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Implementing the Integrated Review in Nigeria: the Imperative of Fixing Nigeria's Illicit Financial Flows by Reviewing UK Laws and Practices in Financial and Professional Institutions.

Introduction

The vision outlined in the Integrated Review and subsequent Foreign Commonwealth and Development Office priorities for Official Development Assistance involves significant investment. Specifically: It is therefore important to consider the emerging opportunities for aid and investment in Nigeria? How should, the FCDO encourage investment in multinational, Small and Medium-sized Enterprises?

The UK's historic links with Nigeria poses certain challenges that must be kept in view when considering the future partnership between the two countries?

This submission considers and evaluates the challenges which the FCDO must take account of and mitigate specifically in the area of illicit financial flows between Nigeria and the UK.

The argument is that UK government must establish mechanisms to combat IFF in order to support trade and private sector development in Nigeria and stimulate investment. The UK must, therefore reform aspects of its trade policies and practices in order to fulfil its anticorruption and transparency commitments within its investment law and practice.

This submission argues that there is a problem of corruption affecting the bilateral trade of Nigerian and the UK particularly involving multinationals and politically exposed persons. Similar problems and issues are found in the history of UK trading relations with other developing countries.

Whereas the UK is seen as a very responsible member of the International community its record in the area of cooperation against IFF with countries like Nigeria is not robust. There are subsisting problems in the area of operation of trusts, bribery and corruption; malpractices among elite systems, money laundering and terrorist financing. The receding importance of EU trade rules and regulations and the Brexit phenomenon will present new challenges for the regulation of IFF between the two countries.

The UK's Warped Self Image on Corruption.

The predominant opinion in scholarly and journalistic writing is that corruption is endemic in places like Africa, the Middle East and parts of Asia. [1] Although there are western writers

[1] The aim of becoming rich quickly is perhaps rightly seen as the hallmark of many African politicians since political independence. Reasons adduced for this situation include the fact that political leadership in places like Africa is a precarious activity that forces candidates to feel obligated to secure their positions by distributing

who note the universality of the problem of corruption, the phenomenon is largely seen as a self-contained developing state issue.[2] In its extreme form the school of thought that blames the Southern countries for their problem with corruption and for the problems it creates in the international system take the view that Western states have very little or no problems with grand corruption and corruption in business. Typical of this school is the claim that the United Kingdom (UK) is widely seen by itself and others, as the model of non-corrupt industrial democracy. British politician Michael Portillo made a highly-publicised speech in 1994, contrasting British purity with the filth found elsewhere – not just in area of politics, but also in terms of business practices and educational qualifications. Although there were muted voices of dissent there was a general echoing and endorsement of the sentiments.[3] The erstwhile British Prime Minister David Cameron in the notorious statement at the 2015 London Anti-Corruption Summit championed a more provocative endorsement of the idea that corruption is a foreign mischief by characterizing Afghanistan and Nigeria as "fantastically corrupt countries".[4] The Nigerian President resisted what should have been a natural urge to ask for an apology but insisted quixotically that all his government wants is for the UK to return the phenomenal amounts of Nigerian assets that have illegally found home in the UK in various ways.[5]

The truth is that the UK has a massive problem of corruption like all modern human societies. Nigeria's former Petroleum Resources Minister, Diezani Alison-Madueke, wanted on many significant corruption accusations has for at least half a decade holed up in the UK and resisted attempts to have herself returned to Nigeria despite repeated official requests.[6]

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patronage and favours and in various ways reward followers, divert rivals, co-opt opponents and appease warring factions. Ian Senior, *Corruption – The World's Big C* (Westminster: Profile Books Ltd, 2006) 19; Robert Williams, *Political Corruption in Africa* (Dartmouth Publishing Company, 1991) 28, 102.

[2] See, John T Noonan, Jr, *Bribes* (MacMillan Publishing Company, 1984) 702.

[3] Andrew Adonis, 'The UK: Civic Virtue Put To The Test' in Donatella Porta, Meny Yves, *Democracy and Corruption in Europe* (Pinter, 1997) 103. The cash for questions and parliamentary expenses scandals, however, reveal a different story. It is notable that corrupt classes everywhere typically produce technicalities by which they try to justify essentially corrupt activities.

[4] Geoffrey Swenson, "Afghanistan Corruption No Gaffe" The Hague Institute for Global Justice13 May 2016 available at http://www.thehagueinstituteforglobaljustice.org/latest-insights/latest-insights/commentary/afghanistan-corruption-no-gaffe/; Imosemi, Adekunbi, Is Nigeria Truly a 'Fantastically Corrupt Nation'? Probing the Domestic Legal Framework and Instigating the United Nations Legal Paradigm to the Rescue (December 28, 2017). International Journal of Innovative Legal & Political Studies, Volume 5, Issue 4, p. 30; R. Doorenspleet, *Democracy and Corruption. In: Rethinking the Value of Democracy. The Theories, Concepts and Practices of Democracy*. (Cham Palgrave Macmillan, 2019).

[5] Peace Ireju Amannah and Josephine Osatohanmwen Adeyeye, "Public perception of media reportage of the anti-corruption crusade of President Muhammadu Buhari", Vol 12 *African Research Review* No 3 (2018) p. 9; Adam Withnall, "David Cameron corruption comments: Nigerian President 'won't demand apology - just return of Nigerian assets' 'What do I need an apology for? I need something tangible'" *Independent* Wednesday 11 May 2016.

[6] BBC News, 'Former Thai PM flees to the UK', *BBC News* (online), 11 August 2008, <http://news.bbc.co.uk/1/hi/world/asia-pacific/7553028.stm>. There were allegations of abuse of power related to purchase of state land by his wife; abuse of power linked to government lottery scheme; abuse of power related to state loan to Burma alleged to have benefited family business; concealing assets; tax evasion. Members of Thaksin's family such as Pojaman Shinawatra and her brother were in fact jailed for three years; Alfred Olufemi, "Diezani, wanted for massive corruption, laments decay in societal values in Nigeria, *Premium Times,* August 10, 2020 available at https://www.premiumtimesng.com/news/top-news/407846-diezani-wanted-for-massive-corruption-laments-decay-in-societal-values-in-nigeria.html accessed 18 November 2020; Sahara reporters, "Pressurise UK to Release Diezani for Trial, Magu Urges Nigerians", Sahara Reporters New York 25, May 2020 available at http://saharareporters.com/2020/05/25/pressurise-uk-release-diezani-trial-magu-urges-

Aspects of the Theory of Deliberate Exploitation of IFF as an instrument of Enrichment and control over the Global South.

Postcolonial Strategies of domination through financial entrapment.

The demise of the British Empire brought Britain's commercial interests across the globe into jeopardy.[7] The apparent challenge for succeeding governments in the country was how to retain as much imperial advantages as possible without being obvious about it. The role of the UK was to continue draining out countries like Nigeria with as little detection as possible. However, the hands of the UK in draining Nigeria can indeed be seen be seen by peeling back the slim veneer that shields much of the mucky business out of sight. First, we have to consider the account of insiders that there is a groupthink that runs island havens, which actually originates 'in bigger global power networks led by Britain'.[8] Accounts of such strategies include orchestrating capital flight, shifting capital out, grand tax evasion, "the really nasty stuff".[9]

It needs be said that London was not alone in this and other areas of western influence were in on the actions that have effectively been draining the newer states like Nigeria.[10] The view is also that the success of this plan by a few professional classes has succeeded in entrapping the ex-colonies such as Nigeria in a peculiar metropole-satellite relationship by which both legitimate and illegitimate financial capital flows to the service of the UK economy.

There is a view that, "[t]he size and complexity of the UK financial sector mean it is more exposed to criminality than financial sectors in many other countries, including abuse enabled by professional enablers…"[11] It is however, the case that the deliberate policy attitude of the UK jurisdiction to lend itself to criminal use cannot be so easily explained away.

Historically Ignoble Role of the City of London:

The City of London is a financial district (a city within a city, a stated within a state) which is run by City of London Corporation. London is literarily a law onto itself when it comes to its ability to regulate financial rules. London's ability to attract capital from across the world with ruthless efficiency and very little care as to its sources is also a notorious fact in international business and financial law as well as international political relations. It is therefore, not surprising that in countries like the UK there is a certain 'marked lack of curiosity' of bank supervisors and regulators coupled with reckless acts of traders still afflict their banking industry today.[12]

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nigerians accessed on 18 November 2020.

