

**REPORT OF GAP AND COMPLIANCE
ANALYSIS OF ANTI-CORRUPTION
INITIATIVES IN NIGERIA WITH REGIONAL
AND GLOBAL ANTI-CORRUPTION
INSTRUMENTS**

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 Preventing 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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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 Prevention 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

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

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 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 supersede 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 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 order 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 IV & 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 interests 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 NGOs, 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 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 encouraging³. 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.

³ National Integrity Systems Transparency International Country Report Nigeria 2004

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.

CHAPTER 1

1.0. PREVENTION

1.1 INTRODUCTION

To a large extent, the law and policy framework in Nigeria had reflected a sense of outrage against corrupt practices beginning at a period prior to the ratification of UNCAC. While UNCAC introduced substantial value addition, particularly in terms of transnational organized crime and corruption within the private sector, some of the regulatory frameworks in the country, with provisions which are complimentary in certain respects to UNCAC provisions, were actually in place before 2003 when UNCAC came into force. Examples of these include the Code of Conduct Bureau and Tribunal Act 1991, the Criminal Code Act 1916, the Money Laundering Act 2003 later amended in 2004 and ICPC Act 2000. This study will examine the levels of compliance of the Nigerian legal, institutional and policy frameworks to the provisions of UNCAC, AUCPCC and ECOWAS Protocol.

Chapter 2 of the UNCAC requires State parties to take proactive measures to prevent corruption. These measures recognize the interplay of administrative, political economic power and self interest, when it comes to decisions and processes of public institutions and private organizations. 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 ranging from preventive anti-corruption bodies, public sector ethics, public contracting and public financial management, public reporting, to access to information, private sector standards (accounting, auditing), and codes and measures to prevent money laundering. The Convention also requires states to consider measures to enhance transparency in the funding of political candidates and of political parties. The chapter addresses the issue of prevention from the following three perspectives:

1. *The public sector:* focusing on public sector ethics and procedures; public procurement; financial management and public reporting; regulation of licences and subsidies granted by public authorities.
2. *Civil society:* the role of citizens including participation; access to information; complaint channels and public education.
3. *The private sector:* Standards for public accounting and auditing and provisions to prevent money laundering.

Chapter 2 of UNCAC in its entirety therefore focuses on strengthening anti corruption authorities and regulatory, supervisory as well as national integrity systems.

1.2 ANTI CORRUPTION MECHANISMS AND POLICIES

Article 5: preventive anti corruption policies and practices

By virtue of article 5 of UNCAC State Parties are required to develop and implement or maintain effective anti-corruption policies that encourage the participation of society, reflect the rule of law and promote sound and transparent administration of public affairs.

Neither AUCPCC nor ECOWAS Protocol has broad requirements like Article 5(1) to (3) of UNCAC, but they each require specific actions that when implemented should lead up to the framework anticipated by articles 5(1) to (3) of UNCAC. For example, at the African Union level, State Parties undertook under Article 12(5) of AUCPCC to create an enabling environment that will

enable 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 organizations 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 subparagraph a),b),c),& i) to provide for other policies that create enabling environment for civil society to thrive.

Many of the administrative reform efforts of the Nigerian Government in the period under review have now been backed by statute. Thus there are now a number of provisions within the context of Nigerian law, which compliment Article 5 of the UNCAC. Section 39 of the 1999 Constitution provides for Freedom of Speech, S 19 of the PPA 2007, makes it mandatory that at least one representative of an NGO and a professional body observe the process in every procurement activity at the federal level of government, and provides for substantial CSO representation in membership of the highest Policy making organ in the Procurement Framework (The National Procurement Council). S 16(14), 23, 24, 25, and 38 of the PPA provide for reasonable access to information by citizens and provides for simultaneous and equal distribution of information relating to procurement opportunities, as well as access to records of procurement proceedings after a winning bidder is selected or a procurement activity is terminated without a contract. However in a second provision for public access to procurement records in S 16 (14), the Act referred to unclassified procurement records, leaving the impression, contrary to S 38 of the same legislation that access provided for, may be limited to unclassified procurement records, without providing a definition of classified or unclassified procurement records.

The FRA provides⁴ for increased citizens consultation and participation in the Fiscal Planning and Budget process in Nigeria, and imposes public consultation and reporting obligations on the Ministry of Finance to improve access to public finance information and participation of citizens in decision making. Ss 11-17 of the Fiscal Responsibility Act requires the preparation of a Medium Term Expenditure Plan in a consultative manner. S.48 of the FRA requires the Federal Government to ensure that its fiscal and financial affairs are conducted in a transparent manner and to accordingly ensure full and timely disclosure and wide publication of all transactions and decisions involving public revenues and expenditures and their implications for its finances. Additionally it requires the National Assembly to ensure transparency during the preparation and discussion of the Medium-Term Expenditure Framework, Annual Budget and the Appropriation Bill. The FRA has provided statutory backing for the administrative reform of fiscal planning in Nigeria which introduced the MTEF and in the same breath the PPA provides statutory backing for the Due Process Administrative Reforms.

Within this period also Nigeria joined the Global Extractive Industries Transparency Initiative. This has resulted in the enactment of the NEITI Act 2007, which provides for CSO, labour and private sector representation in the National Stakeholders Working Group [NSWG] set up to ensure due process and transparency in payments made by extractive industries to government, and generally to monitor and report on payments and practices in the oil industry in Nigeria. The Act empowers NEITI to annually appoint an auditor to conduct extractive industry transparency audits. It has so far published two reports of a three-tier audit of the oil and gas sector in Nigeria; 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

⁴ Section 13(2) FRA

revenues and 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. S 4(3) of the NEITI ACT requires the publication of the NEITI audit reports and its submission to the National Assembly and the Auditor General of the Federation.

These improvements however have largely occurred only at the federal level of government in Nigeria. Part of the underlying reasons behind the gap between the UNCAC provisions and the domestic regime has to do with the low levels of compliance to this particular obligation in the federating States. In view of Nigeria's Federal structure, reversing this situation would require active Federal Government support to states, or initiatives that encourage competitive improvements by States like the State Economic Empowerment and Development Strategy (SEEDS) benchmarking process. The continued existence of the Official Secrets Act imposing an obligation on public servants to keep public information secret and does not support an environment in which civil society and media can hold government accountable.

In practice the National Council for Public Procurement referred to above, aimed to provide in roads for citizen engagement in the procurement policy making is yet to be inaugurated more than two years after commencement of implementation of the Act.

1.3 PREVENTIVE ANTI CORRUPTION BODY OR BODIES

Under **Article 6 (1)&(2) of the UNCAC**: States Parties are obligated to have an anti-corruption body or bodies in charge of preventive measures and policies, grant such body or bodies independence to ensure that it can do its job unimpeded by undue influences, and provide it with adequate resources and training. Similarly **Article 5(3) of the AUCPCC** provides that State Parties are obligated to 'establish, maintain and strengthen independent national anticorruption authorities or agencies'.

Article 5 (h) ECOWAS Protocol provides that each State Party shall take measures to establish and consolidate specialized anti-corruption agencies with the requisite independence and capacity that will ensure that their staff receive adequate training and financial resources for the accomplishment of their tasks.

Nigeria has several Anti Corruption bodies: the Independent Corrupt Practices and Other Related Offences Commission ICPC⁵, the Economic and Financial Crimes Commission [EFCC]⁶, the Code of Conduct Bureau [CCB] and Code of Conduct Tribunal [CCT]⁷, and the Public Complaints Commission [PCC]. Their legal regimes provide for a series of preventive mechanisms. In addition Nigeria has such other bodies as [NEITI]⁸, Fiscal Responsibility Commission⁹, Office of the Auditor-General for the Federation and Bureau of Public Procurement¹⁰, all with mandates to prevent corruption. The Nigerian regime is compliant to the extent that it has the Anti corruption bodies, but in practice their independence is not as secured as UNCAC, AUCPCC and ECOWAS Protocol obligations require.

⁵ Independent Corrupt Practices and Other related Offences Act 2000

⁶ The Economic and Financial Crimes Commission (Establishment Act) 2004

⁷ Code of Conduct Bureau and Tribunal Act

⁸ Nigerian Extractive Industries Transparency Initiative Act

⁹ The Fiscal Responsibility Act 2007

¹⁰ Public Procurement Act 2007

There is also the reality that in practice, though ICPC and Code of Conduct Bureau and Tribunal appear to have statutory independence, like the other agencies they lack financial autonomy. In the case of the EFCC it lacks both statutory and financial independence. S 3(2) of the EFCC Act allows the President to remove any member of the Commission (including the Chairman) from office, if he is satisfied that it is no longer in the interest of the Commission or the Public that the member should continue in office. Additionally majority of members of its board are agency heads whose activities are subject to its scrutiny. Thus while Nigeria has the required agencies, its agencies do not all appear to have the required independence.

Statutory amendments are needed to ensure the full financial and structural independence of the EFCC and ICPC. Such an amendment should review the membership of the board of EFCC and ICPC in favour of independent and known anti corruption crusaders. Even in the case of the PCC, where the constitution provides for charging its operations to the consolidated revenue account, the effect in practice is that salaries and emoluments of its principal officers, who Government is yet to appoint are provided for, while operational funds e.g. funds for purchase of vehicles for investigation and related travels are treated as capital expenditure and not provided for despite annual requests for it by the agency.

1.4 PUBLIC SECTOR - Article 7 of UNCAC

Article 7(1) of UNCAC provide for state parties to adopt, maintain, and strengthen systems for recruitment, hiring, retention and promotion of public officials based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude. The continental compliment to this is found in Article 7(4) of the AUCPCC which provides that State Parties are to ensure transparency, equity and efficiency in the management of tendering and hiring procedures in the public service. Article 5(b) of the ECOWAS Protocol provides that each State Party shall take measures to establish and consolidate transparency and efficiency in the recruitment of personnel into the civil service. In Nigeria, the Federal Character Commission (Establishment) Act CAP F7 LFN 2004 provides for merit and equitable representation or federal character in appointments and promotions to offices in the Public service. The 1999 constitution provides for a quota system to ensure adequate representation of all groups.

Our interviews reveal that in practice vacancies in the service are declared on a state by state basis, which sometimes lead to a situation in the federal service, where a candidate who is qualified and has passed all prescribed examinations, and spent the required number of years may not be recruited or promoted, except the vacant position is one allocated to his or her state. In other words, recruitment or promotion is dependent on whether his or her state has a vacancy to be filled. This regularly excludes competent skill sets from the service, or from due elevation, leading to low morale and poor performance. Often ethnicity and religion are alleged to play serious roles in influencing appointments to service positions, *"This not only encourages mediocrity in government appointments, but also influences public reaction to abuses of public office and trust. People tend to perceive criticisms and evaluation of the performance of public office holders as persecution of the particular ethnic group or religious sect they represent. It is not unusual to see advertisements or public demonstrations by kinsmen of public officials who have run foul of the law, making allegations of discrimination and persecution of the entire group"*¹¹. To address this and other related challenges, the BPSR has now developed a National Strategy for Public Service Reforms with support of DFID to take effect before the end of 2010. Also, the BPSR, working with the Federal Civil Service Commission, the Head of Service and with support from the World Bank is setting up a performance based management system to cut across all sections of the Public Service. It is

¹¹ National Integrity Systems Transparency International Country Report Nigeria 2004

expected to take effect in 2011. At the moment Nigeria is not compliant with the requirements of Article 7(1) of UNCAC, 7(4) of AUCPCC and 5(b) of the ECOWAS Protocol.

a) Adequate Remuneration and Pay Scales.

By virtue of Article 7.1(c) of UNCAC, States Parties are required to promote adequate remuneration and equitable pay scales. There are no similar provisions in ECOWAS Protocol and AUCPCC. At national level, the National Salaries, Income and Wages Commission regulates wages of public servants and provides for a consolidated salary scheme within the Nigerian Public Service. Civil Servants in Nigeria are relatively underpaid with less than average conditions of service, which in turn appears to contribute largely to corruption and low morale within the service. The salaries and allowances of civil servants are poor in relation to the rising cost of living and the amount required for reasonable subsistence¹². If the recently announced salary increases are implemented, a level 12 officer in the service who currently earns N53,000.00 [slightly more than \$300 per month], will receive about N96,000.00 a month depending on his step.

b) Selection and Funding of Candidates and Political Parties.

The Articles 7(2) and 7(3) of UNCAC and Article 10 of AUCPCC and ECOWAS Protocol. The AUCPCC further in Article 10 (a) mandates state parties to proscribe the use of funds acquired through illegal and corrupt practices for finance of political parties. it 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 prescribes the criteria for qualification for election of candidates into the offices of State and Federal legislators, President and Vice President, and Governor and Deputy Governor¹³. Additionally Sections 85-86 of the Electoral Act 2006 provides for offences relating to political party finance and grants the Independent National Electoral Commission [INEC] power to limit 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. The 1999 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 liabilities¹⁴. In the same breath they are 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. Also the Constitution requires INEC to 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 as to enable it form an opinion on such submitted accounts¹⁵.

Additionally the constitution precludes the political parties from receiving and holding on to funding from outside the country 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 the power to issue regulations, guidelines or manuals for the purpose of giving effect to these provisions and their administration thereof. Pursuant to this provision, INEC has since issued a Political Party Finance Manual updated in 2007.

Further 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 will be liable to refund the company the full amount and be guilty of an offence punishable with a fine equal to the amount of the donation or gift.

¹² Public Administration in Nigeria UN Study 2004

¹³ Sections 65-66, 106-107, 131 and 177 of the 1999 Constitution

¹⁴ S 225 of the 1999 Constitution

¹⁵ S 226 of the 1999 Constitution

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. There has been some civil society monitoring of electoral finances in Nigeria, and an example will be the IFES supported SERI monitoring documented in the report titled "Beyond the Ceiling"¹⁶. The laws appear fully compliant. There is however a general perception that implementation of the INEC rules/guidelines is ineffective in practice in Nigeria. While the law provides sufficient leverage for INEC to put in place an effective monitoring system for political financing, monitoring and implementation, these statutory and constitutional provisions have in practice not been effective. Further there is no provision specially proscribing funds acquired through illegal and corrupt means as required under Article 10 (a) AUCPCC. The letters of Nigerian law may be compliant, but in practice so much more needs to be done to achieve compliance.

1.5 CODES OF CONDUCT FOR PUBLIC OFFICIALS - Article 8 of UNCAC

By virtue of **Articles 8(1) and 8(2)**, State Parties are required to promote integrity, honesty and responsibility among public officials. State Parties are also obligated to formulate codes or standards of conduct for the correct, honourable and proper performance of public functions. By **Article 7 (2)** of the **AUCPCC**, State Parties are obligated to create an internal committee or a similar body mandated to establish a code of conduct and to monitor its implementation, and sensitize and train public officials on matters of ethics. Similarly **Article 5** of the **ECOWAS PROTOCOL** provides that each State Party shall take measures to establish and consolidate National laws, ethical guidelines, regulations and codes of conduct that would eliminate conflicts of interest, emphasize methods of recruitment based on merit and provide thorough measures aimed at guaranteeing reasonable standards of living, and implement policies to ensure that public officials do not take official decisions related to private business in which they have an interest.

The main body with mandate to implement an ethical code in the Nigerian Public Service is the Code of Conduct Bureau. The Code of Conduct for Public Officers contained in The Constitution restrains public servants from undertaking several actions as follows: putting themselves in a position where personal interest conflicts with official duties; operating a foreign account outside Nigeria; receiving personal benefit on account of anything done or omitted to be done, including gifts from private companies who have dealings with government; carrying out acts prejudicial to another person's right in abuse of his office; and being a member of a secret society etc. It also requires public officers at the time of commencement of their tenure, and at its end, and if in continuous service, every four years, to specify and declare all of their assets, properties and liabilities or those of their spouse or unmarried children under 18 years. The Code of Conduct Bureau is empowered to receive the declarations, verify them, receive and investigate complaints and where appropriate refer infractions to the Code of Conduct Tribunal for hearing and pronouncement of administrative sanctions. However partly as a result of lack of access to the declared information by the public, it is problematic to conduct a thorough verification of assets of public officers.

The PPA provides for a code for all parties engaged with public procurement including non state actors. The BPP has already issued codes of conduct for procurement officers and procurement monitors in this respect. The various professions established by Acts of parliament in Nigeria have rules of professional conduct applicable to all its members including public servants. The survey results indicate that there is limited compliance to the strict letters of the code of conduct of public

¹⁶ A report on Campaign Finances ,State and Administrative Resources for the 2007 Presidential Election

officers. Inclusion of the detailed Code in the constitution makes it rigid and difficult to initiate improvements in the face of new challenges. Also in practice codes of ethics for many professional groups are not effective, and their complaint mechanisms sparingly work for the weak. Improved enforcement of codes of ethics in both the private and public sectors can bring about improvements to the corruption situation in Nigeria. The provisions of the Nigerian law are compliant with UNCAC, AUCPCC and ECOWAS Protocol. However substantial implementation is yet to be achieved.

According to **Article 8(3) UNCAC** States Parties are required to take note of relevant initiatives of regional, interregional and multilateral organizations, such as the UN International Code of Conduct for Public Officials [General Assembly resolution 51/59 of 12 December 1996] and to ensure compatibility with such provisions. Although no completely similar provision exists at continental level, Article 9(2) of AUCPCC obligates state parties to foster regional, continental and international cooperation to prevent corrupt practices in international trade transactions. There are no similar provisions in the ECOWAS Protocol. The Nigerian code has many related provisions similar to the UN International Code of Conduct for Public officers, but is not fully compatible with it. While it captures such issues as conflict of interests, abuse of office, declaration of assets also provided for by the UN Code, it fails to emphasize efficient and effective performance of the public official's duties in a fair, attentive and impartial manner, an issue which is covered by the UN Code, and is to this extent only, not compatible with the UN International Code of Conduct for Public officers.

Article 8.5 UNCAC: Public officials are required to make declarations about their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may arise. **Article 7.1 of AUCPCC** provides that State Parties take measures that require all designated public officials to declare their assets at the time of assumption of office, during, and after their term of office in the public service. **Article 5 of ECOWAS Protocol** provides that each State Party shall take measures to establish and consolidate policies that oblige public officials to disclose assets, liabilities and copies of their income tax returns. It requires that the disclosure rules be extended to at least the spouses and dependent children of the public officials. S 15 of the Code of Conduct Bureau and Tribunal Act makes it mandatory for every public official to declare his assets prior to assuming public office, and at the end of the service, or every four years, if it is continuous service. While the provision extends to spouses and children as required by ECOWAS Protocol, it does not require disclosure of income tax returns like the ECOWAS Protocol.

The study results indicate that the Nigerian framework has failed to provide public access to the declarations of public officials, making verification very difficult. This is particularly so, given the low levels of documentation, similarity of names and extended family and cultural settings in Nigeria. Government needs to legislate on a mechanism for disclosure of information declared by public officials, to the Public as this can substantially improve verification. Absence of such legislation is the reason put forward by the Code of Conduct Bureau for not making declarations accessible to the public. Many public officials comply, but cases of anticipatory declarations and non disclosure of full information still exists and despite existing mechanisms for penal sanctions, the perception persists that compliance is low.

Article 8.6 of UNCAC obligates state parties to take measures to initiate disciplinary or other measures against public officials who violate the codes or standards. At the domestic level, the Code of Conduct Bureau and Tribunal Act in S 16 require any reports of breach of the code of conduct to be made to the Bureau. It grants the Bureau powers to investigate such complaints and where

necessary refer same to the Code of Conduct Tribunal. S 20 of the Act establishes the Code of Conduct Tribunal (CCT) and vests it with powers to impose sanctions for infractions of the Code of Conduct. The sanctions the Tribunal may impose include; vacation of elective or nominated office, disqualification from holding public office; seizure and forfeiture to the state of any property acquired by corruption or abuse of public office. Further, domestic compliance for the UNCAC provision can be found in Sections (160501 to 160503) Federal Government Public Service Rules, Rules No. 5 Foreign Service Regulations, and Section 57 of The PPA 2007. Thus the letters of the domestic law is fully compliant with UNCAC.

The system in place does not appear compliant with **Article 7.3 AUCPCC** by which State Parties including Nigeria committed themselves to develop disciplinary measures and investigation procedures in corruption and related offences, with a view to keeping up with technology and increasing the efficiency of those responsible in this regard. We will find that with the exception of the EFCC-FIU, suspicious transaction reporting initiative and the Know Your Customer system for financial institutions, the Nigerian framework has made limited use of improving technology to fight corruption. The declaration and verification of assets process is still manual, reporting of infractions remains largely manual, and apart from maintaining a website, the Code of Conduct Bureau does not appear to have any other strategic interface using ICT technology. This is common with most of the other Nigerian anti corruption agencies and other MDAs, who do not yet have the capacity to embrace the huge possibilities that ICT technology holds for corruption prevention and detection in Governance, excepting the EFCC. Nigeria will benefit from a systematic computerization of operations of all government departments

1.6 APPROPRIATE SYSTEMS OF PROCUREMENT - Article 9.1 of UNCAC

1.6.1 Appropriate Systems of Procurement - Article 9.1 of UNCAC

Article 9.1 UNCAC provides that States Parties must 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. Articles 7(4) of AUCPCC require that State parties ensure transparency, equity and efficiency in the management of tendering and hiring procedures in the Public Service. Article 5(b) of the ECOWAS Protocol requires transparency and efficiency in the procurement and disposal of goods, works and services. Nigerian law shows a high degree of compliance with this provision of UNCAC at the Federal level, especially at the level of statutory content. The PPA 2007 appropriately provides for public procurement based on transparent, competition and fair objective criteria in decision making that can be effective in preventing corruption. It must be emphasized however, that Nigeria operates a federal system of government where the federating States have independence on several issues. Public Procurement is substantially within the legislative and operational competence of the States. Therefore the PPA has application only at the Federal level and the States are required to enact their own Public Procurement laws.

The PPA establishes the Bureau of Public Procurement (BPP). It gives it the function and invests it with sufficient powers to regulate and supervise MDA procurement activity for the purpose of ensuring transparency, competitiveness, fairness, accountability and achievement of value for money. It also has powers to determine and enforce appropriate thresholds as required by UNCAC¹⁷.

Article 9(1)(a-c) of UNCAC requires the wide distribution of information relating to procurement opportunities allowing prospective bidders sufficient time to prepare and submit bids, and the

¹⁷ Sections 3, 5 and 6 of the Public Procurement Act 2007

establishment in advance of conditions for participation, selection and award and their publication. The PPA provides for wide and simultaneous distribution of information of opportunities for participation in accordance with article 9(1) of UNCAC, and also provides that criteria for participation, selection and award be based on objective considerations, and be predetermined and published¹⁸. The PPA in section 25 mandates a six weeks period of notification to bidders. The Country procurement assessment report 2000 had found that political interference was a major problem for public procurement in Nigeria. As a result the PPA sought to limit political control and interference in the procurement process, by making the tender boards the approval and awarding authority for all procurement. However in practice the Executive Council of the Federation still approves contract awards above a stipulated threshold.

Articles 9(1)(d-e) requires the establishment of an effective system of domestic review and appeal to ensure legal recourse and remedies, if rules established are not followed. It also provides for measures to regulate matters regarding personnel responsible for procurement such as declaration of interest in particular, public procurement, screening, and training requirements. S 6 of the PPA vests the BPP with powers to ensure compliance with the rules, and powers to apply sanctions against erring public officials as well as contractors. In S 54 it provides a systematic process of administrative redress that compels public officials to review complaints within specific timeframes and provides right of appeal and access to courts in enforcement of the rules. S 57 of the PPA has detailed provisions relating to conflict of interests of participants in the process and S 58 criminalizes many infractions including one relating to non disclosures and resolutions of conflicting interests. Indeed the Nigerian law goes beyond the UNCAC, AUCPCC and ECOWAS Protocol provisions to require bidders to accompany bids with an affidavit of disclosure on whether any officers of the procuring entity or BPP has any interest in their company or the particular transaction.¹⁹ Also it provides for mandatory citizen sector observation of the procurement process, and access to procurement information.²⁰ The BPP in collaboration with the office of the Head of Service of the Federation is currently establishing a procurement cadre in the service to ensure professionalization of procurement practice at the Federal level in Nigeria.

However as a result of Nigeria's fiscal federalist structure, this law is not applicable to state government expenditure, except in cases where the federal government is providing up to 35% of the cost of the project. States therefore need to pass their own procurement legislations. Amongst the 36 States of the Federation only eight, have similar procurement laws at the time of this report. Indications are that even in those states that have passed the law, implementation of those laws are weak and in some cases yet to begin. In practice the Federal Structure is improving in compliance. At the level of the law, the PPA complies fully with UNCAC provisions. In practice however resistance within some MDA's, and the political class, combined with poor knowledge and skills have contributed to reduce compliance levels, and it is expected that as capacities improve, resistance will reduce and compliance will continue to improve.

1.6.2 Transparency and Accountability in Management of Public Finances. Article 9 .2 of UNCAC

Article 9.2 requires States Parties to take appropriate measures to promote transparency and accountability in the management of public finances. Such measures should include procedures for the adoption of the national budget, timely reporting on revenue and expenditure, appropriate

¹⁸ Sections S 4, 16, 23, 24, 25, 49 and 51 of the Public Procurement Act 2007

¹⁹ S 16(6)(f) Public Procurement Act

²⁰ S 19, 16(14) and 38 Public Procurement Act

systems of accounting and auditing standards, related oversight, and effective, efficient risk management and internal control. There are no similar provisions in ECOWAS Protocol and AUCPCC. The procedure set out by the Fiscal Responsibility Law is reasonably compatible with UNCAC and is capable of improving transparency and accountability. They include consultative procedures for adoption of budget, and timely reporting requirements on revenue and expenditure²¹ Its provisions further regulate debt and borrowing²² and create mandatory conditions for public borrowing, and expansion, or improvements in government action which results in an expenditure increase²³. It also creates an oil based fiscal rule requiring the saving of excess proceeds of oil price above the reference commodity price²⁴.

Initiatives have been taken by the Ministry of Finance (working with stakeholders such as the Federal Account Allocation Committee) since January 2004, to improve transparency in fiscal management by engaging in a number of practices. These include publishing the Federal, State and Local Government shares of revenue from the Federation Account, introducing the Medium Term Expenditure Framework [MTEF] into the budgeting process, and improving regularity of budget performance reports at the federal level. However, only a few states in Nigeria have similar fiscal planning legislations or have adopted similar processes. Amongst the six states surveyed only Bauchi and Rivers States have at the time of this report passed a Fiscal Responsibility Law.²⁵ Only about eight out of 36 states of the federation have such a legal regime. This is of significance because as a result of the constitutional fiscal federalist structure, the States in Nigeria and the local governments, receive and expend above 54% percent of National Revenues. Thus while the law at the federal level is compliant, the state structures covered by this study are far from compliant.

1.6.3 Integrity of Accounting Records Article 9.3 of UNCAC

According to Article 9(3), States Parties are obligated to take such civil and administrative measures to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent falsification of such documents. There are no specific equivalents of this UNCAC provision in the AUCPCC or ECOWAS Protocol. However Article 5 (4) of AUCPCC requires State Parties to take measures to create, maintain and strengthen internal accounting, auditing and follow-up systems, in particular in the public income, custom and tax receipts, expenditures and procedure for hiring, procurement and management of public goods and services. The ECOWAS Protocol in Article 5(f) requires revenue collection systems that eliminate opportunities for corruption and tax evasion, and provide for regulations which require companies and organizations to maintain adequate financial books and records and adhere to internationally accepted accounting standards. This provision of the ECOWAS Protocol relates more to accounting records for private companies.

