

**AFRICA DEVELOPMENT  
AFRIQUE ET DÉVELOPPEMENT  
Vol. XLIV, No. 4, 2019**

**Quarterly Journal of the Council for the  
Development of Social Science Research in Africa**

**Revue trimestrielle du Conseil pour le développement  
de la recherche en sciences sociales en Afrique**

Special Issue on  
**Money, Security and Democratic Governance in Africa (IV)**

Numéro spécial sur  
**Argent, sécurité et gouvernance démocratique en Afrique (IV)**

This volume of *Africa Development* is dedicated to  
Naffet Keita (1968–2018)  
who passed away before the editing was completed.

Ce volume *d'Afrique et développement* est dédié à  
Naffet Keita (1968–2018)  
décédé avant la fin de son édition.

CODESRIA would like to express its gratitude to the Swedish International Development Cooperation Agency (SIDA), the Carnegie Corporation of New York (CCNY), Andrew Mellon Foundation, Oumou Dilly Foundation, Ford Foundation and the Government of Senegal for supporting its research, training and publication programmes.

Le CODESRIA exprime sa profonde gratitude à la Swedish International Development Corporation Agency (SIDA), à la Carnegie Corporation de New York (CCNY), à la fondation Andrew Mellon, à la fondation Oumou Dilly, à la fondation Ford ainsi qu'au Gouvernement du Sénégal pour le soutien apporté aux programmes de recherche, de formation et de publication du Conseil.

*Africa Development* is a quarterly bilingual journal of CODESRIA. It is a social science journal whose major focus is on issues which are central to the development of society. Its principal objective is to provide a forum for the exchange of ideas among African scholars from a variety of intellectual persuasions and various disciplines. The journal also encourages other contributors working on Africa or those undertaking comparative analysis of the developing world issues.

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Editor-in-chief/Rédacteur en Chef

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**ISSN: 0850 3907**

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**Naffet Keita**  
**(1968–2018)**



## Editorial

# Money, Security and Democratic Governance in Africa (IV)

This special edition of *Africa Development* is published posthumously. It is dedicated to the memory of Naffet Keita who wrote the introductory article, of the first issue on this thematic (*Africa Development*, Volume XLIV, No. 1, 2019), but passed away before the editorial process was completed. He died in a traffic accident on Monday 22<sup>nd</sup> October 2018, together with his friend and colleague Ambroise Dakouo, on their way to participate in a seminar on security in Ségou, Mali. For a period of over twenty years, Naffet continued to research, write about and provide policy advice on questions related to conflict and radicalisation in Mali, distinguishing himself as one of the few grounded experts on security issues in Africa. Some of his most important publications include a book on the subject of the Tuareg Rebellion, another on slavery in Mali, a research on unemployment and development in underdeveloped countries, and more recently, a book on telephony and mobility in Mali. Amongst many things, he argues that radicalisation is the product of a failure by governments and political systems to provide the basic needs of society. In other words, insecurity arises out of a rupture of the social contract.

This edition of *Africa Development* is the fourth of four thematic issues bringing together a selection of contributions from the international conference on “Money, Security and Democratic Governance in Africa”, organised by CODESRIA and the United Nations Office for West Africa (UNOWAS) in Bamako, Mali, from 19 and 20 October 2017. The meeting followed a series of policy dialogues between the two organisations and research communities on the continent, part of CODESRIA’s engagements in seeking empirically grounded answers to critical questions on security and governance in Africa. Naffet Keita was a resource person during the conference, delivering one of the keynotes.

Security, governance and money are intimately linked. Governance challenges are known to fuel insecurity which in turn undermines efforts at promoting good governance in many countries. Illicit financial flows have the tendency to subvert good governance and fuel insecurity. The illicit

proceeds of transnational organized crime, including drugs and human trafficking have become big contributors to governance challenges in Africa. Illicit funds have permeated, and compromised electoral and governance processes and structures in a number of countries. Furthermore, many groups are known to be using proceeds from various forms of trafficking to purchase arms and pay for operations. Difficulties in domestic resource mobilization undercut the ability of states and supra-state entities to provide adequate security. Countries and regional organizations often depend heavily on external funding for their operations, thereby raising new concerns.

New efforts to reinforce security agencies in response to insurgencies and terrorism also raise concerns over a resurgence of the state security paradigm after the rise of human security in the 1990s. This return to the primacy of force not only crowds out investments in other vital areas of service delivery, but also threatens much of the progress made in focusing on the links between governance and security.

Contributions provide responses to several pertinent questions: To what extent do illicit financial flows undermine democratic governance and security in Africa and what are the sources of the funds involved in these flows? What are the effective ways to curb the influence of illicit money on democratic governance and security in Africa? How are gender and age involved in the interactions of money, security and governance? How can social movements, especially those involving women and the youth, help curb the influence of illicit financial flows on democratic governance and security in Africa? How has investment in law enforcement agencies and security forces affected the capacity and interest of African states to deal with human development challenges? What are some of the deleterious 'side effects' of efforts to curb the influence of illicit flows on democratic governance and security in Africa?



## Éditorial

### **Argent, sécurité et gouvernance démocratique en Afrique (IV)**

Cette édition spéciale d'*Afrique et développement* est publiée à titre posthume. Elle est dédiée à la mémoire de Naffet Keita qui avait rédigé l'article d'introduction, de la première édition de ce numéro spéciale (*Afrique et développement*, Volume XLIV, No. 1, 2019) mais est décédé avant la fin du processus éditorial. Il est mort dans un accident de la route le lundi 22 octobre 2018, avec son ami et collègue Ambroise Dakouo, alors qu'ils allaient participer à un séminaire sur la sécurité à Ségou, au Mali. Pendant plus de vingt ans, Naffet a mené ses recherches, écrit et conseillé sur les questions de conflits et de radicalisation au Mali, se distinguant comme l'un des rares experts des questions de sécurité en Afrique. Parmi ses publications les plus importantes, citons un livre sur la rébellion touareg, un autre sur l'esclavage au Mali, une recherche sur le chômage et le développement dans les pays sous-développés et, plus récemment, un livre sur la téléphonie et la mobilité au Mali. Il a notamment fait valoir que la radicalisation est le produit d'un échec des gouvernements et des systèmes politiques à satisfaire les besoins fondamentaux de la société. Dans d'autres termes, l'insécurité découlant d'une rupture du contrat social.

Cette édition d'*Afrique et développement* est la quatrième de quatre parutions thématiques rassemblant une sélection de contributions de la conférence internationale sur « Argent, sécurité et gouvernance démocratique en Afrique », organisée les 19 et 20 octobre 2017 par le CODESRIA et le Bureau des Nations Unies pour l'Afrique de l'Ouest et le Sahel (UNOWAS) à Bamako, au Mali. Cette conférence fait suite à une série de discussions politiques entre les deux organisations et communautés de recherche, dans le cadre des engagements du CODESRIA dans la recherche de réponses empiriques à des questions cruciales sur la sécurité et la gouvernance en Afrique. Naffet Keita était personne ressource à cette conférence de 2017 et y a prononcé une allocution.

La sécurité, la gouvernance et l'argent sont intimement liés. Les problèmes de gouvernance sont connus pour exacerber l'insécurité, qui, à son tour, compromet les efforts de promotion de la bonne gouvernance.

Les flux financiers illicites subvertissent la bonne gouvernance et alimentent l'insécurité. Les produits illicites du crime organisé transnational, y compris le trafic de drogue et d'êtres humains, sont devenus des contributeurs majeurs aux problèmes de gouvernance en Afrique. Des fonds illicites ont infiltré et compromis les structures et processus électoraux et de gouvernance dans nombre de pays. De plus, il est connu que de nombreux groupes utilisent les produits de diverses formes de trafic pour se procurer des armes et financer leurs opérations. Les difficultés de mobilisation de ressources nationales compromettent la capacité des États et des entités supra-étatiques à assurer adéquatement la sécurité. Les pays et les organisations régionales dépendent souvent fortement de financements extérieurs pour leurs opérations, ce qui suscite de nouvelles inquiétudes.

Suite à la montée, dans les années 90, du concept de sécurité humaine, les nouveaux efforts de renforcement des agences en charge de la sécurité, en réponse aux insurrections et au terrorisme, soulèvent des préoccupations quant à la résurgence du paradigme de sécurité d'État. Ce retour à la primauté de la force prive d'investissements d'autres domaines vitaux de prestation de services, et menace également une grande partie des progrès réalisés en liant gouvernance et sécurité.

Les contributions répondent à plusieurs questions pertinentes : Dans quelle mesure les flux financiers illicites sapent-ils la gouvernance démocratique et la sécurité en Afrique et quelles sont les sources des fonds impliqués dans ces flux ? Quels moyens efficaces pour limiter l'influence de fonds illicites sur la gouvernance démocratique et la sécurité en Afrique ? Quelle est l'implication du sexe et de l'âge dans les interactions argent-sécurité-gouvernance ? Comment les mouvements sociaux, particulièrement ceux impliquant les femmes et les jeunes, peuvent-ils contribuer à réduire l'influence des flux financiers illicites sur la gouvernance démocratique et la sécurité en Afrique ? Comment l'investissement dans les forces de l'ordre et de sécurité a-t-il affecté la capacité et la motivation des États africains à faire face aux défis de développement humain ? Quels « effets secondaires » produit la lutte contre les flux illicites sur la gouvernance démocratique et la sécurité en Afrique ?



# **An Examination of the Financial Intelligence Act of Botswana**

Goemeone E. J. Mogomotsi\*

## **Abstract**

This article provides an analysis of the Financial Intelligence Act of Botswana in respect of the implementation of international anti-money laundering (AML) standards in Botswana. It examines the extent to which Botswana has incorporated, within its legislative framework, the recommendations of the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG) contained in the first Mutual Evaluation Report. Following concerns raised by the ESAAMLG on the effectiveness of the country's AML regulatory framework in 2007, Botswana promulgated the Financial Intelligence Act which is intended to address money laundering risks and compliance issues. This article generally discusses the institutional framework established by the Act and the obligations imposed on the specified parties under the Act. It narrowly focuses on the statutory obligations, to identify customers and keep records by specified parties. It examines the extent to which the provisions of the Financial Intelligence Act comply with Financial Actions Task Force (FATF) recommendations pertaining to customer identification and record-keeping. It is observed that the Act did not until recently provide for enhanced due diligence relating to Politically Exposed Persons. It is further observed that the independence of the Director General of the Financial Intelligence Agency may be threatened under certain circumstances. However, it is generally observed that the Act has made considerable efforts in complying with FATF standards. Finally, the article makes necessary policy recommendations.