[7] B. R. Tomlinson "The contraction of England: National decline and the loss of empire", 11 *The Journal of Imperial and Commonwealth History*, (1982) 1; WM. Roger Louis & Ronald Robinson "The imperialism of decolonization", 22 *The Journal of Imperial and Commonwealth History* 3, (1994) 462.

[8] Shaxson op.cit., p. 182.

[9] John Christenssen, former Jersey economic adviser who turned dissident quoted in Shaxson ibid p. 183.

[10] Ibid.

[11] HM Treasury and Home Office, "UK national risk assessment of money laundering and terrorist financing" (London: OGL, 2015) p. 4. Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/468210/UK_NRA_October_2015_final_web.pdf accessed 05/04/2020.

[12] Pp. 15 and 16.

It became clear that the City of London is the place to go to engage in business that was not allowed elsewhere. Senior Bankers did not have to worry greatly about the consequences of their actions. It will be hard to get the authorities to admit to this but this is perhaps why there are more banks in London than in any other financial centre. Central parts of the attraction include the light touch regulation of financial businesses in the UK and the rarity of bankers in the UK receiving custodial sentences.

Political Will and Undulating Practise of UK Cooperation against IFF.

The UK is seen as a very responsible member of the International community. The UK has endeavoured to keep its image clean through a number of varied strategies such as international diplomacy, active domestic legislative development and enthusiastic engagement in international law making. It therefore appears that the UK is keen to address inwards and outward flows of IFF. In other words, there is a formal appearance of political will to combat bribery, money laundering and all aspects of corruption. Yet there is a widespread impression of poor performance by the UK in this vital area. Despite official denials the UK continues to be seen as one of the major IFF receiving states that does not maintain an appropriate balance between protecting the collective rights of peoples in looted countries against protecting the property rights of its own nationals. Such states have legislation that certainly provide for the seizure and return of assets. However, the legislation (including constitutional provisions) provide protections for property rights, which courts are very reluctant to override through freezing orders. Freezing and forfeiture orders are often viewed by courts as 'draconian measures'. Hence the common requirement that there should be a prospect of proceedings being bought within strict time limits.

For the UK in particular as an IFF prone developing state, the law and practice of asset forfeiture, freezing and seizure needs much more clarity. [13] The activation of these important legal devices by foreign states should be much more user friendly. Taking into account the vociferous complaints of the Nigerian government, experts in the field and civil society on these particular issues, it is arguable that the UK laws and practices in the areas of asset freezing and seizures is in need of further development. Presently the regime is untidy, complex and arguably not yet in full compliance with the spirit of the best practices recommended by the FATF.[14] Nigerian experts are of the view that asset freezing in response to foreign requests in the UK does not normally happen and that cooperation will remain rare because it is the Bank of England's policy to exercise reluctance in freezing funds in order not to affect the confidence of depositors in the City of London.[15]

[13]A freezing injunction is an interim order which prohibits a party from disposing of or otherwise dealing with its assets. Freezing (formerly 'Mareva') injunctions; and search and seizure (formerly 'Anton Piller') orders are discretionary and therefore may be refused if, in all the circumstances of the case, the court considers it inappropriate to grant relief. The comments of Field J in *USA v Abacha & Others* [2014] EWCA Civ 1291.and other case law suggest that where there are allegations of international fraud, English courts may in recent decades have become more willing to assist a foreign claimant whose claim lacks a territorial connection to England and Wales.

[14] The general view expressed in academic literature and the interviews conducted in the course of our research with Nigerian officials is that the UK has not been as forthcoming in actual practice when a state like Nigeria makes requests for significant coercive actions such as arrests, seizures and asset recovery. Questionnaires and interviews are held on file by the authors.

[15] Note the justifications suggested in this regard in the exchanges between Lord Bassam of Brighton and Lord Lawson of Blaby, House of Lords in the *Lords Hansard* (13 December 2000) <http://www.parliament.thestationery-office.co.uk/pa/ld200001/ldhansrd/vo001213/text/01213-02.htm#01213-02_head0> accessed on 20-02-2020.

This is however, not to say that the UK has not shown significant commitment towards international anticorruption law and cooperative arrangements. Since 2006, the UK's Department for International Development (DFID) has assisted specialist police units in some developing countries in tracing, seizing, and returning the fruits of grand corruption to victim states. The UK has cooperated in some complex investigations with African states in relation to foreign bribery and has provided technical assistance to tax authorities and helped in combatting tax evasion. There are also groundbreaking developments such as introduction of 'Unexplained Wealth Orders' which now has essentially established grounds allowing assets to be frozen on suspicion of corruption and the new laws on Beneficial Ownership registers. There are new remarkable powers introduced by the Criminal Finances Act 2017 (CFA) such as the Account Freezing Orders (AFOs) [16] which are now being used successfully against persons with a foreign connection.[17] AFOs generally prohibit the withdrawal or payment from an account maintained with a bank or building society, by each person by or for whom such account is *operated*, to which the order applies (s303Z1(3)(a)).The very first AFOs were used to seize criminal funds in the first few months of 2019.[18]

There is therefore, enough reason to believe that with the necessary political will in place and with the pace of developments in anticorruption legislation, the UK may within this decade be brought even closer to the FATF best practices commensurate with its standing in the international system . It has however, been correctly noted that UK authorities have taken inordinate long periods between the availability of progressive legislation with smart provisions like the AFOs and the UWO and the time they actually put those powers to use. As well as the frequency of occasions they are applied[19]

The manifest litany of legal troubles the former Delta State Governor, James Ibori faced and his failure to evade justice in the UK is indicative of the UKs commitment to cooperation against international money laundering and grand corruption. James Ibori was arrested in Dubai on behalf of the Nigerian government and the UK immediately started processes to have him extradited to London to face many serious criminal allegations. On 17 October 2010, he lost the battle against his extradition to United Kingdom as a Dubai court ruled that

[16] Section 16 of the CFA (2017) amended Part 5 of the Proceeds of Crime Act 2002 (POCA) by adding sections 303Z1-303Z19 (Chapter 3B of POCA). These sections contain the relevant provisions for applying for AFOs and, crucially, the powers of enforcement agencies to subsequently apply to forfeit monies held in accounts subject to an AFO.

[17] Forfeiture orders were granted in favour of the NCA at City of London Magistrates Court on 7 February 2019 against three HSBC bank accounts operated by the son of a family member of an imprisoned high-level foreign public official. The judge was satisfied that, on the balance of probabilities, the money in the accounts was derived from criminal conduct. **I**n March 2019, the SFO secured a Forfeiture Order of £1.5 million against a convicted fraudster. The account with the relevant funds in it had also been subject to an AFO. The subject fled the UK for Pakistan in the mid-2000s.

[18] The Act received royal assent on 27 April 2017. The purpose of the CFA found in its explanatory notes is to: make the legislative changes necessary to give law enforcement agencies and partners, new capabilities and powers to recover the proceeds of crime, and to tackle money laundering, corruption and terrorist financing.

[19] Neil Blundell and Max Hobbs, "Everybody, freeze! Account freezing orders under the Proceeds of Crime Act" available at https://www.macfarlanes.com/what-we-think/in-depth/2019/everybody-freeze-account-freezing-orders-under-the-proceeds-of-crime-act/ accessed on 23 Nov 2020.

he had a *prima facie* case to answer in the UK. The court therefore, ruled that Ibori be extradited to the United Kingdom to face charges of money laundering, credit card fraud and official theft. Judge Rivlin sitting at the Southwark Crown Court in London presided over a seven-count charge of money-laundering preferred against Ibori's wife, the former Delta State first lady and Mr Gohil, Ibori's UK-based lawyer. The direction of events and the eventual results could have been predicted in the results of a previous trial and successful conviction by the Southwark Court against Ms Udoamaka Onuigbo, who was found guilty on a three-count charge of money laundering.[20] The Ibori trials are indeed classic in the way they establish the interconnectedness of crimes of corruption and IFF. A host of criminal counts were sustained in various courts and in more than one jurisdiction. Furthermore, the Ibori crimes show that significant crimes of corruption would typically involve a number of persons in different jurisdictions who facilitate the fraudulent processes. Notably such persons are usually in close relationship to the main actor and they often share deep loyalties. Very importantly, a coterie of professional enablers will also be found in the receiving state. This is why a focus on collaborators and enablers (including enabling professions) is not only of academic interest but is particularly germane in relation to tracking Nigerian money laundering activities. This is also an area where the UK has to display more political will. As the discussion below reveals there is still much more to do by the UK to discipline its professional workforce in the accountancy, legal and property management professions.

