

Fixing Illicit
Financial Flows
between Nigeria,
the United Kingdom
and the United
Arab Emirates

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By

Gbenga Oduntan and Iris Bousiakou

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ABBREVIATIONS

AED Arab Emirati Dirham (UAE currency).

AFFA Advance Fee Fraud and other Related Offences Act

AML / CTF Anti-money laundering / counter-terrorist

AML Anti-Money Laundering.

AML/CFT Anti-Money Laundering/Combating the Financing of Terrorism.

ASGM Artisanal and Small-Scale Gold Mining.

ASPs Ancillary Service Providers

AU African Union

BNI Bearer Negotiable Instruments

BO Beneficial owner

C4ADS Center for Advanced Defense Studies

CAC Corporate Affairs Commission

CAMS Certified Anti-Money Laundering Specialist

CB/CBUAE Central Bank of UAE

CbCr Country-by-Country reporting

CBIConvention on Business Integrity in Nigeria

CBN Central Bank of Nigeria

CBUAE Central Bank of the UAE

CCO Chief Compliance Officer

CDD Customer due diligence

CDD Customer due diligence

CFT Combating Financing of Terrorism

CFZ Commercial Free Zone

CGRS Corporate Governance Rating System.

CPF Counter Proliferation Financing

CPS Crown Prosecution Service

CRD Capital Requirements Directive

CRS Common Reporting Standard

DFSA Dubai Financial Services Authority

DIAC Dubai International Academic City

DMCC Dubai Multi Commodities Centre's

DNFBP. Designated Non-Financial Businesses and Professions.

DNFI Designated Non-Financial Institutions

DOJ Department of Justice.

DPA Deferred Prosecution Agreements

DPR Department of Petroleum Resources

DTA Double Taxation Agreement

EEA European Economic Area

EFCC Economic and Financial Crimes Commission

ESR Economic Substance Regulations

EU European Union

FATCA Foreign Account Tax Compliance Act

FATF Financial Action Task force

FCA Federal Customs Authority

FCA Financial Conduct Authority

FCT Federal Capital Territory

FFP Federal Public Prosecution

FFZ Financial Free Zone

FI Financial institution

FIRS Federal Inland Revenue Service

FIU Financial Intelligence Unit

FMOJ Federal Ministry of Justice

FTZ Free Trade Zone.

GIABA Inter-Governmental Action Group against Money Laundering in West Africa

GPML Global Programme against Money-Laundering

HEDA Human Environmental Development Agenda

ICC International Criminal Court

IFF international Financial Flows.

ITS Information Technology Service

JAFZA Jebel Ali Free zone

JMLSG Joint Money Laundering Steering Group

KYC Know Your Customer

LEAs Law Enforcement Agencies

LFN Laws of the Federation of Nigeria

MDGs Millennium Development Goals during the target period

MLA Mutual Legal Assistance

MLRO Money Laundering Reporting Officer

MOI Ministry of the Interior

MoU Memorandum of Understanding.

NBA Nigerian Bar Association

NCA National Crime Agency

NCS Nigerian Custom Service

NEPZA Nigeria Export Processing Zones Authority

NFIU Nigerian Financial Intelligence Unit

NGRI Natural Resource Governance Institute.

NNPC Nigerian National Petroleum Corporation

NRA National Risk Assessment

NSE Nigeria Stock Exchange

OCCRP Organised Crime and Corruption Reporting Project

OPL Oil Prospecting Licence

PCA Prevention of Corruption Act 1906.

PEPs Politically exposed persons

PIC Private Investment Companies

POCA Proceeds of Crime Act 2002

RERA Real Estate Regulatory Agency (Dubai)

ROCU Regional Organised Crime Units

SARs Suspicious activity reports

SCUML Special Control Unit against Money Laundering

SDGs Sustainable Development Goals.

