Obasanjo refused to assent to it. Similar efforts continue till date and the Bill has been passed at the lower house –the House of Representatives and is currently before the Senate.

Many civil society organizations launched several advocacy programs in support of the passage of the FRA 2007 and PPA 2007. The Public &Private Development Centre (PPDC) for instance succeeded in securing inclusion of a mandatory civil society monitoring clause in the Public Procurement Act and is currently collaborating with USAID-PACT Advance program to implement a Procurement Watch Program, which has led to the formation of the National Procurement Watch Platform and activation of Non State actors monitoring of procurement in accordance with the PPA 2007. This program has trained and introduced many mainstream NGO's and professional bodies to citizens monitoring of the public procurement since 2008, in further fulfilment of Article 13 of UNCAC on participation of society.
Civil society in Nigeria has over the past decade become more involved in public finance management intervention through different forms of budget analysis, monitoring and advocacy. One of such intervention was by Action Aid Nigeria.

Action Aid Nigeria with support from the EU and in partnership with six other local NGO's implemented a public finance analysis program, aimed at increasing citizen's participation in governance through public finance analysis. This program contributed to increasing capacity and citizens participation in decision making in six states one in each of the six geo-political zones across the country. The Justice Development and Peace Commission of the Catholic Church (JDPC) Ijebu Ode has also implemented similar programs in over twelve states of the Country with support from the European Commission. The challenge however for most of these programs is that often the funding circle is short, and with the absence of local funding support, sustainability after termination of international donor funding has been difficult.

Attempts to improve the administration of justice in Nigeria have included sensitization of law enforcement officers on global standards by groups such as the Legal Research Initiative. The Centre for Law Enforcement Education (CLEEN) has also done a lot of work around strengthening internal and external processes and mechanisms for holding law enforcement and security agencies accountable for their conduct in the discharge of their duties and making such mechanisms open for use by members of the public wishing to lodge complaints against misconduct. The Foundation is currently implementing an internal accountability project aimed at enhancing police accountability in Nigeria in collaboration with the Nigeria Police Force. The project involves working closely with the Police Public Complaints Bureau (PPCB) which is one of the internal disciplinary mechanisms to address complaints of members of the public against erring police officers. The focal states for implementation are Lagos, Kano and Rivers States.

Convention on Business Integrity [CBI] in Nigeria exists to encourage and empower businesses to fight against corruption. It was established to empower businesses in and around Nigeria against corruption and corrupt practices. Its code was adopted in 1998. It has a core group of businesses, who subscribe to the Code of Ethics and business principles. Such companies as SAP world's leading provider of e-solutions and OANDO, a Nigerian petroleum industry giant have signed on to this code. It has a secretariat and continues to seek to increase signatories to the code in the business community[70].

Some other non- state actors have been engaged in several efforts aimed at monitoring governance performance relating to anti corruption in many respects. The annual Transparency International

[70] http://www.theconvention.org/aboutus.html 31st July 2010

Corruption Perception Index has had impact in Nigeria, and become a major advocacy tool by citizens organizations. The USAID supported Nigerian Government approved Afro Barometer governance surveys has continually put a searchlight on many vulnerable points in Nigeria. Similar efforts by CLEEN Foundation in the police sector, the Niger Delta Budget Monitoring Group, and Public and Private Development Centre (PPDC) on Levels of implementation of the PPA[71], and Centre for Social Justice (CENSORJ) on implementation of the Fiscal Responsibility Act 2007 have continued to improve attention and improve efforts in corruption prevention. Both PPDC and CENSOJ have produced several informative publications and tools in this area. The Nigerian newspapers and magazines in line with Article 10 of UNCAC continue to provide incisive reports of corruption activity that many a time has caused public outcry and in some instances government action. Such new initiatives as Sahara reporters continually provide detailed expose? on corruption activity using the internet[72].

Government's efforts in passage and implementation of the Fiscal Responsibility Act 2007 and the Public Procurement Act 2007 have contributed to improving citizen's participation in governance in Nigeria. The annual Medium Term Strategy Sessions of the Budget Office aimed at developing the Medium Term Expenditure Framework (MTEF), and the continued sensitization of citizens groups and consultation of stakeholders by the Bureau for Public Procurement are meaningful efforts to improve compliance with Article 13 of UNCAC. However full implementation and compliance to these legislations is yet to be achieved, leaving large room for improvements in the environment for civil society and media to participate and hold government accountable.