It is very germane to point out that political will in UK practice is accentuated by a coincidence of trust between two governments and their heads of states. It appears that much of the cooperation between the UK and Nigeria in the 2000s was down to special relationship of trust between the governments of Tony Blair in the UK and President Olusegun Obasanjo of Nigeria.

Another aspect of political will which seems to be absent is the will to follow-up UK nationals (persons, corporations and organisations), with prosecution and appropriate sanctions where they are involved in Nigeria based corruption. Thus, although there is evidence of the UK's willingness to go after Africans there is perhaps not a commensurate willingness to pursue their UK institutional enablers or bribers. For instance, very little has been done to prosecute the managers of DfID's wholly owned private equity fund that invested in a fund which invested in Notore, Intercontental Bank and other money laundering fronts belonging to the notorious and convicted James Ibori. Other areas of inexplicable inaction is the inability of British prosecutors to maintain a viable case against JP Morgan Chase and Shell over the infamous OPL 245 scandal.[21] The reality is that the UK has shown immense political will– but it just happens to be divided between its legal obligations to Nigeria and that of maintaining the UK's role as lucrative money laundering facilitator.

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[20] Estelle Shirbon, 'UK convicts two women over £14 million stolen in Nigeria' *Reuters* (UK edition), 2 June 2010,
<http://uk.reuters.com/article/idUKTRE65127F20100602> accessed on 20-02-2020; Akin Oyedele, 'Another Ibori Associate Indicted in London' *The Punch* (Nigeria), 3 June 2010,
<http://www.punchng.com/Articl.aspx?theartic=Art201006033151382>; BBC News, 'Nigeria official's $35m refrozen', *BBC News* (online), 9 October 2007 <http://news.bbc.co.uk/2/hi/africa/7035427.stm.>;
Lanre Adewole and Sylvester Idowu, 'Dubai Court Orders Ibori's Extradition to UK: As EFCC, NSA Meet Over', *Tribune* (online), 18 October 2010 <http://www.tribune.com.ng/index.php/front-page-news/12239-dubai-court-orders-iboris-extradition-to-uk-as-efcc-nsa-meet-over-him>. accessed on 20-02-2020.

[21] For further details on UK government involvement in Ibori money laundering fronts, see the written evidence submitted by The Corner House and Dotun Oloko to the UK Parliament available at http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/international-development-committee/dfids-programme-in-nigeria/written/28121.pdf accessed on 24 Nov. 2020.

The Exploitation and Use of Trusts

A special place must be reserved in this discussion for the exploitation of the mechanism of trusts - especially offshore jurisdictions trusts. The trust system lies at the core of the Britain's business secrecy model. While Switzerland runs perhaps the most sophisticated secrecy jurisdiction, Britain has put the trust model to the most profitable use and has cornered a phenomenal share of the financial market using widespread practice of the trust model. Indeed trusts are the main block of Anglo-Saxon secrecy model and are used to form the basis upon which offshore structures are created. Trusts can 'shroud assets in cast-iron secrecy' [22]and are correctly described as follows:

Even though knowledge about the Panama Papers has revealed a lot of corruption in places like Nigeria, the job of anyone chasing illicit and stolen funds has been made near impossible because illicit funds are protected through the device of trusts.

Unconscionable bargains based on a conspiracy of Elite systems

As explained above UK offshore centres have particularly facilitated the ruthless looting of Nigeria by its own elites particularly in the area of storage of unexplained wealth derived from grand corruption. The Panama papers exposed the disguised lucrative assets owned by the wife of the erstwhile President of the Nigerian Senate, in contravention of the country's Code of Conduct Bureau (CCB), as well as required by Section 11 of the Fifth Schedule of the Constitution of the Federal Republic of Nigeria is one such clear instance of the ignoble role of tax havens. Similarly James Ibori, a former governor of Delta State in Nigeria reportedly working through a Swiss asset management firm, Clamorgan S.A. in Geneva, established limited liability companies and foundations in secret offshore tax havens to hide some of the funds he had looted from Nigeria prior to his imprisonment in the UK on moneylandering charges.[23] Things are further complicated by the manner in which for long the UK has blocked efforts to provide greater transparency in tax havens. The UK's many denials and highly effective image laundering exercise notwithstanding, crooks, corrupt elites and rogue corporations have systematically used the UK's offshore centres to hide their wealth. The only desirable future is a qualitative and genuine adherence to the envisaged practice of open publicly accessible register of the beneficial ownership of trusts of all kinds of ownership (to be discussed below). Beneficial ownership registers can however be easily circumvented if the wrongdoer brings someone else who is paid to disguise as the real owner. Many deals are discussed and agreed in London but they are registered offshore for tax and transparency and regulatory purposes. The truth is that the City of London has shaped the way in which overseas territories have developed as tax havens.

The web of offshore tax and secrecy jurisdictions is the way that the UK elites and multinational corporations conduct their affairs in concert with local collaborators. Through a well-oiled system of revolving door corruption and with the active participation of relevant

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[22] Shaxson, 2011, p. 42.

[23] Ehi Esoimeme, "Wealth Management, Tax Evasion and Money Laundering: The Panama Papers Case Study" *Law Digest* Issue 11 Autumn 2016; Samuel Ogundipe, "#PanamaPapers uncovers how Ibori the thief organised massive stealing of Delta funds", *Premium Times* 4 April 2016 available at https://www.premiumtimesng.com/news/headlines/201265-panamapapers-uncovers-how-ibori-the-thief-organised-massive-stealing-of-delta-funds.html accessed on 24 Nov 2020.

professional groupings, the UK's orchestration of secrecy and complexity in finance and government is used to obscure corruption in public office both at home and abroad.

Prem Sikka -a British Emeritus Professor of Accounting noted alarmingly

> Just like the Mafia have penetrated the state, accountancy firms have also penetrated the state. The head of anti-avoidance in the UK tax authority is from one of these firms. The newly appointed chairman of HMRC is a partner of KPMG. Their partners have penetrated the state. They are running the treasury.[24]

Former insignificant outposts of the Empire became the basis for a spider's web of offshore secrecy jurisdictions that captured wealth from across the globe and funnelled it to the City of London. Today 25% of international finance is conducted in British territory. Almost half of the world's secrecy jurisdictions are under the British protection. Up to half of offshore wealth may be hidden in Britain's offshore havens. In a remarkable conclusion a writer surmises that Nigerians would see what Nigerian criminals do in the UK as a mirror image of how British companies and citizens have behaved in Nigeria, in colonial times and since.[25]

FATF Assessment reports and several other studies have been traditionally lenient on the UKs image. The 2007 Report for instance stated among others that:

> The UK is not considered to have a significant problem with domestic corruption. …As a key international financial centre, the UK is at risk of being abused as a destination or channel for the proceeds of corruption perpetrated by foreign public figures overseas, as indicated by for example the high-profile case of the late Nigerian general Sani Abacha who moved stolen funds through the UK financial system in the 1990s.

Again, the latest FATF Assessment of 2018 made conclusions which if true would have made a study such as the one we are writing here redundant as the problem we address would have dissipated.There are, however, more critical reports on record such as the OECD's report on the UK's compliance with the OECD Convention approved in March 2005 (the "Phase 2 report). It noted that in general "there had been no significant progress in implementation of the conclusions under the Phase 1bis examination". That report raised many concerns about the UK's level of implementation of the OECD Convention. The OECD Working Group on Bribery discussed with disapproval the discontinuation by the United Kingdom of a major foreign bribery investigation concerning BAE SYSTEMS plc and the Al Yamamah defence contract with the government of Saudi Arabia. The Working Group had "serious concerns as to whether the decision was consistent with the OECD Anti-Bribery Convention.[26]

UK companies (Unilever, Shell, PZ Cussons, British Airways, Diageo/Guinness, etc.), are among the longest running international businesses in Nigeria. The UK is usually in the top five of Nigeria's trade partners. The UK significantly is seen as the largest source of capital inflows into Nigeria – including investment from the City of London.[27] It is even predicted

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[24] Oswald and Christensen op.cit.,
[25] Michael Peel, Nigeria – Related Financial Crime and Its Links with Britain (Chatham House, 2006) p. 48.
[26] p. 15.
[27] Foreign & Commonwealth Office and Paul Thomas Arkwright, "The UK-Nigeria relationship is one of strong partnership" 3 November 2017; Speech available at https://www.gov.uk/government/speeches/the-uk-nigeria-relationship-is-one-of-strong-partnership accessed 05/04/2020.

that ties between the UK and Nigeria will grow stronger and not weaker well into the next century.[28]

Aspects of the Legal Regime against Bribery and Political Corruption in context of TBML.