Aside from the Constitution, other important pieces of legislations and regulations which govern the Federal budget and its accounting process include the *Finance (Control and Management) Act, 1958*, Cap F26, Laws of the Federation, the *Financial Regulations, 2009*, and the CBN Act. The first is the organic finance law of the Federal Government. It contains detailed framework for the management of the budget and public finances and accounts. It defines the roles of the Ministry of Finance and the Office of the Accountant General of the Federation (OAGF) in public financial

²¹ S 14 -18 of the Fiscal Responsibility Act 2007

²² S 41 and 44 of the Fiscal Responsibility Act 2007

²³ S 36 of the Fiscal Responsibility Act 2007

²⁴ S 35 of the Fiscal Responsibility Act 2007

²⁵ Bauchi, Enugu, Lagos, Kano, Plateau and Rivers were surveyed.

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. The states studied also have old regional finance control and management laws in many instances now applicable to these states.

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 the Act. 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. When passed into law, this will fully complement the FRA 2007.

The Federal Financial Regulations (FR) currently provides detailed guidance on Federal accounting records. The Federal Government has revised the FR three times since 1999, the latest being in January 2009. The revised rules have 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 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 Regulations cover rules and procedures on all aspects of conduct and management of public finance, including revenue, records keeping, preparation of financial statements, stores control, internal audit, external audit, and reporting. They also include proforma 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. *Chapter 17* of the Regulations is devoted entirely to internal audit. It defines internal audit as "*a managerial control, which functions by measuring and evaluating the effectiveness of (the) Internal Control system*". Each State has its own FR, and often a FR for local governments too. However within the states covered by this study, there has not been recent improvements in the FR as is the case at the federal level and most financial regulations used at those levels of government are archaic and out of date with today's reality. Details of the legal regimes in the studied states are found in the report "Mapping of Anti Corruption measures in PFM; a survey of the Federal Government and Six States."

1.7 **PUBLIC REPORTING:** Article 10 of UNCAC

Article 10 of the UNCAC provides that States Parties are required to enhance transparency in public administration, including its organization, functioning and decision-making process, by adopting procedures or regulations allowing members of the general public to obtain information on the organization, functioning and decision-making processes of the public administration with due regard to protection of privacy and personal data. **Article 9 of the AUCPCC** requires state parties to adopt such legislative and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption and related offences. **Article 12 (4)** of the AUCPCC urges State Parties to ensure that the media is given access to information in cases of corruption and related offence on the condition that the dissemination of such information does not adversely affect the investigation process and the right to a fair trial. **Article 5 of the ECOWAS PROTOCOL** further provides that '*each State Party shall take measures to establish and consolidate freedom of the press and the right to information*'

²⁶ The Freedom of Information Bill has just been passed but is yet to be signed into law

The current Nigerian regime does not yet provide for adequate citizens access to public information, except for limited access to public fiscal planning and procurement information under the Public Procurement Act 2007 and Fiscal Responsibility Act 2007.²⁶ This is partly because the Freedom of Information Act has just been passed. S 48 of the Fiscal Responsibility Act 2007 requires the Federal Government to ensure that its fiscal and financial affairs are conducted in a transparent manner and accordingly ensure full and timely disclosures and wide publication of all transactions and decisions involving public revenues and expenditures and its implications for its finances. S 16, 23, 24, 25, 38 of the PPA 2007, provide for promotion of transparency and competitiveness, prior determination of criteria for participation and selection in public procurement, wide distribution of information relating to opportunities for procurement, and access of citizens to unclassified records of procurement or to all procurement records after a procurement activity is terminated without a contract or a winner selected. In spite of the improved regime for dissemination of Public Finance and Expenditure related information in Nigeria, few citizens know about the new access to information obligations of government or have had recourse to these provisions in the PPA and FRA. Government agencies need to initiate effective public education programs to sensitize citizens of their rights, roles and obligations under the new regime, using multiple channels including the media and civil society. Government needs to proactively live up to its obligations under these new laws. Nigeria is only partially compliant with the requirements of Article 10 of UNCAC, Article 9 of AUCPCC and Article 12(14) of the ECOWAS Protocol.

1.8 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 a judicial officer may be removed by the President or Governor acting on an address supported by two third majority of the Senate or House of Assembly in the case of a State or on the recommendation of the NJC, that he or she 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 3rd Schedule to the 1999 Constitution grants the NJC power to recommend to the Governor and President the removal of Judicial Officers from office. In practice the NJC has instituted a Code of Conduct for Judicial Officers and monitors compliance to the code, however success is difficult to assess, as a result of lack of access to information relating to the operations of the NJC. There is information indicating that based on complaints, the NJC sets up panels to investigate allegations of misconduct against Judicial officers, and where found culpable in some cases recommends their removal from office. An example is the Justice Eso panels report which indicted several judicial officers. Some of the officers indicted by this panel include the former Chief Judge of the Federal Capital Territory Justice D. Saleh and Justice Olugbani of the Lagos high court who have since been removed from office. The case of Justice Egbo Egbo of the Abuja High court dismissed based on recommendations of the NJC is also another example. The NJC has the power to institute initiatives that help to prevent corruption in the judiciary. However the often non competitive process of appointment of Judges in Nigeria based on recommendations of a few may not entirely accord with Article 11.

Additionally there 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 of public officers and the code of ethics of the legal profession. No other measures have been taken to maintain their integrity or prevent corruption amongst them. Prosecutors earn the same salaries as other civil servants, far below that of judicial officers, and work in more difficult and dangerous circumstances, with limited or no special protection for their lives and properties, unlike the case with judicial officers. Nigeria is not fully compliant with the requirements of Article 11 of UNCAC.

1.9 PRIVATE SECTOR CORRUPTION - Article 12 of UNCAC

There is a close connection both in cause and impact between public and private sector corruption as there are often two sides to corruption i.e. the public sector and the private sector. This underscores the need for private sector involvement in anti - corruption efforts in line with Article 12 of UNCAC. Article 12 of UNCAC and Article 11 of AUCPCC requires State Parties to take steps to prevent corruption involving the private sector, enhance accounting and auditing standards in private sector, and provide proportionate, administrative and dissuasive sanctions and criminal penalties to punish non compliance. It suggests that measures to achieve the above may include; development of codes of conduct for proper and honourable performance of business activities and for all relevant professions; the prevention of conflicts of interest and promotion of good commercial practices amongst businesses; measures providing transparency in identity of legal and natural persons involved in establishment and management of corporate entities; measures that ensure that private entities have internal auditing controls and certification procedure sufficient for their size and structure; and auditing measures that assists in preventing and or detecting corruption.

Additionally Article 12 (3) requires that countries put in place laws and regulations that ensure maintenance of books and records, financial statement disclosures, accounting and auditing standards. These are aimed 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.

In Nigeria, 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 including the filing of annual accounting returns. It allows access to information on identity of owners and managers of corporate entities as required by UNCAC at a flat fee. However in practice the Commission for many years was not effective in monitoring compliance. Recently it has introduced requirements to induce compliance in some respects; for example only companies that have complied with the requirement to file annual returns are allowed to make changes in their composition or file resolutions and other documents at the registry. However it has no mechanism to and does not verify information filed. Also with Nigeria's huge informal sector, many businesses operate outside the Corporate Affairs Commission (CAC) Framework. The Companies Income tax Act CAP C21 LFN 2004 and the Personal Income tax law P8 LFN 2004 prescribe a clear list of tax deductible expenses, which if scrupulously applied eliminates the possibility of corrupt expenses being tax deductible in any circumstance.

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, which always provide a mechanism for complaint and imposition of sanctions on erring members. In some cases existing professional ethics codes are outdated, and generally enforcement has been ineffective. However for many businesses, specific sectoral business rules are available in Nigeria by either voluntary election by stakeholders or alternatively, where there is a regulatory framework with a regulator empowered by statute to issue and enforce business rules.

By virtue of the company governance mechanism provided for by the CAMA, shareholders and boards of directors can and should, ensure that such controls are imposed on the accounting records of companies. There are however many examples where this is not the case. In circumstances where there is an industry regulator, such a regulator will often issue regulations that may impose corporate governance rules and standards, provide procedure for maintaining accounting records, compel disclosure and subject such records to inspection and verification as we see in the case of the Banks where the CBN and the NDIC perform these functions. Pursuant to its regulatory powers over banks the Central Bank of Nigeria has in collaboration with the EFCC issued 'Know Your Customer' (KYC) Directive and Money Laundering Examination Procedure/Methodology Guidance Note. This provides procedures for checkmating the maintenance of anonymous accounts, and monitoring particularly accounts with foreign transaction activity. As a compliment to this, 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 [Prohibition] Act. However, this insurance sector regulation is yet to come into operation. The CBN had also 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). However levels of compliance and verification of compliance remains a challenge, despite recent improvements in supervision and monitoring of stakeholders.

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. The Securities and Exchange Commission pursuant to its powers under the ISA and in collaboration with the CAC jointly issued a Code of Corporate Governance in October 2003 targeted primarily at the Board of Directors of publicly quoted companies. Currently the 2003 Code of Corporate governance rules jointly issued by the CAC and SEC have been substantially revised. The revised rules have successfully been subjected to stakeholder consultation, but are yet to be gazetted or to come into force. Further, the Securities and Exchange Commission [SEC] in 2010 issued Anti-Money Laundering\Combating Financing of Terrorism [AML\CFT] Compliance manual for Capital Market Operators to ensure compliance with AML\CFT standards

The Pension Reform Act 2004 establishing the National Pension Commission (PENCOM) as the industry regulator has brought about a similar system with full complement of business rules for the Nigerian pension industry stakeholders. Pursuant to this law PENCOM has in addition to its business rules developed its own Whistle Blowers Guidelines issued in June 2008.

Similarly the Electricity Power Sector Reform (EPSR) Act of 2004 sought to deregulate that sector and established the Nigerian Electricity Regulatory Commission (NERC).The commission has issued business rules 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 PLC, and to take some identified fundamental steps to provide required environment for private participation, has slowed the growth of this sector and limited application of the rules.

The Petroleum sector reform bill is currently in the National Assembly and if passed will usher in a similar framework. Also, a draft warehouse receipt financing law has been prepared and may soon be submitted by The Executive to the National Assembly for consideration and passage. Similar regimes are yet to be introduced in the transport sector though Port concessioning has occurred. The Ports Reform bill is not yet to be 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, and enactment of these proposed regulatory reform laws, will improve ability of public bodies to make rules for business behaviour, which can prevent and deter corruption in these specific sectors.

To this extent and until such regulatory frameworks come into place, businesses in non deregulated sectors can in addition to compliance to provisions of CAMA, seek voluntary pacts like the Convention on Business Integrity, which has been adopted by some companies in Nigeria. Perhaps government should provide incentives for businesses that adopt such codes of corporate behaviour and keep its provisions.

As indicated in the GIABA 2010 follow up report, even in sectors like the banking sector, where the rules appear in place, there are concerns with non-effective implementation of provisions related to customer due diligence, record keeping, suspicious transaction reporting, and the supervisory mandates.

In respect of Article 12 (e) Nigeria does have a system to check conflict of interest of public officers while in service as provided by the Code of Conduct of public officers and provisions of the PPA 2007. However this does not extend to their activities, soon after they have left the service. In the case of Public Procurement, the PPA in S 16(6)(f) requires contractors to disclose by affidavit, interests of current or former directors of the MDA or the staff of BPP. Nigeria is partially compliant to Article 12 of UNCAC.

In respect of Accounting and Auditing Standard in the private sector, the National Accounting Standards Board (NASB) continues to provide guidance and issue standards for maintaining accounting records in Nigeria. Effective monitoring and supervision depends on the level of integrity, and sometimes expertise of those who control the company. Nigeria is a member of 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 of its partners²⁷ 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. 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 a campaign against corruption launched in Africa, and backed by the G8 Business Action for Africa (BAA) campaign, which was set up at the July 2005 G8 Summit. 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), 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

²⁷'Nigerian anti-corruption initiatives' by Ijeoma I. Opara, Texas Southern university, Thurgood Marshall School of Law Bepress Legal Series 2006 paper 1392

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" a global initiative between the G8 industrial nations and developing countries whose aim is to eradicate corruption.

1.10 PARTICIPATION OF SOCIETY - Article 13 of UNCAC

Article 13 of UNCAC provides for obligation of State parties to promote the active participation of individuals and groups outside the public sector, such as civil society, NGOs, and community based organizations, in order to prevent and fight corruption and to raise public awareness. Additionally it requires State Parties to enhance transparency and promote citizen contribution to decision making processes, ensure that the public has effective access to information, and undertake public information activities that contribute to reducing tolerance for corruption, and education programs including educational curriculum development.

Article 12 of the AUCPCC obligates State Parties to be fully engaged in the fight against corruption and related offences and the popularization of this Convention with the full participation of the Media and Civil Society at large. It also 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 affairs; ensure and provide for the participation of Civil Society in the monitoring process; and consult Civil Society in the implementation of this Convention.

Article 5 of the ECOWAS Protocol compliments this by providing that each State Party shall take measures to establish and consolidate laws that ensure the participation of civil society and Non-Governmental Organisations (NGOs) in efforts to prevent and detect acts of corruption.

The FRA in S 48 requires the Federal Government to ensure full and timely disclosure and wide publication of all transactions and decisions involving public revenues and expenditures and their implications. It also requires the Federal Minister of Finance to consult the public on the Medium Term Expenditure Framework²⁸. In the case of the PPA 2007, S 19 requires citizens observation/monitoring of all procurement activity, and it provides for public access to procurement information.²⁹ These two legislations have contributed largely to the improvements in the level of compliance of Nigerian law to the UNCAC requirements in this respect.

The major Nigerian Anti corruption legislations except for the Public Procurement and Fiscal Responsibility legislations have no direct provisions supporting participation of society in corruption prevention, and monitoring of anti corruption efforts except the general citizens obligation to report corruption and testify in such proceedings. They impose no obligation for the major agencies to present public reports, work or collaborate with the citizens or grant them access to information in cases of corruption, or data for analyses and evaluation.

However, the ICPC has in collaboration with other relevant bodies developed a secondary school curriculum for civic education in Nigeria. Both the EFCC and ICPC have initiatives to educate and mobilize the citizen sector against corruption. The ICPC and the EFCC each have a department dedicated to this effort and each runs a civil society coalition against corruption. However there are criticisms that these are not effective partnerships as the emphasis is on public enlightenment and not on the more balanced public engagement. The general consensus is that there is need for

²⁸ S 13(2) of the Fiscal Responsibility Act 2007

²⁹ S 16, 23, 24, 25, 38 Public Procurement Act 2007

improved participation of citizens and independent performance evaluation of the Anti Corruption agencies, and their education, prevention and enforcement activities and programs. This study indicates that the agencies are yet to create an environment that supports full citizen participation in the fight against corruption and independent evaluation of performance and progress in this regard.

1.11 PREVENTION OF MONEY LAUNDERING - Article 14 of UNCAC

Article 14 UNCAC, requires State Parties to establish regulatory and supervisory framework to combat money laundering and cooperation of agencies involved at local and international levels. This covers banks and natural and legal persons that provide formal and informal services for transfer of money and assets. It also requires the establishment of financial Intelligence Unit to monitor movement of cash in and out of State borders. . It further requires that financial and non-financial institutions within State Parties collect and keep information on origin of electronic fund transfers, scrutinize incomplete information, and ensure that banks and non-bank financial institutions keep customer and where appropriate beneficial owner identification record, and report suspicious transactions to relevant authorities. It also requires states to promote global, regional and sub-regional co-operation amongst judicial, law enforcement and financial regulatory authorities aimed at combating money laundering. Neither AUCPCC nor ECOWAS Protocol imposes similar obligations to establish a specific regulatory and supervisory framework or an institution like the FIU, though the AUCPCC in Articles 6 & 16 and the ECOWAS Protocol in Articles 7 & 13 equally criminalize and provide for prevention of money laundering related offences.

The Money Laundering [Prohibition]Act 2011 [MPLA] places a limitation on the amount of cash payment for any one transaction within the country, as well as a requirement that transfer from or to a foreign country of funds or securities exceeding \$10,000 USD value shall be reported to the CBN. It imposes a mandatory duty on owners, and operators of businesses that undertake over the counter money exchange transactions including all financial institutions to collect and keep full customer identification information, prior to such transactions, and to keep a register for this purpose for at least ten years after the last recorded transaction in the register. Additionally it requires financial institutions to, within seven days of any such transaction report any single transaction in excess of N5,000,000.00 or its equivalent in the case of an individual and N10,000,000.00 or its equivalent in the case of a body corporate to either of the NDLEA, the CBN, judicial authorities or officers of the Nigeria Customs or such other persons as the CBN may from time to time by order published in a gazette, specify. Under this law money laundering is a crime punishable with imprisonment for offenders ranging from 2 to 3 years imprisonment.

The language of the MPLA reflects Nigeria's concern at the time of its making on drug related trafficking, but it is expansive enough to cover other related laundering activities. Section 6 of the EFCC (Establishment) Act 2004 gives the Commission 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, and the adoption of measures to eradicate economic crimes including preventive and regulatory actions. In S 6(f) & (g) it further makes the Commission responsible for adoption of measures which includes co-ordinated preventive and regulatory actions, and facilitation of rapid exchange of scientific and technical information. In S 6(j) it requires the Commission to establish and maintain a system for monitoring international economic and financial crimes in order to identify suspicious transactions and persons involved, as well as maintain data, statistics, and records on persons, organizations, proceeds, properties or other items involved in economic and financial crimes.

Further to this law and provisions of other laws, the CBN (Banking Industry Regulator) and the NDIC in collaboration with the EFCC has 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. These guidelines apply to bank and non bank financial institutions and even designated non financial institutions like professional practice firms. In further compliance with article14 of UNCAC, and pursuant to S 6 of the EFCC Act, the country has established an FIU, operating as an independent Unit within the EFCC. The letters of Nigerian law are in compliance with Article 14 of UNCAC on prevention of money laundering, however the study indicates that the general application and enforcement is yet to reach optimum levels. As noted in the GIABA follow up report, there is need for Nigeria to integrate AML/CFT measures into supervisory manuals across all reporting entities. Progress has been made, but some work remains to be done e.g. with Securities and Exchange Commission and its stakeholders, the insurance sector and other related sectors.

Matrix on Compliance with Articles 5-14 of UNCAC -PREVENTIVE MEASURES

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 5 of UNCAC Article 12 of AUCPCC Article 5(c) ECOWAS Protocol</p>	<p>Co-ordinated anti corruption policies that ensure participation of society in prevention of corruption Measures that promote transparency and accountability in management of public affairs</p>	<p>Nigeria Extractive Industries Transparency Initiative. The Technical Unit on Governance and Anti Corruption (TUGAR) Inter Agency Task Team of Anti Corruption Agencies Consistent and wide Publication of Monthly allocations of</p>	<p>S 39 of the 1999 Constitution provides for Freedom of Speech. S 1, 2, 16(14) 19, 23, 24, 25 and 38 of the Public Procurement Act 2007. The Fiscal Responsibility Act particularly sections 11-17 and 48 improve access to public finance information. The Nigeria Extractive Industry Transparency Initiative Act 2007 provides for Civil society, labour and private sector representation in the NSWG set up to</p>	<p>Nigeria is in the process of adopting an overall policy document or strategy plan a the fight against corruption, and no sector wide co-ordinated policy. Both The Fiscal Responsibility Act 2007 and The Public Procurement Acts 2007 have provisions for access to information and allow citizens participation in monitoring public finance decision making</p>	<p>Though there are various anti-corruption policies, the absence of a holistic national strategy poses a challenge to coordination especially between the Federal and State levels as well as between government and non-state actors. Though there has been a significant policy shift in the area of collaboration with non state a</p>	<p>The Government to repeal the Official Secret Act preceptively implement the Freedom of Information Law A system for independent performance monitoring of MDAs that enables proactive public reporting to occur regularly is recommended reports.</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
		<p>States and the Federal Government from the Consolidated Revenue Fund. The ICPC National Anti Corruption Volunteer Corps.</p> <p>The EFCC led civil society coalition, and the ICPC led civil society coalition. SERVICOM is a service PACT by the Nigerian government expressing its commitment responsive and citizens friendly governance through quality service delivery that is transparent, efficient and accountable. It promotes citizens</p>	<p>ensure due process, and transparency in revenue receipts from extractive industries , and generally to monitor and report on payments and practices in the oil industry in Nigeria</p>	<p>processes. In practice awareness is low, and few citizens have had recourse to these laws. Amongst the few citizens groups that have tried to access information based on these laws, responses from public institutions have not been positive. Both TUGAR and the IATT are new. Indications so far is that their activities will soon show impact in improved co-ordination and co-operation amongst agencies, particularly if the National Anti Corruption Strategy Plan being prepared is adopted and implemented</p>	<p>ctors there are still gaps in mainstreaming the participation across all sectors.</p>	

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Recommendations
			Legal Framework	Enforcement & Implementation	
		<p>demand for such service. It requires simplification and communication by all government departments and agencies of their service processes and standards.</p>			

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 6(1) &(2) UNCAC, Article 5(3) AUCPCC, Article 5(h) ECOWAS Protocol</p>	<p>-Establishment of independent Anti-corruption agencies. -Independence of the Anti Corruption Body -Adequate training and financial resources</p>	<p>Nigeria has a number of major dedicated Anti Corruption bodies: Independent Corrupt Practices and related offences Commission, The Economic and Financial Crimes Commission and the Code of Conduct Bureau. In addition Nigeria has such other bodies as NEITI, Fiscal Responsibility Commission, Bureau of Public Procurement and the Public Complaints Commission. The legal regimes of the agencies provide for preventive mechanisms.</p>	<p>The Economic and Financial Crimes Commission Act 2004 The Independent Corrupt Practices and other related offences Commission Act 2000. The Code Of Conduct Bureau and Tribunal Act The Nigeria Extractive Industries Transparency Initiative Act 2007, The Public Procurement Act 2007 - Fiscal Responsibility Act 2007 Public Complaints Commission Act Cap 377 LFN</p>	<p>Many more corrupt activities are being exposed. There is improved awareness of the effects of corruption on livelihoods. Investigation and prosecution of many corrupt officials including powerful and influential persons have occurred, while there are many of such cases pending in courts The perception remains however, that many corrupt practices go on unpunished However, though ICPC and CCB have structural</p>	<p>Some core anti-corruption agencies with strong enforcement mandates such as the EFCC do not have legal independence in certain areas i.e. Security of Tenure for key staff. Most of the anti-corruption agencies do not have financial autonomy and are funded from the Executive vote. Most complain of being under funded.</p>	<p>Statutory Amendments are needed to ensure the full financial and structural independence of anti –corruption both bodies. There should be a provision for a direct charge on the consolidated revenue account for ICPC and EFCC, and retention of a percentage of value of assets recovered for government.</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
				<p>independence, they both lack financial independence.</p> <p>In the case of the EFCC, it lacks both structural and financial independence.</p> <p>Majority of members of its board are agency heads whose activities are subject to its scrutiny.</p> <p>There is significant inadequacy in financial provisions for fighting corruption, and limited capacity and skills within most agencies.</p>		

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 7(1)(a) of UNCAC, Article 5(4) AUCPCC, Article 5(b) ECOWAS Protocol</p>	<p>Efficient and Effective systems for recruitment, hiring, retention, and promotion based on objective criteria such as merit, equity and aptitude in the public service. Transparency in recruitment, hiring, promotion and retention.</p>	<p>The Bureau for Public Service Reforms (BPSR) has developed a National Strategy for Public Service Reforms with the support of DFID to take effect before the end of 2010. The BPSR in collaboration with the Federal Civil Service Commission and the Head of Service is setting up a performance based management system to cut across all sections of the Public Service. The system is expected to take effect in 2011.</p>	<p>The Constitution of the Federal Republic of Nigeria provides for Federal Character or equitable representation in public employment, and provides for the establishment of both Federal and State Civil Service Commissions. The Federal Character Commission Act. The Federal Civil Service Rules.</p>	<p>Application of the Federal Character Commission Act has been problematic. In practice vacancy in the service is declared state by state in the federal service, in a manner that, though a candidate is qualified and has passed all prescribed examinations, he or she may not be employed or promoted except there is a vacancy for his or her state.</p>	<p>The current way of implementing the federal character principle which is aimed at ensuring equitable representation i.e. sharing of offices/vacancy by state of origin, has reduced standards and encouraged mediocrity in the service. The Federal Civil Service Rules.</p>	<p>The institution of a performance based management system will be the best way to resolve this challenge.</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
Article 7(1)(b) & (d) UNCAC, Article 5(8) AUCPCC (Related not similar to UNCAC), ECOWAS protocol has no similar provision	Training of personnel to improve performance and create an aversion of society to corruption	Both the ICPC and EFCC have public education departments and anti corruption coalitions focused on education against corruption. There is also a National Citizenship and Education Centre. The Bureau of Public Procurement with Support of the office of the Head of Service has commenced a continuous education and evaluation system based on which it intends to form a new procurement cadre in the Public Service.	The ICPC Act, EFCC Act, NEITI Act, Public Procurement Act and Fiscal Responsibility Act all require improvements in capacity of public officers and education of the citizens against corruption. Additionally the Public Procurement Act provides for training and professionalization of public procurement practice.	Though a civil service training school exists, in practice it has limited programs and few are focused on anti-corruption training. The mechanism is even less effective at the state levels. The National Citizenship Education Centre is largely ineffective, and unknown. The Code of Conduct Bureau conducts educational activities to create aversion to corruption in the service, sometimes jointly with the BPSR.		

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Recommendations
			Legal Framework	Enforcement & Implementation	
Article 7(1) (c) UNCAC. AUCPCC and ECOWAS protocol have no similar provisions.	Ensuring adequate remuneration and equitable pay scales.	National Salaries, Income and Wages Commission. The Nigerian Public Service has a consolidated salary scheme prescribed by this body.	Comparatively the Nigerian public servant has low pay, and poor conditions of service. This appears to be one major reason for low morale in the service. Government has recently announced in July 2010 an increase of civil service salaries.		The Nigerian system requires pay increases supported by a performance management system that can ensure recruitment, hiring, promotion and retention are based on such objective criteria as merit, and aptitude.

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 7(2) and 7(3) UNCAC, Article 10 AUCPCC</p>	<p>Prescription of criteria for candidature and election. Transparency in funding of political parties and candidates for elective office. Proscribe use of funds acquired through illegal and corrupt means in funding political activity.</p>	<p>Independent National Electoral Commission-INEC</p>	<p>The Constitution of the Federal Republic. (Sections 65-66,S 70, 106-107,131, 177) The Electoral Act provides for offences relating to political party finance, power of commission to limit contributions to political parties, monitoring of political party finances, limits on election expenses and reporting obligations. S.225 & 226 of the Constitution provides for political party financing. S 38 The Companies and Allied Matters Act proscribes political contribution by companies.</p>	<p>Enforcement and implementation is poor and there is a dominant perception that the independent Electoral Commission (INEC) is not efficient and effective in implementing the laws.</p>		<p>The implementation of the Justice Uwais report on electoral reforms is believed by many Nigerians to be the best option for reform of the electoral system in Nigeria.</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
Articles 8(1) and 8(2) UNCAC, Article 7(2) AUCPCC,	Promote integrity, honesty and responsibility amongst public officers. Create an internal mechanism/institutions and regulations to establish, monitor implementation and promote codes of conduct, ethical guidelines and promotion of integrity in public service. Management and elimination of conflict of interest.	The Code of Conduct Bureau and Tribunal framework is in place. The Bureau promotes compliance and investigates infractions and the tribunal adjudicates on allegations of non compliance and imposes sanctions. The Code of conduct for procurement officers issued by BPP	The Constitution of the Federal Republic of Nigeria and the Code of Conduct Bureau and Tribunal Act establishes a Code of Conduct for proper performance of public functions. This is supported by the Civil Service Rules and Financial regulations and the Public Complaints Commission established to investigate and mitigate administrative infractions of the public service rules and practices. The states also have their own Civil Service	The Nigerian Framework is largely compliant with UNCAC, AUPCC and ECOWAS Protocol All professional bodies in Nigeria have Code of Ethics and in many instances complaint mechanisms for redress. The Code of Conduct of public officers contained in the constitution serves the same purpose for public servants. There is limited compliance to the strict letters of the Code of Conduct for public officers. This is also the case with similar codes for private sector professional bodies. Implementation does	Inclusion of the Code of Conduct of public officers in the constitution makes it rigid and difficult to initiate improvements in the face of new challenges.	There should be periodic assessment of levels of compliance and implementation of Codes of Conduct, and established mandatory public reporting standards for levels of implementation of Codes of Conduct in the public and private sectors.