## **Résumé**

Cet article fournit une analyse de la loi sur les renseignements financiers du Botswana en ce qui concerne l'application des normes internationales de lutte contre le blanchiment d'argent au Botswana. Il examine comment le Botswana a intégré dans son cadre législatif, les recommandations du Groupe anti-blanchiment en Afrique orientale et australe (GABAOA) contenues

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dans le premier rapport d'évaluation mutuelle. À la suite des préoccupations exprimées par le GABAOA concernant l'efficacité du cadre réglementaire du pays en matière de lutte contre le blanchiment de capitaux en 2007, le Botswana a promulgué la Loi sur le renseignement financier qui doit réduire les risques de blanchiment d'argent et les problèmes de conformité. Cet article traite généralement du cadre institutionnel établi par la loi et des obligations imposées aux parties spécifiées en vertu de la loi. Il porte en outre sur les obligations statutaires d'identification des clients et de conservation des enregistrements par des parties déterminées. Il examine dans quelle mesure les dispositions de la Loi sur le renseignement financier sont conformes aux recommandations du Groupe de travail sur les actions financières (GAFI) relatives à l'identification des clients et à la conservation des données. Il est à noter que la loi ne prévoit pas de diligence raisonnable renforcée à l'égard des personnes politiquement exposées. Il est également observé que l'indépendance du directeur général de la *Financial Intelligence Agency* peut être menacée dans certaines circonstances. Cependant, il est généralement observé que la loi a déployé des efforts considérables pour se conformer aux normes du GAFI. Enfin, l'article donne les recommandations politiques nécessaires.

## **Introduction**

Botswana's financial system can be broadly divided into two main sectors the banking and the non-banking financial sectors.<sup>1</sup> In a similar vein, the country follows the silos (institutional) model of financial sector regulation with each sector having its own sector specific<sup>2</sup> regulator.<sup>3</sup> The silos or institutional model is the traditional approach that appropriates financial regulation according to main functional lines – banking, insurance and securities industry. In other words, it follows the boundaries of the financial system in different sectors, and where every sector is supervised by a different agency.<sup>4</sup>

Another main type of financial services regulatory model is the functional regulatory model. This is mainly identified through the setting up of departments in a supervisory agency which is not sector-specific but focused on various functions such as licensing, legal, accounting, enforcement and information technology, irrespective of the type of business activity being regulated.<sup>5</sup> It is worthwhile noting that there are various other financial services industry regulatory models, which are not necessary for discussion in this article.

As stated above, the anti-money laundering (AML) regime in Botswana is scattered in various pieces of statutes and regulations. That is to say there is no single legislation specifically dealing with combating money laundering. These statutes and regulations include those dealing with anti-corruption and economic crimes, various aspects of serious and organised crime and

the financial services industry, among others. States' efforts in devising domestic regimes in the countering of money laundering, in compliance with internationally adopted standards, are critical in a globalised world economy. Notwithstanding the reference above that Botswana follows regulation by silos for its financial sector, it is imperative to note that the AML regime is generally not sector-specific but cuts across various business entities within and outside the financial services industry.

This article examines the Financial Intelligence Act<sup>6</sup> which has since become the primary AML legislation of general application in Botswana. The other pieces of legislation which form part of the AML regulatory universe in Botswana, however, are not part of the immediate discussion in this article which only investigates the role of the Financial Intelligence Act and the institution it establishes.

### **Background to the criminalisation of money laundering in Botswana**

The origins of the establishment of AML regime in Botswana can be vaguely traced to the promulgation of the Corruption and Economic Crimes Act in 1994.<sup>7</sup> Section 3 of the said statute establishes a Directorate on Corruption and Economic Crimes (hereinafter DCEC), with a mandate to investigate any alleged or suspected contravention of any of the provisions of the fiscal and revenue laws of the country.<sup>8</sup> The mandate to investigate suspected money laundering activities was specifically given to the DCEC in 2000, through the amendment of the Proceeds of Serious Crimes Act (PSCA).<sup>9</sup> Following the amendment of the PSCA, a specialised unit within the DCEC, called the Financial Intelligence Unit (FIU), was established.

Subsequently in 2003, the AML (Banking) Regulations intended to operationalise Section 14 of the PSCA were made under the Banking Act.<sup>10</sup> Recently, the legislature passed the Counter Terrorism Act<sup>11</sup> and Proceeds and Instruments of Crime Act<sup>12</sup> which form part of the AML regime in Botswana. The Proceeds and Instruments of Crime Act repealed and replaced the PSCA.

Most of the legislative enactments were passed, following the first in-country mutual which was conducted in 2007 by the East and Southern African Anti-Money Laundering Group (ESAAMLG). The ESAAMLG is a Financial Actions Task Force (FATF) Styled Regional Body (FSRB), which Botswana is a member. The 2007 Mutual Evaluation Report concluded that Botswana's criminalisation of AML framework was generally in line with international standards and the material elements are consistent with the Vienna,<sup>13</sup> and Palermo Conventions.<sup>14</sup> However, there is no effective implementation and systematic enforcement of the PSCA, and several

predicate offences are not covered under Botswana law. It is further noted that the DCEC and the Bank of Botswana are not currently adequately resourced to perform the full functions of an FIU, especially as no training on the analysis of Suspicious Transaction Reports (STRs) and other reports has been provided to staff which receive the reports made pursuant to AML. There is an unclear legal authority for the DCEC to conduct money laundering investigations beyond corruption and public revenue related cases though they are effectively conducting all money laundering investigations.

The AML regime under the discussion in this article is correct as at end of 2018, the period in which the country experienced the promulgation of some new AML related laws.

### **Background to the passing of the Financial Intelligence Act**

The Financial Intelligence Act, hereinafter 'the Act', was passed by the legislature in 2009.<sup>15</sup> This was following the 2007 Mutual Evaluation Report, which identified some institutional and legislative deficiencies in Botswana's AML regime. Prior to 2009, the DCEC acted as a de facto FIU; however, it shared the responsibility to receive, analyse and disseminate the STRs with the Central Bank, the Bank of Botswana.<sup>16</sup>

Within the DCEC, the STRs were investigated by the Investigations Department to determine if there was any case of money laundering. The Mutual Evaluation Report further observed that there was no specific legal provision for the dissemination of STRs to the Botswana Police Service for further investigation. Of critical importance, it was also observed that the resources and AML skills of the DCEC were insufficient for this agency to fulfil the overall functions of an FIU.<sup>17</sup>

A recommendation was made to designate a single national centre for the receipt, analysis and dissemination of STRs as Botswana's FIU, after consideration of the most appropriate location of the FIU with respect to the legislation, necessary resources, technical capacity, effectiveness, ability to fully cooperate and coordinate with other involved parties, from both the public and private sectors, and to be able to conduct appropriate international cooperation. It was also recommended that a dedicated FIU with administrative, financial and operational independence be established in Botswana.

In essence, the promulgation of the Financial Intelligence Act was giving effect to the recommendations made by the ESAAMLG in its 2007 Mutual Evaluation Report, in an endeavour to make the country comply with international AML standards and practices.

### ***The objective of the Financial Intelligence Act***

The general intention of the legislature in passing the Act is captured in the long title. In the Commonwealth, the long title sets out in general terms the purposes of the parliamentary bill, and should cover everything in the bill.<sup>18</sup> Post-enactment of the bill into an Act of Parliament, the long title forms part of the Act in Roman-Dutch common law which is the law of general application in Botswana.<sup>19</sup>

The long title of the Financial Intelligence Act states that it establishes the Financial Intelligence Act being the FIU. It further states that the purpose of the Act is to establish a National Coordinating Committee on Financial Intelligence. It is stated in the long title that the Act is intended to provide a framework for the reporting of suspicious transactions and other cash transactions. It also introduces a concept of mutual assistance with respect to other FIUs pertaining to financial information and related issues.

### ***The Financial Intelligence Agency***

The establishment of FIUs by countries is provided for in terms of Recommendation 29 of the FATF standards. FIUs are intended to serve as national centres for the receipt and analysis of (i) suspicious transaction reports;<sup>20</sup> and (ii) other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis.<sup>21</sup> The FIU should be able to obtain additional information from reporting entities, and should have access on a timely basis to the financial, administrative and law enforcement information that it requires to undertake its functions properly.

In the context of Botswana's FIU, the Financial Intelligence Agency (FIA) is established in terms of Section 3(1) of the Act,<sup>22</sup> which further provides that the FIA shall be headed by a director and other officers required for the proper performance or execution of the functions of the agency.<sup>23</sup> The discretion to appoint a director rests with the minister responsible.<sup>24</sup> The appointment of a director of the FIA is subject to the candidate having been screened or vetted by the Directorate of Intelligence and Security Services (DISS),<sup>25</sup> and issued with security clearance certifying that he/she is not a security risk, and that the candidate may not act in a manner prejudicial to the FIA in executing its functions.<sup>26</sup>

It is spelt out in terms of Section 4(1) of the Act that the FIA shall be the central unit for the purpose of requesting, receiving, analysing and disseminating, to the investigatory authority, supervisory authority or comparable body, disclosures of financial information.<sup>27</sup> The Section

defines an 'investigatory authority' as such a body legally empowered to investigate or prosecute unlawful offences.<sup>28</sup> Currently, such authorities may refer to entities such as the DCEC which is the primary investigatory body for a specialised crime of corruption. In that regard, it is submitted that information that may be referred by the FIA to the DCEC is the predicate offence of corruption.

Generally, the Botswana Police Service is responsible for the investigation of all other crimes in the country. On the other hand, the Director of Public Prosecution (DPP) holds the exclusive right to prosecute against the commission of crime in Botswana.<sup>29</sup> However, it is imperative to note that there can be prosecution by a private party in instances where the DPP would have refused to prosecute.<sup>30</sup> It appears that one other investigatory authority may be the DISS if, in the view of the FIA, the STRs and Cash Transaction Reports received and analysed by them borders on or threatens national security.<sup>31</sup>

The financial information that the FIA is mandated to transmit to the supervisory authority, investigatory authority or comparable body relates to suspicious transactions;<sup>32</sup> any financial information required to counter financial crime;<sup>33</sup> and information concerning the financing of terrorism.<sup>34</sup> In order to fulfil the functions detailed in Section 4(1), the FIA shall collect, process, analyse and interpret all the information before it is obtained, in terms of the Act, from specified parties obliged to submit information.<sup>35</sup> The FIA is also obliged to inform, advice and collaborate with an investigatory authority.<sup>36</sup>

Notwithstanding sounding tautological, the Act specifically further provides that the FIA shall forward financial intelligence reports to an investigatory authority.<sup>37</sup> The authority is also responsible for conducting examinations of a specified party to ensure compliance with the Act.<sup>38</sup> These examinations may include, but are not limited to, the sampling of data kept by specified parties and testing for compliance, examination of information technology devices and software, as to their ability to detect and identify suspicious transactions, and the threshold of cash transactions required to be reported.