Aspects of The Serious Fraud Office's work on foreign bribery.

It is unfortunate that many British multinationals' operations in Nigeria may have systematically incorporated bribery and corruption practices as part of their routine way of doing business in Nigeria. Bribery, however, also features prominently in IFF losses connected to commercial activities, which accounts for 65 per cent of IFFs. In other words, bribery oils the machinery of TBML, market abuse, conflicts of interests, regulatory abuse and tax evasion.

In 2017, the SFO opened an investigation into the activities of KBR, Inc's United Kingdom subsidiaries for suspected offences of bribery and corruption. This investigation is related to the SFO's ongoing investigation into the activities of Unaoil.[29] In February 2019, an investigation was opened into the activities of Petrofac PLC and its employees and agents for suspected bribery, corruption and money laundering. David Lufkin, a British national, and previously Global Head of Sales for Petrofac International Limited, pleaded guilty at Westminster Magistrates' Court to eleven counts of bribery, contrary to sections 1(1) and 1(2) of the Bribery Act 2010. The allegations and offences concern the making of corrupt offers in order to influence the award of contracts to Petrofac worth about USD $730 million in Iraq and over USD $3.5 billion in Saudi Arabia. The SFO's investigations in this case are ongoing and David Lufkin has not been sentenced as at date of publishing this work.[30]

A spectacular failure to secure convictions on a case relating particularly to Nigeria occurred when three employees of Swift Technical Solutions Ltd, Bharat Sodha, Nidhi Vyas and Trevor Bruce, were found not guilty of corruption offences in relation to the tax affairs of a Nigerian subsidiary on 2 June 2015. An investigation by the SFO in conjunction with the City of London Police into allegations that employees or agents of Swift had paid bribes to tax officials in order to avoid, reduce or delay paying tax on behalf of workers placed by Swift. The charges related to payments allegedly made to agents of the Rivers State Board of Internal Revenue and the Lagos State Board of Internal Revenue, both in Nigeria. The payments were allegedly made in 2008 and 2009 and the value of the bribes approximately £180,000. However, all three employees of Swift Technical Solutions Ltd, charged for the offences were found not guilty of corruption offences in relation to the tax affairs of a Nigerian subsidiary on 2 June 2015 at Southwark Crown Court. The case ended when the jury was unable to reach a verdict on one count against the third defendant and so a verdict of not guilty was entered. In further developments the prosecution then sought a *nolle prosequi* in respect of Paul Jacobs on grounds of ill health and this was granted by the Attorney General on 27 January 2015.[31]

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[28] Foreign & Commonwealth Office and Paul Thomas Arkwright, "Nigeria-UK relations to grow stronger in the next century" Speech available at
21 April 2017 https://www.gov.uk/government/speeches/nigeria-british-relations-the-next-100-years accessed 05/04/2020.

[29] KBR, Inc. is an engineering, procurement and construction company incorporated in the USA and listed on the New York Stock Exchange. SFO, KBR, Inc. available at https://www.sfo.gov.uk/cases/kbr-inc/ accessed on19 Sep 2020.

[30] SFO, "Petrofac PLC" available at https://www.sfo.gov.uk/cases/petrofac-plc/ accessed on19 Sep 2020. This investigation is related to the SFO's ongoing investigation into the activities of Unaoil.

A decade of the Bribery Act 2010: metaphor for motion without movement.

. The prevalence of the use of bribery by British firms in Nigeria particularly is shown in the statement that:

> London is increasingly attacked for alleged hypocrisy in failing to keep its promises to crack down on British corruption in Africa. Privately, British business people admit corruption is still commonplace: one British executive working in the oil industry says his company routinely pays immigration officials a bribe worth between 20 and 30 per cent of the cost of expatriate resident permits.[32]

From the beginning of the era of independence, bribery in business become a weapon of mass intervention in the commercial and economic fortunes of African states. The reform of the law on bribery in the UK was ignored for decades while multinationals literally took African states to the cleaners.[33] Often the aim of the bribes is for regulators to allow oil companies to continue delaying adoption of cleaner technologies in hydrocarbon exploration. At the end of the day, the Nigerian government will be willing to allow oil companies put profit ahead of environmental concerns [34] This of course, led to massive oil spills in places like Ogoni land and continuous gas flaring, which to date continues to damage the environment by emiting toxic and climate-change inducing chemicals. Not only does flaring have a significant environmental impact on Nigeria and the world, but it also results in US 2.5 billion in lost revenue if the gas could be captured.[35]

The interferences with the original jurisprudence of the Bribery Act through arbitrary, shadowy behind the scenes 'guidance' issued by the MOJ and SFO has arguably allowed interference with the original intention of parliament. This is yet another example of the infusion of politics into the application of a very serious legislation, which has a real impact upon international relations. It is further demonstration of the opportunistic attitude of UK governments to exploit gaps in the attention levels of international observers and pressure groups. Then there are inordinate and perhaps deliberate delays in implementation of laws and standards which took too long to be introduced in the first place. Just because of a change of government in 2010, the Bribery Act was delayed a second time although scholars speculated "that this was due to pressures from the business sector".[36] Taking these things into consideration, it is actually easy to see how "the UK's late responses to its global

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[31] Swift Group, https://www.sfo.gov.uk/cases/swift-group/

[32] Peel op.cit., pp. V –VI.

[33] Other Western countries are also in on the act. United States citizen Jim Bob Brown was prosecuted (in the US court system) for bribing various Nigerian officials with $1.5 million dollars relating to natural gas industry contracts in Nigeria. See US Department of Justice, "Former Executive of Willbros Subsidiary Pleads Guilty to Conspiring to Bribe Foreign Officials in Nigeria and Ecuador available at www.justice.gov/opa/pr/2006/September/06_crm_621.html. 17 September 2020.

[34] Okeagu, Jonas E et al, "The Environment and Social Impact of Petroleum and Natural Gas Exploitation in Nigeria," Journal of Third World Studies, 2006: 200; Kennedy, Sam, Frontline/World: the Business of Bribes: Nigeria: the Hidden Cost of Corruption. April 24, 2009, Accessed 23 October, 2012. http://www.pbs.org/frontlineword/stories/bribe/2009/04/nigeria-the-hiddencost-of corruption.html accessed 18 September 2020.

[3535] Royar, Kenneth T. "Money Talks: Why Nigeria's Petroleum Industry Bill will Fail to End Gas Flaring", Defense Technical Information Center website available at https://apps.dtic.mil/sti/citations/ADA570336 accessed 17 Sept 2020 p. iii.

[36] Yeoh op.cit., p. 37

obligations…"[37] may be helping it to maintain significant economic gains through tolerance of money laundering and corruption. This is despite the fact that the country is still able to point at an incremental multiplicity of legislation and treaty obligations.

The Underwhelming Success of Section 6 of the Bribery Act 2010 through the cases.

The Bribery Act (2010) in practice has not proven to be the magic cure to bribery in domestic business and in the participation of British companies in international Business transactions that it was touted to be. To begin with, after almost a full decade of existence, the convictions recorded under the Act has been underwhelming despite the international reach of the 'Corporate Offence' under the Bribery Act. Even less impressive has been the efficacy of section 6, which is meant to be the most, dreaded area for the British business class.