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
			<p>Rules The Public Procurement Act provides for a Code for all parties engaged with public procurement The various professions established by Acts of parliament have rules of professional conduct applicable to all its members including public servants.</p>	<p>not appear to be very effective, and deterrence is low. In practice a huge gap exists between these Codes of Conduct and actual implementation.</p>		

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 8(3) Article 9(2) AUCPCC (Not similar but related)</p>	<p>Take Account of regional, inter regional and multilateral initiatives to ensure compatibility with international code of conduct.</p>	<p>The Code of Conduct Bureau and Code of Conduct Tribunal</p>	<p>The Code of Conduct Bureau and Tribunal Act has many related provisions similar to the UN International Code of Conduct for Public officers but is not fully compatible to it. The Nigerian Code of Conduct for Public Officers fails to emphasize efficient and effective performance of the public official's duties in a fair, attentive and impartial manner.</p>			<p>It is recommended that regular comparative studies be carried out on ethics development and enforcement, between Nigerian local regime and other related international systems with good practices, with a view to improving the local system.</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Recommendations
			Legal Framework	Enforcement & Implementation	
<p>Article 8(4) UNCAC</p> <p>Article 5 ECOWAS Protocol</p> <p>No similar provisions in AUCPCC</p>	<p>Measures and systems that facilitate reporting of acts of corruption by public officers.</p> <p>Protection of persons who provide information on acts of corruption.</p>	<p>No statutory mechanism exists for Whistle Blower and Witness Protection in Nigeria, except for s 64 of the ICPC Act which provides only for protection of identity of informants.</p>	<p>None</p>	<p>No real system exists to facilitate reporting of corruption, and the strong perception is that those who report corruption are at risk in some instances of losing their jobs, lives and property.</p>	<p>There is an urgent need for a statute establishing a Whistle Blowers and Witness Protection framework in Nigeria.</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 8(5) UNCAC, Article 7(1) AUCPCC, Article 5 ECOWAS Protocol</p>	<p>Measures to ensure declaration of assets, gifts, external employment, investments and substantial gifts by public officials or their spouses, children and dependants, including liabilities and copies of their income tax returns.</p>	<p>The Code of Conduct Bureau and Tribunal Act makes it mandatory for every public official to declare his assets prior to assuming public office, every four years while in office and after. It does not however extend to provision of income tax statements as required by ECOWAS Protocol.</p>	<p>The Constitution of the Federal Republic of Nigeria. Code of Conduct Bureau and Tribunal Act.</p>	<p>Though largely compatible with UNCAC, the mechanism fails to provide public access to the declarations of public officials. Given the low levels of documentations, similarity of names and extended family and cultural settings in Nigeria, verification has been very difficult.</p>		<p>Enactment of an appropriate law to prescribe criteria for public access to declarations.</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 8(6) UNCAC, Article 7.3 AUCPCC, Article 10 ECOWAS (Related)</p>	<p>Provision for disciplinary measures against violation of Codes or Standards by public officials. Improvement of technology to fight corruption</p>	<p>The Code of conduct for Public servant and Federal Public Service Rules and Financial regulations make provisions in this respect. The Civil Service Commission both at State and federal levels have a mechanism entrenched in the service rules for investigation of infractions and disciplinary action for such infractions. The Nigerian framework has made limited use of improving technology to fight corruption.</p>	<p>Code of Conduct Bureau and Tribunal Act. Sections (160501 to 160503) Federal Government Civil Service Rules and Rules No. 5. Foreign Service Regulations, Section 6 S. 22 ICPC Act. Sections 16 and 58 of The Public Procurement Act 2007.</p>	<p>The enforcement of provisions of these Codes has not been as efficient as required.</p>		

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 9(1) UNCAC, Article 5(b) ECOWAS Protocol Articles 11(3) and 7(4) of AUCPCC are not similar but related</p>	<p>Establish procurement system based on transparency, competition, efficiency, effectiveness, fair and objective criteria in decision making that are effective in preventing corruption.</p>	<p>Bureau for Public Procurement [BPP]</p>	<p>The Public Procurement Act 2007 particularly Sections 3,5,6,14,16, 19, 24 38, 54, 58 Of Section 22 Independent Corrupt Practices Commission Act The law is fully compliant with UNCAC requirements</p>	<p>Levels of implementation appear reasonable. The efforts at capacity improvements and professionalization of procurement practice are yielding results. However capacities are still low in certain quarters. It is expected that as capacities improve, non compliance will further reduce and compliance will improve.</p>		<p>The Industry regulator needs to proactively see to the enforcement of access to information provisions of the Act, and improve support and partnership with citizens groups monitoring procurement. Need to inaugurate the National Council on Procurement.</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
				<p>However, due to Nigeria's federalism structure, procurement reforms are largely being implemented at the Federal level with the exception of a few states that have passed Public Procurement Laws.</p> <p>Government is yet to inaugurate the highest policy making body under the framework the National Procurement Council.</p>		

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 9(1)(a):UNCAC</p> <p>Article 11(3) (related) AUCPCC</p> <p>ECOWAS Protocol has no similar provision</p>	<p>System of equal and full disclosure and distribution of information on procurement opportunity and procedure. Sufficient and equal time for submission of tenders to all.</p>	<p>The Bureau for Public Procurement pursuant to its supervisory functions and powers provides an appropriate system for public procurement based on transparent, competitive and fair objective criteria in decision making that can be effective in preventing corruption.</p>	<p>S 5(f), S 16, S 24, 25 S. 38, 49 and 51 of the Public Procurement Act 2007 provide for simultaneous distribution of invitations for tender, and citizens access to other procurement information. The Public Procurement Act 2007 is applicable only at the Federal level but not to the 36 states of the federation receiving about 50% of National Revenues as monthly allocations. Only about eight States have similar laws.</p>	<p>Open Competitive bidding is enshrined as the method for procurement of Goods, Works and Services at the federal level and in a very few states in Nigeria.</p>	<p>This is not the case in over 28 states in the federation receiving over 50% of National revenues. Also, skill gaps within MDA's at the Federal Level has affected levels of compliance and very high approval thresholds have not allowed prior certification in many cases, which can improve compliance at this early stage of implementation.</p>	<p>There is need to ensure quick improvements in compliance with provisions for procurement planning, and publication of procurement plans across board. Increased efforts to improve skills and build capacities within the MDAs and Citizens groups need to be made. Need to increase advocacy and pressure to the federating states to pass and implement public procurement laws</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 9.1(b) and (c) of the UNCAC, Article 11(2) of the AUCPCC is close and the ECOWAS protocol has no similar provisions.</p>	<p>Establishment of conditions for participation and criteria for selection and award of procurement contract in advance.</p>		<p>Public Procurement Act 2007 Sections 24 to 56 of the Public Procurement Act 2007. Sections 5, 16, 23 and 24 of the Act provide for determination and publication in advance of selection and award criteria in full compliance with UNCAC requirements.</p>	<p>Many MDA's under the supervision of the industry regulator.</p>		<p>Approval thresholds at the federal level should be reduced for a period of at least two years to allow more transactions pass through pre-certification to enable MDAs garner the necessary experience. At the state levels there is need for every state government to adopt similar laws. There is also need for increased transparency and access to procurement information for non government stakeholders in accordance with the law.</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 9(1)(d) UNCAC AUCPCC and ECOWAS Protocol have no similar provisions.</p>	<p>Effective systems of domestic review put into place, and an adequate system of appeal, to ensure legal recourse and remedy where procurement rules have not been followed.</p>	<p>Bureau of Public Procurement</p>	<p>S 53, 54, 58, 16(18) &(19), of the Public Procurement Act 2007. S. 54 of the Public Procurement Act provide both for an administrative system of review and an appeal system that can ensure legal recourse and remedies in the face of non compliance, and access to courts for redress of any grievances arising from the S 5, 6, and 57 of Public Procurement Act 2007 S 57 of the Public Procurement Act provides for a Code</p>	<p>At the level of the law, the PPA complies fully with UNCAC provisions. However, resistance within some MDA's, and the political class, combined with poor knowledge and skills have contributed to reduce compliance levels, and it is expected that as capacities improve, resistance will reduce and compliance will continue to improve.</p>		<p>There is need for increased public education on the process for administrative review and the various compliance issues under the Act. The public and contractors need to know that the system works, and there is no retribution for using it. The BPP should publish a report of its decision of all complaints brought before it.</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 9 (1) e UNCAC. AUCPCC AND ECOWAS Protocol have no similar provisions</p>	<p>Establishment of measures to regulate matters regarding personnel responsible for procurement e.g. declaration of interest in particular procurement, screening procedures.</p>	<p>The Bureau of Public Procurement has issued Codes of Conduct for Public Procurement officers, Monitors and other stakeholders.</p>	<p>of Conduct and regulates conflict of interest for public officers, contractors and other participants in the process. These provisions are substantially complaint with UNCAC requirements.</p>	<p>Compliance is improving. The Industry regulator pursuant to sections 5, 6 and 57 of the Act has promulgated a Code of Conduct for both public officers and non-state actor observers and is vigorously disseminating these standards. These Codes are new and little information exists on compliance levels. It is expected that as knowledge and skills improve implementation will improve also. This is not the case in over 28 states in the federation.</p>		<p>There is need for improved sensitization on the Codes and publication of decisions with respect to reported infractions as this will enhance public confidence in the system. At the state levels there is need for every state government to adopt similar laws.</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 9(2) UNCAC</p> <p>Article 5(4) AUCPCC (related) ECOWAS Protocol has no similar provision</p>	<p>Transparency and accountability in the management of Public Finances.eg Procedures for adoption of National budget.</p> <p>Timely reporting in revenue. Appropriate accounting and auditing standards.</p> <p>Effective and efficient Risk Management and internal control.</p>	<p>Several initiatives have been under taken by the Ministry of Finance since January 2004 to improve transparency E.g.Publishing the Federal, State and Local Government shares of revenue from the Consolidated revenue Account.</p> <p>Quarterly budget implementation reports by the Ministry of Finance. Medium Term Strategy Sessions with participation of selected stakeholders to debate prioritize and cost initiatives to be included in the budget.</p> <p>Direct releases of MDA appropriation to their accounts held in the Central Bank of Nigeria.</p>	<p>Fiscal Responsibility Act 2007.</p> <p>Nigerian Accounting Standards Board.</p> <p>Fiscal Responsibility Act 2007</p>	<p>In practice the Medium Term Strategy Sessions have not been able to attract sufficient participation of the private sector and citizens groups in the last two years.</p> <p>Budget implementation reports are now published quarterly at the Federal level.</p>	<p>These measures are absent in more than 30 of the 36 States of the Federation.</p>	<p>That Federal Ministry of Finance begin publishing call for submission of initiatives prior to MTSS, and pass received initiatives to the various MTSS committees.</p> <p>Adequate notice of MTSS and call circulars should be given to non government stakeholders, prior to the exercise.</p> <p>Active encouragement of States to pass a Fiscal Responsibility Law.</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 9(3) UNCAC. ECOWAS Protocol and AUCPCC have no similar provision, but Article 5 (4) AUPAC Article 5(f) ECOWAS Protocol (Related</p>	<p>Preservation of documents related to public expenditure and revenue/accounting books Prevention of falsification of such documents.</p>	<p>Public Service Rules have laid out guidelines for managing Public Finance documentation and there is disciplinary procedure for infractions. National Accounting Standards Board [NASB]rules</p>	<p>Public Finance (control and Management) Act 1958. S 16 of the Public Procurement Act requires that file and soft copies of procurement records be kept for ten years. Additionally it requires transmission of copies of all procurement proceeding records to the Bureau within a specific time frame. Companies and Allied Matters Act requires the filing of annual returns in addition to other provisions relating to company records.</p>	<p>There is improving compliance with documentation provisions under the Public Procurement Act 2007. This however cannot be said for all other aspects of public finance document management system.</p>		<p>The Nigerian system will benefit from an improved national document management policy or guideline in the public service and from increased automation of document management systems.</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 10 UNCAC, Article 9 AUCPCC, Article 5: ECOWAS Protocol</p>	<p>Public access to Information and participation in public administration and decision making. Adopting procedures allowing public access to information on decision making processes etc. Media Access to information on cases of corruption.</p>	<p>SERVICOM is one initiative engaged in communication of service pacts to citizens, i.e. information on standard of service the public should expect and demand.</p>	<p>Nigeria is yet to institute an access to information regime. An access to information law has just been passed. However the Public Procurement Act 2007(PPA), the Fiscal Responsibility Act (FRA)2007 and the Nigerian Extractive Industries Transparency Initiative Act 2007 all have access to information provisions which when put together have substantially reduced the application of the Official Secrets Act.</p>	<p>The Nigerian regime is in the process of implementing adequate citizens access to public information, with the recent passage of Freedom of Information Law. There is also access to Public Procurement information under the Public Procurement Act 2007, Fiscal Management information under the Fiscal Responsibility Act and the NEITI Act. There is improved dissemination of Public Finance and Expenditure</p>		<p>Government and its there is need to initiate effective public education programs to sensitize citizens of their rights, roles and obligations under the new regime, using multiple channels and media. Effective partnerships with civil society organizations will be helpful in this direction.</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
			<p>2007 all have access to information provisions which when put together have substantially reduced the application of the Official Secrets Act.</p>	<p>information in Nigeria. However few citizens know about the access to information and obligations of dissemination of Public Finance and Expenditure information in Nigeria. However few citizens know about the access to information and obligations of government to disseminate information or have had recourse to these provisions, in the PPA and FRA.</p>		

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
ARTICLE 11 UNCAC	Take measures to strengthen Judicial Integrity within the ambit of Judicial Independence. Rules of conduct for members of the Judiciary. Measures to ensure integrity within the prosecution services	National Judicial Council	The National Judicial Council (NJC) is established by S. 153 of the 1999 Constitution	There is a Code of Conduct for Judicial Officers. The NJC enforces the Code and exercises other disciplinary measures against Judicial officers. There have been several cases of sanctioning of erring Judicial officers.	There have been criticisms of the method of appointment of Judicial Officers. There exist no measures to apply the ethical principles to prosecutors as required by Article 11 of UNCAC. There is no code to regulate conduct of prosecutors as is the case with judges, other than the regular code of conduct of public officers	Need to institute a Code of Conduct for Prosecutors as well as enhanced conditions of service.

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Recommendations
			Legal Framework	Enforcement & Implementation	
					prosecutors as is the case with judges, other than the regular code of conduct of public officers and the code of ethics of the legal profession. No other measures have been taken to maintain their integrity or prevent corruption amongst them.

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
ARTICLE 12 UNCAC ARTICLE 11 AUCPCC	<p>State Parties to take measures to combat corruption involving the private sector; enhance auditing standards and provide effective civil and criminal penalties.</p> <p>Promote cooperation, develop standards and procedures, promote transparency, prevent conflict of interest, ensure sufficient internal auditing standards.</p> <p>Ensure proper maintenance of books and records.</p>	<p>Corporate Affairs Commission.</p> <p>Central Bank of Nigeria</p> <p>Federal Inland Revenue Service (FIRS)</p> <p>Securities and Exchange Commission.</p> <p>Special Control Unit Against Money Laundering SCUML.</p>	<p>Company and Allied Matters Act 1990.</p> <p>The Companies Income tax Act CAP C21 LFN 2004 and the Personal Income tax law P8 LFN 2004</p> <p>Sections 74, 75, and 100 of the Rules and Regulations of the Investment and Securities Act (ISA)</p> <p>The Pension Reform Act 2004.</p>	<p>The Corporate Affairs Commission promotes transparency by maintaining an accessible data base of the identity of legal and natural persons behind corporate entities</p> <p>The various sector regulators ensure compliance with the different industry specific regulations and Codes.</p>	<p>The existing regulations and codes are mostly industry specific and there are still a significant number of sectors who are not regulated.</p> <p>Codes of conduct are mostly voluntary codes enforceable only through peer pressure.</p>	<p>Prevention and enforcement mechanisms within the anti-corruption laws should be mainstreamed to include private sector entities.</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
ARTICLE 13 UNCAC ARTICLE 12 AUCPCC ARTICLE 5 ECOWAS PROTOCOL	Active participation of groups outside the public sector. Participation of the public in decision making. Access to information. Public sensitization on issues relating to corruption. Information on and access to anti-corruption bodies for reporting of corruption inclusive of anonymous reporting.	ICPC ; EFCC; BPP; CCB; PCC	EFCC ACT, ICPC ACT, PPA 2007; FRA 2007; NEITI ACT 2007	The earlier Nigerian Anti Corruption legislations have no direct provisions for the participation of society in corruption prevention and monitoring of anti corruption efforts except for the obligation to report and testify in such proceedings. However from 2007, enabling legislations for certain	Access to information regimen is yet to be established as the law has just been passed and is not yet operational. There are criticisms that the CSO networks facilitated by some anti-corruption agencies do not constitute effective transparency and accountability partnerships as the emphasis is on public enlightenment and not on the more balanced public	Need to institutionalize an Access to Information regime and also a structured mechanism for accessing public input and feedback

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Recommendations	
			Legal Framework	Enforcement & Implementation		
				<p>institutions began to include provisions for the appointment of representatives of CSO [NGOS and Labour] into the boards of these institutions thereby enabling effective participation in those processes.</p> <p>Legislative frameworks such as the PPA 2007, FRA 2007 and NEITI ACT 2007 have provisions to ensure inclusion and participation ensure inclusion and participation of non state actors in the decision making</p>	<p>engagement. Absence of a Whistle-Blower Protection regimen impedes public reporting of corruption.</p>	

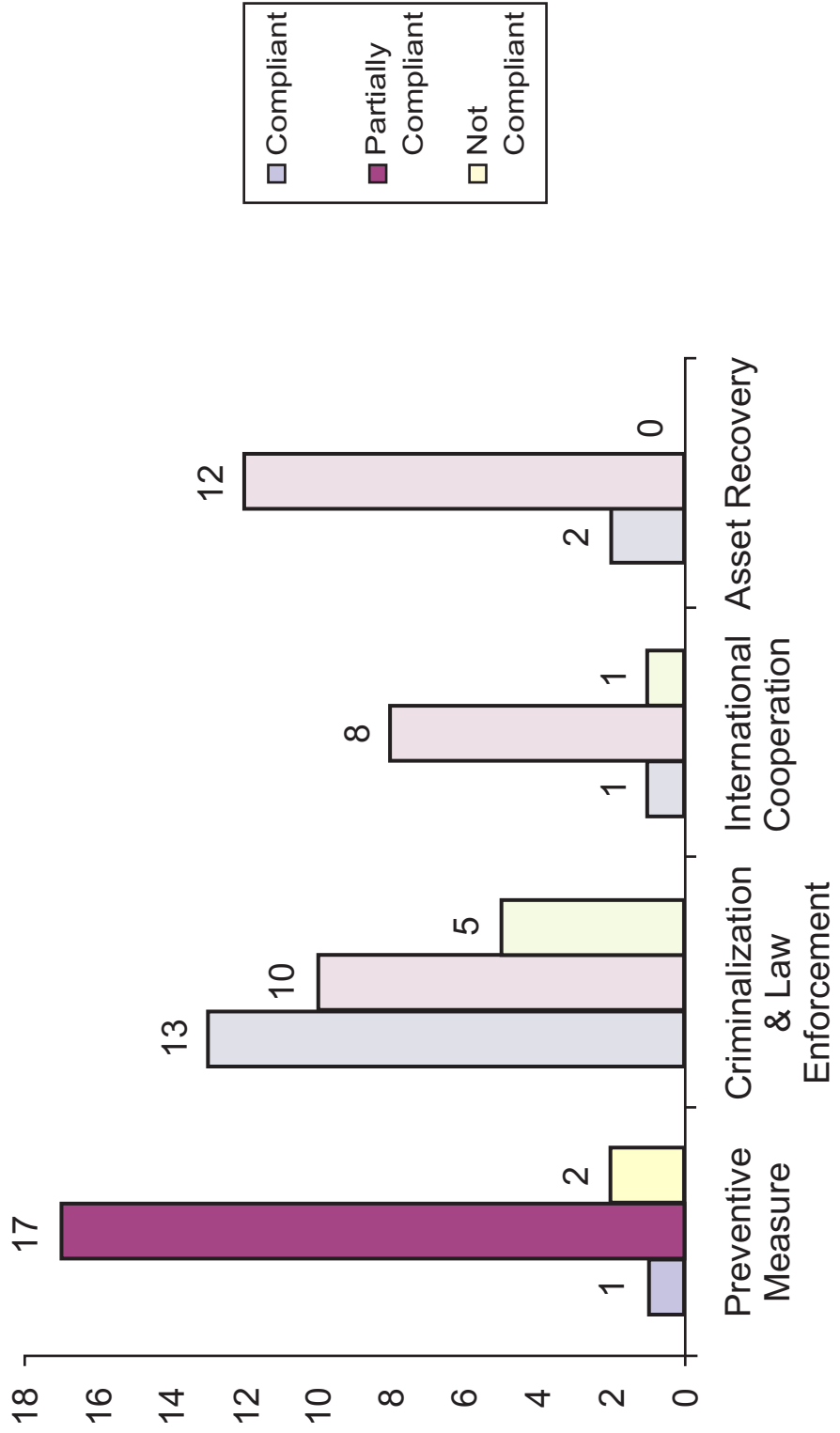
Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
				<p>organs of those institutions.</p> <p>The EFCC and ICPC also have civil society networks which ensure contribution and participation in their activities.</p>		

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Recommendations	
			Legal Framework	Enforcement & Implementation		
Article 14 UNCAC AUCPCC and ECOWAS Protocol have no similar provision	<p>Establishment of regulatory and supervisory framework to combat Money Laundering.</p> <p>Cooperation of agencies involved at local and international levels.</p> <p>Establishment of financial Intelligence Unit to monitor movement of cash in and out of State borders.</p> <p>Encourage financial Institutions to collect information on origin of electronic fund transfers and scrutinize incomplete information.</p>	<p>The Central Bank of Nigeria.</p> <p>The Nigerian Financial Intelligence Unit [NFIU]</p> <p>The EFCC</p>	<p>The Economic and Financial Crimes Commission Establishment Act 2004.</p> <p>Money Laundering Prohibition Act 2011.</p> <p>The Central Bank Act.</p> <p>These laws are significantly compliant with UNCAC obligations</p>	<p>A comprehensive know Your Customer framework has been established for banks and the CBN in collaboration with related agencies monitors compliance.</p> <p>However the revised rules for the stakeholders of the Securities exchange and Insurance companies prepared by SEC and NAICOM respectively are yet to come into force, even though both have begun compliance monitoring based on earlier guidelines issued.</p>	<p>Compliance to reporting obligations is low among Designated Non Financial Institutions.</p>	<p>There is need for closer monitoring of transactions in banks and financial institutions, but even greater need to increase awareness and compliance amongst Designated Non Financial Institutions required to report under the Money Laundering Act.</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National Institutional framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
Article 14 UNCAC AUCPCC and ECOWAS Protocol have no similar provision				A Financial Intelligence Unit has been established as an autonomous Unit in the EFCC.		

Chart Showing Nigeria Levels of Compliance in the areas of Preventive Measure.

international co-operation and assts recovery.



CHAPTER 2

2.0 CRIMINALIZATION

2.1 INTRODUCTION

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). Articles 4 & 5 of AUCPCC and Article 6 of ECOWAS Protocol deal with Criminalization, Article 5(3) of AUCPCC particularly provides that State Parties establish, maintain and strengthen independent national anti-corruption authorities or agencies, and both list acts of corruption that State parties ought to criminalize. 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, creating offences and (ii) establishing appropriate measures and procedures to establish an effective enforcement mechanism.

Specifically chapter III requires State Parties to criminalize the following specific acts: Bribery of National Public Officials; Active Bribery of Foreign Public Officials); Embezzlement, Misappropriation and Other Diversion of Property (**Art.17**); Money Laundering; and Obstruction of Justice. The chapter further urges State Parties to consider the criminalization of the following acts: Passive Bribery of Foreign Public Officials; Trading in Influence; Abuse of Function; Illicit Enrichment; Bribery in Public Sector (**Art.21**); 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 perpetration of UNCAC crimes; and enforcement of sanctions that are effective, proportionate and dissuasive. It also requires State Parties to institutionalize measures to secure effective law enforcement according to specific standards, and consider or seek to institutionalize such measures. Furthermore, the Convention requires them to take such measures as may be necessary to enable "*freezing, seizure and confiscation*". On protection of witnesses and reporting persons, UNCAC requires the establishment of effective witness protection programs within the available means; the establishment of evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons; and the provision of protection against any unjustified treatment for any person who reports in good faith any facts concerning offences. This is in addition to other measures to enable effective enforcement. The intent behind chapter 111 of UNCAC is echoed at both continental and sub regional levels. As a result both the ECOWAS Protocol and the AUCPCC require such measures also in varying degrees.

2.2 CRIMINALIZATION OF OFFENCES

2.2.1 Bribery of Country Public Officials - Article 15 of UNCAC

Article 15 of UNCAC and Article 4 (a) &(b) of the **AUCPCC** both provide for the obligation of State Parties to criminalize the solicitation or acceptance, directly or indirectly, by a public official or any other person; Article 6 of the ECOWAS Protocol identifies the following acts of corruption: a) a public official demanding or accepting, and or offering, promising either directly or indirectly through a third party, any object of pecuniary value such as a gift, offer, a promise or an advantage of

any nature, whether for himself or for another person, in exchange for an act or an omission in the discharge of his duties. The Law and Policy regime at domestic level complies fully with this particular requirement of UNCAC and AUCPCC. Prior to UNCAC S. 98(a)-(d) of the Criminal Code had provided for these offences. Sections 8 and 9 of the ICPC Act 2000 establish the offences of accepting gratification and giving/accepting gratification through an agent respectively, along the same lines as section 12 of the Code of Conduct Bureau and Tribunal Act establishing the infraction of '*bribery of public officials*'. The challenge at domestic level appears to be at the level of implementation as the perception persists, that investigation and prosecution is not effective and that many who contravene the law go unpunished.

2.2.2 Bribery of foreign public officials and officials of public international organizations - Article 16 of UNCAC

Article 16 of UNCAC requires State parties to: (1) Criminalize active bribery of foreign Public Officials and officials of Public International Organizations”. 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 S. 12 and 404(1) (a) of the Criminal Code criminalizes corruption of foreign government officials, where the act constituting the offence occurs partially or wholly in Nigeria or partly elsewhere. This however is subject to the Diplomatic Immunities Act which grants immunity to diplomats and their families. There is no evidence of prosecutions under these sections prior to the return to civil rule in Nigeria in 1999.