As the primary authority for embedding and monitoring compliance of international AML standards and norms in Botswana, the FIA is statutorily responsible for guiding or providing technical assistance to specified parties pertaining to their performance of duties as outlined in the Act.<sup>39</sup> The law establishing the FIA provides for a two-way flow of information between it and the specified parties; that is to say that much as specified parties are obliged to submit suspicious transacting behaviour to the agency, having examined and analysed the said report, the FIA is under an obligation to give feedback to the specified party.<sup>40</sup> In that regard, it is submitted that this type of feedback may assist specified parties in improving their compliance

programme in giving more accurate hits in the event of a false hit; alternatively, if the hit was accurate, in making the processes and procedures better, to reduce money laundering and terrorist financing risk.

The Act authorises the FIA to be able to share information of mutual benefit with other FIUs.<sup>41</sup> This provision is consistent with the Egmont Group's Principles for Information Exchange between FIUs.<sup>42</sup> It has been observed that the ability of FIUs to effectively cooperate and share necessary financial information is vital to adequately detect, prevent and prosecute financial crime at the international level.<sup>43</sup> The sharing of financial intelligence is normally operationalised between and among FIUs through the conclusion of bilateral agreements which specify the terms of such exchanges.<sup>44</sup>

The Act provides the FIA with operational independence at the discretion of the director to seek guidance from law enforcement agencies, the government and any other person or entity the director deems necessary.<sup>45</sup> This provision is wide enough to enable the FIA to enter into agreements and/or arrangements that allow it access to data through requests or direct access to the relevant databases, or indirectly, through another government authority or entity holding the information.<sup>46</sup>

One of the main weaknesses of the AML framework in Botswana at the time of carrying out the in-country assessment and the release of the Mutual Evaluation Report in 2007 was the lack of coordination between different agencies and institutions with different AML responsibilities. The Financial Intelligence Act creates an inter-agency committee which addresses the concerns of lack of cohesion and cooperation between financial crime law enforcement agencies. The nature and functions of the said committee is discussed in the following section.

## **Oversight of the FIA**

Due to the sensitive nature of the operations of FIUs, the FATF requires them to be granted operational autonomy and independence.<sup>47</sup> However, it is important to note that as much as FIUs ought and should be free from interference, they remain government agencies and thus should be accountable for the manner in which they execute their functions.<sup>48</sup> It is indisputable that FIUs are part of national authorities that are responsible for receiving, analysing and disseminating financial intelligence submitted through suspicious reports by obliging institutions or persons.<sup>49</sup>

There are various models or mechanisms of ensuring FIUs' accountability, one being the Canadian model which allows the minister to direct the unit in any matters that materially affect public policy or the strategic direction of

the FIU.<sup>50</sup> The common model in most legal systems is that the FIU issues a periodic report on its activities to a specified authority, i.e. the parliamentary select committee.<sup>51</sup> Quite a few jurisdictions have a high-level committee, placed between the FIU and the minister, which exercises some sort of supervisory and governance role over the FIU.<sup>52</sup> The specific functions and the role played by such a committee differs from one country to another as is spelt out in the legislation. Botswana is one of the jurisdictions which have adopted the high-level committee model. The composition and functions of the said committee are discussed in the following section.

### **National Coordinating Committee on Financial Intelligence**

The National Coordinating Committee on Financial Intelligence (hereinafter 'the Committee') is established in terms of Section 6(1) of the Act.<sup>53</sup> The Committee is comprised of the director of the FIA,<sup>54</sup> and the Director General shall be the Secretary to the Committee.<sup>55</sup> The members are the representatives of the Ministry of Finance and Development Planning who shall be Chairperson of the Committee,<sup>56</sup> a representative of the DCEC,<sup>57</sup> a representative of the Botswana Police Service is also a member,<sup>58</sup> the Attorney Generals Chambers is represented as well.<sup>59</sup> Also represented are the Bank of Botswana,<sup>60</sup> and the Botswana Unified Revenue Services.<sup>61</sup> Other members of the Committee include representatives of the Ministry of Foreign Affairs and International Cooperation,<sup>62</sup> the Department of Immigration,<sup>63</sup> the Non-Bank Financial Institution Regulatory Authority,<sup>64</sup> the DPP; the DISS,<sup>65</sup> and the Ministry of Defence, Justice and Security.<sup>66</sup>

### ***Functions of the Committee***

The overarching or core function of the Committee is to advise the minister on issues relating to financial offences.<sup>67</sup> The Committee is established to assess the effectiveness of existing policies and measures in combating financial crime.<sup>68</sup> It shall from time to time make recommendations to the minister to make administrative, legislative and policy reforms pertaining to financial offences.<sup>69</sup> This is necessary to ensure that the regulatory and administrative framework keeps up with changing international norms and standards. For the financial intelligence regime to be effective, it shall keep up with the changes in the international arena.

The Committee is responsible for promotion coordination in the combating of financial crime between the FIA, investigatory bodies, supervisory authorities and any other relevant institution, in order to improve the effectiveness of existing AML policies.<sup>70</sup> This provision has addressed one of the fundamental findings of the 2007 Mutual Evaluation Report

which faulted the then AML regime for not providing for coordination and cooperation of state agencies in the combating of money laundering in Botswana. The Committee is statutorily mandated to formulate policies which protect and enhance the reputation of Botswana internationally, with regard to combating financial offences.<sup>71</sup> This is important as money laundering and financial crime generally have far-reaching consequences on the financial system of countries and negatively impact on the integrity of domestic economies.<sup>72</sup>

It is thus submitted that the Committee essentially operates as a board of directors or governance board for the FIA, albeit from an operational point of view. It is the custodian of the financial intelligence framework in Botswana which has a critical obligation to safeguard the integrity of the financial system and protect the integrity of the economy.

The Committee shall meet at least once every three months,<sup>73</sup> or when the minister so directs.<sup>74</sup> It has the autonomy to regulate its own meetings<sup>75</sup> and, if it deems fit, may request advice from anyone it finds necessary.<sup>76</sup> For efficiency and effectiveness in executing its duties, like other governance bodies, the Committee may appoint sub-committees constituted by its members.<sup>77</sup> The Committee has the discretion to co-opt any person, either for a specific period or a specific issue being dealt with.<sup>78</sup>

## **Operational provisions of the Act**

Parts IV and V of the Act operationalise the combating of money laundering, terrorist financing and financial crime generally. They do so by providing for what should be done and by whom in managing financial crime risk in Botswana. This part of the article discusses the said provisions against the FATF Recommendations.<sup>79</sup>

### ***Customer due diligence and record-keeping***

The international standards pertaining to customer due diligence and record-keeping are set out in FATF Recommendations 10 and 11. FATF Recommendation 10 prohibits the keeping of anonymous accounts or accounts in obviously fictitious names. It places an obligation on financial institutions to conduct customer due diligence (CDD) when establishing business relationships.<sup>80</sup> CDD is based on the Know Your Customer (KYC) principles.<sup>81</sup> In that regard, KYC and CDD are at times used interchangeably. In terms of FATF Recommendation 10, CDD is also required in carrying out occasional transactions,<sup>82</sup> above the applicable designated threshold,<sup>83</sup> or that are wire transfers in circumstances covered by the Interpretive Note

to Recommendation 16.<sup>84</sup> CDD should also be carried out when there is a suspicion of money laundering or terrorist financing.<sup>85</sup> In a case when the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data, CDD should be carried out.<sup>86</sup>

FATF Recommendation 10 requires that individual countries should make it a legal requirement in their domestic legislation that financial institutions conduct CDD.<sup>87</sup> The specific CDD obligations remain at the discretion of each jurisdiction.<sup>88</sup>

### ***Standards relating to Politically Exposed Persons***

In terms of FATF Recommendation 12, financial institutions are required in respect of foreign Political Exposed Persons (PEPs),<sup>89</sup> in addition to performing normal CDD measures, to have appropriate risk-management systems to determine whether the customer or the ultimate beneficial owner is a PEP.<sup>90</sup> They are further expected to obtain senior management approval for establishing (or continuing, for existing customers) such business relationships;<sup>91</sup> to take reasonable measures to establish the source of wealth and source of funds;<sup>92</sup> and to conduct enhanced due diligence (EDD) ongoing monitoring of the business relationship.<sup>93</sup>

Further, financial institutions and/or any reporting entity should be required in law to take reasonable measures to determine whether a customer or beneficial owner is a domestic PEP or a person who is (or has been) entrusted with a prominent function by an international organisation.<sup>94</sup> In cases of a higher risk business relationship with such persons, financial institutions should be required to apply the measures referred to above.<sup>95</sup>

That is to say, in terms of foreign PEPs, EDD measures should be applied; while in the case of domestic and international organisation PEPs, the nature and extent of due diligence will ordinarily depend on the risk perceived by the bank in establishing a business relationship with such PEPs.<sup>96</sup> In determining the risk involved, the financial institution should take into consideration the risk posed by the product, service or transaction sought, as well as other factors that have a bearing on money laundering and corruption risks.<sup>97</sup> In instances of high risk PEPs, the AML/Counter Terrorism Financing (CTF) approach should be stricter accordingly, i.e. applying EDD measures even to domestic and international organisation PEPs.<sup>98</sup>

The need for specialised customer identification and account monitoring pertaining to PEPs and their associates is mainly because of the ways in which corrupt PEPs launder their ill-gotten gains.<sup>99</sup> The scale of the plunder of state assets and impact on confidence in financial institutions and the financial system in general requires greater scrutiny of business relationships

with PEPs, with a view to addressing potential corruption and relatively high levels of money laundering risks associated with these customers.<sup>100</sup>

It was concerning that neither the Financial Intelligence Act nor the regulations made thereunder provided for EDD in respect to PEPs, foreign or domestic, for over eight years of coming into operation. In fact, these pieces of legislation did not recognise the concept of PEPs and the risk they pose to the financial system due to their likelihood to engage in financial offences. For almost a decade, specified parties were not under an obligation to exercise EDD when dealing with PEPs, contrary to international best practice as laid down by the FATF and/or the Model Provisions on Money Laundering, Terrorist Financing, Preventative Measures and Proceeds of Crime, hereinafter 'the Model Law'. The model section pertaining to PEPs aims to provide for an elaborative procedure of identifying the source of wealth of PEPs, their families and associates and further seeks to provide enhanced risk analysis when dealing with the business and transactions of PEPs.<sup>101</sup>

Notwithstanding the above, in June 2018, the legislature in Botswana passed amendments to the Financial Intelligence Act which among other changes introduced the concept of PEP. However, the parliament adopted a different nomenclature for the same concept that has been used in the statute, i.e. Prominent Influential Person (PIP). The amendment omits listing foreign PIPs as those required to be classified as high risk customers by financial institutions and other reporting entities. High ranking military and police officers have not been listed in the statute. This is notwithstanding the influence and power they hold in the society, including the possibility of being bribed. Despite the current omission of foreign PEPs, the clause in the amendment statute gives the minister the power to list or prescribe any other person as a PIP.