A recent freedom of information request revealed that after a decade of the Bribery Act 2010 took effect in July 2011 there have been 99 convictions secured under the Act. The achievements of the Bribery Act falls far short of its actual potentials and they include:

- about two-thirds of the convictions related to charges under section 1 (- offence of bribing another person);
- about one-third of the convictions related to charges under section 2 (offence of receiving bribes); and
- two convictions related to charges under section 7 (the "failure of commercial organisations to prevent bribery"). [38]

The largest financial penalty for a company resulting from prosecution under the Act was in the 2015 judgment against the Sweett Group (discussed above) by the Serious Fraud Office. The penalty included a fine of £1.4m, a confiscation order of £850,000 and £95,000 in costs.[39]

Although the "failure to prevent" offence under section 7 had initially been viewed as a revolutionary tool for enforcement agencies in pursuing corporate entities for bribery offences its use after a full decade has been minimal and was used only twice. Indeed the approach provided in this area by the Act has been mimicked in other legislation such as the Criminal Finances Act 2017, which relates to the facilitation of tax evasion. However, the fact that only two convictions have resulted under this section in the space of a decade, out of a total of 99 convictions, suggests that the these hopes and expectations of the drafters of the Bribery Act in this area may have been misplaced. It is remarkable that one of those two convictions was in fact secured against a dormant company.

However, it has been suggested that the real value of section 7 may lie in its role as leverage for the authorities to agree deferred prosecution agreements (DPAs), rather than securing actual convictions.[40]

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[37] Ibid. p. 37.

[38] Neill Blundell and James Reid, Bribery Act 2010: 10 years in numbers, Lexology Website available at available at https://www.lexology.com/library/detail.aspx?g=77d2787f-7390-4e45-ad58-504fb07c22c3 accessed on 27 Nov 2020.

[39] Laura Teodorescu, "Five years on –what impact has the Bribery Act had on construction?" *Construction Manager*, June 2016 p. 38.

[40] Blundell and Reid op.cit.

The Bribery Act only came into force in 2011 and it can take very many years to conclude complex cases. In other words we may arguably only now be beginning to see the relevant case flow. The problem with this sympathetic view is that it asks countries like Nigeria to continue to condone the lack of commitment to international bribery through deliberate or negligent institutional incapacities of the UK (discussed later 5.4.8). In essence the Bribery Act 2010 has thus, not attained its full potentials despite its usefulness. The reasons for this are many and may include inadequate incapacity as well as a deficit of political will.

THE MONEY LAUNDRERING LAW AND PRACTICE OF THE UK –PROBLEMS AND PROSPECTS.

Just as the UK parades a plethora of laws against bribery and corruption the regime against money laundering is also eclectic and complex.[41] There is an interesting perspective showing a triangulation of the problem of money laundering and corruption between the UK and Nigeria countries directly involved in this study. British criminals also often transfer the proceeds of their crimes to other countries. In between 2010 and 2015, criminal assets with an estimated value of over £600 million have been identified to have been moved overseas by convicted offenders with confiscation orders made against them.[42] Clearly, the total amounts involved in this direction of corrupt fund traffic would be much more given the justice gap in criminal matters. It is quite interesting to note in the following table that UAE and Nigeria are top and bottom respectively of the list of countries to which identified UK criminal assets were laundered when ranked by estimated value.[43]

Table 11: Top 10 countries to which identified UK criminal assets were laundered, ranked by estimated value, 2010/11-2014/15

3 Data **Rank**	**Country**
1	United Arab Emirates
2	Pakistan
3	Switzerland
4	Spain
5	Liechtenstein
6	Hong Kong
7	Cyprus
8	British Virgin Islands
9	Isle of Man
10	Nigeria

Source: HM Treasury and Home Office, "UK national risk assessment of money laundering and terrorist financing" (London: OGL, 2015)

[41] In 1997 at the time the *OECD Convention* was adopted, the UK already had anticorruption law spread across a number of sources - common law and a number of statutes. These include the *Public Bodies Corrupt Act 1889*, the Prevention of Corruption Act 1906 and the *Prevention of Corruption Act 1916.* The UK law covered both active and passive bribery (*Public Bodies Corrupt Act 1889*), and applied to both private and public sector bribery (*Prevention of Corruption Act 1906*). The definition of public body in the 1889 Act was widened by the *Prevention of Corruption Act 1916* so that local and public authorities of all descriptions could be included.

[42] Data from the Joint Asset Recovery Databased (JARD), 2010/11 – 2014/15, as at May 2015.

[43] HM Treasury and Home Office op. cit., p. 8.

Impact of EU Law and the potential damage of Brexit.

It will appear from our discussions that Britain leads the world in money laundering and tax avoidance. This not only invites more criminal operators towards the jurisdiction but it means that honest actors are disadvantaged. In very many respects, the EU law has acted as a restraining influence of the worst impulses of UK institutions to habour sharp business and investment practices that may aid IFF. The EU Anti-tax avoidance Directive was given birth to. This lifestyle is not only damaging to all countries but wrecks particular havoc on developing states. Brexit will probably put the UK out of the Tax avoidance Directive. By so doing, Brexit is likely to give a new lease of life to those who desire a tax-free lifestyle.

Experts have correctly warned that such FTZs pose a glaring danger to transparency in business. The EU itself has reconsidered and has in fact adopted a new stance of over the existence of FTZs. The European Commissioner in charge of Justice, Consumers and Gender Equality Věra Jourová recently labelled them as a "new emerging threat" in the world of financial crime.[44] An influential EU report notes: "free ports, and investor citizenship and residence schemes ('golden passports/visas')" are new sectors posing risks of money laundering and terrorist financing.[45]

Obtaining Consent to Prosecute.

The general view of the authors is that the system of obtaining consent for bringing prosecution for corruption crimes in the UK is still open to criticism to the extent that it allows too much ambit for political considerations and interferences. Under UK law, certain corruption prosecutions are subject to consent from the Attorney General.[46] This feature of the legislation has been correctly criticised by the influential Group of States against Corruption (GRECO). According to the Group's evaluation, a review by a law officer such as the Attorney General could easily become a tool of political control.[47] These fears have indeed being borne true by the record of controversies surrounding the various BAE scandals and the controversial withdrawal of the investigation of the Saudi Arabia investigation by the Serious Fraud Office (SFO) with the resultant damaging effect this has caused to the image of the UK in political and legal terms.[48] As a result of these criticisms there have been some

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[44] Cited in ; Daniel Neale, "Free Trade Zones: a Pandora's Box for Illicit Money", Global Financial Integrity (GFI) website, October 7, 2019, available at https://gfintegrity.org/free-trade-zones-a-pandoras-box-for-illicit-money/ accessed on 21 August 2020; Jennifer Rankin, "Free ports favoured by Boris Johnson are money-laundering threat – EU" *The Guardian* Wed 24 Jul 2019; Daniel Neale, "Free Trade Zones: a Pandora's Box for Illicit Money", Global Financial Integrity (GFI) website October 7, 2019 available at https://gfintegrity.org/free-trade-zones-a-pandoras-box-for-illicit-money/ accessed on 21 August 2020.

[45] European Commission Brussels, 23.1.2019 COM(2019) 12 final Report From The Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions Investor Citizenship and Residence Schemes in the European Union pp. 1, 2, 6. Available at https://ec.europa.eu/info/sites/info/files/com_2019_12_final_report.pdf accessed on 21 August 2020.

[46] Section 1 of the Law Officers Act 1997 enables the Solicitor General to grant consent as well as the Attorney General.

[47] Formed by the Council of Europe in 1998 – Resolution 98(7) of 4 May 1998. The UK is an active member of GRECO. See, Review of Implementation of the Convention and 1997 Recommendation Phase I Bis Report at <http://www.oecd.org> accessed on 20-02-2020.

[48] As a writer put it the incidence has become one of the 'admittedly unpalatable yet unavoidable aspects of international trade'. The '…never-ending story of the alleged BAE Systems' corruption scandal over the "AI

changes to legislation and the issue of consent. However, some offences of bribery, for example under the Public Bodies Corruption Act 1889 and the Prevention of Corruption Act 1906, may still not be prosecuted without the Attorney General's consent.[49]

In bringing prosecutions under the Bribery Act 2010, there is a requirement of obtaining the personal consent of the DPP or Director SFO. Offences of bribery which occur after 1 July 2011, which are prosecuted under the Bribery Act 2010, require the consent of the Director of the SFO.[50] In essence, the Director of Public Prosecutions (DPP) or the Director of the Serious Fraud Office (DSFO) must give personal consent to a prosecution under the Act, as set out in section 10 of the Act. A personal consent under this system is to be distinguished from usual DPP consents. This is principally because this particular discretion must be approved personally by the DPP and cannot be delegated to a Crown Prosecutor.

The Directors make their decisions in accordance with the Code for Crown Prosecutors ("The Code").[51] Perhaps the possibility of larger role and involvement of the team of committed and zealous prosecutors would help in enshrining more transparent processes in bringing cases before the courts. In this way, political interference will reduce and transparency will increase in quite concrete terms. This will also bring UK practise in line with its European partners especially those within the EU.