The two major Anti-Corruption agencies have both established many initiatives to engage citizens in the Anti-Corruption fight. The ICPC established and is currently supporting its National Anti–Corruption Coalition and has registered about 185 NGOs as members of the coalition. It has also developed a National Values Curriculum and now runs Anti –Corruption Development (CD) Groups within the National Youth Service Corps (NYSC) Program.

The Economic and Financial Crimes Commission has a Strategy and Re-Orientation Unit (SARU) focused on citizens' sector engagement relating to the mandate of the EFCC. SARU has facilitated the formation of a citizens group which is called the Anti-Corruption Revolution [ANCOR.] It is primarily a network of NGOs, labour Unions, Professional bodies and other actors aimed at improving public aversion for corruption and financial crimes and mobilizing citizen support for achieving the mandate of the EFCC. It focuses on Advocacy, civic education and sensitization against economic and financial crimes and corruption.

However the singular most significant achievement of the Government of Nigeria in encouraging citizens participation and engagement in governance is the provision for appointment of CSO representatives to the board or governing council of certain critical good governance institutions. The enabling legislations of these institutions tagged 'the sunshine laws' provide for the appointment of CSO representatives who sit on the board and decision making organs of these institutions. Examples of these are the NEITI ACT 2007, PPA 2007 and the FRA 2007.[73] This has not only ensured enhanced access to information and CSO participation in governance, it also represents a significant policy shift on government CSO relationship and interaction especially in view of the country's relatively recent return to civil rule.

2.6.2 Donor Activity and Support of the Anti-Corruption Agenda.

The United Nations Development Fund (UNDEF) is currently providing support to carry out procurement monitoring and deepen stakeholder capacity to engage the procurement process in Nigeria.

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[71] Compliance with the Public Procurement Act 2007: A survey of procuring entities, civil society observers, bidders and contractors, legislators and Bureau for Public Procurement 2010

[72] see www.saharareporters.com.

[73] Section 6[2][ii] NEITI Act 2007, Section 1[2][v] Public Procurement Act 2007 and Section 5[1][b][ii] of the Fiscal Responsibility Act 2007

One of the outputs emerging from this process is the establishment of a "Procurement Observatory" an ICT web portal for collation, analysis and e-reporting of citizen led procurement monitoring in Nigeria, the first of its kind in Africa[74]. This will further improve compliance with Articles 10 and 13 of UNCAC.

There is also the Right to Know (R2K) organization established to champion the right to access officially held information at all levels of government. The organization works to establish legal standards for these rights in Nigeria, drawing attention to the fact that the legal affirmation of this right is a necessary pre-condition for the establishment of open and democratic government in Nigeria[75]. This project is supported by the Open Society Justice Initiative.

The Coalitions for Change Programme (C4C) is a direct response to DFID Nigeria's Drivers of Change analysis which argued that individuals and organisations acting on their own would be hard-pressed to drive meaningful long-term change. In order to tackle the fundamental constraints to change in Nigeria, an approach was developed that identifies and supports coalitions of interest across civil society, government, the private sector and the media. These coalitions are working on issues that engage their stakeholders and have the potential to lead to institutional change.

C4C is DFID Nigeria's main vehicle for supporting and testing this new and innovative 'issues-based approach' (IBA) to development. It has now developed and implemented a series of eight specific issue-based projects (IBPs). These in turn aim to drive change in the institutions that sustain two of the principal constraints to Nigeria's achievement of the MDGs: the mismanagement of public revenues and weak formal accountability.

Movement Against Corruption supported by DFID Nigeria's Coalition for Change C4C, is one of such coalitions, established with the aim of mobilizing mass citizens engagement in governance and anti-corruption, this group at inception held many mobilization activities in different regions of the country, however not much has been heard from this group since these widely publicized mobilization events.

Another of its offshoots is the Coalition for Accountability and Transparency in Extractive Industry, Forestry and Fishery in Nigeria (CATEIFFN) formed in February 2009, initially with 4 partners. Its membership has now grown to 13 and cuts across the public sector, broad-based CSOs and the private sector. The IBP's coalition, CATEIFFN is still in its formative stage.