### **General obligations of specified parties**

Part IV of the Act is applicable to specified parties. The said specified parties are listed in Schedule I of the Act as follows: a firm of practising attorneys,<sup>102</sup> a firm of practising accountants,<sup>103</sup> practising real estate professionals,<sup>104</sup> a bank,<sup>105</sup> a bureau de change,<sup>106</sup> a building society,<sup>107</sup> a casino.<sup>108</sup> Other specified parties in terms of the Schedule are: a Non-Bank Financial Institution,<sup>109</sup> a person running a lottery,<sup>110</sup> Botswana Postal Services,<sup>111</sup> a precious<sup>112</sup> and semi-precious stones dealer,<sup>113</sup> Botswana Savings Bank;<sup>114</sup> Botswana Unified Revenue Service,<sup>115</sup> and the Citizen Entrepreneurial Development Agency.<sup>116</sup> Furthermore, Botswana Development Corporation,<sup>117</sup> National Development Bank,<sup>118</sup> car dealerships,<sup>119</sup> and money remitters<sup>120</sup> are equally specified parties listed in Schedule I of the Act.

The Act makes it mandatory for a specified party to implement and maintain a customer acceptance policy, internal rules, programmes, policies, procedures or any other relevant controls as may be prescribed in law to safeguard the systems of the specified party against financial crime.<sup>121</sup> Specified parties are required to have a compliance function which shall be responsible for the implementation and embedding of internal AML or financial crime programmes, including the maintenance of statutory records and reporting of suspicious transactions.<sup>122</sup> The law makes it mandatory for the leadership of the compliance function to have a place in the decision-making and/or at the managerial level of the specified party.<sup>123</sup> The compliance officers should be entitled to have unrestricted access to CDD data, transaction records and/or any other information relevant in executing their duties.<sup>124</sup> All specified parties are required to implement and maintain compliance programmes.<sup>125</sup>

The internal compliance programmes and procedures should be designed to be in line with any guidelines, instructions and/or recommendations issued in term of Section 27(1)(b) of the Act.<sup>126</sup> The said supplementary guidelines may include provisions relating to the high standards of integrity of staff members of the specified party and a system to evaluate their personal, employment and financial history.<sup>127</sup> The guidelines may also include directions as regards the ongoing employee training programme to enhance compliance with the provisions of the Act.<sup>128</sup> Furthermore, the recommendations, instructions or guidelines issued in terms of Section 27(1)(b) may be related to an independent internal audit function to check compliance with programmes. It is obligatory for specified parties to ensure that their internal compliance policy is made available to all employees, particularly information relating to records required to be kept,<sup>129</sup> the identification of reportable transactions, i.e. suspicious or cash transactions,<sup>130</sup> and staff training, in order to recognise financial offences.<sup>131</sup>

A failure by the specified party to put in place internal systems and procedures as required by the Act to ensure that neither it nor its services are capable of being used to commit or facilitate the commission of financial crimes shall be liable to an administrative fine imposed by a supervisory authority, not exceeding P100,000.<sup>132, 133</sup>

### ***Duty to identify customers***

Part V of the Act which is made up of Sections 9–16 seeks to domesticate FATF Recommendations 10 and 11. In terms of the Act, it is prohibited for a specified party to establish a business relationship or conclude a transaction with a customer unless due diligence has been undertaken.<sup>134</sup> If the customer is acting on behalf of another person, the specified party

is required to establish (i) the identity of the beneficial owner,<sup>135</sup> (ii) authorisation by the beneficial owner, instructing the customer to establish a business relationship or conclude a transaction on their behalf.<sup>136</sup>

With respect to a business relationship established prior to the coming into force of the Act, the specified parties are prohibited from transacting for and/or on behalf of such a customer unless there is strict compliance with the new CDD provisions.<sup>137</sup> Essentially, the specified party is required to freeze the accounts or suspend the relationship with the client or customer until after such a period when the said client or customer has renewed his/her KYC documentation. The Act recognises proof of identity as a National Identity Card, in respect of citizen customers, and a passport for non-citizens.<sup>138</sup>

The production of a false identity document to a specified party in the conduct of business is a criminal offence attracting a fine of P 500,000.00 or imprisonment not exceeding ten years or both.<sup>139</sup> A specified party who fails to comply with the provisions relating to identifying customers or contravenes any part of Section 10 of the Act, shall be liable for an administrative fine not exceeding P 1,000,000.00 as may be imposed by the supervisory authority.<sup>140</sup>

## **Duty to keep and maintain records**

### ***Overview of international record-keeping standards***

The international framework pertaining to the keeping and/or maintenance of records is established in terms of FATF Recommendation 11. In terms of this Recommendation, legal provisions should be made obliging the financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic and international, to enable them to comply swiftly with information requests from the competent authorities.<sup>141</sup> The said records to be kept and maintained must be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity.<sup>142</sup>

Any entity required by the law should maintain all records obtained through CDD measures, account files and business correspondence, including the results of any analysis undertaken (e.g. inquiries to establish the background and purpose of complex, unusual large transactions), for at least five years after the business relationship is ended, or after the date of the occasional transaction.<sup>143</sup> FATF standards require that the CDD information and the transaction records should be available to domestic competent authorities whenever requested by the appropriate authority.<sup>144</sup>

### ***Keeping of records under the Act***

The prevailing regime provides that when a specified party establishes a business relationship or concludes a transaction with a customer, the specified party should maintain the records of identity of the customers;<sup>145</sup> for instance, where the customer is acting on behalf of someone else, the recorded identity of the person on whose behalf the customer is acting,<sup>146</sup> and the customer's authority to act on behalf of that other person, i.e. this may be a power of attorney or resolution of board of directors in respect to the juristic person.<sup>147</sup>

In a factual matrix where another person is acting on behalf of the customer, the documents to be obtained and kept are the identity of that other person,<sup>148</sup> and the other person's authority to act on behalf of the customer.<sup>149</sup> The specified party is also required to record and keep an explanation of how its employee(s) established the required identities.<sup>150</sup> Further information required to be kept is in regards to the nature of the business relationship or transaction,<sup>151</sup> the amounts of money involved in the transaction and the parties to the transaction.<sup>152</sup>

The specified party is required to keep the records of all accounts involved in a transaction concluded in the course of a business relationship or single transaction.<sup>153</sup> The name of the employee(s) of a specified party who obtained the requisite information should also be recorded and kept.<sup>154</sup> Identity documents, either a National Identity Card or passport obtained in the identity verification process should be kept as well.<sup>155</sup> The records may be kept either as paper-based copies or be saved electronically in a retrievable form.<sup>156</sup>

The records referred to above are to be kept or maintained for at least five years from the date a transaction is concluded.<sup>157</sup> However, if so required in writing by an investigating authority, a specified authority may be under an obligation to maintain such records for a longer period, as may be specified in the written request.<sup>158</sup> It is worth noting that specified parties are at liberty to outsource the carrying of CDD and record-keeping to a third party.<sup>159</sup> Where such a duty is outsourced to a third party, the specified party is required to inform the FIA and furnish it with the details of such a service provider.<sup>160</sup> Failure by a third party to perform on behalf of a specified party does not absolve the latter of its statutory obligations under the Act; as a matter of fact, it shall be liable for the failure.<sup>161</sup> Any document saved or kept in electronic form shall be admissible as evidence in a court proceedings.<sup>162</sup>

Failure to keep the records as required and for the specified period of time shall attract a fine not exceeding P 1,000,000.00 as may be imposed by the supervisory authority.<sup>163</sup> It is a criminal offence to remove any record, register or document kept in terms of the Act, attracting a fine not exceeding P500,000 or imprisonment for a term not exceeding ten years, or both.<sup>164</sup> An examiner of the FIA or supervisory authorities are entitled to have access to any records kept in terms of Section 11 of the Act and may make extracts from or copies of any such records.<sup>165</sup> An 'examiner' means a person so designated in writing by the FIA or supervisory authority.<sup>166</sup> An examination and audit of books and records of specified parties may be carried out at any time by the FIA or a supervisory authority to investigate compliance with the requirements of the Act or compliance with any guidelines, instructions, recommendations or regulations made under the Act.<sup>167</sup>

In order to investigate compliance with the Act by a specified party, the examiner may make a written request or orally require the specified party, or any other person whom the FIA or supervisory authority reasonably believes has in their possession or control a document or any other information that may be relevant to the examination, to produce or furnish the information as specified in the request.<sup>168</sup> Further, an examiner is entitled to examine, make copies of or take an extract from any document or thing that the examiner considers relevant or may be relevant to the examination.<sup>169</sup> The examiner may keep or retain any document it deems necessary.<sup>170</sup> Officers or employees of specified parties may be required orally or in writing by an examiner to provide information about any documents that in the view of the examiner, may be relevant to the examination.<sup>171</sup>

Specified parties, their officers and employees are under a legal obligation to give the examiner full and unlimited access to the records and other documents as may be reasonably required for the examination.<sup>172</sup> Any person who intentionally obstructs the examiner in the performance of any of his or her duties, or fails without reasonable basis to comply with a request of the examiner in the performance of the examiner's duties, shall be guilty of an offence and liable for a fine not exceeding P1 000, 000.00 or imprisonment for a term not exceeding ten years or both.<sup>173</sup>

An authorised officer of an investigatory authority may apply to court for a warrant to exercise the powers ordinarily exercised by an examiner.<sup>174</sup> The said warrant shall be issued if the court is satisfied, upon reading the averment contained in the affidavit so deposited, that there are reasonable grounds to believe that the records may assist the investigatory authority to prove the commission of a financial crime.<sup>175</sup>

## **Conclusion and recommendation**

Generally, Botswana has taken considerable strides in complying with international norms and standards relating to AML and CFT, following the release of the 2007 Mutual Evaluation Report. The Financial Intelligence Act in terms of Sections 9–16 has sufficiently domesticated the FAFT Recommendations relating to the Duty to identify customers and keep records.

Consistent with the recommendations of the Mutual Evaluation Report, a standalone FIU in the form of the FIA was established. The structure and functions of the FIA largely comply with FATF Recommendation 26 relating to FIUs. It is also largely similar to the provision of the Model Law on the various structures and shapes that an FIU may take. Notwithstanding the above, it is observed that the Director General of the FIA and his/her officers are considered to be public servants, in terms of the Public Service Act.<sup>176</sup> This may be understood to mean that, administratively, the director is accountable to the Head of the Public Service, i.e. the Permanent Secretary of the President, like any other administrative head of a government department, in terms of Section 8(4) of the Public Service Act. The only difference with the other heads is that the director is appointed in terms of the Financial Service Act. However, since June 2018 the term of appointment of the FIA Director General has since been aligned with that of the Director General of the DISS appointed not under the provisions of the Public Service Act but under those terms and conditions the President deems fit, as recommended by the National Security Council.<sup>177</sup> In the appointment of the Director General of, the Committee only determines the qualifications he/she should possess and on conditions as may be recommended by the minister.