2.2.3 Embezzlement, Misappropriation or other Diversion of Property by a Public Officer - Article 17 of UNCAC

By Article 17 UNCAC, State Parties are required to criminalize embezzlement, misappropriation or other diversion” if committed intentionally by a public official for his/her benefit or 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 12 of ECOWAS Protocol make similar provisions. S 383 of the Criminal Code generally criminalizes stealing, which includes by way of conversion, fraud and misappropriation. S. 22(5) of the 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 include embezzlement and misappropriation as required under Article 17 of UNCAC. Both the Nigeria Police Force and the ICPC have several pending cases in this area, and in the case of the Police Force records exist of several pending and concluded prosecutions in the Magistrate Courts under S. 383 of the Criminal Code. Many of these cases however, are un-reported and the records have not been aggregated from different courts.

2.2.4 Trading in Influence – Article 18 of UNCAC

By Article 18 of UNCAC State Parties are required to consider criminalization of acts of “trading in influence”. This means intentional promise/giving/solicitation/acceptance by a public official or any person of an undue advantage in order that the public official or that other person be influenced with a view to obtaining from an administration or public authority of the state an undue advantage. A similar provision is found in Article 4(f) of the AUCPCC, and the same is the case with Article 6(1) (d) of the ECOWAS Protocol. The related domestic legal regime is found in sections 8– 11 as well as 18 – 22 of the ICPC Act. The joint effect of these provisions is that the Nigerian legal regime recognizes both active and passive trading in influence with punishment ranging from three to five years imprisonment, both without the option of fine. The challenge as with many of the provisions within the ICPC Act, has been the lack of vigorous implementation as there have been very few records of cases successfully prosecuted under these provisions.

2.2.5 Abuse of Office - Article 19 of UNCAC

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 4(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 for the purpose of illicitly obtaining benefits for himself or for a third party, including abuse of office or power to obtain illicit gain for his or her person or any other person. Prior to the UNCAC S 98 102, and 104 of the Criminal Code had criminalized this conduct in Nigeria. Additionally Ss 8, 10 and 19 of the ICPC Act criminalize similar acts of abuse of office. Ss. 57 and 58 of the PPA 2007, criminalize acts of abuse of official position in the Public Service as it relates to Public Procurement.

2.2.6 Illicit Enrichment – Article 20 of UNCAC

According to Article 20 of UNCAC state parties are required to consider criminalization of '*intentionally committed illicit enrichment*', i.e. a significant increase in the assets of a public official that he/she cannot reasonably explain in relation to his/her lawful income. Article 8 of the AUCPCC and Article 6(3) of the ECOWAS Protocol both address the issue of illicit enrichment. Within the context of the domestic legal regime, section 7 of the Bank Employees Declaration of Assets Act 2004 criminalizes illicit enrichment of bank officials and allows the President to extend its application to other categories of persons, even though this has not happened yet. The Code of Conduct Bureau and Tribunal Act is partly hinged on an intention to guard against illicit enrichment amongst public office holders by requiring them to provide information as to whatever assets, property or outside business they own at the commencement and termination of their tenure in public office. By virtue of S 20 (2) of the Money Laundering Prohibition Act and 19(5) of the EFCC Act possession of pecuniary resources or property disproportionate to income of an accused or for which he cannot satisfactorily account, though not an offence may corroborate testimony of witnesses and be taken into account by the court. In the case of S. 35 of the Miscellaneous Offences (Public Order and Nuisance) Act CAP 184 LFN 2004 it is an offence punishable under the law. The domestic regime is therefore in compliance with UNCAC requirement.

2.2.7. Bribery in the Private Sector - Article 21 of UNCAC

Article 21 of the UNCAC obligates State Parties to consider the criminalization of “bribery in the private sector”. Article 4(e) of the AUCPCC Convention urges State Parties to criminalize “offering or giving, promising, solicitation or acceptance, directly or indirectly, of any undue advantage to or by any person who directs or works for, or in any capacity, a private sector entity for himself or herself or for anyone else, for him to act, or refrain from acting in breach of his or her duties.. The ECOWAS Protocol in Article 6(5) obligates State Parties to criminalize promise to offer, offer or giving of bribes to public officials or employees of companies of the private sector, either directly or indirectly to themselves or to third parties in order to carry out or abstain from carrying out an action in violation of their function. It also requires criminalization where public officials or employees in the private sector ask or receive directly or indirectly bribes for themselves or third parties in order to carry out or refrain from carrying out an action in contravention of their duties.

Prior to UNCAC, Sections 433, 434, 435 & 436 of the Criminal Code Act, criminalizes similar offences particularly as it relates to trustees, and officers of companies, corporations as well as false accounting in the private sector. Ss 8(1) and 17 of the ICPC Act provides for bribery of officials of private companies and agents, but not exhaustively as required by UNCAC and ECOWAS Protocol. Section 58(6) of the PPA 2007 criminalizes several procurement related infractions for both the

public and private sector. Additionally Section 7 of the Bank Employees Declaration of Assets Act 2004 for instance criminalizes illicit enrichment of bank officials, and allows the President to extend its application to other categories of persons. No such presidential extension has been applied yet. Section 15(1) (d) of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 2004 also addresses the issue of corruption, however it is limited to the sphere of banking operations alone, leaving S 17 of the ICPC Act with its limitations as the major provision applying squarely to all private sector organizations activities. The limitation in terms of domestic compatibility lies with the fact that many of these provisions except for S 17 of the ICPC Act address corruption within the private sector in a compartmentalized fashion by narrowing down to specific blocs within the sector, rather than covering the sector in its entirety such that the Nigerian legal regime is only partially compliant with this UNCAC provision.

2.2.8. Embezzlement of Property in the Private Sector- Article 22 of the UNCAC provides that State Parties are required to consider embezzlement in the private sector, if committed intentionally in the course of economic activities by a person directing or working in a private sector entity in respect of any things of value entrusted to him/her by virtue of his/her position. In addition to Article 4 (discussed above) Article 11(1) of the AUCPCC obligates State Parties to “*adopt legislative and other measures to prevent and combat acts of corruption and related offences committed in and by agents of the private sector*”.

At the domestic level S. 17 of the ICPC Act criminalizes this kind of conduct to a limited degree as already discussed. The Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 2004 address such issues as it relates only to a failed bank. S.383 criminalizes stealing whether in the public or private sector; S 434 criminalizes destruction or conversion of property by a trustee, but makes it a defence to a criminal charge in this respect, that a civil action has already been taken out against the accused by the same complainant, except there is prior sanction of a judge. Additionally S 437 exonerates an accused for any offence under this chapter of the Criminal Code, if such an accused had prior to the charge under this chapter and in consequence of a compulsory process of a court in any action or proceeding instituted in good faith by an aggrieved party, or in compulsory examination before a court, disclosed on oath such an act alleged to constitute the offence. In today's complex environment, these provisions are insufficient to regulate corruption in the private sector, and fall short of the requirements of the international instrument in view in this report.

2.2.9. Criminalization of Laundering of Proceeds of Crime - Article 23 of UNCAC

Article 23 of the UNCAC requires each State Party to criminalize conversion or transfer of property, knowing such property to be proceeds of a crime, with the aim of hiding its illicit origin or helping anyone involved to evade the consequences of his action. It further requires criminalization of concealment, disguise of true nature, source, location disposition, movement or ownership of such assets, their receipt, acquisition, and use knowing that such asset is proceeds of a crime. It obligates State Parties to also criminalize participation, association, conspiracy, aiding and abetting, facilitating or concealing the commission of any of the said offences. At the Continental and regional levels Article 6 of the AUCPCC and Article 7 of the ECOWAS Protocol obligate State parties to criminalize the same host of activities as stated in Article 23 of UNCAC.

Prior to UNCAC S. 433 of the Criminal Code had provided for a similar offence. The Money Laundering Prohibition Act 2011 provides for money laundering offences in Nigeria. The offence is described in Section 15 of the Act to include the conversion of, transfer of resources or property derived from illicit traffic in narcotic drugs or psychotropic substances bribery and corruption or

any illegal Act, with the aim of either concealing or disguising the illicit origin, location, movement or ownership of the resources or property. It also includes aiding any person involved in the illicit traffic in narcotic drugs, psychotropic substances or any other crime or illegal act to evade the legal consequences of his action, and also provides for liability of directors of private entities. It also prohibits collaborating to conceal or disguise the genuine origin, movement or ownership of properties or proceeds from such crimes. The Money Laundering Prohibition Act criminalizes failure to comply with customer identification information collection and submission of returns on such transactions specified in the Act.

S. 6 of the EFCC (Establishment) Act 2004 grants the EFCC the function of co-ordination and enforcement of all economic and financial crimes laws and enforcement functions conferred on any other person or authority in Nigeria. S. 7 of the Act gives the EFCC powers to investigate any person, corporate body or organization and charges the EFCC with the responsibility to enforce five other economic crimes related legislations including the Money Laundering Prohibition Act, as well as the criminal and penal codes. S 14 of the EFCC Act criminalizes failure by an officer of a bank or designated non financial institution to ensure compliance with the Act. The Act also criminalizes wilful supply of false information as well as money laundering providing an alternative provision to the Money Laundering Prohibition Act under which culprits could be charged. As indicated in the GIABA follow up report on Nigeria, there is the need for sustained application of sanctions for AML/CFT breaches. This is an area where the supervisory bodies and regulators need to be more proactive in ensuring that deterrence measures are put in place to protect the Global financial system. Thus the Nigerian regime is only partially compliant with the requirements of UNCAC, AUCPCC and the ECOWAS Protocol in this respect.

2.2.10 Concealment – Article 24 of UNCAC

State Parties are required to criminalize *intentional concealment or continued retention of property with the knowledge that such property is the result of any offence established by UNCAC but without having any participation in such offence.* Article 4(b) of the AUCPCC requires criminalization of the use or concealment of proceeds derived from any acts referred to in Article 4. Additionally Article 6 (c) of the AUCPCC appears to provide for a wider coverage, since it obligates state parties to criminalize “*the acquisition, possession or use of property with the knowledge at the time of receipt, that such property is the proceeds of corruption or related offences*” Article 7(1)(i)& (ii) of ECOWAS Protocol obligates state parties to take measures to criminalize the conversion and transfer of assets, knowing such assets to be proceeds of crime, and concealment of the true nature and source, location, disposition, movement or ownership of or rights with respect to assets, knowing that such assets are the proceeds of crime. It further criminalizes the acquisition, possession or use of assets, knowing at the time of receipt that such are the proceeds of crime. Also it criminalizes participation in, association with or conspiracy to commit, attempts to commit, aiding and abetting in facilitating and concealing the commission of any of the offences established in accordance with the Articles.

Prior to UNCAC S. 427-433 of the Criminal Code criminalizes obtaining and possession of assets knowing them to be proceeds of a felony or other crimes. By virtue of Section 17 of the EFCC Act it is a crime for a person to retain control of the proceeds of a criminal conduct of another person, knowing that such proceeds are the result of criminal conduct by the principal. The punishment in such cases is a minimum of 5 years in prison and/or a fine equivalent to 5 times the value of the proceeds of the criminal conduct. Section 17 of the EFCC Act also criminalizes the acquisition, possession or use of property knowing at the time of its acquisition that such property was derived from an offence. Also S 24 of the ICPC Act and S 17 of the Money Laundering (Prohibition) Act criminalize such infractions. On this account the Nigerian legal system is fully compliant with the requirements of UNCAC, AUCPCC and ECOWAS Protocol.

2.2.11 Obstruction of Justice – Article 25 UNCAC

State Parties are required to criminalize any of the following acts, if committed intentionally, in relation to the commission of UNCAC offences: use of physical force, threats, intimidation, promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding, or to interfere with the carrying out of official duties by a judge or law enforcement official.

At the domestic level prior to UNCAC, S. 366 of the Criminal Code criminalized such use of force or other means to compel or induce a person not to undertake any lawful act like providing a testimony or to cause him to provide a false testimony. Sections 15 and 25 of ICPC Act criminalizes making or causing any person to make false statement to officers of the Commission, while S 15 relates to acts committed fraudulently or with intent to frustrate the commission in its investigation. S. 25 criminalizes giving of false statement or causing any person to make a false statement. In S. 25 of the ICPC Act, it does not appear to matter if such a false statement was caused by use of force, threat, intimidation, offering of an undue advantage or even a due advantage. This section appears broader than the requirements of Article 25 of UNCAC. S 22 of the Money Laundering (Prohibition) Act also criminalizes wilful obstruction of the agency or its authorized personnel. Section 38 of the EFCC Act criminalizes wilful obstruction of the EFCC or its personnel and in both cases, such obstruction could be by threat, or inducement etc. The Nigerian framework is compliant with UNCAC in this respect.

2.2.12 Liability of Legal Persons – Article 26 of UNCAC

Without prejudice to the criminal liability of natural persons committing offences provided for in UNCAC, State Parties are required to establish criminal, civil or administrative liability for participation in any such offence by legal persons and prescribe effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanction for the legal persons, notwithstanding the accompanying liability of natural persons participating in committing the crime.

This is similar to the provisions of Article 10(2) of ECOWAS Protocol and Article 11 of AUCPCC. Article 11 of the ECOWAS Protocol provides that each State Party shall adopt such measures as may be necessary, and consistent with its legal principles, to establish the liability of legal persons for participation in offences established in accordance with Articles 6, 7 and 12 of the Protocol.

Section 58 (6 &7) of the PPA 2007 provides for liability of legal persons and directors registered in the Company registry at the time of commission of the procurement related offence. As a compliment to this, the Money Laundering Prohibition Act provide for a system within the bank to combat money laundering including a centralized information collation and reporting system, as well as liability of the Company and its directors to specific infractions relating to failure to comply with these provisions.

The Interpretation Act defines 'persons' to include both legal and natural persons. Further, the general language of most provisions in the EFCC, ICPC, and NEITI Acts impose civil and criminal liability on companies which in Nigeria are legal persons. Section 17 of the EFCC Act criminalizes infractions by “any person” in the private sector, and this will include companies which are legal persons by Nigerian law. Section 16 of the NEITI Act 2007 criminalizes false rendering, delay and failure to render statements of accounts and information by extractive companies. S 19 of the Money Laundering Prohibition Act criminalizes actions of directors, managers, secretary and staff

that help in commission of an offence by a corporate body, and provides punishment for both the company and its principal officers. The Nigerian legal regime is compliant with this obligation.

2.2.13. Participation, Attempt and Preparation – Article 27 of UNCAC

By the UNCAC, State Parties are required to criminalize participation in any capacity such as an accomplice, assistant or instigator in any offence created by the Convention. It also requires State parties to consider criminalization of any attempt or any preparation of any offence covered under the Convention. Article 4(1)(i) of the AUCPCC obligates state parties to adopt measures to criminalize participation as a principal, co-principal, agent, instigator, or accessory after the fact or on any other manner in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in that Article of the AUCPCC, which are entirely similar to the acts for which the UNCAC requires criminalization in its Article 27 [a]. There are no similar provisions in the ECOWAS Protocol.

At domestic level, Sections 516, 517, 519 & 520 of the Criminal Code Act criminalizes *conspiracy* as well as being *accessories to and after the fact* in all misdemeanours and felonies in and outside Nigeria. On this account alone the Nigerian framework is fully compliant with UNCAC and AUCPCC. However in addition, S 26 of ICPC Act criminalizes abetment, acts preparatory to and attempts to commit an offence. Along the same lines S 18 of the Money Laundering Prohibition Act criminalizes conspiracy, aiding, abetting, counselling and attempts to commit an offence under the Act. S 58(4) of the PPA criminalizes entering into and attempts to enter into collusive agreements relating to the public procurement process whether or not enforceable. The domestic legal regime is fully compliant with UNCAC on this obligation.

There are indications that several persons have been investigated and prosecuted for aiding, abetting or participating in other capacities in corruption related offences, and many court and newspaper reports of such indictments exist.

2.3 LAW ENFORCEMENT MEASURES

2.3.1. Knowledge, Intent and Purpose as Elements of an Offence – Article 28 of UNCAC

State Parties are required to enable its courts to infer “*knowledge*” “*intent*” or “*purpose*” from objective factual circumstances. While the regional and continental frameworks do not contain similar provisions, domestic criminal jurisprudence is fully compliant with this requirement. S 53 of the ICPC Act allows courts to presume several factual circumstances in respect of offences under Ss 3-19 of the Act. These include that offer, acceptance, promise, attempt to obtain gratification if proved is corruptly done, or that obtaining, acceptance or attempt to obtain a valuable thing for a value one knows to be inadequate, once proved, means that it was done with knowledge of particulars set out in the offence. These offences include corruptly obtaining benefits/properties; *corrupt offers to public officers; and non disclosure of parties to a transaction*. Furthermore, section 54 of the ICPC Act grants courts authority to presume evidence of illicit enrichment against an accused, close relations and associates as corroborating evidence for offences in Ss 8-19 of the ICPC Act. Ss 56-58 also provide for admissibility of previous statements whether or not interpreted to the person charged by a police officer when the statement was taken, and allows the court in such a trial to presume that a certificate issued by a principal or an officer on his behalf, declaring that a person named held an office is admissible against any person named in it, that such a person held the position, office or capacity and received emoluments specified in the certificate. Also the EFCC allows presumption of evidence of illicit enrichment as corroboration of testimony in proof of related offences.

2.3.2 Statute of Limitations – Article 29 of UNCAC

The UNCAC requires that State Parties establish a long period of limitations for UNCAC offences or establish a longer statute of limitations period or provide for the suspension of the statute of limitations, where the alleged offender has evaded the administration of justice.

The position in Nigeria is that there is no time limitation with respect to the prosecution of criminal offences. The implication is that an accused can at any time be charged and tried no matter how much time has passed. This provides contextual basis that far exceed the UNCAC requirement in **Article 29** UNCAC.

2.3.3 Prosecution, Adjudication and Sanctions – Article 30 of UNCAC

Article 30 provides that in respect of offences prescribed by UNCAC, State Parties are required to prescribe sanctions proportionate to the gravity of such offences; establish and maintain an appropriate balance between any immunities or jurisdictional privileges accorded to public officials for the performance of their functions; take appropriate measures to ensure that conditions imposed in connection with decisions on release pending trial/appeal of an accused take into consideration the need to ensure his/her presence at subsequent proceedings; consider establishment of procedures through which a public servant accused of any such offence can be removed, suspended or reassigned; consider establishment of procedures for excluding persons convicted of any such offence from holding public office or office in an enterprise owned, in whole or in part, by the State. The provisions in the AUCPCC are similar to the UNCAC only to the extent that it require balance the application of any laws providing official immunity. Article 7(5) of AUCPCC obligates State Parties to ensure that any immunity granted to public officials shall not be an obstacle to the investigation of allegations against and the prosecution of such officials.

Article 10 of the ECOWAS Protocol obligates each State Party to provide, in respect of those criminal offences established in line with the Protocol, effective, proportionate and dissuasive sanctions and measures, including, when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition.

Although the domestic frameworks such as the EFCC Act, the ICPC Act and the PPA deal extensively with the criminalization of a wide range of corrupt acts in public office, Nigeria's 1999 Constitution provides near absolute immunity from prosecution for certain categories of public officers, which effectively prevents their prosecution when in office, and makes their investigation difficult. They can neither be arrested nor compelled to respond to allegations of corruption. S 308 of the 1999 Constitution specifically provides for immunity from prosecution for Governors and Deputy Governors of States, and President and Vice President of the Federation, without any balancing provision to support effective prosecution, except in cases of impeachment. However S 52 of the ICPC Act provides for the appointment of independent counsel to conduct investigations in corruption offences in respect of officers granted immunity under the constitution. It has been argued that this is sufficient balancing provision as required by AUCPCC and UNCAC, particularly since the application for appointment of an independent counsel will be made by the ICPC to the Chief Justice of the Federation who heads the Judiciary. There has not been an instance where this provision has been invoked to its logical conclusion in Nigeria.

2.3.4 Freezing, Seizure and Confiscation – Article 31 of UNCAC

Central to an effective anti corruption regime is the need to prevent offenders from profiting from their acts of corruption through the confiscation of illicitly acquired funds and property. This is addressed in Article 31 of the UNCAC which provides that State Parties are required to take measures to enable identification, tracing, freezing, or seizure for purposes of confiscation of

proceeds of crimes derived from UNCAC offences or property which corresponds to such proceeds, and or properties, equipment or other instrumentalities used or destined for use on such offences. This provision also includes properties in which proceeds of crime are commingled, or proportionate value of properties thereof, income or benefits derived from property into which proceeds of crime are transformed or converted.

Article 13 of the AUCPCC requires each State Party to adopt such legislative measures as may be necessary to enable its competent authorities to search, identify, trace administer and freeze or seize the instrumentalities and proceeds of corruption pending a final judgement. It also requires confiscation of proceeds or property, the value of which corresponds to that of such proceeds, derived from offences established in accordance with this convention; and reparation of proceeds of corruption. It further requires the requested state party, in so far as its law permits to seize and remit any object required as evidence or acquired as a result of the offence for which extradition is requested or found at the time of arrest or subsequently discovered. When the asset or object is liable for seizure in the territory of the requested state party, the latter may in connection with pending or ongoing proceedings, temporarily retain or hand over to the requesting party on conditions that it is returned to the requested party.

At sub regional level, the ECOWAS Protocol urges State Parties to adopt measures, where necessary, that would permit competent authorities to identify locate and seize assets or items for eventual forfeiture, or forfeiture of proceeds of crimes established in accordance with the provisions of the protocol.

At the domestic level, Sections 19 -26, and 33 of the EFCC Act provides for tracing, freezing, seizure and confiscation or forfeiture of proceeds of crimes, or means of conveyance, mechanisms , books and records or data used and intended to be used to facilitate the crime. Section 45 of the ICPC Act also provides for tracing, freezing, seizure for confiscation of such assets, movable and immovable property by order of the Commission. Feedback from some of the law enforcement agencies indicates that there have been many cases of confiscation of instrumentalities of crime. The survey results indicate that the Economic and Financial Crimes Commission regularly traces, freezes and seizes assets suspected to be proceeds or instrumentalities of crime within limits of existing law, but such cases are court/conviction based. The Nigerian regime has gaps as it relates to non conviction based freezing and seizure of assets.

2.3.5 Protection of Witnesses, Experts, Victims, and Reporting Persons – Articles 32 and 33 of UNCAC

By virtue of Article 32 of the UNCAC, State Parties are required to undertake measures to provide effective protection from potential retaliation or intimidation for witnesses, experts giving testimony or victims and their relatives and other persons close to them, including agreements and arrangements with other States for relocation of such persons. Article 33 of the UNCAC further provides that: State Parties are required to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning UNCAC offences.

The provisions of the AUCPCC in Article 5(5) & (6) requires State parties to adopt measures to protect informants and witnesses in corruption and related offences, including protection of their identities, and measures that ensure that they report corruption without fear of reprisals. According to Article 8 of the ECOWAS Protocol each State Party shall take appropriate measures to provide effective protection to witnesses from potential retaliation or intimidation and, as appropriate, for

their relatives and other persons close to them. Article 9 further provides that each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by the Protocol, in particular in cases of threat, retaliation or intimidation. Each State party shall permit the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings in a manner not prejudicial to the rights of the defence.

At the domestic level, no specific legislations or provisions of extant law provides any protection or mechanism for protection of either witnesses or whistle blowers. S 64 of the ICPC Act only provides for protection of the identity of informants, where such informants are required as witnesses or where their further action in support of investigation and prosecution will pose a threat to their person or family. No guarantees are provided under Nigerian law, for their protection.

2.3.6 Consequences of Acts of Corruption – Article 34 of UNCAC

Article 34 of the UNCAC requires state parties to (with due regard to the right of third parties acquired in good faith), consider corruption as relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action. There are no similar provisions in the AUCPCC or the ECOWAS Protocol.

One step that would be extremely useful in terms of complying with the UNCAC provisions would be incorporating anti-corruption clauses in all contractual and concession documents. This is already the case with the standard procurement transaction documents issued by the BPP pursuant to its powers under S 5 and 6 of the PPA 2007. Additionally under Nigerian case law, resulting from application of common law principles, fraud vitiates all contracts. In many if not all instances corruption involves fraud, fraudulent misrepresentation, fraudulent omission to act or actions contrary to public duty, and thus corruption is a basis for nullification of contracts, not only in cases of procurement, where the contracts more often contain such clauses, but in all other forms of contracts, where such circumstances exist.

2.3.7 Compensation for Damage – Article 35 of UNCAC

State Parties are required by virtue of section 35 of UNCAC to ensure the right to seek compensation for damage suffered by victims of corruption. While there are no similar provisions in the AUCPCC, the ECOWAS Protocol provides in article 9(3) that each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by the Protocol.

Ss 113-117(a) of the Criminal Procedure Act grant powers for a court after a trial to make order as it thinks fit for disposal, destruction, confiscation, compensation or delivery to anyone entitled to possession of a property or document etc produced before it. These provisions however are not as direct as UNCAC obligations require. They relate more to handling of exhibits. Indeed in S 113 (b) where it refers to payment of compensation, the reference is to the use of an exhibit to pay costs or compensation levied against the accused by a magistrate. It would appear that cost and compensation contemplated may be to government and not the victim. Also the power is conferred on a magistrate and may not be exercised by a Judge of the high court. There is therefore need for an amendment to make it abundantly clear that victims of crime are entitled to compensation for injuries suffered. The only exception appears to be the new Criminal Justice Administration Act of Lagos State, which provides some measure of victim compensation.

2.3.8 Specialized Authorities – Article 36 of UNCAC

Article 36 requires State Parties to ensure the existence of specialized independent authorities for

combating corruption through law enforcement. Continental support for this can be found in Article 5(3) of the AUCPCC where AU member states are encouraged to “establish, maintain and strengthen independent national anti-corruption authorities or agencies”.

The domestic regime is quite compliant with this particular UNCAC requirement. The Nigerian Government has established the EFCC, the ICPC, the CCB, and a number of other anti corruption agencies. S.6 of the ICPC Act and S. 7 of the EFCC Act respectively empower both agencies to investigate any reports of commission or conspiracy to commit offences under these laws or any other law. S 7(2)(a-f) of the EFCC Act empowers the Commission to enforce the provisions of the Act and seven other related legislations. At the same time, the enabling legislation of the ICPC provide for the security of tenure of their principal officers in the case of Auditor General and the ICPC, but this is not entirely the same in the case of the EFCC. S 3(2) of the EFCC Act empowers the President to remove a member of the Commission and by inference the chairman for inability to discharge the functions of his office or for misconduct, or if satisfied that it is not in the interest of the Commission or the public that the member should continue in office. This leaves room for a President to remove an EFCC Chairman without recourse to the Senate. However this is not the case with the ICPC. For instance Section 3 of the ICPC Act 2000 grants the ICPC legal independence and security of tenure for the Chairman and members of the Commission. The 1999 Constitution of Nigeria in its section 153, grants independence and security of tenure to the Chairman and members of the Code of Conduct Bureau and Tribunal. Nigeria is partially compliant with these provisions of UNCAC and AUCPCC.

These anti-corruption bodies have a full complement of staff and mandate to ensure specialized training for the staff. S 3(13) of the ICPC Act empowers the commission to employ, designate and deploy needed staff. This is also the case with section 8(3) of the EFCC Act. However, neither of these agencies have financial independence, as their funding is largely determined by the Executive Budgets.

2.3.9 Cooperation with Law Enforcement Authorities – Article 37 of UNCAC

By Article 37 of UNCAC, State Parties are required to take measures to encourage persons who participate or have participated in an offence to supply information and provide factual specific help to combating authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds, and to consider provisions for immunity from prosecution or mitigating punishment for any such person.

There are no similar provisions at both ECOWAS and AUCPCC levels. There is also little or no compliance with this provision within the context of the domestic regime as there are no codified provisions of Nigerian law on such issues and methods as plea bargain. Except in the case of the new Lagos State Criminal Justice Law applicable only to Lagos State the Nigerian legal framework is not in compliance with Article 37 of UNCAC.