There is the European Union Support to Reforming Institutions Program (SRIP). Its purpose is to ensure that authorities and citizens of target states render the budget and budgeting process a more transparent, effective, and accountable means of managing public resources. It provides two kinds of support, one for budget planning execution and monitoring agencies in order to increase fiscal transparency and efficiency, which should have positive impact on overall quality of public service delivery, and to Civil Society organizations within target States in order to strengthen their understanding of and participation in the budget process in order that greater pro-poor needs are reflected in the budget process.

The United Nations 7th Country program (7th CP) agreed between the UNDP and Government of Nigeria supports Nigeria's efforts to achieve the MDGs. It has four main program components, the Economic Governance Program (EGP), the Capacity for Governance Program (CGP), the private sector Development Program and the Sustainability and Risk Management Program. The core partners for this 7th CP program are Anambra, Bayelsa, Delta, Niger, Ondo , Rivers and Sokoto and there are the UN joint programming states of Adamawa, Akwa Ibom, Benue, Imo Kaduna, Lagos and the FCT. The EGP aims to support the Governments fiscal planning to achieve medium to long–term development priorities. The CGP plans to improve livelihoods by strengthening government accountability, increasing public

[74] [see www.procurementmonitor.org] 2nd August 2010].
[75] (http://www.r2knigeria.org/)

participation in governance through sustainable electoral process. It has three core aspects, Electoral Reform, Deepening Democracy, Public Accountability and Local Governance. Its expected outcomes will include more open and responsive public institutions and greater citizen engagement in political process and decision making, further integration of anti –corruption measures and procurement reforms in public sector management, and functioning local governance systems that are responsive to public demands as well as providing improved coverage and quality of basic services in selected states.

UNDP is promoting Development Watch Initiative (DWI) which is being raised as the platform for the new citizens budget monitoring drive. The aim of the initiative is to support government to get their system right and develop data that can influence policy. The overriding concept of the project is to build capacity to enable the CSOs monitor development projects at national, state and council levels. The project will use the UNDP National Information Action Centres (NIACs) to promote access to key public information from the top (government) to the bottom (citizens) and vice versa. The UN agency is partnering with the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and Other Related Offences Commission (ICPC), in collaboration with the Centre for African Settlement Studies and Development (CASSAD). Some of the CSOs involved in the project are Poverty Alleviation For the Poor Initiative (PAFPI), Global Call to Action Against Poverty (GCAP) and the Self Worth Development Initiative (SWDI).

The UNODC's mandate is to assist member States in their struggle against illicit drugs, crime and terrorism. It also supports members' efforts in the fight against transnational crime and corruption in all its dimensions.

The UNODC work and support to Nigeria has included; support to Economic and Financial Crimes Commission and the Nigerian Judiciary; Promoting Ethics and Transparency in Business Transactions in Nigeria; Preventing and Combating Trafficking in persons; Improving the Nigerian Prison Service Adherence to International Standards in the treatment of Prisoners through human Resource development; Capacity Building for National Agency for the Prohibition of Traffic in Persons (NAPTIP) Implementation of the Action plan Against Human Trafficking and Law enforcement capacity Building to prevent and combat smuggling of migrants in ECOWAS region and Mauritania. The UNODC has also provided support to the IATT and TUGAR especially in on-going efforts to develop the National Strategy to Combat Corruption. These UNODC projects and UNODC's global programs facilitate the support to Nigerian partners in key areas of Capacity Building and human resources development for institutions; Infrastructure development and creation of IT and other technical capacities; Policy development and research; and Outreach activities to broaden the national base for crime prevention and control. UNODC has managed a 32 million EURO EU support providing much needed ICT and other tools for corruption control, prevention and prosecution and increasing capacity within the EFCC in Nigeria.