It is commendable that in order to guarantee the independence and the operational autonomy of the Director General in executing his/her duties, his/her removal for alleged misconduct has been tied to the constitutional provision for the removal of the Director of Public Prosecutions. This change has been brought through the 2018 amendment to the Act and the direct opposite of the earlier legislative framework in which the Director General essentially served at the pleasure of the appointing authority. One of the drafting notes in the Model Law states that drafters of national legislations should consider a provision that sets a fixed term for the director with dismissal permissible only in the case of verifiable misconduct.<sup>178</sup> This is in recognition of the fact that in an instance where the director serves at the discretion of the minister, it is very difficult to rule out political interference in the operations of the FIU.<sup>179</sup> In that note, the recent amendment has

codified the tenure of the Director General to five(5) year term renewable once or until he or she attains the age of 60 years, whichever comes first.<sup>180</sup>

Another concerning provision of the Act are Sections 5(4)–(5) which state that the DISS may withdraw the security clearance certificate of the director or any officer of FIA if it is of the view that he/she is a security risk.<sup>181</sup> Withdrawal of the security clearance certificate means that the office of the director or of the officer shall become vacant,<sup>182</sup> and a replacement Director General or officer shall be appointed.<sup>183</sup> This is problematic in the context of Botswana where the DISS, commonly referred to as the ‘DIS’, is often accused of money laundering and other financial offences.<sup>184</sup>

In an environment where the DISS is not accountable to anyone and there are no functional oversight mechanisms, the withdrawal of a security certificate may be a counter-intelligence strategy to collapse money laundering investigations against it. In as much as there is security vetting of the FIA Director General and his/her officers, this has to be done in a context where there are checks and balances on the exercise of the national security vetting duty by the DISS. That is to say that the withdrawal of a security certificate should only be done in an instance where its objectivity is verifiable and the intelligence outfit has not turned rogue as the DISS is often accused of. As it is, the DISS, in order to suppress any investigation against itself or its officer, may withdraw the director’s certificate and that of any other officer in the FIA.

In as much as the precedent submission sounds like a scene from a fictional spy movie, the legal framework in Botswana allows the DISS to act as it pleases without being questioned, even by the courts. Essentially, the decisions or actions of the DISS are not reviewable in Botswana. The Court of Appeal, in the case of *Kenneth Good v Attorney General*, held that ‘where the ... decision is based on the interests of national security or is made in the national interest ... such a decision should neither be open to public disclosure nor be the subject of scrutiny by the courts’.<sup>185</sup> It is thus recommended that Section 5(4) of the Financial Intelligence Act be repealed without delay in order to protect the operational independence of the FIA and to safeguard it from possible institutional bullying orchestrated by the DISS.

In light of the foregoing, it is concluded that notwithstanding the legislative deficiencies identified, the provisions of the Act subject to discussion in this article comply to a large extent with international norms and standards. The discussed weaknesses are capable of being cured by the legislature and through secondary legislation to improve the level of compliance and the realisation of an effective AML/CTF framework in Botswana.

## Acknowledgments

This paper is an adaptation of a chapter from my Ph.D. thesis. I wish to acknowledge the comments of my supervisor, Dr Herbert on the earlier version of this paper. The financial support from the Council for the Development Social Science Research in Africa (CODESRIA) towards making conference presentation of this paper in Bamako, Mali is appreciated.

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127. Section 9(2)(a)(i).
128. Section 9(2)(a)(ii).
129. Section 9(2)(b)(i).
130. Section 9(2)(b)(ii).
131. Section 9(2)(b)(iii).
132. P1.00 = US\$ 0.097 (as of 12 December 2017).
133. Section 9(3).
134. Section 10(1).

135. Section 10(1)(b)(i).
136. Section 10(1)(b)(ii).
137. Section 10(2).
138. Section 10(3).
139. Section 10(4).
140. Section 10(5).
141. FATF Recommendation 11.
142. *ibid.*
143. *ibid.*
144. *ibid.*
145. Section 11(1)(a).
146. Section 11(1)(b)(i).
147. Section 11(1)(b)(ii).
148. Section 11(1)(c)(i).
149. Section 11(1)(c)(ii).
150. Section 11(1)(d).
151. Section 11(1)(e).
152. Section 11(1)(f).
153. Section 11(1)(g).
154. Section 11(1)(h).
155. Section 11(1)(l).
156. Section 11(2).
157. Section 12(1).
158. Section 12(2).
159. Section 13(1).
160. Section 13(2).
161. Section 13(3).
162. Section 14.
163. Section 15(1).
164. Section 15(2).
165. Section 16(1).
166. Section 16(6).
167. Section 16(2).
168. Section 16(3)(a).
169. Section 16(3)(b).
170. Section 16(3)(c).
171. Section 16(3)(d).
172. Section 16(4).
173. Section 16(5)(a)-(b).
174. Section 16(7).
175. Section 16(8).
176. Cap. 26:01

177. Section 6(1).
178. See Drafting Note to Section 38 in respect of the Establishment and Structure of FIUs.
179. Musando Simwayi, 2012, 'A critical analysis of the Financial Intelligence Centre Act of Zambia', *Journal of Banking Regulation* 13 (2): 114–26, at p. 125.
180. Section 3A of the Financial Intelligence Act.
181. Cap.08:07 [Laws of Botswana].
182. Section 5(b).
183. Section 5(c).
184. <http://www.sundaystandard.info/isaac-kgosi%E2%80%99s-name-crops-money-laundering-probe>, accessed 10 December 2017.
185. 2005 (2) BLR 337 (CA).





# **The Challenge of Drug Trafficking to Democratic Governance and Human Security in West Africa: A Historical Reflection**

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## **Abstract**

We argue that West Africa has come into the spotlight as an increasingly important site and destination in the global drug trafficking system. Evidence of the growing role of the sub-region in the global strategy and operations of international drug cartels is broad and varied, comprising a complex admixture of both direct, traceable facts from official and non-official sources, and more indirect information of an indicative, associative and anecdotal nature. Initially targeted as a re-distribution centre and transit point for the trafficking of drugs to end-use destinations around the world, most notably Europe and North America, the sub-region has gradually become a market destination in its own right for global drug cartels mainly, though not exclusively, originating from Latin America. Evidence also points to the emergence of West Africa as an increasingly significant production site for some types of drugs, including amphetamine-type stimulants. The analysis presented in this article points to the history and context of the governance and human security challenges faced by West African countries and the ways in which drug trafficking cartels have both taken advantage of them and, simultaneously, contributed to the exacerbation of the problems. The article concludes that in responding to the governance challenges posed by or associated with drug trafficking, West African countries, working together with one another and in concert with Western countries, civic groups/movements and the private sector will need a much more coherent and coordinated approach, anchored on the idea of the ultimate indivisibility of governance and human security in the sub-region.

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## Résumé

Nous soutenons que l'Afrique de l'Ouest est devenue une destination et un site de plus en plus importants dans le système mondial du trafic de drogue. Les preuves du rôle croissant de la sous-région dans la stratégie et les opérations mondiales des cartels internationaux de la drogue sont nombreuses et variées, avec un complexe mélange de faits directs provenant de sources officielles et non officielles, ainsi que d'informations indirectes plus indicatives, de nature associative et anecdotique. Initialement ciblée comme centre de redistribution et de transit du trafic de drogue vers d'autres destinations dans le monde, notamment l'Europe et l'Amérique du Nord, la sous-région est progressivement devenue une destination commerciale pour les cartels mondiaux de la drogue, principalement mais non exclusivement originaire d'Amérique latine. Les données montrent également que l'Afrique de l'Ouest est un site de production de plus en plus important de certains types de drogues, notamment les stimulants de type amphétamine. L'analyse présentée dans cet article met en évidence l'historique et le contexte des défis de gouvernance et de sécurité humaine auxquels sont confrontés les pays de l'Afrique de l'Ouest, et la manière dont les cartels de drogue en ont profité tout en contribuant à exacerber les problèmes. L'article conclut que, pour faire face aux problèmes de gouvernance posés par ou associés au trafic de drogue, les pays d'Afrique de l'Ouest, travaillant ensemble et de concert avec les pays occidentaux, les groupes/mouvements civiques et le secteur privé, auront besoin d'une approche beaucoup plus cohérente et coordonnée, ancrée dans l'idée de l'indivisibilité ultime de la gouvernance et de la sécurité humaine dans la sous-région.

## Introduction

West Africa is under attack from international criminal networks that are using the sub-region as a key global hub for the distribution, wholesale, and increasing production of illicit drugs. Most of the drug trade in West Africa involves cocaine sold in Europe, although heroin is also trafficked to the United States (US). The sub-region is becoming an export base for amphetamines and their precursors, mainly for East Asian markets and increasingly to the U.S. At least nine top-tier Latin American drugs cartels have already established bases in at least 11 out of the 16 West African nations in recent years. West Africa has grown exponentially from a minor trafficking route for cocaine exports to a major hub. It was not until 2004 that large scale cocaine trafficking through West Africa was first detected. Prior to this, annual cocaine seizure levels in West Africa had rarely exceeded one metric ton per year, but by 2008, cocaine trans-shipments rivalled stolen crude oil as the most valuable smuggled commodity in West

Africa (UNODC 2008). Estimates of 2015 annual cocaine trans-shipments through West Africa ranged widely between 46 and 300 tons, yielding wholesale revenues of US\$3 billion to US\$14 billion (UNODC 2016). The hiding of drugs in containers on commercial vessels, for example, is a new strategy whose use has probably expanded. In July 2010, a container with 450 kilos of cocaine was seized in Lagos, Nigeria, on a vessel arriving from Chile. In January 2011 and March 2015, nine other vessels seized in Nigeria had a total of 275 kilos of cocaine, one of which contained 110 kilos arriving from Bolivia (Wylér and Cook 2009).

Another tactic was to route an increasing number of containers through Argentina and Uruguay towards West Africa. In November 2012, authorities in Guyana seized 350 kilos of cocaine hidden in a shipping container filled with soap powder destined for Nigeria. West Africa's emergence as a trafficking nexus was also symptomatic of a shift in the centre of gravity of the global market for cocaine from the US to Europe (Wylér and Cook 2009). This shift occurred due to structural factors, including a declining and saturated US cocaine market, heightened European demand for cocaine, the stronger euro making sales of this drug more lucrative in Europe, the existence of well-developed West African smuggling networks as ready-made partners, and successful interdiction efforts, including anti-money laundering measures that drove drug traffickers away from traditional trafficking routes into North America and Europe, including via the Caribbean and Spain (Harrigan 2012).

West Africa's geographical location between Latin America and Europe made it an ideal transit zone for exploitation by powerful drugs cartels and terrorist organisations. In this sense, many West African countries are now suffering the adverse effects of the geographical accident of lying between the sites of drug production and the most lucrative consumption markets – much as the Caribbean and Central America had long suffered from being placed between South America's cocaine producers as well as North America's cocaine users. Dakar in Senegal, for example, is roughly a midway point between Latin America and Europe, and is actually 700 miles closer to Recife in Brazil than it is to Paris in France. West Africa's primary operational allure to traffickers is not actually geography, but rather its low standards of governance, low levels of law enforcement capacity, and high rates of corruption.