2.3.10 Cooperation between National Authorities – Article 38 of UNCAC

State Parties are required to take appropriate measures to encourage cooperation, particularly exchange of necessary information, between public authorities, public officials and investigating or prosecuting authorities. The AUCPCC requires State Parties to ensure that the “national authorities or agencies shall communicate with each other directly for the purposes of this Convention”. Article 16 of the ECOWAS Protocol provides for each State Party to designate a central authority which shall be responsible both for formulating and receiving the requests for cooperation and assistance set out in this Protocol. They may establish direct lines of communication between themselves.

At domestic level, Section 6 of the EFCC Act empowers the EFCC to coordinate all agencies of Government carrying out similar or analogous functions. Also, the EFCC Act provides for the Nigerian Financial Intelligence Unit for purposes of collation and sharing of information amongst local and foreign investigating bodies and prosecution agencies. At the level of implementation, recently government has set up TUGAR as an independent unit and the IATT to improve information sharing and co-ordination amongst anti corruption agencies in Nigeria.

TUGAR additionally is required to facilitate synergy between diverse anti corruption initiatives. This by inference includes synergy between public agency initiatives and non government sector activities. The successful efforts of TUGAR in improving inter agency co-operation in such a short time, is an indication that it may also succeed in improving coordination between non government actors and government agencies.

2.3.11 Cooperation between National Authorities and the Private Sector – Article 39 of UNCAC

State Parties are required by Article 39 of UNCAC to encourage co-operation between national investigating or prosecuting authorities and private sector entities, particularly financial institutions on matters relating to UNCAC offences, and encourage citizens and residents to report to national investigating or prosecuting authorities the commission of UNCAC offences.

At the Continental level Articles 5(6) of AUCPCC enjoins State Parties to take measures that ensure citizens report instances of corruption without fear of reprisals. The ICPC Act makes it mandatory in S 23 of the ICPC Act for citizens to report acts of corruption and criminalizes failure to report such acts. There are no specific provisions of the Nigerian Anti corruption laws requiring them or making it mandatory for them to co-operate with the private sector or civil society, even though this co-operation is necessary to achieve their mandate.

Sections 5-10 of the Money Laundering Act provides reporting requirements for banks and the monitoring role of CBN (the banking industry regulator) enables the EFCC receive the co-operation of financial institutions in this regard. Part of the practical response to this provision is the interagency implementation of the 'Know your customers' Program and also the 'Know your Customer's Business' Program, which the EFCC is coordinating. Personnel interviewed indicated good co-operation between CBN, EFCC and the NDIC in monitoring money laundering activities within banks in Nigeria. However such levels of co-operation do not exist with other sections of the private sector and the enforcement agencies. Nigeria is only partially compliant with this requirement.

2.3.12 Bank Secrecy – Article 40 of UNCAC

State Parties are required to ensure appropriate mechanisms to overcome obstacles that may arise out of the application of bank secrecy laws in the case of investigation of UNCAC offences. Article 17 of the AUCPCC provides for each State Party to adopt such measures necessary to empower its courts or other competent authorities to order the confiscation or seizure of banking, financial or commercial documents with a view to implementing this Convention. It further requires that the requesting State shall not use any information received that is protected by bank secrecy for any purpose other than the proceedings for which that information was requested, unless with the consent of the Requested State Party. Article 13 of the ECOWAS Protocol urges each State Party to empower its courts to order the surrender or seizure of bank, commercial or financial documents and shall not invoke banking secrecy in order to refuse the assistance requested by another State Party. Article 15(8) further provides that State Parties shall not decline mutual legal assistance on the basis of bank secrecy.

At National level Section 13(4) and 19 of the MLPA and Section 18 of the EFCC Act removes the application of bank secrecy laws to offences under the Act and empower the Federal High Court to try these offences. Law enforcement agencies interviewed particularly the EFCC, attributed the success of several investigations and prosecution to their access to records from banks and other financial institutions.

2.3.13 Criminal Record – Article 41 of UNCAC

Article 41 of UNCAC requires that State parties adopt measures as may be necessary to take into consideration under such terms, and for the purpose that it deems appropriate any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with the conviction. S 225 of the Evidence Act³⁰ provides that where necessary to prove previous conviction from other jurisdictions, same may be proved by production of a certificate of conviction containing the substance and effect of the conviction signed by the registrar or any other officer of the court in whose custody such records may be. This is in addition to provisions of S 226 of the Evidence Act which allows for use of previous convictions from Nigeria. This provision is important since previous conviction is a basis for disqualification from most, if not all elective and even appointive positions in Nigeria. Additionally by S 16 (6) (f) & (g) of the PPA provides that a company with a previous conviction relating to procurement proceedings, or owned or managed by a person validly convicted for a procurement offence or any other offence committed to gain financial profit is disqualified from bidding for public contracts.

2.3.14 Jurisdiction – Article 42 of UNCAC

By Article 42 of UNCAC, State Parties are required to establish jurisdiction with respect to UNCAC offences committed in their territory or on board aircraft and vessels registered under their laws. Also in cases where they cannot extradite a person, State Parties are also required to consider the establishment of jurisdiction in cases where the offence is committed by or against a national; where the offence is committed by a national or stateless person residing in their territory; where the offence is linked to money laundering planned to be committed in their territory; or the offence is committed against the State.

Article 13 of the AUCPCC makes provisions similar to UNCAC provisions. It obligates state parties to establish jurisdiction where the breach is committed wholly or partially inside its territory, or the offence is committed by one of its nationals, outside its territory or by a person who resides in its territory, or where though committed outside its territory, the offence affects its vital national interests or the harmful effects impact on the State Party.

Article 4 of the ECOWAS Protocol requires that each State Party shall adopt the necessary measures to exercise its jurisdiction in respect of criminal offences established in accordance with Articles 6, 7 and 12 of the Protocol as long as the criminal offence was committed in its territory or by one of its nationals or by a permanent resident.

A State Party in whose territory an alleged offender is found, and which does not extradite such person in respect of an offence to which the ECOWAS Convention on Extradition applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purposes of prosecution. A similar requirement is also contained in the UNCAC.³¹

³⁰ CAP E14 LFN 2004

³¹ Article 42[3] UNCAC

At domestic level, Section 15(2) of the Money Laundering Act, Sections 12 -14 of the Criminal Code Act and Section 66 of the ICPC Act establishes jurisdiction in respect of offences committed abroad, or partly at home and abroad. Sections 19, 20, 21 and 24 of the EFCC Act extend jurisdiction of the Nigerian courts to assets outside Nigeria and to all means of conveyance whether or not within Nigeria used in the commission of an offence. Section 66 of the ICPC Act extends jurisdiction of Nigeria to citizens, foreign citizens or residents in or outside Nigeria and acts committed within or outside Nigeria. To this extent there is compliance with the UNCAC provision on this issue.

Nigeria is no doubt substantially compliant with the criminalization obligations imposed by UNCAC, AUCPCC and ECOWAS Protocol. The challenge however is in the levels of implementation.

In 2008, Transparency International (TI) carried out a review of the UNCAC implementation across Africa based on a case study of five countries including Nigeria³². A number of the key issues identified during that review were re-echoed in the course of interaction with key stakeholders for purposes of this current analysis. Specifically on the issue of criminalization and law enforcement in Nigeria some of the key conclusions reached include the following:

- Although legal measures, such as anticorruption laws and agencies, have been established to execute the relevant provisions within the UNCAC, there are local constraints to the full implementation of the Convention, such as under funding, cultural factors and lack of political will.
- Measures providing for the criminalisation of bribery of national public officials and embezzlement of public funds enjoy the highest rate of compliance, while provisions providing for the criminalisation of bribery of foreign public officials are least frequently implemented.
- There are legislative measures in place to criminalise active and passive bribery of national public officials in compliance with the convention.
- Neither active nor passive bribery of foreign public officials and officials of public international organisations were established as criminal offences.
- Domestic measures have been adopted to establish as criminal offences embezzlement, misappropriations or other diversion of property by a public official.

The major difference found in this current study is that in the case of Nigeria S 404(1)(a) of the Criminal Code Act criminalizes corruption of foreign Public Officials, unlike in other countries studied by Transparency International.

A number of Countries including Nigeria have cited improvements in the process of criminalization and enforcement of corruption related offences due to the global pressure and influence embedded within the context of UNCAC. For instance some MDA's in Nigeria have established hotlines for whistle blowers. An example is the Hotline project which was run for a time by the Federal Ministry of Finance in collaboration with the Zero Corruption Coalition and supported by the UNDP. Also the National Pension Commission (PENCOM) has a whistle blowers policy guide for the pension industry, while some arms of government have adapted certain global practices which affirm the UNCAC principles. A good example of this is the adoption of a code of conduct substantially based on the Bangalore Principles of judicial conduct by the Nigerian judiciary in its operations and activities.

³² 'Update on UNCAC Implementation in Africa', Transparency International, October 2008

These principles seek to establish acceptable standards for ethical conduct for judges and to afford the judiciary a framework for regulating judicial conduct. The principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial.³³ Given the crucial relevance of judicial functionality in criminalization and law enforcement, this adoption is quite useful. The Trans - continental dimensions of the UNCAC have resulted in improved cross country information exchange which has enhanced criminalization and law enforcement.

The EFCC feedback for instance attributes their most successful cases to joint criminal investigation processes in which countries such as the United Kingdom and the United States of America were involved³⁴. All of the MDAs' interviewed, however appear to 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 same. Closely annexed to this issue is the need for an improved access to justice regime, empowering potential whistleblowers to aid the criminalization and law enforcement process.

One of the issues that also came up for discussions during interactions with stakeholders was the degree to which criminalization and law enforcement have been improved through the technical assistance of donor agencies such as UNDP, DFID, WORLD BANK, UNODC, and the EU. Support from these and other agencies to Nigeria have focused mainly on help with building institutional systems and judicial integrity, both very fundamental to criminalization and law enforcement.

³³Preamble to the 'Bangalore principles of judicial conduct', 2002

³⁴Key informant interview between EFCC, A and E LAW Partnership and TUGAR held on 15th January 2010

Matrix on Compliance with Articles 15 - 42 of UNCAC **CRIMINALIZATION AND LAW ENFORCEMENT**

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
Bribery of National Public Officials- Article 15 UNCAC, Article 4 (a) &(b)AUCPC C Article 6:ECOWAS Protocol	Criminalization of demand and acceptance of bribe or any undue advantage by Public officers.		S 2, S 8 and 9 of the ICPC Act 2000 Section 98 of the Criminal Code Act- S 12 of the Code of Conduct Bureau and Tribunal Act.	The law is fully compliant with UNCAC, AUCPCC and the ECOWAS Protocol.	However investigation and Prosecution is not wholly effective and perception persists that many who contravene the law go unpunished.	

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
Bribery of Foreign Public Officials and Officials of Public International Organization Article 16 UNCAC Article 12 ECOWAS Protocol and Article 5(1) AUCPCC	Criminalization of promise of active and passive bribery of foreign public officials , officials of Public International Organizations and employees of the private sector.		There are no direct provisions relating to bribery of foreign public international organizations in the ICPC Act. However S 12 and 404(1)a of the Criminal code Act criminalizes corruption of foreign government Officials S 12 of the Criminal Code when read with section 98 of the Criminal Code, Act applies to foreign public officials.	Nigeria has criminalized both active and passive bribery of a Foreign Public Official. However The Vienna Conventions on Diplomatic Relations (1961) and Consular (1963) Relations is an impediment to the implementation of subsection (2) of this Article.		

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
Embezzlement, Misappropriation or other diversion of property by a public official- Article 17:UNCAC Article 4(d) AUCPCC Article 6(1)(e) ECOWAS Protocol	<p>Criminalization of diversion of public property to personal benefit or for the benefit of a third party by public officials.</p> <p>Criminalization of embezzlement of public property by public officials.</p>		<p>S 102 of the Criminal Code Act</p> <p>S 22(5) of the ICPC Act which criminalizes virement.</p> <p>S 19 (1)(d) of the ICPC Act encompasses embezzlement misappropriation or other diversion of funds if committed by a Public Officer..</p> <p>Sections 428 and 439 of the Criminal Code Act.</p>	<p>Several Investigations and Prosecution have been and are on-going in relation to this Article.</p>	<p>Slow court processes and outdated criminal procedure and evidence laws continue to impede trials.</p>	<p>Criminal Procedure law and Evidence law reforms are urgently needed.</p>

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
Trading in Influence- Article 18: UNCAC, Article 4(g) AUCPPC Article 6(1) ECOWAS Protocol	<p>Criminalization of trading of influence (Offering, requesting, giving and accepting undue advantage) to influence the decision making or performance of duty of any person in private and public sector for personal benefit or that of a third party.</p>	<p>The ICPC, The Nigerian Police.</p>	<p>Section 433 of the Criminal Code Act Sections 8 -11, Ss 18 & 19 and 22 of the ICPC Act criminalizes trading in influence. S 17 of the ICPC Act deals with similar offences in the private sector. S 15 of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act CAP F2 LFN 2004 Vol. 6. Criminalizes such infractions in the banking sector.</p>			

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Abuse of Functions- Article 19 UNCAC</p> <p>Article 4(C)AUCPCC</p> <p>Article 6 (1) ECOWAS Protocol</p>	<p>Criminalization of any act or omission in the discharge of duties by a public official or any other person for the purpose of illicitly obtaining benefits for himself or herself or for a third party.</p>	<p>ICPC, Code of Conduct Bureau (CCB).</p>	<p>S 8, 10, 18, 19 21 & 22 of the ICPC Act. S 57 & 58 of the Public Procurement Act 2007.</p> <p>S 13 Code of Conduct Bureau and Tribunal Act.</p>	<p>Enforcement has improved, but is still very low compared to required standards.</p>		

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Illicit Enrichment - Article 20 UNCAC</p> <p>Article 8 AUCPPC (Related)</p> <p>Article 6(3): ECOWAS Protocol</p>	<p>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.</p>		<p>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.</p> <p>By virtue of S 6 and 19(5) of the EFCC Act and S 20 of the Money Laundering prohibition Act . Evidence of wealth unaccounted for by income is valid corroboration of the evidence of commission of a related crime.</p>	<p>The enforcement and use of these provisions has improved in recent years.</p>		<p>The President should exercise the power given him under the Bank Employees etc Declaration of Assets Act to extend application of the law to all areas of human endeavour in Nigeria</p> <p>A Proper system that allows victims or witnesses to report freely, without fear of reprisals will help to improve reporting, investigation and enforcement.</p>

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
			<p>Legal Framework</p> <p>S 35 of the Miscellaneous Offences (Public Order and Nuisance) Act CAP 184 LFN 2004 criminalizes illicit enrichment and makes it a punishable offence.</p>			

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Bribery in the Private Sector - Article 21 UNCAC</p> <p>Article 4(e) AUCPCC.</p> <p>Article 6(5)ECOWAS Protocol has no similar provision regarding the private sector</p>	<p>Criminalization of promising, demanding, receiving offering or giving of bribes/undue advantage to an official in the private sector</p>	<p>S 8 (1) ICPC Act S 17 of the ICPC Act makes limited provisions for bribery in the private sector.</p> <p>S 15(1)(d) of Failed Banks(Recovery of Debts) and Financial Malpractices in Banks Act CAP F2 LFN 2004.</p> <p>S 58 (6) of the Public Procurement Act 2007 criminalizes several public procurement related infractions for both the public and private sector.</p> <p>S 7, 8,9, 10 of Bank Employees etc (declaration of Assets Act) CAP B1 LFN 2000.</p>	<p>Implementation has improved enormously in recent years.</p> <p>There are cases in Court between EFCC and officials in the banking sector. Although these cases are yet to be determined and so cannot be cited, they are indications that Nigerian laws are better implemented now than before.</p>	<p>The limitation in terms of domestic compatibility lies with the fact that many of these provisions except for S 17 of the ICPC Act address corruption within the private sector in compartmentalized fashion by narrowing down to specific blocs within the sector, rather than covering the sector in its entirety such that the Nigerian legal regime is only partially compliant with this UNCAC provision.</p>		

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
Embezzlement of Property in the Private Sector- Article 22 UNCAC Article 11(1) AUCPCC	Embezzlement by a person working in the private sector if committed intentionally in the course of economic activities in respect of any things of value entrusted to him/her by virtue of his/her position.		S 383 (stealing) Ss.433, 434,435 and 436 of the Criminal Code.	These were already offences under Nigerian law prior to UNCAC. Prosecution in respect of such offences are often undertaken by the police before magistrate courts. limited prosecutorial skills and absence of witness protection systems and poor working conditions for prosecutors combined with challenges in the evidence and criminal procedure laws limit effective prosecution of these and all other offences at this level.		An amendment is required to the newer anti-corruption laws to comprehensively provide for such offences in the private sector and ensure dissuasive sanctions.

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
Laundering of Proceeds of Crime- Article 23 UNCAC Article 6 AUCPPC Article 7 ECOWAS Protocol	Criminalization of laundering (acquisition, concealment disguise of illicit origin, conversion and possession) of proceeds of crime.		Section 433 Criminal Code Act S 15, 16 and 17 - 18 of the Money Laundering (Prohibition Act) S 17 & 18 of EFCC Act. S 23 & 24 of the ICPC Act.	The EFCC has recorded several investigation, prosecution and conviction for offences related to Laundering of Proceeds of Crime.		Effective implementation of the newly passed Anti-Money Laundering Law.

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Concealment Article 24 UNCAC</p> <p>6(c) AUCPCC appears to provide wider coverage</p> <p>Article 7(1) ECOWAS Protocol</p>	<p>Criminalization of intentional concealment, possession and use of proceeds of a crime by person(s) who did not participate in commission of the offence, or by person(s) who aids and abets concealment of the proceeds of the crime.</p>		<p>Legal Framework</p> <p>S. 23 & 24 of the ICPC Act S. 427 of the Criminal Code Act S. 16 & 17 of the EFCC Act. S. 427 & 430 of the Criminal Code Act</p> <p>Section 19(4) Failed Banks(Recovery of Debt) Act</p> <p>S. 17 Money Laundering Prohibition Act.</p> <p>S. 12 of the Criminal Code Act.</p>	<p>Enforcement & Implementation</p>		

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 25 UNCAC AUCPCC and ECOWAS protocol have no similar provisions</p>	<p>Criminalization of use of threat, intimidation, force, promise of undue advantage to interfere with or induce the giving of testimony, production of evidence during proceedings or interfere with the exercise of official duties by a Justice of a Court.</p>		<p>Section 366 of the Criminal Code Act S. 15 and 25 of ICPC Act criminalizes making or causing any person to make false statement to officers of the Commission. S. 22 of the Money Laundering (Prohibition) Act criminalizes wilful obstruction of the agency or its authorized personnel. 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, inducement, etc.</p>			

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Liability of Legal Persons- Article 26: UNCAC</p> <p>Article 11 ECOWAS Protocol</p> <p>AUCPCC made no provision for civil and administrative sanctions and remedies.</p>	<p>Establishment of criminal, civil or administrative liability of legal persons for participation in any offence. with effective sanctions (administrative, criminal or non criminal)</p>		<p>Legal Framework</p> <p>S 58(6&7) of the Public Procurement Act. S ,10, 11, 12, 16, 19 of the Money Laundering Prohibition Act, 2011.</p> <p>The general language of most provisions in the EFCC, ICPC, PPA, Money Laundering Act and NEITI Acts impose civil and criminal liability on companies which in Nigeria are legal persons.</p> <p>Section 18-19 failed Banks (Recovery of Debt) Act. S 19 of the Money Laundering Act criminalizes actions of directors, managers, secretaries and staff</p>	<p>Enforcement & Implementation</p> <p>There are several precedents where corporate entities have been sanctioned for criminal offences.</p>		

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
			<p>that help in commission of an offence by a corporate body.</p> <p>S 16 of the NEITI Act 2007 criminalizes false rendering delay and failure to render statements of accounts and information and imposes sanctions on both the corporate body and its officers.</p>			

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Participation and Attempt- Article 27 UNCAC Article 4(1)(i) AUCPPC ECOWAS Protocol has no similar provision.</p>	<p>Criminalization of participation in commission of acts of corruption whether as an accomplice, co-conspirator, principal, agent, accessory after the fact or any other form of collaboration</p>		<p>Legal Framework</p> <p>S 516, 517, 519 & 520 of the Criminal Code Act criminalizes conspiracy, accessories to and after the facts, in all misdemeanour and felony in and outside Nigeria.</p> <p>S. 26 of ICPC Act criminalizes abetment, acts preparatory to and attempts to commit an offence.</p> <p>S. 18 of the Money Laundering Prohibition Act criminalizes conspiracy, aiding, abetting, counseling and attempts to commit an offence under the Act.</p>	<p>Enforcement & Implementation</p>		

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
			<p>S 58(4) of the Public Procurement Act 2007 criminalizes entering into and attempts to enter into collusive agreements whether or not enforceable.</p>			

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Knowledge, Intent and Purpose as elements of an Offence. Article 28 UNCAC AUCPCC and ECOWAS Protocol have no similar provisions.</p>	<p>Enabling courts to infer “knowledge” “intent” or “purpose” from objective factual circumstances.</p>		<p>Legal Framework</p> <p>Ss 8-19 , 53 54 and 58 of the IPC Act allows courts to presume several factual circumstances including evidence of illicit enrichment against an accused, close relations and associates as corroborating evidence for offences .</p> <p>The EFCC Establishment Act 2004</p> <p>S. 20 of the Money Laundering Prohibition Act allows presumption of evidence of illicit enrichment as corroboration of testimony in proof of related offences.</p>	<p>Enforcement & Implementation</p>		

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Statute of Limitations- Article 29: UNCAC</p> <p>AUCPCC and ECOWAS Protocol have no similar provisions</p>	<p>Establishment of a long statute of limitation period in proceedings of corrupt practices offences.</p>		<p>Legal Framework</p> <p>No limitation period for criminal offences in Nigeria. An accused can at any time be charged and tried no matter how much time has passed.</p>	<p>Enforcement & Implementation</p>		

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Prosecution, Adjudication and Sanctions- Article 30 UNCAC 7(5). AUCPCC (partly similar) Article 10 ECOWAS Protocol</p>	<p>Prescription of appropriate, dissuasive legal sanctions for committing a corruption related offence. Establishment appropriate balance between any immunities or jurisdictional privileges accorded to public officials for the performance of their functions; Consideration of establishment of procedures for prohibiting persons convicted of any corruption offences from holding public office or office in an enterprise owned by the State. Establish conditions</p>	<p>The Nigerian Police Force, EFCC, ICPC, Ministry of Justice.</p>	<p>Economic and Financial Crimes Commission [Establishment] Act 2004 Corrupt Practices and Other Related Offences Act 2000. Public Procurement Act 2007. Nigeria Extractive Industries Transparency Initiative Act, etc provide appropriate sanctions. S. 308 of the Constitution provides for immunity from prosecution for Governors and their Deputies and President and the Vice President of the Federation, while in office.</p>	<p>The ICPC Act in S.52 has provisions for appointment of an independent counsel to investigate allegations of corruption against the category of officers who enjoy immunity and report to the National Assembly though in practice this provision has never been invoked.</p>		

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
	for release during trial or appeal of persons accused of corrupt practices which will ensure their appearance at subsequent proceedings.					

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
Freezing, Seizure and Confiscation - Article - 31:UNCAC Article 16: AUCPCC Article 13 ECOWAS Protocol	<p>Search, confiscation and identification, tracing, freezing or seizure for the purpose of confiscation of proceeds of crime and corruption. Confiscation of property and equipment used or intended to be used for the purpose of crime, and property, income and other assets to which the proceeds of crime are intermingled or which value corresponds with the proceeds of the crime of corruption committed.</p>	<p>EFCC, ICPC</p>	<p>S 19 -26, and S.33 of the EFCC Act provides for tracing, freezing, seizure and confiscation or forfeiture of proceeds of crimes, or means of conveyance, mechanisms , books and records or data used and intended to be used to facilitate the crime. S. 45 of the ICPC Act also provides for tracing, freezing, seizure and confiscation of assets, movable and immovable property by order of the Commission.</p>	<p>The ICPC and the EFCC have several cases where the provisions relating to freezing , seizure and confiscation have been applied</p>		<p>There is need for a legal or coordinated administrative framework to manage seized or confiscated assets.</p>

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Protection of Witnesses, Experts and Victims- Article 32: UNCAC</p> <p>Article 5(5) AUCPCC inadequate provisions but related)</p> <p>Article 8 ECOWAS Protocol</p>	<p>Protection from potential retaliation or intimidation for witnesses, experts giving testimony, victims and their relatives and other persons close to them</p> <p>Agreement with other States for relocation of such persons.</p> <p>Assistance and protection to victims of corrupt practices offences and their relatives particularly in cases of threat, retaliation or intimidation.</p>		<p>Apart from S. 64 of the ICPC Act which seeks to protect the identity of informants, there are no similar provisions under Nigerian Law.</p>	<p>Nigeria has no legal regime for Witness or Whistle Blower protection</p>		<p>Nigeria needs a comprehensive legal regime for Whistle Blower and Witness Protection</p>

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Recommendations	
			Legal Framework	Enforcement & Implementation		
Protection of Reporting Persons- Article 33: UNCAC Article 5 (5) AUCPCC Article 9 ECOWAS Protocol	Protection of persons who report offences of corruption from victimization and unjustified treatment. And allowing victims to present their views and concerns at appropriate stages of criminal proceedings.		Nigerian law has no regime for protection of reporting persons.	Individual agencies make internal arrangements for protection of reporting persons and witnesses.	There is no Whistle Blower and Witness Protection Law.	Need for a comprehensive legal regime for Whistle Blower and Witness Protection

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Recommendations
			Legal Framework	Enforcement & Implementation	
<p>Consequences of Acts of Corruption- Article 34 UNCAC AUCPCC and ECOWAS Protocol have no similar provisions.</p>	<p>Consideration of acts of corruption as relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action in due regard for the right of third party who acts in good faith.</p>		<p>Fraudulent crimes generally are a basis for annulment of contracts under Nigerian law. This is a part of Nigeria's legal system resulting from the application of common law principles. Corruption is a form of fraud and is a basis for annulment of a contract.</p>	<p>Often private parties to such contracts can sue to annul the contract. In the case of procurement contracts standard contract documents issued pursuant to the PPA contain anti corruption clauses on the basis of which such a claim can be made.</p>	<p>Mainstream the inclusion of anti-corruption clauses into all government contractual documents</p>

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Recommendations
			Legal Framework	Enforcement & Implementation	
<p>Compensation of Victims- Article 35 UNCAC Article 9(3): ECOWAS Protocol AUCPCC has no similar provisions</p>	<p>Right of victims to seek compensation</p>	<p>No National Framework exists for victim compensation and only Lagos State has a new system put in place by its new Criminal Justice Administration Law, applicable only in Lagos State</p>	<p>Nigerian laws have not made provision for compensation of victims of corruption. The provisions in Ss. 113-117(a) of the Criminal Code relate more to exhibits before a court than to restitution in damages or compensation for injury caused a victim of a crime.</p>	<p>There is no nationwide framework for compensation of victims of crimes including corruption.</p>	<p>Although corruption is a crime and is prosecuted with the person convicted either liable to a fine or imprisonment, there should still be clear provisions in the law that allows victims of corrupt practices to recover their loss and also be compensated in damages.</p>

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Recommendations	
			Legal Framework	Enforcement & Implementation		Gaps
Specialized Authorities on Law Enforcement- Article 36: UNCAC Article 5(3) AUCPCC Article 5 (h) ECOWAS Protocol	Establishment and strengthening of authorities specialized in combating corruption through law enforcement.	The Nigerian Police Force. The EFCC The ICPC The CCB and CCT	The ICPC Act The EFCC Act Public Procurement Act The Code of Conduct Bureau and Tribunal Act	These agencies are fully established with structures which include enabling laws, structures, budgets and a full complement of staff	Concerns have been raised about the security of tenure of the key management of some of the agencies e.g [EFCC]. Further the agencies do not have sufficient financial autonomy	Need to amend the EFCC Act to ensure adequate security of tenure for the Chairman in particular.