In 2009, a new Country Partnership Strategy (CPS2) was agreed between the Nigerian government, DFID, the World Bank, the African Development Bank and USAID[76]. The strategy which covers (2010 – 2013) represents a shared commitment to work together as effectively as possible to help Nigeria achieve its development goals. The areas to be covered are public expenditure management, development of sector strategies, strengthening of sector institutions and improving the policy and regulatory environment. The partnership will also provide support for capacity development in the public service at the federal, state, and local levels. CPS2 provides support for public sector reform, and strengthening the capacity of government to formulate and implement policy and serve as regulators. Government planning and statistical capacity building will also be a critical aspect of the partnership. Justice sector reform and democratic governance will also be supported by DFID and USAID building on existing programs (including USAID DFID Strengthening the National Assembly Program (SNAP), and DFID Security Justice and Growth (SJG) and USAID's Local Governance Program).

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[76] Nigeria: Nigeria – Country Partnership Strategy : 2010 – 2013, World Bank website

The Federal Government of Nigeria has an ongoing credit from the International Development Association (IDA) towards the cost of implementing State Governance and Capacity Building Project (SGCBP) initially in three Pilot States, namely Bauchi, Cross River and Kaduna States. The current proposal is to cover thirteen states. The overall objective of the Project is to ensure good governance by way of promoting efficiency, accountability and transparency in the utilization of Public financial and human resources and better public service delivery.

The Project has the following components, which cut across a number of MDAs in Cross River State. These are:
A. Accounting Expenditure Control and Financial Reporting
B. Budget Preparation
C. Budget and Treasury Management Information System (BATMIS)
D. Human Resource Management and Staff Training Enhancement
E. External Audit
F. Public Finance Legislation
G. Public Procurement Reform,
H. Rehabilitation of Management Development Institute (MDI) and
I. Enhancement of Judicial Services

In October 2005, with the UK's assistance, Nigeria agreed the largest-ever debt-relief package for sub-Saharan Africa, which saves it debt payments of US$1 billion a year. With DFID's support, the Nigerian government created a system for monitoring debt relief gains, to make sure that they are spent on poverty reduction. For example, in 2006, these gains resulted in the retraining of 145,000 teachers and the recruitment of 40,000 new ones. DFID support has also included the provision of technical assistance to the Nigerian budget office to improve budget systems and to link spending more closely to poverty reduction. In 2006 the agency's support helped the government to identify savings of about £850 million, which will be invested in roads and power to support economic growth. DFID has supported the work of the Nigerian government's Economic and Financial Crimes Commission (EFCC), since its inception in 2004.

DFID partnered with the British Council between 2002 and 2010 to establish and implement the Security, Justice and Growth Program (SJG) to improve access to, and the quality of safety, security and justice for poor Nigerians. The SJG Program started at federal level and eventually expanded to the states. The project entry point was justice sector administration in Nigeria with a focus on three major components- safety and security, Justice, and growth. Specific project actions include work with the Police to introduce community policing in over 130 police stations nationwide[77]; strengthening and streamlining a legal regulatory environment for economic growth and work with anti corruption agencies in 2005 to contribute to the delisting of Nigeria from the Financial Action Task Force (FATF) blacklist, which hitherto restricted Nigeria's economic growth.

Other multilateral agencies that have supported administration for justice reforms in Nigeria include the European Union and the Commonwealth Secretariat. At the level of the European Union, an estimated sum of $32, 000,000 (Thirty Two Million Dollars) had gone into supporting institutional capacity building within anti corruption agencies such as the EFCC and the Nigerian Judiciary[78]. The Commonwealth Secretariat's Criminal Law Section has initiated an anti-corruption project aimed at securing compliance with, and implementation and enforcement of the UNCAC. The project provides Commonwealth member states including Nigeria with the legislation and tools to prevent, detect, investigate and prosecute corrupt activity as well as trace and confiscate the proceeds of such activity. The overall aim of the

[77] DFID website

[78] European Commission website

Secretariat's anti-corruption program is not only to encourage and facilitate the implementation of anti-corruption laws within the Commonwealth, but to also ensure that the domestic institutions, such as newly establishedanti-corruption commissions, are properly empowered and resourced to enforce those laws. Nigeria's anti corruption agencies have benefited from the commonwealth training programs on anti corruption.