The UK Mutual Legal Assistance Treaty System.

The UK has a healthy number of MLATs. Suffice to note here that there is one between Nigeria and the UK that has actually been utilised many times by both states. In 2007 alone, the UK requested to have its officers question high-ranking Nigerian officials and business leaders. These include: the Chairman of Globacom, Chief Mike Adenuga, with respect to his business transactions and the former governor of Delta State, James Ibori, the request for whom was turned down for procedural reasons.[52] The *Nigeria–UK Mutual Legal Assistance Treaty* has indeed become the benchmark for such bilateral cooperation between Nigeria and other Western states. In the face of a major financial bribery scandal involving huge sums given by Siemens to many Nigerian officials an erstwhile Nigerian President acknowledged to his German counterpart that, '[w]e need a Mutual Legal Assistance treaty similar to the

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Yamamah"' and the political fallout has been typified as close to 'sheer delirium'. Bonsignore, above n 13, 8-9. See also, ASIL, 'Brief Notes, US Launches Investigation of Large BAE Systems Contract with Saudi Arabia, Protests Dropping of UK Investigation' (2007) 101(3) *American Journal of International Law* 670 670-671; Elsa McLaren and Andrew Ellson, 'Saudi Arabia: Saudi "slush fund" Investigation Discontinued', *Times UK* (online) 14 December 2006 <http://www.timesonline.co.uk/tol/news/article754650.ece> accessed on 20-02-2020.

[49] The procedure for obtaining consent by the requisite authorities within the country include that upon agreement on strategy and policy and that it is appropriate to seek consent, applications would be addressed to the Deputy Director, Criminal Law, Attorney General's Office, 5-8 The Sanctuary, London SW1P 3JS consents@attorneygeneral.gov.uk. See SFO, "Consent" *SFO Operational Handbook* available at https://www.sfo.gov.uk/publications/guidance-policy-and-protocols/sfo-operational-handbook/consents/ accessed 05 Dec 2020

[50] Ibid. Prosecutions under the Bribery Act 2010 and for failure to prevent facilitation of overseas tax evasion contrary to s46 Criminal Finances Act 2017, will in all cases require the Director's personal consent (see s10(4) Bribery Act 2010 and s49(2) Criminal Finances Act 2017). If the Director is unavailable the consent may in such cases be given by a person designated in writing by the Director to exercise his function under s10 (s10 (5) Bribery Act 2010 and s49(4) Criminal Finances Act 2017).

[51] The Code for Crown Prosecutors 26 October 2018. Publication available at https://www.cps.gov.uk/publication/code-crown-prosecutors accessed on 20-02-2020.

[52] Funso Muraina, 'Nigeria: UK Wants to Quiz Adenuga, Says AG' *This Day* (online), 4 December 2007,<http://allafrica.com/stories/200712040005.html>. Accessed on 20-02-2020.

one we have with the United Kingdom because it serves as a deterrent to underhand dealings and corruption'.[53]

The network of MLAs between countries can have a multiplier effect on making the international system less welcoming of bribe givers, money launderers and other corrupt persons. International bribery and corruption investigations involving Nigeria or UK are often connected to the USA jurisdiction as well because of the rampant extraterritorial jurisdiction of the US under its FCPA.

UK national risk assessment of money laundering and terrorist financing.

The fact that the UK conducted its first money laundering and terrorist financing National Risk Assessment (NRA) in just 2015 is in many ways unsatisfactory given its history as a significant force in international finance as well as international commercial relations. The NRA conducted in 2015 found that, while in some cases individual agencies or supervisors have a good understanding of the risks in these areas, the collective understanding of law enforcement agencies, supervisors and the private sector is quite limited. Based on what we know, the risks in these areas appear to be lower relative to those posed by cash-based money laundering and 'high-end' money laundering through the financial and professional services sectors.

It is also notable that the Assessment found that the effectiveness of the supervisory regime in the UK is inconsistent. While there are supervisors that are highly effective in certain areas, there is certainly room for improvement across the board. Gaps in competence include understanding and applying a risk-based approach to supervision and in so doing providing a credible deterrent. In fact, the existence of a large number of professional body supervisors in some sectors may have produced a high level of inconsistencies of approach. For instance, the assessment concluded that requisite data sets are simply not shared between the requisite supervisors freely or frequently enough. This has produced some sectors where there are overlaps in supervision.

Incompetent professionals in the regulated sector.

The story of the problems in the UK regulatory sector is not complete unless account is taken of incompetent professionals in the regulatory sector. While the majority of those working in the regulated sector are not complicit in money laundering or terrorist financing, there are those who negligently aid the occurrence of money laundering. The role of the non-compliant or negligent professional in aiding illicit financial flows especially in money laundering cannot be overstated. Such staff have over the years caused significant harm, reputational damage and the lowering of standards in their profession. There is the need to address the inconsistencies in the supervisory requirements and arrangements the country has for its AML regime.[54]

Differentiated Regulatory Competence among Police Forces.

The different police forces in the UK exhibit differentiated attention span and indeed competence towards dealing with international money laundering. International money laundering operations has not been a priority for most local police forces (although the

[53] Official Website of the Office of Public Communications, 'President Yar'Adua Re assures of his Commitment to Combat Corruption', above n 105, 5.
[54] HM Treasury and Home Office op.cit., pp. 6-7.

metropolitan forces appear to provide a more effective response).[55] This has prompted the UK government since 2012 to invest in developing the capabilities of Regional Organised Crime Units (ROCUs).

Problems with the Suspicious Activity Reports Regime.

Suspicious Activity Reports (SARs) are a special reporting technique that are deployed to alert law enforcement to potential instances of money laundering or terrorist financing activities. They may be compiled by financial institutions, solicitors, estate agents and accountants among many others. SARs are a vital source of intelligence not only on economic crimes, but also in relation to a wide range of criminal activities. The SARs regime in the UK obliges entities in the regulated sector to report suspicions of money laundering or terrorist financing to the UKFIU. The UKFIU is of course, part of the Economic Crime Command in the NCA and in fact sits within the National Crime Agency (NCA). The system appears over utilised with over 470,000 SARs issued in 2018. [56] Under UK law a wide range of FIs and DNFBPs are required to report SARs. In practice the system has enabled law enforcement agencies to intervene and prevent suspicious transactions on very many occasions.[57]

Inadequate Infrastructure.

The 2016 government review also stated that both the banks and law enforcement agencies viewed the UKFIU's technical infrastructure and resources as "inadequate". Glaring infrastructural deficiencies have created shocking lapses and scandalous revelations have become all too often regular. Nigeria indeed sued for damages up to $875,740,003 against JP Morgan Chase (JPMC) for alleged breach of fiduciary duty and breach of trust in relation to JPMC's handling of the Escrow Accounts that were set up to receive funds arising from the OPL 245 deal. The Escrow Accounts were stated to be illegal under Nigerian law. The US banking giant JP Morgan claimed in court that the UK's anti-money laundering authorities in an unbelievable blunder gave them consent to transfer $875m to a convicted money-launderer.

Innovative Strategies to Stop the Flow.

We ought now to consider the main features of the UK's money laundering legislation and show its strengths and weaknesses with a view of arriving at recommendations for the future. It suffices to begin by noting that the requisite laws are largely comprised of legislation derived from the EU Third, Fourth and Fifth Money Laundering Directives.[58]

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[55] This is hardly surprising given that the skills of municipal police forces lie in investigating mundane crimes such as burglary, murder, etc. and not in complex financial dealings.

[56] The UK launched the NCA in 2013. The NCA chairs the multi-agency criminal finances threat group, which has the duty to generate a comprehensive response by law enforcement agencies to the threat posed by money laundering, including cash-based money laundering, non-cash money laundering and professional enablers. The NCA's National Intelligence Hub, is responsible for producing the authoritative national assessment of the threat posed by serious and organised crime. The Hub established a dedicated money laundering threat desk in 2014. National Crime Agency, *SARs Reporter Booklet* (London: NCA July 2019) available at https://nationalcrimeagency.gov.uk/who-we-are/publications/332-sars-reporter-booklet-july-2019/file accessed on 20-02-2020.

[57] HM Treasury and Home Office op. cit., p. 5.