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Recommendations	
			Legal Framework	Enforcement & Implementation		
<p>Cooperation between National Authorities- Article 38 UNCAC</p> <p>Article 20(3) AUCPPC(Not adequate but relevant)</p> <p>Article 16 ECOWAS Protocol</p>	<p>Taking appropriate measures to maintain communication, assistance, investigation and provision of information between national public officials and national law enforcement officials.</p>	<p>IATT; EFCC</p>	<p>The EFCC Act empowers the EFCC in S 5 to co-ordinate all Agencies of government carrying out similar or analogous law enforcement functions. Also the EFCC Act provides for the Nigerian Financial Intelligence Unit for purposes of collation and sharing of information amongst local and foreign investigating and prosecution agencies.</p>	<p>There are several inter-agency committees working in the area of coordinating activities of national authorities.</p>	<p>There are still challenges relating to Law enforcement cooperation in the area of investigating and prosecuting corruption related offences.</p>	

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Recommendations	
			Legal Framework	Enforcement & Implementation		Gaps
<p>Cooperation between national authorities and private sector- Article 39 UNCAC Article 11: AUCPCC (related) ECOWAS Protocol has no similar provision.</p>	<p>Taking measures to ensure cooperation of agencies./ Prosecuting authorities, private sector entities/ financial institutions in respect of offences of corruption. Taking appropriate measures to encourage citizens report acts of corruption without fear of reprisal</p>	<p>TUGAR and the Inter-Agency Task Team of Anti Corruption agencies. Special Control Unit Against Money Laundering [SCUML]</p>	<p>Legal Framework</p> <p>S 6, 7 & 10 of the Money Laundering Prohibition Act gives reporting requirements for banks and enables EFCC receive co-operation of financial institutions in this regard. In execution of these and its functions as a co-ordinating Agency EFCC has co-ordinated new Know Your Customer rules. The ICPC Act in S.23 makes it mandatory for citizens to report acts of corruption. However, the provisions to protect Whistle Blower's against reprisals is inadequate.</p>	<p>Enforcement & Implementation</p> <p>The EFCC, through the Central Bank of Nigeria has achieved some level of co-operation with banks and financial institutions in Nigeria. This however cannot be said for other sectors. SCUML also works to ensure Co-operation of the private sector and government in the area of Money Laundry especially with designated non financial institution.</p>	<p>Gaps</p> <p>The involvement of the private sector in the fight to combat corruption is limited. There is need to foster cooperation between the government and other non-financial private sector entities. The absence of a Whistle- Blowers protection regimen is an impediment to citizen's cooperation in the fight against corruption.</p>	<p>Recommendations</p> <p>Negotiate incentives with the organized private sector to get their full buy-in in the fight against corruption. Enact a Whistle Blower Protection Law</p>

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Recommendations
			Legal Framework	Enforcement & Implementation	
Banking Secrecy- Article 40: UNCAC Article 17 AUCPPC Article 13 ECOWAS Protocol	<p>Taking appropriate measures to empower Courts and necessary agencies to access banking, financial or commercial documents without the limitation of bank secrecy.</p> <p>The documents so collected are to be used for no other purpose but in the process of prosecution of offences of corruption.</p>		<p>Legal Framework</p> <p>S 13 and 20 of the Money Laundering Prohibition Act remove the application of bank secrecy laws to offences.</p>	<p>Enforcement & Implementation</p> <p>EFCC personnel interviewed confirm this has been useful for them in obtaining important information and documents that have improved their success rate in prosecuting financial crimes.</p>	

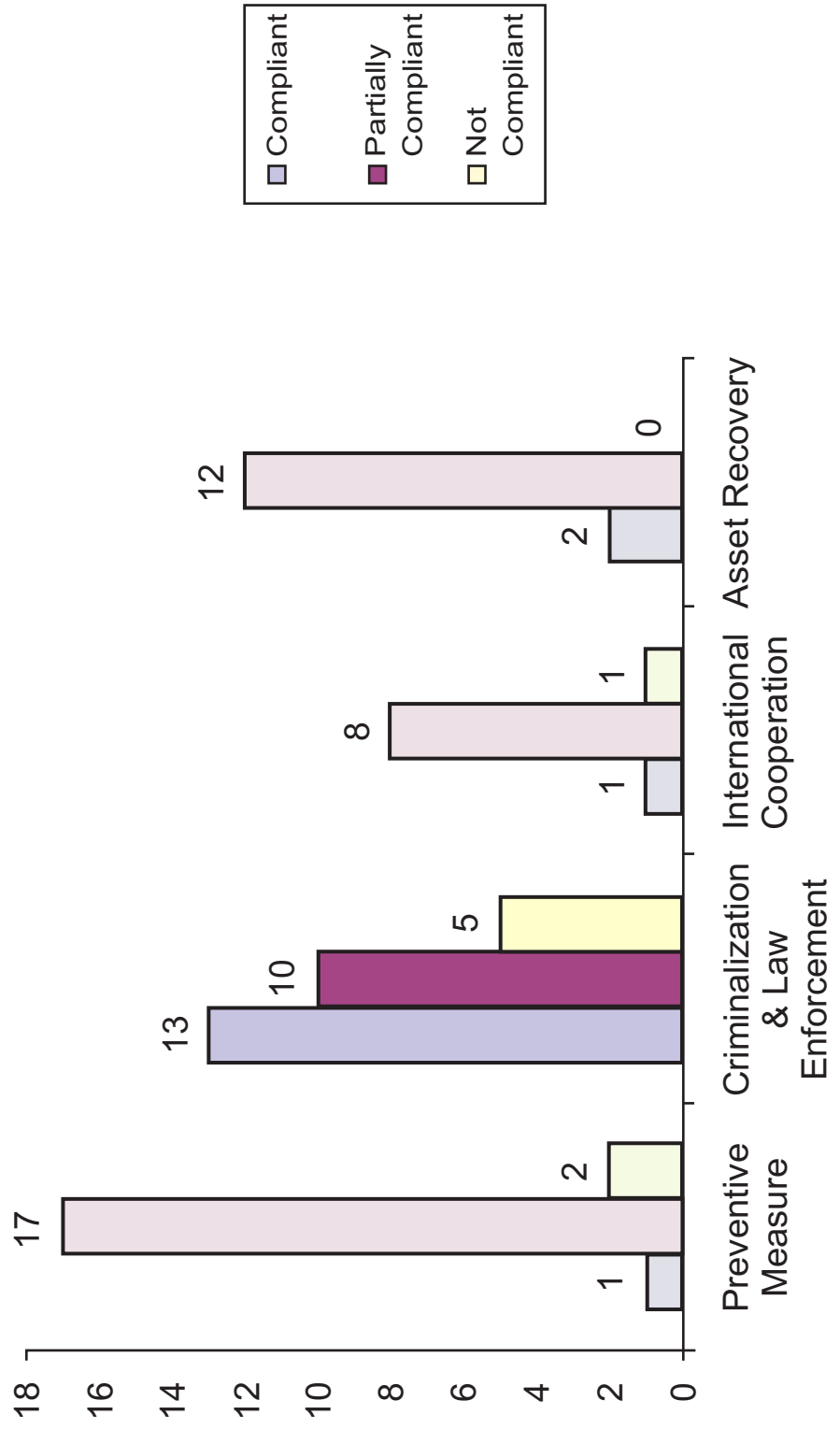
Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Recommendations
			Legal Framework	Enforcement & Implementation	
				Gaps	
Criminal Record- Article 41: UNCAC Article 13 AUCPCC (related) Article 4 ECOWAS Protocol (related)	Adoption of legislation or other measures to take into consideration, any previous conviction and criminal record of an accused person in criminal proceedings of offences of corruption.		S 225 and 226 of the Evidence Act CAP E14 LFN 2004	There is a challenge of keeping the records in comprehensive and accessible form.	Need to build capacity in record keeping and data management as well as computerization of the process.

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Jurisdiction- Article 42 UNCAC</p> <p>Article 13 AUCPCC</p> <p>Article 4ECOWAS Protocol</p>	<p>Adoption of the necessary measures to exercise jurisdiction in respect of criminal offences of corruption committed wholly or partially within its territory (aboard a vessel or air craft), committed by nationals outside their State territory, by a foreigner who resides within State territory.</p> <p>Establishment of jurisdiction in cases where nationals are victims or perpetrators of the offence .</p> <p>Extradition (request</p>		<p>Legal Framework</p>	<p>Enforcement & Implementation</p>		
			<p>S 15(2) of The Money Laundering Prohibition Act, S 12 - 14 of the Criminal Code Act and S 66 of the ICPC Act establishes jurisdiction in respect of offences committed abroad, or partly at home and abroad,</p> <p>S 19, 20, 21 and 24 of the EFCC Act extends jurisdiction of the Nigerian courts to assets outside Nigeria and to all means of conveyance whether or not within Nigeria used in commission of an offence.</p>			

Topics and relevant Convention provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
	from other State or making requests to other States) of Nationals who have committed offences of corruption outside State territory.					

Chart II: General Levels of Compliance with Criminalization Chapter

international co-operation and assts recovery.



CHAPTER 3

3.0. **INTERNATIONAL COOPERATION**

3.1 INTRODUCTION

International Cooperation has been described as 'the interaction of persons or groups of persons representing various Nations in the pursuit of a common goal or interest'³⁵ and also as a process which facilitates transfers in cash or in kind between the governments of different countries or between governments and international organizations³⁶.

The UNCAC in chapter four contains important provisions relating to International cooperation between State Parties and fulfils one of the cardinal objectives of the framework itself, which is to promote, facilitate and support international cooperation and technical assistance in the prevention of, and fight against corruption. The provisions in chapter four of UNCAC provides for a comprehensive system for mutual legal assistance between competent authorities of State Parties. These detailed provisions, largely mandatory, cover specific aspects of law enforcement cooperation such as extradition, gathering and transferring evidence, and assisting investigations and prosecutions. They include requirements that States Parties consider joint investigation, the transfer of criminal proceedings and special investigative techniques. Furthermore States may not refuse assistance on the basis of bank secrecy and can invoke dual criminality requirements only in limited cases. Countries are required to cooperate with one another in every aspect of the fight against corruption, including prevention, investigation, and the prosecution of offenders. Countries are bound by the Convention to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court and to extradite offenders. Countries are also required to undertake measures, which will support the tracing, freezing, seizure and confiscation of the proceeds of corruption.

In the same vein Article 43 of UNCAC requires that State Parties co-operate and assist each other in investigations of and proceedings in civil and administrative matters relating to corruption particularly in respect of Article 44. Also it provides that whenever dual criminality is considered a requirement, State Parties will consider it to exist where the conduct underlining the request is an offence in the requested State party, notwithstanding whether or not the requested State's law place the offence in the same category or describes it with the same terminology as the requesting State.

S 6 of the EFCC Act establishes a framework for international co-operation in civil and administrative matters relating to corruption, and in particular extradition. The Chief law Officer of Nigeria the Attorney General for the Federation and Minister of Justice is the designated Central Authority for mutual legal assistance, and has constitutional authority and pre-eminence in the structure of the Nigerian legal system, as it relates to civil and administrative matters between Nigeria and other states. Nigeria is a signatory to UNCAC, AUCPCC and ECOWAS Protocol, and specifically Nigeria's strong participation in NEPAD, GIABA and many other regional and multilateral efforts to combat corruption are evidence of her practical co-operation with other States.

³⁵Encyclopedia of international relations, 2000

³⁶OECD glossary of statistical terms, 2001

3.1.1 Extradition - Article 44 of the UNCAC

Article 44(1) provides for extradition in a situation where the person, who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party. However Article 44(2) provides that despite the requirement of dual criminality stipulated in Article 44 (1) a State Party may still grant extradition for offences covered by the convention, even where the offence is not punishable under its domestic law. Both at the continental and regional levels, Article 15 of the AUCPCC and Article 14 of ECOWAS Protocol have similar provisions to Article 44 of UNCAC. Under the three conventions offences to which the specific articles on extradition apply are deemed as included as crimes to which extradition applies in the local laws of each State Party, and such State Parties are obligated to criminalize such offences. In the same breath a State Party that makes extradition conditional on existence of a treaty, in cases of requests from States with which it has no treaty, may consider each of the conventions as a treaty and legal basis for extradition. State Parties whose local laws have no such conditions shall also recognize offences under each of the conventions as extraditable offences. In all the treaties, State Parties undertake to extradite any persons charged with related offences carried out on the territory of another State Party, whose extradition is requested by the State Party in whose territory the offence occurred. These treaties all further provide that where a State Party, in whose territory is found any person charged with an extraditable offence, refuses to extradite the person on basis that it has jurisdiction over such offences, such a State Party is required to submit the case without delay to its competent authorities for prosecution.

Partial domestic compliance with article 44(1) of the UNCAC can be found in the Extradition Act CAP 125 LFN. By virtue of this law extradition to or from Nigeria is by treaty and for a 'returnable offence' which is defined as an offence punishable by a term of imprisonment of two years or more in both Nigeria and the requesting country. The Extradition Act is applicable to all Commonwealth countries provided they also accord Nigeria the same privilege in their domestic laws. It was affirmed however by senior government officials at the time of producing this report that Nigeria treats extradition requests judiciously, and where such requests arise from non Commonwealth countries Nigeria regards the UNCAC provisions as a basis for extradition. Also S 6(j) (k) of the EFCC Act grants the Commission power to co-ordinate with government bodies within and outside Nigeria carrying out functions relating to many matters including extradition, deportation, and mutual legal or other assistance between Nigeria and any other country relating to economic and financial crimes.

The requirement of fair treatment of persons referred to in article 44 is covered by fundamental human rights guaranteed by **Chapter 4 of the 1999 Constitution of the Federal Republic of Nigeria**. Also, Section 3 of the Extradition Act provides for restrictions on surrender of fugitives, and these restrictions do not include fiscal matters in line with paragraph 16 of Article 44 of UNCAC. To be fully compliant, the Nigerian Extradition law will need to be amended to apply to all State Parties who are signatories to UNCAC as well as the other relevant Conventions.

3.1.2 Transfer of Sentenced Persons - Article 45 of UNCAC

Article 45 of UNCAC requires State Parties to consider entering into multi-lateral agreements or arrangements on transfer of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with UNCAC. Despite the non-mandatory nature of this provision, Nigeria already has existing³⁷ treaty in this respect with other countries.

3.1.3 Mutual Legal Assistance - Article 46 of UNCAC

³⁷ Treaty between Nigeria and Thailand on mutual co-operation, extradition and transfer of persons convicted of extraditable offences in both country's territories, including exchange of information to the extent that convicted citizens of both countries can be transferred to serve their full prison sentences in their home country prisons.

Article 46 obligates State Parties to afford each other the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings relating to offences covered under UNCAC. Article 46(2) appears to clarify “the widest measure” to mean the fullest extent possible under relevant laws, treaties, agreements and existing arrangements between state parties as it relates to investigations, prosecutions and judicial proceedings. Article 46(3) lists specific activities in focus to include taking evidence and statements, effecting service, executing searches, seizures, tracing and freezing of assets, providing information, expert evaluation,, transfer of prisoners or witnesses, and any other kind of assistance that is not contrary to local law of the requested party. Sub Article 5 of Article 46 provides that State Parties may without request transmit information relating to criminal matters and the party receiving the information should comply with requests that the said information remain confidential or with other restrictions to its use except in the event that such information exculpates a party. In such a case the receiving party shall inform the giving party prior to disclosing such exculpating information. Also it requires that State Parties do not decline assistance on grounds of bank secrecy laws. By sub Article 9-absence of dual criminality can be a ground for refusing assistance under this convention. However in spite of such absence, a State Party may without coercion render assistance, that is consistent with basic principles of its domestic law, and may adopt measures that enable it provide wider scope of assistance in the absence of dual criminality. Sub Articles 10-11 deal with transfer of prisoners (for purposes of identification, testifying) or witnesses on terms agreed between parties. Such terms may include return of such transferred persons, or undertaking not to prosecute, detain, punish or subject such person to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred, with respect to acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

The article also requires State Parties to designate a Central Authority and notify the Secretary General of the UN, as well as provide for the form and contents of request for assistance.

The Convention provides that Mutual Legal Assistance may be refused if the request is not in accordance with Article 46 of UNCAC; if its execution is likely to prejudice the sovereignty of the requested State Party; or if the requested State is prohibited by its local law from carrying it out; However, it shall not be a reason for refusal that requests relate to fiscal matters. Requests shall be executed as soon as possible and requested State Party shall take into account as much as possible, of datelines suggested by the requesting State Party. This Article obliges State Parties to conclude bilateral or multi lateral agreements that would serve the purposes of or give practical effect or enhance the provisions of the Article.

Article 46 of UNCAC provides a more comprehensive framework for Mutual Legal Assistance than the AUCPCC or ECOWAS Protocol. However, Article 18 of AUCPCC requires state parties to provide each other with the greatest possible technical co-operation and assistance in dealing with requests from authorities that are empowered with respect to their national laws to prevent detect, investigate and punish acts of corruption and related offences. Article 15 of ECOWAS Protocol requires State parties in accordance with provisions of national laws and treaties in force to undertake to assist each other by expediting action on requests submitted by competent authorities and to take necessary measures to facilitate the procedures and formalities relating to investigation and prosecution of acts of corruption. Article 16 of ECOWAS Protocol like UNCAC requires State parties to designate a Central Authority for formulating and receiving requests for co-operation or assistance. Both continental and regional conventions however, do not constrain, but encourage wider co-operation and assistance between state parties based on other treaties or national laws.

Nigeria has designated the Office of the Attorney General for the Federation and Minister of Justice

as the designated Central Authority for Mutual Legal Assistance. Additionally the EFCC Act in S 6&7 provides for the EFCC to collaborate with government bodies within and outside Nigeria carrying on functions wholly or in part analogous with those of the Commission concerning: tracing of the whereabouts of persons suspected of being involved in economic and financial crimes, movement of proceeds or properties derived from commission of economic and financial crimes or related crimes, exchange of personnel or experts, establishment of system for monitoring international economic and financial crimes and suspicious transactions, maintaining data, information and records on persons suspected of economic and financial crimes, undertaking research with the aim of determining extent of manifestation and magnitude of economic and financial crimes, extradition, deportation and Mutual Legal Assistance between Nigeria and other countries. The EFCC is also mandated by law to be responsible for co-ordinating all activities and functions of other bodies relating to investigation and prosecution of such offences, and maintaining liaison with all related local agencies including the Hon Attorney General of the Federation and Minister of Justice. Also **Section 13 (4) of the Money Laundering (Prohibition) Act 2011** affirms the provision in **Paragraph 8 of article 46 of UNCAC to the extent that States Parties shall not decline to render mutual legal assistance** pursuant to this article on the **ground of bank secrecy.**

The Nigerian legal regime is compliant with UNCAC in respect of Article 46. The EFCC confirmed that in fact, it is already receiving and providing such assistance in relation to cases involving some countries namely United Kingdom, Switzerland, United States and Brazil and similar activities of such countries have supported successful investigations and prosecutions in Nigeria.

3.1.4 Transfer of Criminal Proceedings - Article 47 of UNCAC

Article 47 requires State parties to consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with the UNCAC, if such transfer is considered to be in the interest of the proper administration of justice, particularly in cases where several jurisdictions are involved. There has not been any instance where Nigeria has been involved in such a transfer. There is at the moment no domestic law to support such a transfer.

3.1.5 Law Enforcement Co-Operation Article 48 of UNCAC

Article 48(1) (a) provides for law enforcement cooperation between State Parties. The section provides specifically that: 'States Parties shall cooperate closely with one another, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention, particular, take effective measures to enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities'.

The AUCPCC in Article 18 in more general and less specific terms requires co-operation of state parties to prevent, detect, investigate and punish corruption and related offences as in Article 18 of AUCPCC. It also requires co-operation in research, studies and exchange of expertise relating to combating corruption and related offences. In the same light Articles 15 & 16 of ECOWAS Protocol requires State parties to undertake to assist each other as much as possible in the area of law enforcement co-operation so as to strengthen measures to prevent, detect and suppress acts of corruption.

Under the Nigerian legal system, the EFCC Act provides for collaboration of the kind required by UNCAC, AUCPCC and the ECOWAS Protocol with foreign governments and bodies carrying out similar functions of law enforcement. Additionally it is to co-ordinate all local agencies, and their functions and activities relating to economic and financial crimes. Further, the office of the Attorney General of the Federation and Minister of Justice performs the functions of the Central Authority. The Attorney-General and Minister of Justice is the Chief Law officer of the state with constitutional authority for prosecution, taking over and discontinuation of any criminal proceedings and is responsible for advising other agencies on similar matters. The Nigerian domestic law is therefore compliant. The Nigerian Government has co-operated with similar bodies in other countries including the United Kingdom, United States and Brazil.

Additionally Nigeria is party to many international co-operation efforts, and is supportive of the Stolen Assets Recovery (StAR) initiative launched in 2007 through the efforts of the World Bank and the United Nations Office on Drugs and Crime (UNODC). Nigeria is a member of the Egmont Group of Financial Intelligence Units. Nigeria has also played a prominent role in the establishment and implementation of the GIABA which was established as an FATF-styled regional body in demonstration of the strong political commitment of member states of ECOWAS to combat money laundering, terrorism financing and to ensure co-operation with other concerned nations and international organizations to achieve this goal. Nigeria therefore has a strong engagement with GIABA, the FATF and other regional and international groups for combating money laundering and related offences in compliance with Article 14 (5) of UNCAC.

A detailed Mutual Evaluation of Nigeria's Money laundering (ML) and Counter Terrorism financing Mechanisms (CTF) took place in 2007. 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-compliant³⁸. The areas of non compliance relate substantially to the weak systems for combating terrorism financing.

Other areas of cooperation in which Nigeria has participated are as follows:

Nigeria was a party to the ECOWAS' 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.

Nigeria participated in the development of the sub-regional protocol against corruption the ECOWAS Protocol which is yet to take effect.

Similarly, Nigeria as part of its commitment to the crusade against corruption is one of the leading continental powers behind the implementation of New Action Plan for Africa Development (NEPAD), which seeks amongst other objectives to establish a platform for a new partnership between Africa and the rest of the world in an effort to sanction and eradicate corruption.

Some earlier efforts include the United Nations Convention Against Transnational Organized Crime [UNTOC] which Nigeria has signed and ratified.

3.1.6 Joint Investigative Techniques and Special investigative Techniques - Article 49 and 50 of UNCAC

Article 49 requires State Parties to consider concluding treaties and arrangements to establish joint investigative bodies or in the absence of such agreements to carry out joint investigations on a case by case basis. Also article 50 requires State Parties to take measures as may be necessary to allow

³⁸ <http://www.giaba.org/index.php?type=c&id=49&mod=2&men=2>

appropriate use by competent authorities of controlled delivery and other special investigative techniques such as electronic surveillance, under-cover operations and to allow for admissibility of evidence obtained by such means. Article 15 (4) (5) & (6) of the ECOWAS protocol provides for use of special investigative techniques. Articles 18(3) & (4) of AUCPCC merely provides for co-operation and technical assistance between State Parties.

Officials interviewed for this report confirm that they carry out joint investigations and under-cover operations. The power of investigation given to the Nigeria Police under the Police Act also covers special investigative techniques. The investigative powers granted the ICPC and EFCC in Nigeria broadly speaking include the use of such conventional investigative techniques as mentioned in the conventions. S 6 of the EFCC Act specifically alludes to the use of investigative and controlled techniques. While the Evidence Act does not directly mention undercover investigations or controlled delivery and special investigative techniques, it does provide in S 178 for admissibility of evidence of accomplices, which technically speaking are persons who have participated, or assisted in the crime. It provides that accomplices shall be competent witnesses against an accused person, and a conviction is not illegal merely because it proceeds on the uncorroborated testimony of an accomplice. Its only limitation is that in cases of jury trial, which no longer occur in Nigeria, a presiding judge shall warn the jury, that it is unsafe to convict any person upon such evidence, though they may do so. Thus evidence obtained by such controlled techniques or officers under cover are admissible and will be accorded the weight accorded evidence of an accomplice in Nigeria.

MATRIX ON COMPLIANCE WITH CHAPTER IV UNCAC (ARTICLE 43 - 50) - INTERNATIONAL CO-OPERATION

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 43 UNCAC Articles 18 & 19. AUCPCC</p> <p>Article 15 ECOWAS Protocol</p>	<p>Co-operation on investigation in civil and administrative matters relating to corruption particularly extradition.</p>	<p>The Office of the Attorney General of the Federation and Minister for Justice and Chief law officer of the Country is the designated Central Authority for mutual legal assistance for Nigeria and handles administrative processes in this respect with support of the EFCC.</p>	<p>S 6 of the EFCC Act</p>	<p>Enforcement & Implementation</p>		<p>Nigeria needs to establish or put in place a clearer administrative mechanism for making and rendering MLA that implements the legal provisions and treaty obligations more effectively.</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 44 UNCAC Article 15 AUCPCC Article 14 ECOWAS Protocol</p>	<p>Granting of requests for extradition of offenders.</p> <p>Offences which come under the scope of application of the conventions and the protocol shall be considered as crimes leading to extradition.</p>		<p>The Extradition Act CAP 125 LFN</p> <p>The EFCC Act 2004.</p>	<p>The EFCC's powers to co-ordinate activities of other agencies working in this area provides a good framework for comprehensive local support to requests for extradition and related matters.</p>		<p>Need to inform the Secretary –General of the UN if the Country intends to use UNCAC as the legal basis for extradition. In the alternative, the Extradition Act needs to be amended and updated.</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 45 UNCAC AUCPCC and ECOWAS Protocol have no similar provisions.</p>	<p>Bilateral or Multilateral agreements or arrangements for transfer of persons sentenced to prison or other forms of deprivation.</p>	<p>Office of the Attorney General of the Federal and Minister of Justice.</p>	<p>The 1999 Nigerian Constitution of the Federal Republic of Nigeria permits the negotiation, execution and implementation of treaties between Nigeria and other nations.</p>	<p>Some treaties signed e.g. Treaty between Nigeria and Thailand on mutual co-operation, extradition and transfer of persons convicted of extraditable offences in both countries territories, including exchange of information.</p>		

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Recommendations	
			Legal Framework	Enforcement & Implementation		
<p>Article 46: (1)UNCAC</p> <p>Article 18(1) AUCPCC</p>	<p>Requirement to consider entering into bilateral or multilateral agreements of Mutual Legal Assistance (MLA) in investigation, prosecution, judicial proceedings, asset confiscation and recovery to prevent, detect, and punish acts of corruption and related offences.</p>	<p>Office of the Attorney General of the Federation and Minister of Justice as the designated Central Authority for MLA</p> <p>Additionally the EFCC Act in S 6&7 provides for the EFCC to collaborate with government bodies within and outside Nigeria.</p>	<p>The EFCC Act</p> <p>The ICPC Act</p> <p>The Extradition Act</p>	<p>There have been several cases of where MLA requests have been granted to other Countries</p>	<p>Absence of a legal framework to guide MLA.</p>	<p>There is a need for specific legislation or navigational guide on Mutual Legal Assistance MLA.</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 46 (2)UNCAC</p> <p>Article 18(1) AUCPCC</p>	<p>Requirement to consider entering into bilateral or multilateral agreements of mutual legal assistance (MLA) in investigation, prosecution, judicial proceedings in respect of offences in which a legal person may be held liable.</p>	<p>The Office of the Attorney General and Minister of Justice as the designated Central Authority for MLA. Additionally.</p>	<p>S 58(6) & (7) of the Public Procurement Act.</p> <p>Ss 10, 11, 16, 19 of the Money Laundering Prohibition Act criminalizes infractions by legal person in and this will include companies which are legal persons by Nigerian law.</p> <p>The general language of most provisions in the EFCC, ICPC, PPA, Money Laundering Act and NEITI Acts impose civil and criminal liability on companies which in Nigeria are legal persons.</p>	<p>Enforcement & Implementation</p>		

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 46 (2) UNCAC</p> <p>Article 18(1) AUCPCC</p>			<p>provisions in the EFCC, ICPC, PPA, Money Laundering Prohibition Act and NEITI Acts impose civil and criminal liability on companies which in Nigeria are legal persons.</p> <p>Section 18-19 failed Banks (Recovery of Debt) Act.</p> <p>S 19 of the Money Laundering act criminalizes actions of directors, managers, secretaries and staff that help in commission of an offence by a corporate body.</p> <p>S 16 of the NEITI Act 2007 criminalizes</p>			

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
Article 46 (2) UNCAC Article 18(1) AUCPCC			Legal Framework	false rendering delay and failure to render statements of accounts and information by corporate bodies.		
ARTICLE 46[8] UNCAC	State parties shall not decline to render MLA on the basis of Bank Secrecy.	Office of the Attorney General for the Federation and Minister of Justice.		Section 13(4) of the Money Laundering (Prohibition) Act 2004.		