Traffickers gain competitive advantages by operating in West African states with the weakest rule of law. Powerful cartels and terrorist organisations both thrive in West Africa's permissive environment and vast ungoverned sea, land and air spaces. West Africa's borders – including its

maritime domain – are largely unguarded. The region boasts more than 2,600 miles of coastline. West Africa's governance, law enforcement and corruption challenges are linked to the sub-region's underdevelopment. All but three of the 16 nations in West Africa are on the UN's list of 'least developed countries', while five are countries with the very lowest levels of human development. Ten of the top 41 countries in the '2016 Failed States Index' were in West Africa (and 25 of the top 41 were in sub-Saharan Africa) (UNODC 2016). Against this background, this article sets out to interrogate the challenge of drug trafficking to democratic governance and human security in West Africa.

### **History of drug trafficking in West Africa**

Drug trafficking is not a new phenomenon in West Africa, but a consideration of this history is important to illuminate the entrenched nature of the drugs trade in the sub-region, and its negative implications for democratic development. The historical reality is that trade routes for illicit (and licit) goods have existed for hundreds of years in West Africa and are ensconced in local traditions, especially in the Sahel–Saharan region. Consistent with this, the pre-independence economies of West Africa were characterised by a variety of illicit, shadow economies. Cannabis trafficking in West Africa was documented almost a century ago, in the 1920s, and is still widespread today. Annual cannabis production in West Africa is about 3,500 tons/year (Regan 2010; Felbab-Brown 2010). There were seizures in September 2011, February 2012, July 2014 and October 2016 of five and one ton respectively of cannabis resin being transported to Europe via northern Niger in Toyota 4X4s (UNODC 2016).

The first documented use of West Africa as a staging post for international heroin smuggling was in 1952, when US officials noted that parcels of the drug were being transported by a Lebanese syndicate from Beirut to New York, via Kano in Nigeria and Accra in Ghana. While cocaine trafficking has become a recent focal point of international attention on West Africa, the sub-region actually has a longer history of trafficking and organised crime (Feinstein 2012). West Africa has received less notoriety, however, because the sub-region, and indeed all of sub-Saharan Africa, generally only played a peripheral role in global drug trafficking prior to the mid 2000s. Generally speaking, the roots of West Africa's transformation into a major international trade hub in illegal drugs may be traced to the 1960s. It was then that the first reports emerged of locally grown cannabis being exported from Nigeria to Europe in significant quantities. By the 1970s, Ghanaian smugglers had joined Nigerians in exporting African-grown cannabis to Europe on a scale

large enough to attract sustained official attention. Starting from the 1980s, production, distribution and consumption of cannabis provided pathways for the incorporation of heroin and cocaine into West Africa's drugs trade. At that time, Nigerian smugglers started sending heroin by air courier from Pakistan to Nigeria, where it was repackaged and re-exported to the US (Feinstein 2012; Champin 2012).

By the 1990s, Ghana had become an early transit point for the international cocaine trade, and in Accra it was public knowledge that houses were built with cocaine money and flashy cars were cocaine cars. Nigeria still plays a huge role in the international heroin trade, with intercepted stocks amounting to about 70 kilos seized in the country per year (Champin 2012). Besides Nigerian and Ghanaian global networks, major new ones have developed, involving Ivorian and Senegalese nationals. By the 1990s, Nigerian drug traders had largely finished the process of 'internationalising' their business. Nigerian drug traffickers had not only developed the means to make bulk shipments of narcotics, but had also become fully global, having a 'headquarters' (home) country, business associates in both producing and consuming countries, and facilities in countries outside Nigeria. Part of the reason why Nigerian drug traffickers have been so successful is that their home country has provided them with a relatively permissive environment. Perhaps the most important local partner of Nigerian drug traders in the 1990s was the Nigerian military, which by then had developed a high degree of impunity after being in power almost continuously for many years.

Within West Africa, Nigerians established operational centres in Cotonou in Benin Republic, and Abidjan in Côte d'Ivoire. Outside the continent, they established sales networks in major US, European and post-Soviet Union cities, including Geneva in Switzerland, where people are active in cocaine trafficking, and in Moscow in Russia, where they have taken over heroin retailing. In Asia, there are large networks of Nigerian air couriers, some bringing heroin and transiting or stopping in West Africa, and others transporting cocaine and methamphetamines, ecstasy and ketamine from West Africa towards Asia (and Australia). These often transit via Malaysia or Indonesia, to Japan, Korea, China, Thailand and Singapore. Since 2009, Nigerian and Ghanaian drug trafficking organisations (DTOs) have diversified into trafficking crystalline methamphetamine through links with other West African countries such as Benin, Côte d'Ivoire, Guinea and Senegal.

### **Latin American drug dealers partner with West African criminals**

One typical way that the Latin American drug cartels operate is to send their lieutenants to open legitimate businesses in West African nations in

order to obtain legal residency papers, and then start the process of setting up local illegal networks and front-companies to facilitate drug trafficking (Champin 2012). Once installed, the Latin Americans partner with transnational organised crime groups (TOCs) in West Africa, particularly Nigerians, for their smuggling and trafficking expertise, safe houses, storage space, banking, and a host of other services (Ellis 2009). This is analogous to how Colombian cartels established links with Mexican syndicates after the US significantly choked off the old Caribbean drug transportation corridor and forced the Colombians to start moving their drug loads across the southwest border of the US (*ibid.*). Mexican DTOs, including the Sinaloa cartel, are also present in West Africa (Farah 2014). There have also been reports of Venezuelans, Surinamese and European organisations, including Italian TOCs, operating in the same territory (*ibid.*).

The degree to which Latin American traffickers rely on West African partners, and the nature of these partnerships, depends heavily on the quality of law enforcement in each African country. In countries such as Guinea-Bissau, which has extremely weak governance, Latin American cartels merely need to bribe the only institution with real power – the military – to be able to enjoy *de facto* freedom from prosecution. In other countries, such as Ghana, which has an emerging democratic tradition and stronger state institutions, Latin American cartels rely more on local partners, thus insulating themselves from possible arrest by local authorities. Not surprisingly, while law enforcement authorities continue to arrest low-level narcotics traffickers, Ghana has had relatively limited success in pursuing Latin American partners and their Ghanaian drug baron partners.

### **Structure of West African DTOs**

The general structure of most West African criminal networks has distinctive characteristics typical of lineage-based societies (Akyeampong 2005). Criminal enterprises in West Africa use techniques similar to those of legitimate traders and business people, whereby a successful individual entrepreneur invites one or more junior relatives or dependents to join him or her in a business deal (Amado 2008). West African criminal networks, in general, have certain prime characteristics, including: being small, compartmentalised cells of between two and 10 members; comprising mostly kinsmen from the same ethnic group; the ability to communicate mostly in indigenous, African languages; making deals and then dispersing, and regrouping at a later date as needed; adopting false identities for their members, including changing their nationalities; and refraining from the use of violence in order not to attract the attention of law enforcement officials (Williams and Haacke 2008).

Some observers have juxtaposed so-called ‘horizontally’ structured African criminal gangs with the so-called ‘vertically’ structured Latin American cartels. This is a flawed analogy, however, as West African societies remain relatively traditional and hierarchical. The West African modus operandi closely resembles an ‘adhocracy’, which is able to fuse experts drawn from different disciplines into smoothly functioning, yet ad hoc, project teams (*ibid.*). This stands in contrast to the more corporate-style relations of classic American mafias. Moreover, ‘informal’ or ‘ad hoc’ is not intended to imply that West African traffickers are not capable. A senior US anti-drug official once described Nigerian drug networks as ‘one of the most sophisticated and finely tuned trans-shipment, money-moving and document-forging organizations in the world’ (Ellis 2009).

West African trafficking groups have shown a high degree of flexibility in their amphetamine-type stimulants (ATS) trafficking routes by using couriers from countries outside the region, e.g., from Eastern Europe or Asia, and by diversifying their routes, which are mostly by air (UNODC 2012). Nigerian drug traffickers are also ‘decentralised and diversified’ into TOC lines of business, including ‘illicit drugs, prostitution, and scams’. Consistent with this, Nigerians dominate the markets for cocaine and prostitution in Rome, Milan, Naples, Genoa and other Italian cities, in collaboration with the Calabrese and Camorra mafia, and may be more accurately considered to be TOC members than merely DTOs. This being said, most indigenous organised crime groups in West Africa, with Nigerians and Ghanaians being exceptions, have historically lacked the sophistication of global drug trafficking cartels. Unfortunately, West Africans are catching up by partnering and learning from the Latin American drug cartels (International Narcotics Control Strategy Report 2012).

### **Global drug trafficking routes via West Africa**

Global drug trafficking routes that pass through or originate in West Africa vary by the type of drug involved. The first is heroin. This drug is principally smuggled by West African criminal groups from Afghanistan and Pakistan, through Iran and other Middle Eastern countries, on to East or Southern Africa, then to West Africa before being transported to the US and Europe. Nigeria and Ghana are the principal transit zones in West Africa, with Côte d’Ivoire as another key transit country. By contrast, heroin coming from South America, especially Colombia, often traverses the Atlantic to West Africa, only to cross back to North American markets (Harrigan 2012). In both routes, heroin is transported from the source zone by a variety of means, including maritime containers, go-fast boats,

small wooden fishing vessels called dhows, air drops at sea, air cargo, and in luggage and body carried by couriers or 'mules' (Harrigan 2012). Nigerian nationals accounted for 32 percent of drug trafficking arrests in Pakistan from 2000 to 2008, with Ghanaian, Guineans and Ivoirians accounting for 1 percent each (Harrigan 2012). During July 2011, the Drug Enforcement Administration (DEA) Office in Accra, in coordination with the Ghana Sensitive Investigative Unit, concluded an investigation targeting a Ghana based organisation responsible for shipping multi-kilogram quantities of heroin from West Africa to the US. Smaller countries in West Africa are also touched by the international heroin trade. In May 2011, the DEA Office in Lagos, Nigeria, in coordination with the DEA Islamabad and the Benin judicial police intercepted 200 kilos of heroin from Pakistan that was in transit in Cotonou, Benin. This undercover operation resulted in the single largest heroin seizure in Benin's history, and the arrest of three Beninese and one Togolese in Benin and several arrests in Pakistan (Harrigan 2012).