SEC Securities and Exchange Commission

SFO Serious Fraud Office

SOCPA Serious Organised Crime and Police Act 2005

SRA Solicitors Regulation Authority

STR Suspicious Transaction Report

SWIFT Society for Worldwide Interbank Financial

TBML Trade-based Money Laundering

TCSPs Trust and company service providers

TIN Tax Identification Number

UKFIU UK Financial Intelligence Unit

UNCAC United Nations Covention Against Corruption

UNCTAD United Nations Conference on Trade and Development

UNECA United Nations Economic Commission for Africa

UNTOC United Nations Convention Against Transnational Organized Crime

UWOs Unexplained Wealth Orders.

WARN World Anticorruption Research Network

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Arms Trade Treaty 2014.

Bribery Act 2010 .

CBN Anti-Money Laundering and Combating the Financing of Terrorism (Administrative Sanctions) Regulations, 2018.

Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1999.

Council of Europe Criminal Law Convention on Corruption (1999)

Criminal Law Act 1977.

Declaration on Democracy, Political, Economic and Corporate Governance (2002).

ERGP Economic Recovery and Growth Plan

¹ *African Union Convention on Preventing and Combating Corruption*, adopted on 11 July 2003 (entered into force 5 August 2006) (*'AU Convention'*). This instrument has received impressively high acceptance among African states signed by 41 out of 53 African Union Member States, of which only 24 have actually ratified it. Ratifying states as at 2009 are: Algeria, Burkina Faso, Burundi, Comoros, Congo, Ethiopia, Ghana, Kenya, Libya, Lesotho, Liberia, Madagascar, Mali, Mozambique, Namibia, Nigeria, Niger, Rwanda, South Africa, Senegal, Tanzania, Uganda, Zambia, and, Zimbabwe.

EU Funds Transfers Regulation (2015).

European Convention of Human Rights (1950)

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Money Laundering, Terrorist financing and Transfer of Funds (Information on the Payer) Regulations 2017.

Nigeria–UK Mutual Legal Assistance Treaty.

Palermo Convention the United Nations Convention against Transnational Organized Crime 2000.

Prevention of Corruption Act 1906.

Proceeds of Crime (Money Laundering) Act in Canada.

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Second Money Laundering Directive, adopted in December 2001.

Terrorism Act 2000, UK Public General Acts 2000 c. 11.

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The Arab Anti-Corruption Convention (the Arab Convention) on the 21 December 2010.

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Third Money Laundering Directive.

Treaty between the United Kingdom of Great Britain and Northern Ireland and the United Arab Emirates on Mutual Legal Assistance in Criminal Matters REFERENCE TS 5/2008 Cm 7383.

UK Criminal Justice Act 1991. The Drug Trafficking Act 1994

UK Money Laundering Regulations 1993.

UN Drug Convention

United Nations Convention against Corruption (UNCAC)

United Nations Convention against Transnational Organized Crime (UNTOC);²

United Nations Convention on Corruption (UNCAC)³

Vienna Convention on the Law of Treaties 1969.

² UNTS 2225 (p.209).

³ *United Nations Convention against Corruption*, opened for signature 31 October 2003, UNTS, (entered into force 14 December 2005) ('*UNCAC*'). See, <<http://www.un.org>> accessed 05/04/2020.

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ABSTRACT

This book is focused on the phenomenon of illicit financial flows (IFF) generally and how it takes place in the commercial activities and business relations between Nigeria and two of its principal development partners – the United Kingdom (UK) and the United Arab Emirate (UAE). The book discussed types and variants of IFF that occur between these states and focused on identified shortcomings in national laws and the rules governing professional bodies and financial institutions in the UAE and the UK. It then considers practical measures that can be taken in short, medium and long terms to diminish identified gaps in the law and practice against IFF, including illicit trading activities, bribery, corruption and money laundering. The arguments focused on major drivers of IFF in Nigeria as a developing state and recommends effective measures for tackling IFF nationally and internationally as between the countries under review.