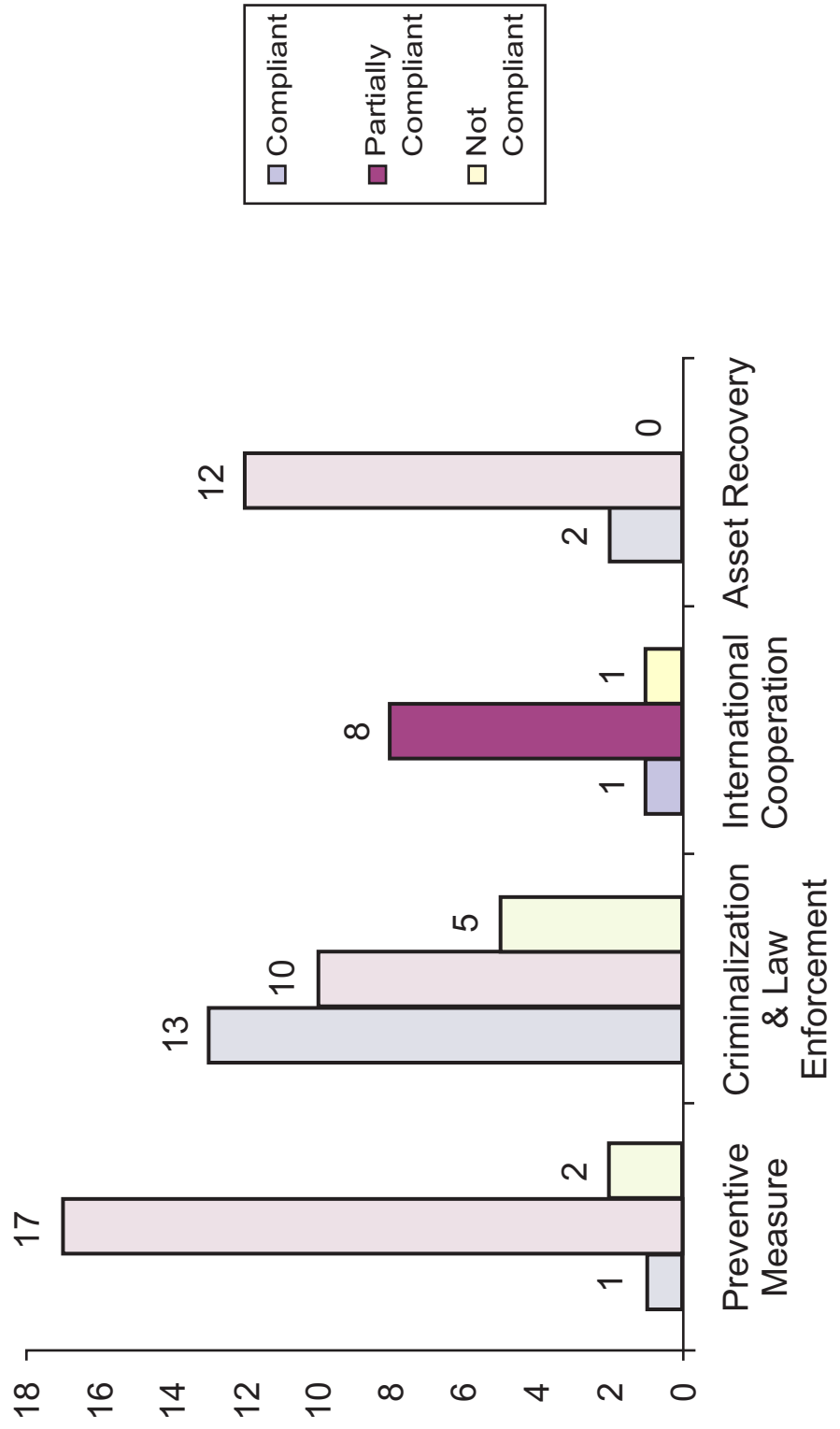
Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
Article 47 UNCAC AUCPCC and ECOWAS Protocol have no similar provisions	Requirement to transfer criminal proceedings for offences of corruption to another State Party in the interest of proper administration of justice.		There is currently no legal framework for transfer of criminal proceedings.			

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 48 UNCAC</p> <p>Article 18 of AUCPCC</p> <p>Articles 15 & 16 of ECOWAS Protocol</p>	<p>Strengthening the communication channels among respective law enforcement agencies</p> <p>Exchange of technology, personnel and information on specific means and methods used in related offences, movement of persons or proceeds of crime.</p>	<p>Federal Ministry of Justice, EFCC, NFIU.</p>	<p>Section 6(j) of the EFCC Act 2004.</p> <p>Section 1[2][c] EFCC ACT on the Establishment of the NFIU.</p>	<p>Several cases of cooperation with competent authorities of other State Parties.</p>		

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 49 UNCAC</p> <p>Though not entirely similar the provisions of Article 19(5) AUCPCC may include joint investigative bodies.</p> <p>ECOWAS Protocol has no similar provisions.</p>	<p>Establishment of joint investigative bodies to conduct joint investigations in matters involving more than one State.</p>		<p>The EFCC Act allows for such efforts.</p>	<p>The EFCC has co-operated with similar bodies in other countries including the United Kingdom, United States and Brazil. In the case of Brazil the investigations and prosecution resulting from this co-operation resulted in the return of millions of USD proceeds of crime to a Brazilian bank.</p>		

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 50 UNCAC</p> <p>AUCPCC and ECOWAS Protocol have no similar provision.</p>	<p>Allow the use of special investigative techniques such as controlled delivery, establish electronic surveillance and undercover operations as investigative measures and allow for the admissibility of evidence obtained through such techniques.</p>		<p>The EFCC Act</p> <p>The Evidence Act</p>	<p>Powers granted the ICPC and EFCC in Nigeria to investigate broadly include the use of such special investigative techniques as mentioned in the conventions. S 6 of the EFCC Act specifically alludes to the use of “investigative and control techniques.”</p>	<p>MLA treaties have been signed with only a few countries. There is need to enter into more bilateral and multilateral treaties.</p>	

CHART SHOWING LEVEL OF COMPLIANCE WITH CHAPTER IV (INTERNATIONAL CO-OPERATION)



CHAPTER 4

4.0. ASSETS RECOVERY, FORFEITURE AND TECHNICAL ASSISTANCE

4.1. INTRODUCTION

Asset recovery is concerned about the tracing and recovery of proceeds of crime, which often have been disguised and transferred across country borders to hide their nature and origin, thereby making them difficult for law enforcement to reach. Thus asset recovery is the process of tracing and recovering laundered assets. Through laundering stolen public wealth and resources are represented as legitimate personal or corporate assets and carefully hidden in an intricate web from the eyes of the law.

Such ill-gotten wealth, left in the hands of those who illicitly acquire them could be used to finance subversive activities that greatly jeopardize civil order, peace and development of a state. Such criminal activities include terrorism, coup d'état and other activities that retard the economic growth of any state, affecting its GDP and overall standard of living. The procedure for asset recovery is intended to find, seize and ensure forfeiture of such ill gotten wealth. The United Nations Convention against Corruption (UNCAC) makes Asset Recovery a fundamental principle of the Convention and makes adequate provisions for the tracing and recovery of such assets.

The UNCAC recognizes the need to support developing countries and economies in transition to meet obligations imposed by the convention. To achieve this aim, State Parties are required to enhance cooperation at different levels.

4.1.1 Freezing, Seizure and Confiscation – Article 31

Central to an effective anti-corruption regime is the need to prevent offenders from profiting from their acts of corruption through the confiscation of illicitly acquired funds and property. This is addressed in Article 31 of the UNCAC which provides that State Parties are *required to take necessary measures to enable confiscation and identification, tracing, freezing or seizure for the purpose of confiscation, of Proceeds of Crime derived from UNCAC offences or property the value of which corresponds to such proceeds; Property, equipment or other instrumentalities used in or destined for use in such offences; and Property into which proceeds of crime are intermingled, and income or other benefits derived from property into which proceeds of crime are transformed converted or intermingled.*

The AUCPCC in Article 16 requires each State Party to adopt such measures as may be necessary to enable, *its competent authorities to; search, identify, trace, administer and freeze or seize the instrumentalities and proceeds of corruption pending a final judgment; Confiscation of proceeds or property, the value of which corresponds to that of such proceeds, derived, from offences established in accordance with this convention; and repatriation of proceeds of corruption to its original owners.*

At sub regional level, Article 13 of the ECOWAS Protocol urges State Parties to adopt measures, where necessary, that would permit *the competent authorities to identify locate and seize assets or items for eventual forfeiture in respect of crimes established in accordance with the provisions of this Protocol.*

Both the ECOWAS Protocol and UNCAC require that State Parties empower its courts and in the case of UNCAC (and other competent authorities) to order the surrender or seizure of bank, commercial or financial documents, and to ensure that bank secrecy laws are not a basis to refuse access to such documents.

At domestic level Section 45 of the ICPC Act provides for tracing, freezing, seizure or confiscation of such assets, (movable and immovable property), by order of the Commission. There have been some cases of confiscation of instrumentalities of crime by ICPC. However, the most extensive provisions for assets recovery are found in the EFCC Act.

Sections 19 – 26 & 33 of the EFCC Act provides for tracing, freezing, seizure and confiscation or forfeiture of proceeds of crimes, or means of conveyance, mechanisms, books and records or data used and intended to be used to facilitate the crime. S. 19 of the EFCC Act as well as S. 20 of the Money Laundering Prohibition Act designates the Federal High Court as the appropriate Court with coercive powers to try the cases and make necessary orders for forfeiture. Sections 20 and 22(2) EFCC Act require that these assets be forfeited to the Federal Government of Nigeria, subject to existing treaties. The Act does not appear to contemplate repatriation of assets to original owners of the assets within Nigeria, and in the case of return of assets outside Nigeria, it appears to refer only to situations where treaties exist for that purpose. S 19(5) of the EFCC Act provides that the fact that an accused person obtained, or had attributed to him, at the time of the offence or possesses at the time of arrest resources for which he cannot satisfactorily account, which is disproportionate to his income, may be proved and taken account of by the court as corroborating the testimony of any witness. S 25 empowers the forfeiture of all books, data, instruments, negotiable instruments, securities, things of value, means of conveyance used or intended for use to transport or facilitate the sale, receipt, possession or concealment of proceeds of such crimes, except such a means of conveyance is a common carrier and it is established that its owner is not a consenting party, or while the means of conveyance was unlawfully in the possession of another person.

Beyond the requirements of UNCAC, S. 27 of the EFCC Act requires full declaration of assets by any person arrested for an offence under the Act and provides a mandatory assets declaration process to be completed by any persons so arrested. It further criminalizes failure to fully disclose assets, or making of a false declaration of assets by such an accused person. The Nigerian regime is compliant with UNCAC provisions except that there are no requirements to return assets forfeited to their original owners in the above cited laws. However S. 22 of the EFCC Act subjects the forfeiture of such assets to the Federal Government of Nigeria to any treaties or agreements existing between Nigeria and any Foreign Government. In effect where the foreign Government has entered into a bi-lateral or multi lateral treaty with Nigeria, requiring repatriation of forfeited assets, such assets will be repatriated to that country. Additionally the Foreign Judgements (Reciprocal Enforcement) Act CAP F35 LFN 2004 allows registration and enforcement within Nigeria of foreign judgements. Thus in cases where such foreign owners have established their rights before courts in their country, such judgements and orders of competent courts can be enforced in Nigeria, if they come from countries to which this Act is applicable. In practice the EFCC is known to have returned funds and assets forfeited to their rightful owners. The EFCC officially reports it has recovered assets and cash valued over \$15 billion USD³⁹. It is known to have returned forfeited assets to sub-national Governments in Nigeria and to countries such as Brazil. However the state of the domestic law requires improvements in the area of civil or non conviction based forfeiture to achieve full compliance.

4.2 PREVENTION AND DETECTION OF TRANSFER OF PROCEEDS OF CRIME

4.2.1 Prevention and Detection of the Transfer of Proceeds of Crime – Articles 51 & 52 of UNCAC

Article 51 of the UNCAC declares asset recovery to be a fundamental principle of the convention and further requires the widest measure of cooperation and assistance for asset recovery between State Parties. In Article 52, UNCAC requires financial institutions (FIs) of States Parties to verify the

³⁹ Fact Sheet of the Inter Agency Task Team (Anti Corruption Agencies) published in 2009

identity of customers or the beneficial owners of deposits into high-value accounts and to conduct enhanced scrutiny of accounts of officials entrusted with prominent public functions, their family members and close associates, with a view to determining and reporting suspicious transactions. Public officials that have foreign accounts are required to report it to the relevant authority. States Parties must ensure that their financial institutions maintain transaction records of such persons for an appropriate period. Further, FIs are also discouraged from dealing with banks that have no physical presence, that are not affiliated with any regulated financial group or having a corresponding bank relationship with them or any bank that allows the use of their accounts by such an institution. States Parties are also required to have effective financial disclosure systems and provide appropriate sanctions for non-compliance. Article 16 of AUCPCC and Article 13(4) of ECOWAS Protocol obligate State Parties to assist each other identify, seize and remit to requesting party such proceeds of crime. Article 15 of the ECOWAS Protocol obligates State Parties to assist each other in measures to prevent, detect and suppress acts of corruption. Neither AUCPCC nor ECOWAS Protocol provides for detailed measures as is the case with UNCAC.

Under the Nigerian domestic regime, the ICPC Act⁴⁰ empowers the Commission to enlist the services of such international crime fighting organizations, such as the Interpol thus encouraging the kind of co-operation required by Article 51 of UNCAC.

The EFCC Act in Section 6 (j) mandates the Commission to collaborate with governmental bodies within and outside Nigeria carrying out related functions: to identify persons involved with crime;; movement of crime proceeds; exchange of expert personnel; establishment of international monitoring mechanism; maintaining comprehensive records on organizations, persons, proceeds and assets involved in financial crimes; Collection of all reports relating to suspicious financial transactions; engage in research with a view to advising government on appropriate intervention mechanism; and carry out such other activities that are necessary and expedient to fully discharge its functions. This enables the EFCC to engage in international co-operation of the kind anticipated by Articles 51-52 of UNCAC. Above all the same section enables the EFCC to supervise, co-ordinate and maintain liaison with activities of other agencies performing functions required under Articles 51&52⁴¹

In Nigeria it is an offence to open or operate a bank or financial institution without license. **The Central Bank of Nigeria (CBN) Act CAP C4 LFN 2004 and the Banks and other Financial Institutions Act CAP B3 LFN 2004** grant CBN full and extensive powers to set conditions for licensing and operation of banks and financial institutions in Nigeria. Those powers and conditions already issued ensure verification of corresponding banks for Nigerian institutions and require that such corresponding banks have physical presence, a minimum asset base and be or belong to regulated groups in compliance with Article 52.

Sections 1 & 2 of the Money Laundering Prohibition Act prohibit cash transactions above ₦5,000.00 for individuals and ₦10,000,000.00 for corporate bodies and requires reports to the CBN by banks or other financial institutions of every transfer or funds or securities of a sum exceeding \$10,000 USD. While UNCAC requirements relate to high value accounts and account of public officials, S. 3 of the Money Laundering Prohibition Act requires detailed customer and beneficial owner identification in financial transactions. It further criminalizes failure to comply with these requirements by individuals or corporate bodies with penalties ranging from fines to revocation of banking licences. S. 3 requires all financial institutions to verify its customer's identity and addresses before opening an account or entering into fiduciary transactions including renting safe deposit box or establishing any business relationship with the person.

⁴⁰ Article 65 (3) ICPC Act

⁴¹ S 6(j) m, n & o EFCC Act

Further to the provisions of other laws the CBN Act, BOFID and the MLPA, the CBN (Nigeria's banking industry regulator) and the NDIC in collaboration with the EFCC has 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 regulation applies to bank and non bank financial institutions and even Designated Non Financial Institutions like professional practice firms, dealers in jewellery, cars luxury goods, hotels, casinos etc. The CBN "Know Your Customer" Guidance Regulations for example requires banks in opening an account, to demand from clients full names, copies of and production for sighting, original copies of specified category of identity cards, full addresses including permanent addresses, evidence of residency, including evidence of utility bills. Additionally such persons are required to provide information on state and local government of origin, parents, mother's maiden names and permanent home addresses, names and full particulars of spouse and or children if any. It also requires banks to update information of customers with existing accounts.

Assignees of a body corporate must provide power of attorney empowering them to act on its behalf. Cash transaction at some banks have columns for greater details, depending on how much is to be transferred while others separate entirely, the colour and type of deposit/withdrawal slips for different categories of cash payment and withdrawal, and the higher the amount, the greater the information details to be furnished.

By Section 13 of the Money Laundering Prohibition Act, relevant agencies may by order of court place certain bank accounts under surveillance tap telephone lines, computer systems or obtain access to communication devices suspected to have been used by any persons in a transaction involving proceeds of a financial or other crime.

As already discussed in this report, the Code of conduct for public officers in Nigeria requires full disclosure of financial and other assets and external businesses of every public officer before and at termination of tenure of office. In respect of continuous tenures, the declaration is required every four years. Section 7 Code of Conduct Bureau and Tribunal Act prohibit Nigerian civil servants and government officials from maintaining foreign accounts.

Nigerian law may be compliant with the requirements of Article 51 & 52 of UNCAC as it relates to the banking industry. But as indicated in the GIABA 2010 follow up report, there are concerns with non-effective implementation of provisions related to customer due diligence, record keeping, suspicious transaction reporting, and the supervisory mandates. The securities market and the Insurance industry which by S. 25 of the Money Laundering Prohibition Act are financial institutions are lagging behind the banking sector. Their industry regulators SEC and NAICOM have produced draft "Know Your Customer" Guidelines and Regulations which when they come into force will put them on the pathway to compliance with Article 52 of UNCAC.

4.2.2 Measures for Direct Recovery of Property – Article 53 of UNCAC

By article 53 of the UNCAC States Parties are required to allow another State Party to initiate a civil action in its Court to establish title to property acquired through commission of an UNCAC offence and courts should be empowered to order payment of compensation directly. State Parties must take necessary measures to permit their courts or competent authorities, when having to decide on compensation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of a corruption offence and to order payment of compensation to such State Parties. Article 9 of ECOWAS Protocol requires access to compensation for victims of

offences covered by the Protocol. It appears rational that where such a victim is a State Party, this provision should avail it. There is no provision in AUCPCC on this issue.

S 6 (j) (i)-(vi) of the EFCC Act provides copiously for international cooperation, but does not mention initiation of court proceedings outside Nigeria or by other countries in Nigeria. However Nigerian law is not discriminatory as it relates to litigants that can come before its courts. All legal persons, who have *locus standi* in the issues litigated, are entitled to ventilate their grievances in appropriate courts. The courts of Nigeria recognize countries and other nations as legal persons, and entertain suits relating to nations or their embassies and missions in Nigeria. Indeed Nigerian courts have held that in pure commercial transactions foreign government missions will not enjoy diplomatic immunity and this by inference means they can sue and be sued in Nigeria⁴².

By Section 113-117(a) of the Criminal Code Act a Magistrate Court has power when an enquiry or trial in any criminal case is concluded to make such an order as it thinks fit for the disposal by destruction, confiscation or delivery to any person appearing to be entitled to the possession thereof, of any moveable property or documents produced before the court or which is in its custody or regarding which an offence appears to have been committed or which has been used for the commission of any offence. The combined effect of S 22(2)EFCC Act and Sections 113-117(a) of the Criminal Procedure Act indicate partial, but not full compliance with this requirement, because while existing treaties may resolve the situation for foreign countries in appropriate cases, there still remains a challenge to forfeiture to private citizens as against Government of Nigeria. Further, other courts may not exercise this power directly granted to magistrates in s 113-117(a). There is therefore the need to amend Nigerian laws to directly provide for orders of restitution (damages and compensation) for victims of crimes. This is without prejudice to the fact that where the actions constituting the crime in question, constitutes a tort under Nigerian law, the victim so injured can sue and recover damages in tort. However the newly enacted Criminal Justice Administration Act of Lagos State provides for a measure of victim compensation.

4.2.3 Recovery of Property through International Cooperation in Confiscation– Article 54 of the UNCAC

Article 54 of UNCAC requires States Parties to permit their authorities to give effect to an order of confiscation issued by a court of another State Party and allow their authorities to order the confiscation of such property. States Parties must also require their competent authorities to freeze or seize property upon a freezing or seizure orders issued by a competent authority of another State Party and or allow such authorities to make such orders. Further, State Parties should also consider allowing confiscation of property of foreign origin by adjudication of money laundering or other offences within their jurisdiction or by other procedures under domestic law without a criminal conviction, when the offender cannot be prosecuted by reason of death, flight, absence or in other appropriate cases.

Articles 16(1) of AUCPCC anticipates repatriation of seized assets from foreign countries. Article 13(1) of ECOWAS Protocol requires that State Parties may locate, identify and seize assets proceeds of a crime. In each case also provisions of both conventions on international cooperation and mutual legal assistance require the greatest measure of cooperation possible within domestic law.

At the domestic level, S. 6 of the EFCC Act empowers the EFCC to collaborate with bodies within and outside Nigeria carrying on functions analogous to its mandate. Such areas of cooperation include the tracing, seizure and confiscation of assets, which are proceeds of crimes. However Sections 20 and 22 of the EFCC Act provides for forfeiture of assets proceeds of a crime under the

⁴² Oluwalogbon & 3ors Vs United Kingdom & Anor 2005 7(CLRN) 90 at 108

Act to and in the name of the Federal Government of Nigeria, subject to existing treaties and arrangements with other countries.

By S. 46 of the ICPC Act the Chairman of the ICPC can apply for a court order to prohibit any person, by whom property being proceeds of a crime in Nigeria is held or deposited outside Nigeria from dealing with it. Thus in the case of a country in a bilateral or multi lateral treaty with Nigeria, which requires such confiscation or forfeiture, the provisions of the treaty as to whom such assets are forfeited to will prevail over the requirement to forfeit to and in the name of the Nigerian government, where such existing treaties require forfeiture to the original owners of assets.

However Nigerian legal system at present has no regime for non court conviction based assets forfeiture as required by this article. Efforts are on going to reintroduce the Non –Conviction Based Asset Forfeiture Bill which was recently thrown out in the National Assembly.

4.2.4 International Cooperation for purposes of Confiscation – Article 55 of UNCAC

States Parties are mandated under article 55 of UNCAC to provide assistance to the greatest extent possible, to another State Party for confiscation of proceeds of crime. A State Party is required to: submit requests for confiscation of proceeds of crime to its competent authorities for the purpose of obtaining an order of confiscation and give effect to it take measures to identify, trace, freeze or seize proceeds of crime; take the right of a bona fide third party into account; and furnish copies of their laws and regulations that give effect to the article and of any subsequent changes of such laws to the Secretary-General of the United Nations. This is also the thrust of Article 16(2) and 13 (1&2) of AUCPCC and ECOWAS Protocol.

Article 6(j) of the EFCC Act serves the purpose of trans border cooperation between member states on confiscation of proceeds of crime as contemplated by article 55 of UNCAC.

The Foreign Judgements (Reciprocal Enforcement) Act CAP F35 LFN 2004 empowers Nigerian courts to register and enforce, as if they were their own, judgements and orders of superior courts of foreign countries. It grants the Minister of Justice and Attorney General of the Federation power to extend the application of this law to judgement of any country if he is satisfied that substantial reciprocity of treatment will be assured. Thus judgement and orders of foreign courts regarding confiscation of properties relating to money laundering are enforceable in Nigeria.

4.2.5 Special Cooperation – Article 56 of UNCAC

States Parties are required to disclose information on the proceeds of offences established by UNCAC to another State Party that may assist the receiving state party in carrying out investigations, prosecutions or judicial proceedings or might lead to requests under this chapter of UNCAC. It is important to note that the requirement of Article 13(5) of the ECOWAS Protocol to transfer or repatriate proceeds of crime, is to State parties that have assisted in the investigation and prosecution of the offence.

S 6 (j) of the EFCC Act empowers it to collaborate with local or foreign bodies performing analogous functions with those of the commission in many areas including gathering, management and exchange of information on proceeds of offences established under UNCAC. The entire regime for collection of information set up by the Money laundering Act and related legislations in Nigeria make it possible for the EFCC and other agencies to maintain and exchange information as required by Article 56 and thus Nigeria is in compliance with this requirement.

4.2.6 Return and Disposal of Assets – Article 57 of UNCAC

States Parties are obliged to cooperate with respect to returning confiscated property to its prior legitimate owners by taking into account the rights of *bona fide* third parties. State parties may deduct reasonable expenses incurred for the confiscation process and may also consider the conclusion of agreements or arrangements for the final disposition of assets on a case by case basis. Furthermore, the requested State Party should return the confiscated property to a requesting a State Party or legitimate owners, or victims of the crime as compensation, depending on the circumstances. Articles 16(4) and 13 (5) of both AUCPCC and ECOWAS Protocol provide for repatriation of proceeds of crime as well.

According to the ICPC Act, the Chairman may upon investigations and upon his conviction that a corruption offence has been committed, order the accused person to identify his properties outside Nigeria, their location and value.⁴³ . S 20 of the EFCC Act provides that any property in Nigeria which is obtained from the proceeds of crime shall be forfeited 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. However S 20 and 22 of the EFCC Act provides for forfeiture of assets which are proceeds of a crime under the Act to and in the name of the Federal Government of Nigeria, subject off course to existing treaties and arrangements with other countries. By S. 46 of the ICPC Act, the Chairman of ICPC can apply for a court order to prohibit any person by whom property which is proceeds of a crime in Nigeria is held or deposited outside Nigeria from dealing with it. Thus in the case of a State Party to a relevant treaty, bilateral or multi- lateral with Nigeria, which requires such confiscation or forfeiture, the provisions of the treaty as to whom such assets are forfeited, will prevail over the requirement to forfeit to and in the name of the Nigerian government.