[58] Tim Edmonds, "Money laundering law" Wednesday, February 14, 2018 https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN02592 accessed on 20-02-2020.

New Beneficial Ownership Regime.

Beneficial ownership rules in full operation properly, adequately and accurately documents the actual ownership of the person or persons who ultimately own or control an asset (for example, a property or a company) and benefit from it. While credence must be given to the UK for finally incorporating this important law into their financial system, it must be realised that this law took too long in coming into realisation. For a country so central to the international financial system, the UK took far too long to bring the beneficial ownership regime into reality. Each year of delay in the smooth set up and functioning of beneficial ownership register is an added benefit to those heavily involved in grand corruption, money laundering and other IFF activities. For countries like Nigeria, the absence or lack of access to beneficial ownership information in relation to the UK holds up investigations and allows the irrevocable dissipation of laundered funds.

Cogent criticisms of the system, however, exist and they include the so called 'lender loophole' and the trust exemption. The commencement of a robust beneficial ownership regime is of clear advantage to Nigeria among many other developing states given the many ongoing investigations that have been stalled for lack of evidence of ownership.

There is some solace in the provisions of EU law in the form of the Fifth Anti-Money Laundering Directive, which allows members of the public to be able to access trust data if they can demonstrate a legitimate interest. Thus, a journalist investigating corruption or money laundering in theory may be able to gain access through that route.[59] The effects of the EU directives may, however, evaporate in a post Brexit United Kingdom.

UK Legal Practitioners and enabling corruption.

Prior to now, there was recognition that legal practitioners can claim client confidentiality over a very wide scope of communications. This provided an unfortunate cover for unscrupulous legal practitioners to assist dodgy clients in hiding their wealth in the UK. Under the new legal regime, concerning beneficial ownership the legal privilege of confidentiality is lost where the communication is over a criminal or fraudulent purpose. In fact both LAP and litigation privilege may be lost if the communication in question was created for furthering criminal or fraudulent purposes or acts.[60] Mandating legal practitioners to make reports that feed the FIU of their countries will indeed do a long way in reducing the mischief that FIUs are created to cure.

Anatomy of Banking Regulation that ought to prevent Illicit Financial Flows into UK.

To provide a useful critique of the UK's banking regulations and its effects on AML/CTF regimes and to put in perspective, the complexities, slow and inordinate approach to reform, our research discussion will focus on at least the last decade.

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[59] Transposed into UK Law in the form of the Money Laundering and Terrorist Financing (Amendment) Regulations 2019.

[60] Andrew Smith, Ashley Pigott and Teresa Edwards, "UK: The Basics: Does Legal Professional Privilege Apply To All Communications with or Through a Solicitor?" 29 July 2019 https://www.mondaq.com/uk/CorporateCommercial-Law/830584/The-Basics-Does-Legal-Professional-Privilege-Apply-To-All-Communications-With-Or-Through-A-Solicitor accessed on 20-02-2020.

UK Banking Regulatory Authorities.

Just like in some other OECD countries, the failure of UK Banks to eradicate or reduce the inward flow of illicit financial funds is *prima facie* evidence of negligence of existing regulatory bodies. There are indeed sophisticated institutions in place with clear-cut jurisdiction and supervisory authority. They, however, quite inexplicably and miserably fail despite existing adequate but arguably not sufficient guidance to perform some of the very basic controls, required by both international and domestic laws and professional/ethical standards. There is no obfuscating the fact that the collation of massive amounts of funds into UK banks is due to systematic failures of British banks under the watch of their supervisory bodies. A lot of money laundering would be preventable if banking institutions adhere to the existing requirements to identify their clients – including their place of residence – and to verify all necessary information.[61] Arguably therefore, UK banks generally have also been spectacularly failing in their prescribed requirement to identify the "beneficial owners" (natural person(s)) who ultimately control corporate entities, partnerships or trusts, accounts and investments.

Enhanced CDD measures are normally required in certain higher risk cases, such as when dealing with a politically exposed person (PEP). A huge cause of failure in identification of PEPs comes from the fact that many banks rely on self-reporting. They simply ask persons at the time of opening an account whether or not they are a PEP or closely related to one, without any subsequent verification. These identified failures in the UK system run afoul of the FATF Recommendations. It is therefore, argued that the UK does fall short of international standards in the prevention of international money laundering. This is despite the self-image portrayed in much of patriotic national literature on the topic. On the whole, despite the potentials of a sophisticated regulatory oversight provided by the BoE, PRA and the FCA, the ability of the British banking system to enhance the transparency and availability of beneficial ownership information of legal persons and arrangements from countries like Nigeria has been underwhelming and inadequate.

Issue of ethics in banking and finance.

It is our view that the failure of the UK banking industry to prevent wide scale problems in the financial system of the country is a failure of ethical standards among practitioners especially those in the highest leadership positions. There are many examples of such failures indicated in our recently published study but emphasis may be made of the allegations of how JP Morgan branch went ahead to transfer $875m to a convicted money launderer even though the bankers perhaps ought to have known the ex-minister involved was an ex-convict and is linked to the beneficiary firm in a Nigeria oilfield deal.[62] Other high profile ethical failures include the involvement of UK bankers in FX rigging that elicited heavy EU fines.[63]

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[61] This usually means requesting a government-issued identification and some proof of residence, such as a utility bill or other official documents. Some banks will also check with credit reference agencies

[62] JP Morgan has always and continues to deny any wrongdoing. The Bank admitted it knew it was paying the money to a company associated with Etete and that he had a money laundering conviction, however, it says it complied fully with UK anti-money laundering through a series of Suspicious Activity Reports. Opeoluwani Akintayo, "Malabu scandal: 4 Nigerian officials named as authorising $875m payment to Etete", *Sweet Crude Reports* April 14, 2018 available at https://sweetcrudereports.com/malabu-scandal-4-nigerian-officials-named-as-authorising-875m-payment-to-etete/ accessed on 05 12 2020. For Etete's convictions see *Public Prosecutor's Office v. Etete Granier-Deferre* 11th division/1 Case No. 0226992507 Judgment dated November 7, 2007 no.1. See also *Public Prosecutor's Office v. Dan Etete and Richard Granier-Deferre*, Judgment, Paris Court of

Dictates of the FATF Recommendations to the UK Banks and Financial Institutions.

Given the guidance provided to the UK under the FATF Recommendations the entire gamut of UK FIs and DNFBPs are expected to be managed and run by competent authorities and practitioners including banking supervisors. Accordingly, the level of failure to detect and prevent wide scale leaking of Nigeria's funds into the UK is virtually inexcusable. The situation is especially inexplicable given that the UK is widely regarded as a world class, financial and developed legal jurisdiction. UK Banks and their operatives are expected to identify, assess and understand the ML/TF risks to which they are exposed in various forms of transactions with Nigeria. Looking at our analysis, they are collectively failing in respect of these obligations.

Results and Implications of the 2018 UK-FATF Peer Review process.

In 2018, the Financial Action Task Force (FATF) completed its last assessment of the implementation of anti-money laundering and counter-terrorist financing standards in the United Kingdom of Great Britain and Northern Ireland (UK).

Despite all the issues and shortcomings rising from the last FATF study on the UK highlighted below, when the FATF released its evaluation of the UK's anti-money laundering and counter terrorist financing regime in December 2018, it gave the country almost full marks.

As the Global Witness persuasively laments on this issue:

> "The FATF review glosses over fundamental failings. The information in the UK register is accepted at face value without any verification, and the government has not given Companies House the mandate or resource to investigate suspicious entries

The deliberate underdevelopment of the UKFIU extends to starving it from available resources (human and IT) and analytical capability. This is a serious concern considering similar issues were raised over many of these issues a decade earlier in the UK's previous FATF mutual evaluation. For these reasons, the quality of financial intelligence available to investigators is called into question. Serious deficiencies were identified with respect to the system of SAR's. To begin with there is a well acknowledged underreporting of suspicious transactions by higher risk sectors such as trust and company service providers (TCSPs), lawyers, and accountants. The conclusion reached by the 2018 assessment is that "the SAR regime needs a significant overhaul which would improve the financial intelligence available to the competent authorities". Indeed precisely, because a significant number of high-quality SARs are received by the UK authorities, it is unsatisfactory that such systemic failures are tolerated. The implications of leaving things as they are must be obvious to both the pertinent regulators and the UK government. The fact that yet again the matter is flagged by international assessors shows the need for immediate action and genuine changes.