CHAPTER 1

PROBLEM OF THE STUDY

1.0 Introduction and Rationale of the Study

The UAE and the UK are key financial jurisdictions with global economic and political relevance. Both states are very much connected to the economies of African states, and they are indeed regarded as development partners to many African countries including Nigeria. There is a rich history of business connections between Nigeria and these target states, and they share extensive, contemporary political and diplomatic relationships. Thus, the UAE and the UK offer excellent case studies in understanding the problem of illicit financial flows (IFF) from developing countries like Nigeria to economically more successful jurisdictions. The banking and financial institutions as well as Designated Non-Financial Businesses and Professions (DNFBP) in the UAE and the UK share extensive connections to similar institutions in Nigeria and these connections are arguably of central importance to Nigeria's economic and financial fortunes. This is very much the case in terms of Nigeria's consumer behaviour in foreign banking, financial services, property investment and other international business transactions.¹ Big businesses in Nigeria and indeed the Nigerian wealthy elites

¹ Financial institutions in this work means any natural or legal person who conducts as a business one or series more of the following activities or operations for or on behalf of customers: 1. Acceptance of deposits and other repayable funds from the public.⁵⁹ 2. Lending.⁶⁰ 3. Financial leasing.⁶¹ 4. Money or value transfer services.⁶² 5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money). 6. Financial guarantees and commitments. 7. Trading in: (a) money market instruments (cheques, bills, certificates of deposit, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity future trading. 8. Participation in securities issues and the provision of financial services related to such issues. 9. Individual and collective portfolio management. 10. Safekeeping and administration of cash or liquid securities on behalf of other persons. 11. Otherwise investing, administering or managing funds or money on behalf of other persons. 12. Underwriting and placement of life insurance and other investment related insurance. 13.

invest heavily in financial deals in both countries. This includes systematic and prolific participation in the acquisition of real property, corporate investments, shares ownership and transactions relating to tourism, entertainment, education and health services. Regrettably, vast amounts of illicit wealth including corporate profits disappear into both the UAE and the UK never to meaningfully return to the benefit of Nigeria. Although these sorts of abusive international relationships involving illicit flows occur between Nigeria and several other countries, the UK and UAE are the focus of the study because of the scale and socio-political relevance of the problem in those jurisdictions.. Asset recovery sometimes appears to be incredibly challenging despite the provisions of international laws. This is all despite the impressive reputation maintained and enjoyed by both the UK and the UAE in the international system. The apparently cordial set of bilateral relationships maintained between Nigeria and the countries under review as well as inter se between the three states has also not delivered the expected levels of cooperation against IFFs. These leading jurisdictions and Nigeria itself have an ever-increasing array of sophisticated domestic legal instruments. In addition, all three states are parties to some of the most impressive anticorruption and transparency treaties, conventions, standards and other soft laws.

The problem of IFF is a global phenomenon that particularly compounds and depletes the economic fortunes of developing states across the world in ways that ought to command the attention of law and development scholars. This problem is arguably under-discussed in multidisciplinary analysis. This study however, concentrates on the manifestation of the IFF challenge in deliberately narrow confines. It focuses on a socio economic and critical legal analysis of the international money laundering and other IFF problems based on the triangular transactions linking Nigeria, the United Kingdom and the United Arab Emirates.

In essence, the problem of the study underlying this book is to unearth some of the major deficiencies in the general financial regulations of the three countries concerned. The book examines the major deficiencies in the general financial regulations of all three countries reviewed in this study. It aims to indicate the shortcomings in both domestic and international laws particularly in the regulation of financial institutions and DNFBPs of these countries. This will require investigation, evaluation and critique of existing anticorruption and money laundering legislation as well as the deficiencies and challenges of these laws and their practice over the last many decades.