Additionally as stated above the combined effects of Ss 113 - 117(a) of the Criminal Procedure Act, enables a magistrate upon a charge before the court to make appropriate orders relating to destruction, confiscation, sale and forfeiture of assets to meet any costs directed to be paid by the person charged. By Section 20 of the EFCC Act forfeiture will be to the government of Nigeria. However S 22 of the EFCC Act allows forfeiture to foreign governments where a treaty providing for such forfeiture is in existence. Thus while subjection to existing treaties as stated in S 22 of the EFCC Act resolve the issue of forfeiture for foreign governments and nationals, this provision remains a challenge to forfeiture or compensation to a private citizen or Nigerian legal person as against Government of Nigeria. There is need to amend Nigerian laws to directly provide for orders of restitution (damages and compensation) for victims of crimes as is now the case in Lagos State. This is without prejudice to the fact that where the actions constituting the crime in question constitutes a tort under Nigerian law, the victim so injured can sue and recover damages in tort.

4.2.7 Establishment of a Financial Intelligence Unit – Article 58 of UNCAC

The UNCAC requires the establishment of a Financial Intelligence Unit (FIU) for: receiving, analyzing and disseminating reports of suspicious transactions to competent authorities and preventing and combating the transfer and aiding in the recovery of proceeds of offences established under the Convention. AUCPCC and ECOWAS Protocol have no direct provision on the establishment of an FIU, though the ECOWAS Protocol obligates State Parties to assist each other take measures to prevent, detect and suppress acts of corruption, and information sharing could be one of such measures.

⁴³ Section 44 (1)(i), (ii) and (iii)

S. 9 of the Money Laundering Prohibition Act mandates financial institutions to establish amongst others, an internal audit unit with compliance officers, who shall be responsible to see that the requirements of the Act are effectively complied with. The Act also provides for financial institutions to develop programs to help staff remain current on mechanisms to combat money laundering. Many banks have established these compliance units, but their officers require capacity on available tools and monitoring mechanisms. Establishing such unit can be said to have fulfilled the provisions of Article 58 of UNCAC, but their effectiveness needs to be improved.

S 6 (g) & (j) of the EFCC establishment Act empowers the EFCC to establish and it has since established an FIU, which is charged with the mandate of receiving, analysing and disseminating to competent authorities reports of suspicious transactions in compliance with UNCAC. Domiciled within the Economic and Financial Crimes Commission (EFCC) as an autonomous unit, the setting up of the NFIU partially fulfils the requirements in **Article 58** of the UNCAC. The establishment of the NFIU was a precondition for the removal of Nigeria, from the Financial Action Task Force (FATF) list of non-cooperative countries and territories (NCCTs). To midwife the birth of the NFIU, a 10-man technical committee made up of representative from the CBN, NDIC, the private sector, Nigeria Police together with an employee of EFCC was constituted as far back as October 2003. The NFIU though under the EFCC operates as a central national agency. It receives and analyzes financial information such as Currency Transaction Reports (CTR's) and Suspicious Transaction Reports (STR's) - from financial institutions and designated non - financial institution and disseminates intelligence arising there from to law enforcement agencies (LEA's) and other stakeholders. In practice the decision to subjugate the FIU to the EFCC which is one of the many agencies it ought to serve locally, may require revisiting as it has made it subject to other challenges of interagency co-ordination in Nigeria. It is recommended that as soon as practicable the Nigerian FIU should be an entirely autonomous body.

4.2.8 Bilateral and Multilateral Agreements – Article 59 of UNCAC

The UNCAC advocates the formulation of bilateral or multilateral agreements between States Parties to enhance effectiveness of international cooperation. Similar provisions exists in article 16 and 19 of AUCPCC and ECOWAS Protocol respectively. The AUCPCC provides for close arrangements with regional and international organizations, while the ECOWAS Protocol provides a mechanism for technical co-operation.

Article 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 among others.etc

Article 5 (1) (j) EFCC Act complies with Article 59 UNCAC and both the AUCPCC and ECOWAS Protocol to the extent that it provides a window of opportunity to a principal governmental agency tackling corruption to collaborate with similar National and International bodies.

Cap 235 Laws of the Federation (LFN) 1990 on Mutual Legal Assistance with Commonwealth countries permits the provision of the widest possible range of mutual assistance to Commonwealth Member States. In the West Africa sub-Region, Nigeria has ratified the ECOWAS Protocol on Mutual Legal Assistance, which is applicable to Member States in the region. For non-Commonwealth and non-ECOWAS Countries, the Constitution permits the negotiation of multilateral and bilateral Agreements on Mutual Legal Assistance. Nigeria does not have a comprehensive legislation on international cooperation. Mutual legal assistance related legislation has to be distilled from multiple legislation and various multilateral and bilateral agreements. The Attorney General of the Federation and Minister for Justice is responsible for the negotiation and implementation of Mutual Legal Assistance treaties. So far, no regulation has been issued regarding the process for initiating and concluding Mutual legal Assistance.

The domestic legal regime of Nigeria does not have adequate provisions to ensure the widest level of mutual legal assistance (MLA) to other UNCAC State Parties as required by the Convention. Nigeria's extradition legislation is subject to the constitutional requirement with regard to the application of dual criminality principles. This requirement may inhibit efficient execution of international cooperation requests. There is no time limit regarding the length of time required to respond to extradition requests and concerns have been expressed regarding the efficiency of the existing process. On the whole, domestic legislation in these respects still requires a number of amendments and improvements in order to be fully compatible with UNCAC provisions.

Also as already stated above the Foreign Judgements (reciprocal Enforcement) Act and S 22(2) of the EFCC Act appear to resolve the issue of assistance in repatriation of proceeds of a crime, where there are enforceable judgments of foreign courts or treaties providing for repatriation of such proceeds of crimes exist. S 22(2) of the EFCC Act improves the domestic regime to the extent that repatriation of proceeds of crime is allowed subject to treaty. UNCAC in itself is a basis for signatory countries to accord each other the required measure of co-operation, where such signatory countries have informed the Secretary –General to that effect. Nigeria is yet to remit such information to the Secretary –General in respect of the UNCAC. There have however been instances where the Nigerian Government has accorded assistance to other signatory countries to UNCAC on the basis of the Convention.

International cooperation particularly between the EFCC and other transnational bodies have reportedly led to the recovery and return of \$242 million in a case involving a Brazilian Bank \$4 million to a Hong Kong National and \$ 500,000 to sundry US citizens⁴⁴ and is being deployed to recover assets within and outside.

4.2.9 Training and Technical Assistance - Article 60.

Article 60 requires each State Party to develop and improve specific training programs for its personnel, including effective measures to prevent, detect, investigate, punish and control corruption; the use of evidence –gathering and investigative methods; building capacity in development and implementation of strategic anti –corruption policy; preparation of requests for Mutual Legal Assistance; evaluation and strengthening of public service institutions, and public finance management including public procurement; preventing and combating transfer of proceeds of crime, detecting, freezing and other mechanisms for recovering of proceeds of crime; surveillance on movement of proceeds of crime and public finance; methods for protecting victims and witnesses who co-operate with law enforcement. It requires that State Parties give the widest possible technical assistance especially for the benefit of developing countries in their plans to combat corruption, including material, training support and mutual exchanges of experience,

⁴⁴'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.

specialized knowledge, and exchange of experts. Article 18(4) of AUCPCC provides for technical assistance by State Parties. In the Nigerian framework S 6 of the EFCC Act provides a basis for Technical assistance and co-operation particularly in the light of its statutory co-ordinating role for the enforcement functions of other agencies working on financial crimes issues in Nigeria. The EFCC by S 6(j) has statutory authority to initiate, receive and give technical assistance to similar organizations in other countries. In practice the EFCC has been a beneficiary of Technical Assistance from the European Union countries through a UNODC managed grant, and has also benefitted from such other programs from the United Kingdom and United States. Other anti-corruption agencies such as the CCB, ICPC, NEITI, TUGAR and BPP have also benefitted from Technical Assistance given by agencies such as the UNDP, DFID and the World Bank.

4.2.10 Collection, Exchange and Analysis of Information - Article 61 of UNCAC

This Article obligates State Parties to consider analysing with experts, trends in corruption and circumstances in which corruption occurs in its territory. Additionally they may consider sharing with each other analytical expertise relating to corruption and developing common definitions, standards and methodologies and information on best practices to prevent and combat corruption. The EFCC Act requires the Commission to collaborate with other country agencies in exchange of experts, data collation and analysis and similar activities with a view to determining manifestations of corruption, as well as establish systems for monitoring international economic crimes.⁴⁵ In addition to internal research units of the various anti-corruption agencies, TUGAR is set up to specifically conduct monitoring, evaluation and trend analysis of the anti-corruption environment in Nigeria and to support the ongoing initiatives with coordinated data. This study is one such analytical report.

4.2.11 Other Measures in Implementation of the Convention through Economic Development and Technical Assistance - Article 62

This Article of UNCAC requires State Parties to make concrete efforts to the extent possible in co-ordination with each other as well as international and regional organizations. Also it requires material and financial assistance to support the efforts of developing countries and economies in transition to effectively fight corruption. To that end State parties are encouraged to make voluntary contributions to an account in the United Nations funding mechanism designated for that purpose. Further, State Parties are also encouraged to give special consideration to contributing a percentage of the money or corresponding value of proceeds of crime or property confiscated or recovered in accordance with the convention to that account. . As indicated earlier Nigeria has been a beneficiary of technical assistance from the European Commission, the UNDP, DFID and both British and American Governments. Additionally Nigeria has equally been very active at the regional and continental levels through the NEPAD and GIABA as already discussed in this report.

⁴⁵ S 6(j) iii, v & vi EFCC Act

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Measures to Prevent and detect proceeds of crime UNCAC and AUCPCC and ECOWAS Protocol have no similar provision</p>	<p>Establishment of regulatory and supervisory framework to combat money laundering and cooperation of agencies involved at local and international levels Establishment of financial Intelligence Unit to monitor movement of cash in and out of State borders. Encourage financial Institutions to collect information on origin of electronic fund transfers and scrutinize incomplete information.</p>	<p>A Financial Intelligence Unit has been established in the EFCC Nigerian Banks now have a comprehensive know your customer procedure and obligations to report suspicious transactions and transactions within given monetary thresholds.</p>	<p>Section 6, 7, 14 Economic and Financial Crimes Commission [Establishment]. Money Laundering Prohibition Act 2011. Section 65 (3) of the Independent Corrupt Practices & Other Related Offences Act. Central Bank of Nigeria Act CAP C4 LFN 2004. Banks and other Financial institutions Act CAP B3 LFN 2004 Advance fee Fraud and other Fraud Related Offences Act</p>	<p>A Financial Intelligence Unit is fully functional, receiving analysing and distributing information. Compliance by DNFI to reporting requirements under the EFCC and Money Laundering Acts is very low.</p>		<p>There is need for increased capacity building for financial institutions to enhance compliance with regulations. There is need for closer monitoring of transactions in financial institutions but above all to secure compliance by designated non financial institutions there is need for capacity building and enforcement of sanctions.</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Article 23 UNCAC</p> <p>Article 6 AUCPCC</p> <p>Article 5 ECOWAS Protocol</p>	<p>Criminalization of conversion, transfer or disposal of property being 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.</p>	<p>The EFCC supervises and co-ordinates all related agencies in Nigeria and has established a mechanism for coordination and monitoring.</p>	<p>Sections 15 & 16 of the Money Laundering prohibition Act N0 7 of 2011.</p> <p>Section 17 the Economic and Financial Crimes Commission (Establishment) Act 2004</p> <p>Section 13, 15 (a, b & c), ICPC Act</p>	<p>Substantially Compatible with UNCAC AU and ECOWAS Protocol against Corruption</p> <p>The EFCC Act is a response to the UNCAC requirement for the adoption of legislative measures. While UNCAC provides for the offences related to Money Laundering, the EFCC Act covers a wider spectrum of financial crimes such as contract and computer credit card fraud, counterfeiting, and Advanced Fee Fraud in addition to Money Laundering offences. The EFCC vigorously</p>		

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
				investigates and prosecutes money laundering offences in Nigeria. The EFCC has however secured major convictions on the offence of laundering of proceeds of crime.		

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Recommendations
			Legal Framework	Enforcement & Implementation	
Article 31 of UNCAC	Freezing, seizure and Confiscation of assets		S 20, 22 and 24 of the EFCC Act. S 45 of the ICPC Act	The Economic and Financial Crimes Commission (EFCC) and the ICPC regularly traces, freezes and seizes assets suspected to be proceeds or instrumentalities of crime within limits of existing law, but such cases are court/conviction based.	The Non-Conviction Based asset Forfeiture Bill should be passed into Law.
				The Nigerian regime has gaps as it relates to non conviction based freezing and seizure of assets.	

MATRIX ON COMPLIANCE WITH CHAPTER V ASSET RECOVERY (ARTICLES 51 - 59 UNCC)

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Wide measure of Cooperation on Asset Recovery Article 51 UNCAC Article 16 AUCPCC Article 13 (4): ECOWAS Protocol</p>	<p>Wide Cooperation with other States for purpose of Asset Recovery. Confiscation of property /proceeds or of value of which corresponds to proceeds of offences of corruption Identification and seizure of proceeds, items used in committing offence of corruption. Release items that may be used as evidence to other State where extradition is required.</p>		<p>Sections 6, 22, 38 The Economic and Financial Crimes Commission Establishment Act.2004</p> <p>Section 18(2) of the Money Laundering (Prohibition) Act. 2004.</p>	<p>The Nigerian legal and regulatory regime is substantially in compliance with the obligations imposed by UNCAC and both the AUCPCC and the ECOWAS Protocol. There are existing co-operation between Nigeria and many other States.</p>		

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>Prevention and Detection of transfers of Proceeds of Crime</p> <p>Article 52: UNCAC AUCPCC and ECOWAS Protocol have no similar provisions</p>	<p>Requirement of financial institutions (FIs) of States to verify the identity of customers or the beneficial owners of deposits into high-value accounts , and to conduct enhanced scrutiny of accounts of public officials, their family members and close associates, to determine and report suspicious transactions.</p>	<p>The CBN and the NFIU</p> <p>The EFCC</p>	<p>S 6 of the EFCC Act 2004 empowers it to establish this system and to co-ordinate the activities of all financial institutions and other agencies in Nigeria in this regard, and to establish an FIU.</p> <p>The Money Laundering (Prohibition) Act 2011 provides obligations on the bank to identify customer and source of funds, and a reporting requirement for banks, financial institutions and other DNFI. The Code of Conduct of Public officers in Nigeria</p>	<p>The EFCC in collaboration with banking regulatory authorities have established a vigorous Know Your Customer procedure for accounts opened in Nigerian banks.</p> <p>Our survey indicates that banks are reporting. Available evidence indicates that the highest levels of non compliance are found amongst DNFI, many of which are not yet complying with these</p>		<p>SCUML needs to be supported to increase sensitization and if possible monitoring and reporting on compliance amongst DNFI</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
	<p>Public officials having accounts in a foreign Country must report it to appropriate authorities and financial Institutions must maintain transactions and financial records of such persons for an appropriate period. Establishment of appropriate disclosure system and sanctions for non compliance.</p>		<p>source of funds, and a reporting requirement for banks, financial institutions and other DNFI. The Code of Conduct of Public officers in Nigeria prohibits public officers having foreign accounts Sections 3 - 13 Money Laundering (Prohibition) Act. The Central Bank Act.</p>	<p>requirements. There is a blanket provision for scrutiny of suspicious transaction, not necessarily of public officials and their relations.</p>		

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
Measures for Direct Recovery of Property ARTICLE 53 UNCAC ARTICLE 9 ECOWAS PROTOCOL AUCPCC HAS NO SIMILAR PROVISION S	<p>Take necessary measures to permit other State Parties. establish ownership to property acquired through commission of UNCAC offence. Take measures to facilitate court ordered. compensation for damages to other State parties. Take measures to ensure that courts recognise other State parties claim in cases of confiscation.</p>		<p>The combined effects of 5 22 (2) EFCC Act and the Criminal Procedure Act and Section 113 -117(a) of the Criminal Code Act empower courts to make orders relating to confiscation or disposal of properties and delivery of such property to persons entitled to them. Section 22 EFCC Act provides that the Attorney General of the Federation shall see that the foreign assets of a person convicted under this Act are forfeited to the Federal Government subject to existing treaties with the foreign government.</p>	<p>Nigerian law is not discriminatory as it relates to litigants that can come before its courts. All legal persons who have locus standi in the issues litigated are entitled to ventilate their grievances in appropriate courts. The courts of Nigeria recognize countries and other nations as legal persons and entertain suits relating to nations or their embassies and missions in Nigeria.</p>	<p>These provisions do not adequately address the issue of compensation. Further other courts may not exercise this power directly granted to magistrates in s 113-117(a). The combined effect of S 22(2) and Sections 113-117(a) of the Criminal Procedure Act indicate partial, but not full compliance with this requirement</p>	

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
			Also the Sheriff and Civil Process Act CAP 56 LFN 2004 allow the enforcement in Nigeria, of judgments from foreign courts. Nigerian rules of court provide a procedure to enforce such judgments through the Foreign Judgements Enforcement Act.			

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Recommendations
			Legal Framework	Enforcement & Implementation	
Mechanism for Recovery of Property through International Cooperation. Article 54:) UNCAC Article 16(2): AUCPCC Article 13 (1,2):ECOWAS Protocol	Adoption of measures that allow competent authorities to -give effect to an order for confiscation issued by a court of another State Party. - allow confiscation without criminal conviction when the offender cannot be prosecuted by reason of death, flight, absence or in other appropriate cases. -identify, locate, freeze and seize proceeds of crimes or other assets that equal the value of the crime for forfeiture and ensure that such assets are transferred to other States.	The EFCC The Office of the Attorney-General of the Federation and Minister of Justice	Section 6(d)The EFCC Act 2004 and Section 13 of the Money Laundering Prohibition Act 2011	The Nigerian regime is Partially compliant.	There is no Non-Conviction Based Asset Law. Need to represent The Non-Conviction Based Asset Forfeiture Bill to the National Assembly.

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
	<ul style="list-style-type: none"> -Allow competent authorities to freeze or seize property upon a freezing or seizure order issued by a competent authority of another State -confiscation of property of foreign origin either in exercising jurisdiction or on behalf of another State. 					

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
<p>International Cooperation for Purposes of Confiscation Article 55 UNCAC Article 16 (1) (3) (4): AUCPCC Article 13 (4), (5): ECOWAS Protocol</p>	<p>State Parties are required to employ all legislative measures that would enhance the job of the competent authorities to</p> <ol style="list-style-type: none"> 1. identify, trace, freeze or seize proceeds of crime, after or pending judgement and to take the right of a bona fide third party into account, 2. To assist other State Parties in identification, seizure of the assets or items acquired in committing the crimes and transfer all or any part of such assets to another State. 	<p>Ministry of Justice EFCC ICPC</p>	<p>The Nigerian Court rules provides for enforcement of foreign court judgements and orders. S 5 (j) of The EFCC Act grants it the mandate to co-ordinate with foreign and local agencies to achieve the aforesaid activities.</p>	<p>The EFCC has in fact worked with foreign agencies on many cases subject to the powers of the Attorney General for the Federation and Minister of Justice as the Chief law Officer and the Central Authority in respect of Mutual Legal Assistance.</p>	<p>Absence of specific legal frame work on MLA</p>	<p>Need for a legislation or navigational guide on MLA</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Gaps	Recommendations
			Legal Framework	Enforcement & Implementation		
Special Cooperation Article 56 UNCAC Article 9 AUCPCC Article 5(i) ECOWAS Protocol	<p>Ensuring mechanism to allow each State Party to share information of proceeds of crime established under UNCAC without prior request and without prejudice to its own investigations, or assist receiving party in initiating or carrying out investigations or prosecutions.</p>	<p>The EFCC, The NFIU</p>	<p>The EFCC Establishment Act 2004 and the Money Laundering Prohibition Act 2011 both allow for such exchange of information and co-operation between EFCC and counterpart agencies in foreign countries.</p>	<p>EFCC is known to have this kind of collaboration with other country agencies.</p>		

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Recommendations	
			Legal Framework	Enforcement & Implementation		
<p>Return and disposal of Assets</p> <p>Article 57 UNCAC</p> <p>Article 16(3) AUCPCC</p> <p>Article 13(5) ECOWAS Protocol</p>	<p>Cooperation with other States with respect to returning confiscated property to its prior legitimate owners by taking into account the rights of bona fide third parties;</p> <p>Transfer/ Return of proceeds of crime or other assets confiscated to other States that request (even if extradition is refused or not carried out as a result of death) or states that assisted in the process of investigation.</p>	<p>THE EFCC and other Anti-Corruption Agencies.</p>	<p>Sections 6(j) and 19-25 of the EFCC Establishment Act 2004 provides for assets seizure and confiscation. The Money Laundering (Prohibition) Act 2011 also provides for freezing of accounts containing proceeds of a crime</p> <p>Section 41 (1) (i) (ii) & (iii) ICPC Act</p>	<p>There have been instances of the EFCC recovering in Nigeria and returning to victims of financial crimes abroad proceeds of financial crimes.</p>	<p>The legal provisions make no mention of return of assets to original or legitimate owners rather there are copious provisions on vesting same on the Federal Government. However S 20 and 22 of the EFCC Act makes forfeiture to the Federal government subject to existing treaties and arrangements with other countries. Thus while subject to existing treaties as stated in S 22 of the</p>	<p>There is need to amend Nigerian laws to directly provide for orders of restitution (damages and compensation) for victims of crimes</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Recommendations
			Legal Framework	Enforcement & Implementation	
				Gaps	EFCC Act resolve the issue of forfeiture for foreign governments and nationals, this provision remains a challenge to forfeiture or compensation to a private citizen or Nigerian legal person as against Government of Nigeria.

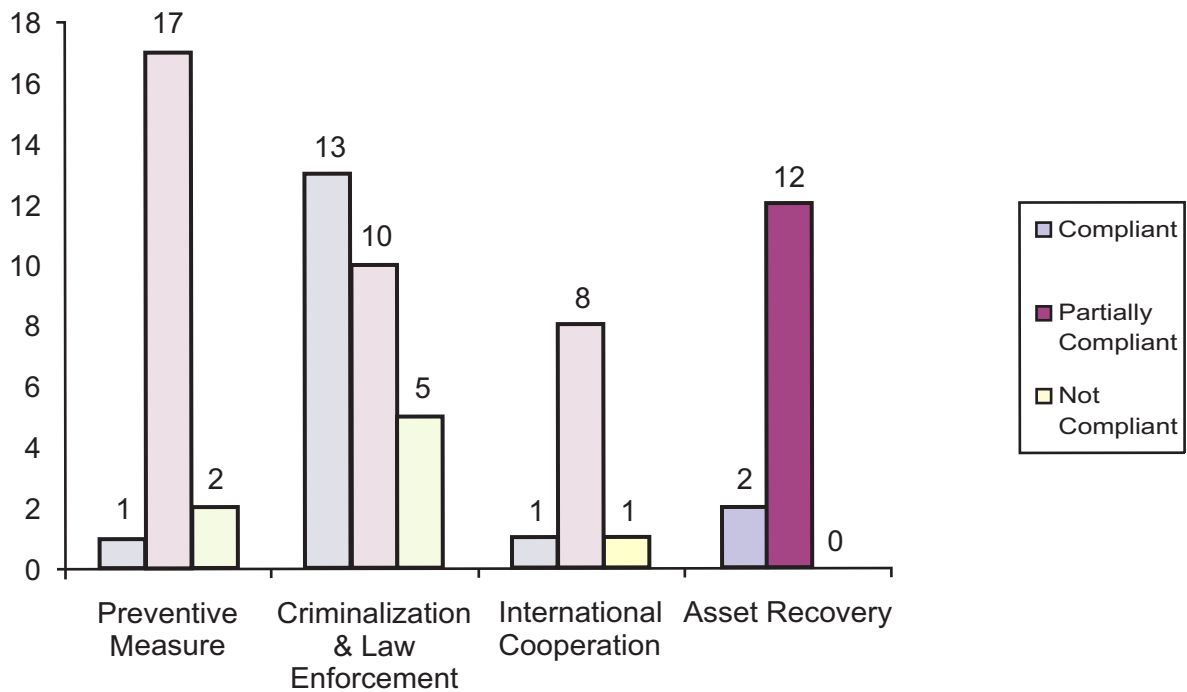
Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Recommendations	
			Legal Framework	Enforcement & Implementation		Gaps
<p>Financial Intelligence Unit</p> <p>Article 58: UNCAC AUCPCC and ECOWAS Protocol have no similar provisions</p>	<p>Establishment of a Financial Intelligence Unit (FIU)</p> <p>For combating transfer of proceeds of corruption and aiding in recovery of proceeds of corruption.</p> <p>For receiving, analyzing and disseminating reports of suspicious transactions to competent authorities.</p>	<p>The Nigerian Financial Intelligence Unit [NFIU] is established as an independent unit in the EFCC.</p>	<p>S 56 of The EFCC Act and Sections 1-12 of the Money Laundering (Prohibition) Act 2011.</p>	<p>The system is compliant. The FIU has been established and fully functional for over three years.</p>	<p>In practice the decision to subjugate the FIU to the EFCC one of the many agencies it is serving locally, may require revisiting as it has made it subject to other challenges of interagency coordination in Nigeria.</p>	<p>There is need for a more detailed and aggressive monitoring of compliance to reporting obligations by Banks, designated financial and Designated Non Financial Institutions particularly professional practices.</p> <p>The Financial Intelligence Unit needs to be independent of the EFCC and be in a better position to serve all other agencies equally.</p>

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Recommendations	
			Legal Framework	Enforcement & Implementation		
Bilateral and Multi-lateral Agreements Article 59 UNCAC Article 19 AUCPCC Article 15: ECOWAS Protocol	Bilateral or multilateral agreements between States to enhance International Cooperation	The Ministry of Justice The EFCC The NFIU	Section 6 EFCC Act	The provision in the EFCC Act complies with the conventions and protocol to the extent that it provides a window of opportunity the principal governmental agency tackling corruption to collaborate with similar national and international bodies.	Gaps	Need for Nigeria to conclude as many bilateral and multilateral treaties as possible to facilitate implementation of this provision.

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Recommendations
			Legal Framework	Enforcement & Implementation	
Article 60 AUNCAC Article 18 AUCPCC Article 15 (2)ECOWAS Protocol(not completely similar)	Requirement for training and technical assistance to prevent and combat corruption	The EFCC has a training school and the ICPC is in the process of constructing its own training school.	The EFCC Act and the ICPC Act	Key anti-corruption agencies benefit from Technical Assistance and also have structured programs for staff training and capacity building.	Gaps

Topics and relevant UNCAC, AUCPCC, and ECOWAS PROTOCOL provision(s)	Key indicators	National framework	Analysis		Recommendations
			Legal Framework	Enforcement & Implementation	
<p>Collection , exchange and analysis of information on corruption Article 61 UNCAC Article 18(3) AUCPCC ECOWAS Protocol has no similar provision but Article 15 (2) appears to be relevant.</p>	<p>Monitoring policies and practices, along with evaluating their effectiveness and efficiency, co-operation among States in conducting and exchanging studies and researches on how to combat corruption and related offences and to exchange expertise relating to preventing and combating corruption and related offences.</p>	<p>TUGAR has recently been established to fill this gap</p>	<p>The ICPC Act, The EFCC Act</p>	<p>Enforcement & Implementation</p>	<p>Need to strengthen the capacity of TUGAR to enhance its monitoring, evaluation and data coordination role.</p>
				Gaps	

**CHART SHOWING NIGERIA IS LEVEL OF COMPLIANCE WITH CHAPTER (V)
(ASSET RECOVERY)**



PIE CHART SHOWING LEVELS OF COMPLIANCE TO INTERNATIONAL ANTI-CORRUPTION CONVENTIONS IN THE AREA OF PREVENTIVE MEASURES, CRIMINALIZATION AND LAW ENFORCEMENT, INTERNATIONAL CO-OPERATION AND ASSET RECOVERY