Appeal, March 2009 File no. 07/11397 Judgment no. 1 Paris Court Of Appeals 9th Division, Section A.

[63] Faull 2018 op.cit., Foo Yun Chee, Kirstin Ridley op.cit.

Deficiencies Identified by Our Study.

Our study stands on the shoulder of other prestigious, influential and in-depth studies, from these the gamut of issues that may be highlighted here include

- Deficiencies in Governance and Risk Management.
- Deficiencies in Customer due diligence (CDD) checks and in the role of the Money Laundering Reporting Officer (MLRO).
- Deficiencies in the handling of higher risk situations, enhanced due diligence (EDD) and enhanced ongoing monitoring systems.
- Weak Cooperation and lack of coordination with law enforcement Agencies.
- Irregular Customer payments and deficiencies in countering the finance of terrorism.

Fast-tracking action and policy imperatives.

The depletion of Nigeria's wealth into the United Kingdom's coffers through a series of carefully maintained strategies, connections, actions and omissions to act, is *prima facie* a neo colonialist strategy. The original sin was colonialism against the peoples of Nigeria and other parts of the developing world followed by phenomenal resource extraction. The neocolonialist strategy is the exploitation of extraction through a web of offshore jurisdictions that account to the UK by sharing profit extracted through IFF. The development of large networks used to promote and exploit financial interests to the advantage of the UK is highly successful and is one of the reasons the UK is very wealthy country today whereas Nigeria is poor and its people live in penury.

Nigeria needs to institute an annual money laundering and terrorist financing National Risk Assessment (NRA). In conducting this assessment, the aim should be to identify, understand and assess the money laundering and terrorist financing risks faced by Nigeria in relation to high risk receiving states such as the UK and the UAE. In the course of events, the nature of these risks and the countries they affect would change.

It is arguably scandalous that for an exposed jurisdiction like the UK it is on record that only in December 2014 was high-end ML prioritised for law enforcement Agencies. This is another example of the ride it out as long as possible approach to anticorruption problems referred to above. Although there are ample legal instruments and a sophisticated legal regime to regulate the banking and financial sector in the UK, the principle of *res ipsa loquitor* (the facts speak for themselves) helps to lift the veil and show clearly that holistically viewed the regime is not fit for purpose. Thus, wherever one looks in the UK financial industry the story is the same and it is one of poor AML controls, risk assessment and failure of professional ethics and even personal standards. Changes are therefore, imperative and must be implemented. The UK needs to spend more to finance the training of the City of London Police, the Metropolitan Police and the Crown Prosecution Service among others in order to combat international corruption. The specific purpose of ramping up the training and education of the financial industry and its pertinent regulators is to strengthen the UK's capacity to investigate and prosecute the corruption that occurs between developed and developing countries and to return stolen assets.[64]

[64] Note previous programmes such as that under the International Corruption Group (ICG), which was set up at the end of 2006 to strengthen the UK's capacity to investigate money laundering and foreign bribery. See

Strategies for Combatting Trade based Money Laundering.

Grievous damage has been occasioned on the Nigerian state and its economy by multinationals through trade-based money laundering (TBML) and other IFF. At the nadir of this practice has been international oil companies that have made themselves adept at perverting the course of Nigeria's national life. It is particularly incumbent on the United Kingdom to press for changes in its multinationals operating in Nigeria to make positive change and end the era of economic and political mischief in their investment practice with the country. For instance, it has for long been known that the effective lobbying by oil companies is a large aspect of the stalled progress of the Petroleum Industry Bill (PIB) for nearly 20 years now because "the oil majors have been particularly vocal on potentially losing tax exemptions as a result of this law". Shell for instance claims that "the proposed PIB Joint Venture terms are not competitive when compared with other oil producing countries."[65]

Streamlining and improving methods for moving money around.

The way and manner in which the wealthy and resourceful from Nigeria have been able to move stupendous amounts of monies around the world has relied on a certain level of permissiveness by the recipient countries. The apparent laxities defy not only the normal rules of international finance but also those of national banking laws in all states concerned.

As aptly described by Mathew Page

> "Nigerian PEPs face few obstacles in transferring large quantities of cash to Dubai. Financial institutions in both Nigeria and the UAE do not appear to be reporting large or otherwise suspicious transactions by PEPs to national authorities. And when they do, the reports do not appear to be regularly investigated. Thus, Nigerian PEPs face few roadblocks or consequences for exfiltrating pilfered public funds out of Nigeria and investing them in Dubai property. Unless disincentives are put in place, such outflows will continue unchecked."[66]

This brings us to a conclusion that there may be in practice one set of rules and expectations for normal people and businesses on one hand and another for Nigeria's super wealthy and connected. This dichotomy of treatment is what has allowed the facts that led to very many scandals such as the Abacha, Alamasigyah, Ibori, Dariye and Dan Etete cases. Obtaining Consent to Prosecute. The UK Mutual Legal Assistance Treaty System.

Fontana, A. (2011), "Making development assistance work at home: DfID's approach to clamping down on international bribery and money laundering in the UK", U4 Practice Insight, No. 2011:5, U4 Anti-Corruption Resource Centre, Bergen, Norway, available at www.u4.no/publications/ making-development-assistance-work-at-home-dfid-s-approach-to-clamping-down-on-international-bribery-and-money-laundering-in-the-uk accessed 06/04/2020.

[65] Evans, Galkina, Marriot et,al. p. 16; Nigeria's PIB not competitive – Shell
on: November 19, 2012 "Nigeria's PIB not competitive – Shell", Sweet Crude Reports, 19, November 2012http://sweetcrudereports.com/2012/11/19/nigerias-pib-not-competitive-shell/

[66] Page op.cit., p. 25.

This submission recommends that there is a need for a UK- Nigeria National Risk Assessment of Money Laundering and Terrorist Financing. Changes that are imperative include addressing the perceived dearth of competence of professionals in regulated sector. This includes addressing the differentiated regulatory competence among Police Forces. In the banking sector there is a need to address problems with the Suspicious Activity Reports Regime and other areas of banking regulation that ought to prevent Illicit Financial Flows into UK. Recommendations are made to specifically target professional groups like UK Legal Practitioners, real estate practitioners and other Designated Non-Financial Businesses and Professions DNFBP to facilitate their training and reduce the risks of their facilitating corruption and IFF. Ethical training and introduction of improved code of ethics in several professional groups is recommended

Recommended Nigeria –UK strategies.

a. UK should rein in or better still put an effective stop to tax havens. The UK has to reduce drastically the formula and modus operandi of secrecy banking in many of these jurisdictions. Tax havens and secrecy jurisdictions are a tool for defrauding other peoples and nations and ought to be exposed for what they really are. The UK has to be sure that the country wants the increasingly visible negative record of these vassal states on the image of the UK. Although the shadiness and opaqueness of tax haven operations might have been largely unknown and anonymous in a previous century, the global community is increasingly educated and enlightened on their negative aspects. It is unedifying for the UK that its history is yet again in the 21st century linked to a system of mass exploitation just like it was in previous centuries with respect to slavery and colonialism. The UK's participation in the spread of misery around the world by playing a central role in IFF is indeed similar in many ways to its participation in colonialism and slave trade in previous centuries.
b. Both Nigeria and the UK should agree to a system whereby public procurement of contracts excludes companies that operate out of tax havens.
c. Both countries should share public registries of beneficial owners of companies, trusts and foundations.
d. NEITI should be strengthened but more importantly full transparency must be introduced to contractual arrangements of all sorts between companies and governments.
e. To further deter the illicit gold trade that sometimes ends up in the UK via Dubai, the UK could impose stricter measures on gold coming in from the UAE. They should also impose travel and financial sanctions on those Dubai-based businesses and individuals that facilitate illicit gold trade.[67]
f. Britain should introduce country-by-country reporting system for all of its multinational companies and should make it a requirement for all companies with multinational operations operating from or connected with Britain.
g. Introduce a sophisticated mechanism for automatic information exchange between both countries and indeed other countries.
h. The SFO and NCA are apparently suffering from a fundamental lack of capacity to take up and successfully conclude investigations concerning developing states. Thus,

[67] Shawn Blore And Marcena Hunter, "Dubai's Problematic Gold Trade" op.cit., p. 47.

the UK must invest more into its SFO to increase its capacity to conduct more detailed investigation into Nigeria related fraud and bribery cases.

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