The second drug is methamphetamine. Illicit manufacture of methamphetamine is not entirely new to the African continent. Since 2004, regular reports of illicit manufacture of the substance have been received from South Africa. Since 2007, the DEA has assisted with the seizure of several other multi-ton pseudoephedrine and ephedrine shipments in Africa that have been linked to Mexican DTOs (Harrigan 2012) in Nigeria, Ghana, Kenya, the Democratic Republic of the Congo and Mozambique (Pena 2012). Mexican cartels are gaining a foothold in West Africa, where their traffickers are being used as advisors and possibly being recruited as chemists in the illicit manufacture of methamphetamine (UNODC 2012). West Africa has been a trans-shipment area for precursor chemicals diverted for methamphetamine production since at least 2009, with large increases in shipments through Benin, Côte d'Ivoire and Senegal (Champin 2012) and with Nigeria and Ghana as likely production hubs, based on increased precursor shipments. The added danger with ATS is that, unlike cocaine and heroin, illicit ATS manufacture does not rely on the cultivation of naturally occurring plants such as the coca leaf or opium poppy and, as such, is not limited to certain geographic locations – leaving the possibility that West Africa could be transformed not only into a key transit point for ATS, but into a manufacturing hub as well (UNODC 2012). The DEA has already documented the emergence of West Africa as a significant production point of origin for multi-kilogram methamphetamine shipments to the Far East.

Evidence was uncovered in July 2009 of intended ATS manufacture in Guinea, with precursor chemicals sufficient to manufacture ecstasy worth over US\$100million (*ibid.*). In April 2010, 36 kilos of crystal

methamphetamine destined for Japan and five kilos of methamphetamine destined for the US via South Africa were seized on cargo planes in Nigeria (Champin 2012). In June 2010, Côte d'Ivoire officials seized precursor chemicals acetone destined for Benin and methylethylketone destined for Guinea (UNODC 2012). In 2010, the International Narcotics Control Board reportedly stopped shipments of 500 kilos and 200 kilos of ephedrine headed for Guinea and Niger respectively (*ibid.*). In 2010, the US Government indicted members of a large international cocaine trafficking organisation for, inter alia, the intent to establish a clandestine laboratory in Liberia for the large scale manufacture of methamphetamine that would have been destined for Japan and the US (*ibid.*). Because of limited reporting to the UNODC by West African countries, the best measure of the escalating situation appears to be reports coming from countries in East and Southeast Asia of the increasing involvement of West African nationals. While China and Taiwan have traditionally been the source countries for methamphetamine smuggled into Japan, the proportion of seized methamphetamine trafficked into Japan from Africa rose from 7.4 percent in 2009 to 36 percent in the first half of 2010, mostly from Nigeria (*ibid.*).

The most common destinations for methamphetamine trafficked through Africa have been Japan, followed by Korea. Since March 2010, numerous arrests of couriers in Asia attempting to smuggle methamphetamine from Africa indicates that African drugs syndicates are producing the drug for export throughout the Asia Pacific region, with most of the Africa sourced methamphetamine destined for sale in Japan following trans-shipment through countries such as Malaysia (Champin 2012) and Thailand. In May 2011, there were two seizures in Nigeria of 63 kilos of methamphetamines, and 14 and 26 kilos of amphetamines destined for Japan, and a seizure in Senegal of one kilo of methamphetamine from a courier from Togo heading to Japan. According to a European police official based in Africa, Nigerian criminal networks were building links to Japan's *yakuza* criminal gangs (Champin 2012). French anti-drug officials agree that most methamphetamine production in West Africa is destined for East and Southeast Asia, including also China, Cambodia, Vietnam and the Philippines (Champin 2012).

Since 2010, West African groups, particularly Nigerians, have trafficked methamphetamine to New Zealand (UNODC 2012) and likely to Australia as well. In 2011, the DEA and Nigeria's drug law enforcement agency jointly initiated two additional investigations, targeting clandestine methamphetamine operators either based in Nigeria or selling their labs'

illicit production in Nigeria. These operators are actively seeking organised criminal group assistance in legally importing and then diverting large-scale quantities of precursor chemicals into Nigeria to increase their methamphetamine production capacity (International Narcotics Control Strategy Report 2012). An operating methamphetamine laboratory was discovered in Lagos in June 2011; it was estimated to be capable of producing 150–200 kilos per week (UNODC 2012). A second operational lab was seized in February 2012, with one Nigerian and three Bolivians arrested – suggesting possible cooperation with Latin American criminal syndicates (UNODC 2012).

Methamphetamine and other illegal drugs produced in Africa could very well make their way to US markets one day. Some methamphetamine currently produced in Africa is being shipped all the way to Southeast Asia. There is no reason to believe that methamphetamine produced in Africa could not make it into the US in the future (Feinstein 2012). Senator Feinstein's concerns are well-placed. Most countries in West Africa do not have the legislative and institutional frameworks necessary to control precursor trafficking. As has been the case with heroin and cocaine, traffickers are taking advantage of the sub-region's permissive environment to import chemical precursors and, increasingly, use these locally in the illicit manufacturing of ATS drugs (Feinstein 2012).

The third drug is cocaine. Colombia produces about 54 percent of the refined cocaine on the world market, with the rest coming from Bolivia and Peru (Farah 2014). Prior to about 2004, cocaine destined for Europe had followed a northerly route from South America, through the eastern Caribbean to Spain's Canary Islands and Portugal's Azores Islands, to clandestine landing zones on the coast of Spain, Portugal and the Netherlands or to commercial ports such as Barcelona, Rotterdam and Antwerp (Rotella and Kraul 2007). Besides Spain, Portugal and the Netherlands, other major European entry points for cocaine included France and Italy (Wyler and Cook 2009).

However, heightened US anti-drug and counter-terrorism law enforcement and border control efforts, coupled with US and European interdiction, have forced smuggling further south to destinations in West Africa, from Mauritania to as far south and east as Nigeria (Wyler and Cook 2009). Around 2004, West Africans began to provide logistical assistance to South American cocaine traffickers in organising their West African maritime shipments to Europe from at least two sub-regions: one centred on Guinea-Bissau and Guinea in the western Gulf of Guinea, and the other centred on the Bight of Benin, including Ghana, Togo, Benin and Nigeria

(World Drug Report 2010). This first sub-region was along Latitude 10 North between northern South America and the western part of Africa's coast, and became so important that law enforcement agencies dubbed it 'Highway 10' (Wyler and Cook 2009).

Europol has recently confirmed that former hashish smuggling routes are also being used by cocaine traffickers (Rotella and Kraul 2007). These routes may involve Moroccan nationals who have gained smuggling expertise through years of trafficking hashish across the Mediterranean (Rotella and Kraul 2007). Algeria is also an important hub for drugs of all kinds, with numerous reports of arrests of couriers (Champin 2012). In 2007, US and international authorities estimated that approximately 80 percent of cocaine travelling from Latin America to Africa moved by sea and 20 percent by air (*ibid.*). There may be as many as 100 ships that cross the Atlantic every year, transporting drugs to West Africa (*ibid.*).

Anecdotal evidence suggests cartels have even used submarines (BBC News 2011). The largest known loads of cocaine en route to Europe via West Africa have been transported by large commercial fishing or freight 'mother ships' that hand off shipments to smaller, faster boats outside territorial waters (including fishing boats, sailing yachts and speedboats) (Wyler and Cook 2009). According to Europol, the crews of these smaller vessels are often West African, with Spanish or South American 'controllers' (UNODC 2008). In addition to ships, about 60 illicit aircraft regularly make the trans-Atlantic journey, benefiting from an abundance of landing strips and limited air traffic control (Champin 2012). After arriving in West Africa, the cocaine is transported in small quantities by couriers on commercial flights, and sometimes by air freight or by smugglers across the Sahara to North Africa and then Europe (Champin 2012). A 2008 Department of Homeland Security report warned of a growing fleet of rogue aircraft criss crossing the Atlantic – at least 10 aircraft, including executive jets, twin-engine turboprops and ageing Boeing 727s (Scott 2010).

UNODC reported in 2010 that a number of modified aircraft had taken off from Venezuela toward West Africa, 'notably to Cape Verde, Guinea-Bissau, Mali, Mauritania, and Sierra Leone' (Champin 2012). Some smaller aircraft are modified for the trans-Atlantic voyage by the inclusion of additional fuel tanks (UNODC 2008). Some airports or landing strips are also in the Sahara-Sahel (Wyler and Cook 2009). In November 2009, a burned Boeing 727 was found in the desert of northern Mali after having served to transport several tons of cocaine from Venezuela (Champin 2012). One affluent area of Gao, in north-eastern Mali, had been known as 'Cocainebouyou' – at least until the March 2012 Al-Qaeda in the Islamic

Maghreb/Tuareg take-over of that city (Melly 2012). Much of Colombia's cocaine exports to Europe are now passing through Venezuela and Brazil and then transiting through West Africa via air and ship. A significant portion of the Bolivian (and, to a lesser degree, Peruvian) cocaine shipments are also moving by air via Venezuela, in part because of the 'Bolivarian Revolutionary' alliance between Bolivian President Evo Morales, himself a coca farmer before rising to power, and Venezuelan President Hugo Chávez (Farah 2014). Several of the largest cocaine busts in West Africa have come aboard aircraft that departed from Venezuela (*ibid.*).

The majority of the Bolivian and Peruvian cocaine is moved through Brazil and then onward to Africa. There are linguistic as well as geographical reasons for the Brazil connection. Guinea-Bissau and Cape Verde, two of the most active trans-shipment hubs, are former Portuguese colonies, like Brazil (International Narcotics Control Strategy Report 2012). This Brazil connection was facilitated by increased air transport links between Brazil and Africa. Consistent with this, in November 2011, there were two seizures at the Lagos airport from passengers on a Qatar Airlines flight from São Paulo, Brazil (Champin 2012). Brazil is now rivalling Venezuela as the number one point of departure for cocaine transported to Africa.

### **Impact on good governance and human security**

Some analysts believe that the damage done to governance in West Africa due to the drugs trade has already reached the point that some governments in the sub-region are 'dominated by criminal networks' (Reyskens 2012), and that their sovereignty and even viability as independent rule-of-law-based entities is in jeopardy (Wyler and Cook 2009). In short, these violent non-state actors may represent, over time, an existential threat to the viability of West African states and thus the greatest challenge to human security in the sub-region since resource conflicts rocked several countries, starting in the early-1990s. There is little doubt that the proceeds of drug trafficking are indeed fuelling a dramatic increase in narco-corruption in West Africa. UNODC indicated in a 2010 report that the drugs trade in West Africa appears to be controlled by national figures so powerful that little opposition is possible, and where disputes over illicit markets 'can lead to the toppling of governments'.

With the presence of large amounts of money, drug traffickers can stage coups d'état, hijack elections and buy political power. In Guinea-Bissau, at least the last two coups d'état have been directly or indirectly linked to a fight for control of the drugs trade. In drug trafficking hubs such as Ghana and Nigeria, members of parliament, police officials and government ministers

have been implicated in drug smuggling over the past years (Champin 2012). The largest seizure of heroin in New York in 2006 was made from a shipment originating from Ghana and belonging to a Ghanaian member of parliament who was not subsequently suspended from his position in government (Champin 2012). In January 2011, then Ghanaian President Atta-Mills called in Western diplomats for a private meeting at which he reassured them of Ghana's resolve in the fight against illicit drugs, in order to dissipate doubts following revelations that Ghana's national drug bureau had actively collaborated with drug traffickers to torpedo a United Kingdom (UK) anti-drug operation involving cocaine and heroin transiting Ghana en route to the UK (*ibid.*).