The Open Society Institute of West Africa (OSIWA) and the Open Society Justice Initiative have launched their West African Anti Corruption Monitoring Program (ACMAP) in Nigeria[79]. The Program Objective is to assist civil society in Nigeria to create mechanisms and methodologies for independently monitoring the performance and effectiveness of anti corruption agencies in some mutually consistent way as part of the larger West African Program focusing initially on the three countries including Nigeria. The project actually sets out to facilitate appraisal of progress within individual agencies over time. The Immediate objective of the ACMAP is to design and deploy a set of instruments or benchmarks that civil society and the agencies themselves can use to monitor performance, designed in a way to provide snapshots of different dimensions of the agency's work that in the aggregate, can begin to serve as an objective account of particular strengths and weaknesses, as well as overall performance. This tool has been developed and presented to the Nigerian Anti Corruption agencies. The project expects that through public ownership of this information and the informed debate that it will generate, it can achieve its broader goals in the medium term. The goals include efforts to play an important role in broader efforts to map the constituency of actors and skills for effective anti-corruption prevention and enforcement in Nigeria, as well as the political and other constraints on these actors, and provide an informed basis for joint public advocacy in support of Nigeria's anti-corruption institutions and their civil society partners. It will also include activities to address and monitor corrupt practices particularly from a human rights perspective; to help foster coordination among different anti-corruption agencies; encourage governments to sign and abide by international anti-corruption instruments; seek and provide effective assistance in inter-governmental anti-corruption measures; and to serve as one important building block in the elaboration of a national, and, eventually, a regional – anti-corruption strategy. This program however appears to be at a very early stage.

Additionally the PACT Nigeria USAID supported Advance project has supported civil society participation in procurement monitoring and also supported several local organizations such as the Civil Society Legislative Advocacy Centre (CISLAC), and also CSOs working to improve citizen participation in the NEITI processes. The support includes many capacity improvement programs and publications in this area.

2.7.1 SUMMARY OF KEY FINDINGS

The scoping and compliance exercise highlighted a number of good practices as well as entry points for further action in the area of establishment of independent anti corruption agencies, on going public service reforms, fiscal planning and procurement reforms, prescription of criteria for candidature and election, prescription of standards for transparency in political financing, criminalization of most offences, and international co-operation. In summary it found that Nigeria's anti corruption intervention is in many respects compliant with the UNCAC, AUCPCC and ECOWAS Protocol provisions. However, some gaps were identified in areas such as access to information, Whistle Blowers and Witness Protection, remuneration, recruitment and promotion of public officers and framework for civil forfeiture of assets. As a matter of fact some of the provisions within the UNCAC were already part and parcel of Nigeria's criminal law regime prior to the entry into force of UNCAC. The government has made significant effort to enact the laws and establish the institutional structures required by regional and global anti-corruption

[79] OSIWA website

Conventions. The Government has also made significant effort to align policy formulation and implementation to international good practices. However, the challenge of lack of effective implementation of existing policy and laws persists, and needs urgent remedial action.
Other findings include:

1. Access to governmental information remains a problem for not only for citizens and non-governmental organizations but also in many instances government agencies and officers also face this challenge in their work.

2. Corruption reporting and citizens support for investigation and prosecution of corruption is hampered by the absence of a Whistle Blowers and a Witness Protection regime.
3. There is low awareness by citizens around the anti corruption law and policy frameworks as well as insufficient technical knowledge and skills on how to engage citizens on the part of the public agencies.

4. There is no country wide anti corruption strategy plan in place and no structures for assessing progress.

5. There are a number of initiatives which currently seek to address the institutional capacity deficits in terms of the tools and skills sets required to prevent, educate against and above all investigate and effectively prosecute corruption offences, but capacity deficits persist in these areas. Attempts to build capacity have not been matched with a corresponding commitment to developing the ethical component of the anti corruption struggle.
6. Absence of Non- Conviction Based Assets Forfeiture provisions in the law limits ability of the Anti-Corruption agencies to recover proceeds of crime.

7. The outdated criminal procedure and evidence laws and congestion in courts lead to unacceptable delays in trail of criminal cases including corruption cases. The resultant effect is erosion of public confidence in sanctioning corrupt practices.

8. There is limited engagement of private sector associations and interests groups in the Anti Corruption fight in Nigeria leading to limited number of creative private sector initiatives to prevent and fight corruption.

9. Limited skills, funding and capacity of public prosecutors is a big challenge for the system.

10. The lack of statutory time line for submission of the Accountant General's Report to the Auditor General, and the lack of Financial Autonomy of the office of the Auditor General has not helped its independence nor supported performance of its important oversight function.