The indications are that IFFs are inextricably part of the usual legal financial flows. This essentially means that licit and illicit financial flows are

in many ways indistinguishable, particularly in certain sectors of international trade and international business transactions. The crucial task before investigators and researchers in identifying illicit finances would be to link them with individuals, organisations (particularly corporate entities) especially where they have committed predicate crimes. The solutions are bound not to be simple or easy to implement. Effectively eliminating illicit financial flows from the international system will require more than the routine deployment of legal instruments such as Suspicious Activity Reports (SARs) by financial and professional institutions.

The prevention of IFF obviously requires better enforcement surrounding predicate crimes in individual high-risk jurisdictions. For the three countries focused on by this study, it is nearly impossible to efficiently scrutinize trilateral flows without the creation of a ‘Big Brother’ style institution, which would operate audit-based systems that can potentially examine all transactions and demand corroborated proof of their provenance. Such a creation would however, be unwieldy, impractical if not impossible to agree upon. Yet nothing must be considered off limits in finding effective solutions to the problems of this study. The damaging effects to the economies and to the brand image of all the countries concerned are far too significant to be ignored. The central problem of this study, therefore, and its major opportunity of contribution to existing literature lies in its comprehensive identification and treatment of legitimate solutions to one of the most important global challenges of the 21st Century.

This book is an original research effort that builds on the authors’ findings from a 2019 McArthur Foundation-funded study examining the comparative effects of illicit financial flows on Nigeria. It also draws on the recommendations of the Presidential Advisory Committee Against Corruption (PACAC) International Conference, held in 2018 under the theme “Combating Illicit Financial Flows and Enhancing Asset Recovery for Sustainable Development.”

The book specifically aims at the following:

- Assess the general regime of anti-corruption laws and regulations applicable to the UK and UAE. This will entail a look into history, cases, investigations, practice, performance and the user friendliness of applicable laws in relation to Nigeria and its effort to stem IFF and to engage in asset recovery operations.
- Critique the compatibility and efficacy of Anti Money Laundering (AML) obligations (under the requisite national laws, of the UK and the UAE and their application by members of specific professions and sectors that are most exposed to the IFF problem. Examples will

be drawn from those professions that are most exposed to IFF by virtue of handling the most lucrative property, commercial and economic deals -(i) the bankers, (ii) real estate agents and (iii) the legal profession. We will specifically assess the tensions, inconsistencies and gaps that exist between the professional ethics and standards of these professions and the requisite international regime of AML. The book will also consider the gap between laws and the ‘real world’ practice in these sectors. The book will thus, explore the compatibility of AML disclosure requirements and client confidentiality or legal privilege in the pertinent countries. The book will seek to expose the differences and shortcomings in the regulation and practice of AML requirements within the professional sectors under review. The study will take stock of the target jurisdictions’ compliance practice and case law. We will highlight and propose appropriate guidelines and changes that can clarify effective AML reporting practices.

- Identify the steps that are required to succeed in abating further depletion of Nigeria’s resources by way of IFF.

1.1 Significance of Study

The significance and usefulness of this study to Nigeria in the 21st Century are many, but we will identify a few below: First, it will identify and focus on those industries and professionals that top the bill in attracting and enabling money laundering, grand corruption and illicit business in relation to Nigeria. Second, it will expose the various techniques through which, perhaps the top quintile of Nigeria’s illicit financial flows disappears into the black hole of institutions and investments in the UK and the UAE among others. Thirdly, the study will identify areas requiring reform within the anti-corruption and business regulatory frameworks of both the UK and the UAE, considering their roles as Nigeria’s development partners and the alignment with their own national interests.

Fourthly, the study will elaborate upon some of the shortcomings in international anti-IFF, policies and practice as well as the imperative changes needed in international laws and international relations to slow down, prevent and stop further flows.

The study and its findings will however, be of global significance for other subsets of developing country focused analysis. This is because both the UK and the UAE are important members of the global international financial system in the 21st Century and they are relevant to the economic relations of many other developing states and regional economic communities. The European Commission’s 2013 impact assessment of the EU anti-