11. The absence of independent objective performance evaluation systems for public institutions reduces pressure for improved performance and limits the drive to improve performance within public institutions including the Anti Corruption Agencies.

12. Absence of detailed and effective public reporting systems and obligations for public institutions, particularly the major Anti Corruption institutions like the EFCC and ICPC limits public engagement and perception of effectiveness or ineffectiveness of their work and their capacity to mobilize public support.
13. Absence of an access to information regime limits public participation and levels of transparency and accountability in governance in Nigeria, just as failure of the legislature to prescribe terms and

conditions for inspection of assets declaration of public officers has resulted in poor verification of information declared, making it easy for erring public officers to get away with false declarations.

14. The Nigerian Anti corruption crusade is yet to secure support of majority of the Nigerian population.

15. Lack of legal, structural and complete administrative independence for the EFCChas been decried by stakeholders.

16. The location of the NFIU within the EFCC has subjected it to the challenges of poor co-ordination and under lining rivalries between anti-corruption agencies in Nigeria, which in some cases have overlapping mandates.

16. Limited funding and lack of financial independence impinges on the effectiveness of Anti Corruption Agencies.
18. Governments continued failure over the years to appoint Commissioners into the Public Complaints Commission has limited its effectiveness.

2.7.2. SUMMARY OF RECOMMENDATIONS

Seven key things may be central to a successful anti-corruption crusade. They are as follows:

- Political will to fight corruption
- Enabling legal framework
- Independent and effective anti-graft institutions
- Skilled efficient and effective public service
- Full citizens access to information, awareness and an environment for effective citizens participation in governance and the crusade against corruption
- Effective implementation of comprehensive ethics rules in all relevant sectors.
- Concise and coherent anti-corruption policy and strategy that supports performance monitoring and evaluation.

In order to ensure improved effectiveness of Nigeria's anti corruption crusade and levels of compliance with the UNCAC, the AUCPCC and the ECOWAS protocol against corruption, the following are recommended:

1. Institute an effective performance management system at all levels of government which ensures that merit is the substantial basis for employment, recruitment, promotion and discipline in the public service, both at state and the federal levels.

2. Implementation of an effective Access to Information Regimen to strengthen citizens scrutiny of public officer's actions, and build public confidence, while also acting as a major deterrent to corrupt activities.

3. Adopt and implement the National Strategy Plan to Combat Corruption , 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, while serving as the *broad umbrella road map for mass mobilization of citizens in support of the crusade.*

4. The building of analytical capacity and subject matter skills amongst non state actors in order to enable them play a more substantive role in the effective implementation of anti-corruption activities.

5. There is need for systemic capacity improvements for anti corruption institutions and their personnel in the area of improved tools, knowledge, skills and mechanisms for fighting corruption.

6. Even though mechanisms have been set in place to facilitate multi agency coordination and coherence in anti corruption efforts in the country, this process needs to be improved upon significantly, especially when it comes to information sharing between agencies.

7. Establish statutory obligation and mechanism for detailed public performance reporting by all public institutions, ministries, departments and agencies and mechanisms for independent and objective performance monitoring and evaluation.

8. Pass a Whistle Blowers and Witness Protection Law that creates an effective framework and presents incentives for citizens to fight corruption.

9. Create incentives and mechanisms for professional bodies to intensify efforts at co-ordinated ethics development, effective and efficient enforcement of all professional ethics and the introduction of sector specific private sector initiatives to prevent and combat corruption.

10. Enact a non conviction - based assets forfeiture law, with broad provisions to deal with all issues of proceeds of crimes by the anti-graft agencies and courts.

11. 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, a percentage of value of 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.

12. The introduction of joint agency sector specific system review and improvement initiatives with stakeholder participation by the major anti corruption agencies may help reduce deficiencies in prevention efforts and mobilization of citizens.

13. 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, codes of conduct for prosecutors, improved conditions of service, for prosecutors and judges, improved skills and capacity for prosecuting agencies and the judiciary and periodic independent evaluation of progress in pending cases. Above all the process of appointment of judicial officers should be made more transparent and emphasize peer scrutiny of nominees for appointment.