Drug trafficking is a major problem for the government of Sierra Leone – a recovering failed state at risk of regression because of illicit drugs. In Sierra Leone, the Minister of Transportation resigned after his brother was implicated in the country's largest cocaine seizure, but was rehired despite this scandal. In Mauritania, the son of former President Ould Haidalla was arrested on cocaine trafficking charges. These elites have also kept their law enforcement and justice systems underdeveloped and corrupt, with police chiefs in many West African countries being appointed directly by the president and dependent on the head of state's support and patronage for resources, promotion, and the job itself (Felbab-Brown 2010). Drug traffickers are able to offer law enforcement officials in West Africa more than they could earn in a lifetime, simply to look the other way. Some ruling elites are even tempted to use anti-drug campaigns as a mechanism to weaken political opposition (Felbab-Brown 2010). Anti-corruption bodies have also been very weak, often serving as yet another mechanism for purging domestic opposition, instead of cleaning up deficient institutions.

### **Weakness of the judicial system in fighting drug money**

UNODC's current Representative for West Africa said in June 2011 that a big part of the problem is a weakness in the sub-region of the judicial and penal systems, where there remains a 'culture of impunity'. Up to then, he added, no country in West Africa had ever brought up a case in its judicial system for laundering drug money. This Representative asserted that the international community had focused its efforts on law enforcement, and had done little to strengthen the judicial systems (Champin 2012). Consistent with this, a French national was convicted in Nouakchott, Mauritania, in February 2010, along with a police commissioner, a former International Criminal Police Organization (INTERPOL) representative, and a local businessman, of transporting 760 kilos of cocaine in a minibus

in August 2007. In August 2011, however, the Court of Appeals reversed the convictions and freed the accused. In September 2011, the Mauritania Supreme Court reversed the appeals court decision, fired the head of the appeals court, and punished four other judges for their decision to reverse the convictions (Champin 2012). Even when officials are not corrupt, state-paid prosecutors are usually no match for the best defence lawyers that drug money can buy (*ibid.*). Unsurprisingly, when drug trafficking surges, the legal system becomes overburdened with court cases related to drugs in one way or another, even when there are applicable laws in place to indict individuals, or to prosecute and incarcerate them.

### **Drugs – anew form of resource conflict?**

In the post-independence period in West Africa, much political conflict focused on gaining access to the state in order to control rents from various legal, semi-illegal or outright illegal resource economies such as diamonds, gold and other precious metals, stones and timber (Liberia and Sierra Leone), oil (Nigeria) and fishing. The latter is often conducted illegally and destructively by international fleets from outside West Africa (Felbab-Brown 2010). From the early-1990s, this conflict in West Africa devolved into protracted violent clashes and civil wars that centred on natural resources, particularly diamonds, timber, oil and gold. Profits from these resource wars fuelled the rise of the Revolutionary United Front (RUF) in Sierra Leone, for example; fed the wars sustained by Liberia's Charles Taylor, and contributed to the rampant corruption and weak or failed institutions in almost every country of the sub-region. At the same time, these kinds of natural resources, while valuable, pale in comparison to the money now generated by the cocaine trade in West Africa. For example, at its peak, the total annual value of the 'blood diamond' trade smuggled out of Sierra Leone and Liberia was less than US\$200 million. The potential to fuel conflicts over the cocaine pipeline, the most lucrative commodity so far, and one whose profits are several orders of magnitude larger than diamonds, is truly frightening. Just as the 'blood diamond' trade and illicit timber deals allowed groups like the RUF to purchase advanced weapons on the international market, the influx of cocaine cash will allow the criminal and militia groups in the region to acquire ever more sophisticated armaments, training and communications (Farah 2014). Separatists in Senegal's Casamance region are already using the drugs trade to finance their rebellion, and while they have historically used the sale of cannabis to do so, it is logical to assume that cocaine revenues will eventually contribute to this ongoing instability, if they have not already.

Even if West Africa does not see a return of civil wars or rebellions, diplomats and other international officials worry that some West African countries could develop 'along similar lines to Mexico, where drug gangs have a symbiotic relationship with political parties and with the state and drug-related violence resulting in thousands of deaths every year' (Ellis 2009). The current UNODC Representative for Mexico, Antonio Mazzitelli, who was also previously its Representative for West Africa, believes that West Africa could see far greater violence, much like 'small gangs in Jamaica', such as those of the drug kingpin Christopher 'Dudus' Coke, who was extradited to the US in 2010 (Mazzitelli 2017; Champin 2012). One scholar has hypothesised that where there is political sponsorship of drug trafficking, violence can be relatively low, but that where sponsorship is contested, violence results. In January 2011, for example, a major battle was fought between Berabiche Arabs running drugs to Libya, and Tuaregs who demanded a fee for passing through their territory (Champin 2012).

Latin American drug gangs themselves could also be the source of killings and other violence in West Africa, adding to the region's instability. Many of the Mexican cartel wars are, in essence, resource wars, with the merchandise in dispute being not only the trafficked drugs but the physical trafficking hubs through which the illicit goods must pass. In other words, the criminal pipeline itself can become a resource in dispute, and one of the primary sources of violence (Farah 2014). There is also a risk that rivalries between various African networks of corrupt politicians or military officials could lead to violence, something some analysts believe has already occurred in Guinea-Bissau. Whether similar cartel wars could break out in Africa is uncertain. Some skeptics assert that such violence would not be consistent with the way disputes are handled in West Africa; it may also be the case that governance is so weak that there are multiple channels or pipelines to traffic through the sub-region's 16 countries, and therefore little reason to fight over them. One exception, however, could involve fighting for control of choice island landing strips in Guinea-Bissau, which, with the collusion of a weak host government, are particularly valuable pipelines.

Civil society can also be intimidated and muzzled by the drugs trade. There have been significant instances of interference with the freedom of the press by some officials in Guinea-Bissau, related to media reports on drug trafficking and alleged related corruption in the military. Human rights can also become a casualty when drug traffickers are calling the shots (UNODC 2008).

## **Is the drugs trade not a threat to political stability?**

One scholar has written that, ‘To the extent that a governing elite captures rents from the drug trade, a symbiosis between foreign (and national) drug traffickers and the ruling elites may develop’ (UNODC 2008), which is analogous to what has occurred in Jamaica. In this view, drug traffickers enjoy a sponsored safe haven, and the stability of the existing political status quo is reinforced, making it harder to root out these entrenched interests. The fundamental problem with this view, however, is that the short-term stability of having undemocratic ruling elites enter into ‘symbiotic’ relationships with drug traffickers will, in the long run, choke off democratic evolution in West Africa. The stability of this alliance lasts only until the next group of wannabe leaders acts to mount a coup or launch an insurgency, thereby perpetuating a new form of resource conflict in West Africa.

Military leaders have since been designated ‘drug kingpins’ by the US Government. Ex-Naval Chief of Staff Jose Americo Bubo Na Tchuto, for example, was listed as a drug kingpin in April 2010 by the U.S. Department of the Treasury, and then reinstated by the Guinea-Bissau Government as the head of the navy a few months later. Armed Forces Chief Antonio Injai reportedly had been competing with Tchuto for a larger share of drug profits, with the former controlling airports, and the latter maritime shipments (Champin 2012). Ibrahima Camara, the head of Guinea-Bissau’s air force, is also involved in drug trafficking. One observer believes that the involvement of the Guinea-Bissau armed forces in the drugs trade is so entrenched that there exists a generational tension between an old guard that has access to drug revenues and a younger generation of officers that wants its share (*ibid.*).

## **Impact on society**

Historically, the societies of transit countries have never been able to remain immune from the negative impacts of drug trafficking. Inevitably, local consumption of drugs increases, which has cascading negative effects on the social fabric, stability and security of any transit country (Farah 2014). For example, no country in Latin America has suffered as much as Brazil for becoming a key transit country, where payment is often made with drugs. It has become the second largest consumer of cocaine in the world, after the US (Farah 2014). Already, West Africa is proving that it is no exception. There is often a lack of appreciation by leaders in West Africa of how serious this problem is, and of how rapidly it can metastasize. An estimated US\$800 million was spent on drug use in 2009 alone in West Africa, which has become a huge local consumption market (UNODC

2012). Drug consumption in West and Central Africa is growing quickly, with up to an estimated 2.5 million drug users now in these areas, a UN official reported in February.

There are roughly 1.1 million cocaine consumers in West Africa, according to UNODC, which indicates that 8 percent of the world's 14 Million cocaine users are from the sub-region (UNODC 2012). Of the 35 tons of cocaine that transited West Africa en route to Europe in 2010, 13 tons were consumed locally, and somewhat less than one ton seized. Trafficking has also fuelled increasing consumption of methamphetamine in the sub-region (International Narcotics Control Strategy Report 2012). ATS are transported mainly from Nigeria to several countries in West Africa, with traffickers using land routes due to the free movement policy of ECOWAS. The use of amphetamines has already been reported in several West African countries, including Burkina Faso, Niger, Senegal and Sierra Leone, even among school-aged children. UNODC has established an annual prevalence rate of amphetamines at 1.4 percent in Nigeria, based on a 2008 household survey. This rate is higher than in South Africa, currently thought of as the most established ATS market in Africa; higher than in most European countries; and comparable to use levels in Asia, where ATS use has a long tradition (International Narcotics Control Strategy Report 2012). Ghana is one example of a West African nation with a growing illicit drugs problem. Cannabis is the most abused illicit drug, but the use of hard drugs is on the rise. Cocaine and heroin are the upper-middle-class drugs of choice, while poorer Ghanaians get hooked on crack cocaine.

It is safe to assume that those seeking treatment at psychiatric hospitals are but a small fraction of local users. Nigeria already has a large number of heroin addicts, who number at least in the tens of thousands. Throughout West Africa, the presence of drugs is engendering a growing user population and straining already weak health systems, with no real mechanisms to cope. Due to the lack of hard data on consumption, it is too early to tell how bad the long-term health implications of drug trafficking through West Africa will be. Despite this, experiences of other transit states tell us they will be serious (Bybee 2011). To give one example, governments in the sub-region, compromised by drug trafficking, have less to invest in health or education because those resources have been diverted to address the insecurity resulting from trafficking-related violence. Besides drug-related violence and the damage to the health of West Africans, drugs and easy money are also having a corrosive effect on societal norms and values. Drugs devalue traditional values, which have kept African societies cohesive and united. Unemployed and desperate youths are vulnerable to being recruited as foot soldiers for criminal groups.

## Impact on the economy

A few observers do not see the net economic impact of the drugs trade on West Africa as all bad. Some say that illicit drug trafficking in West Africa – by far the most lucrative transnational criminal activity (Farah 2014) – has become institutionalised and so entrenched that it is essentially a part of each country's economy, making a huge, though unofficial, contribution to national income (Reyskens 2012). Indeed, trafficking in heroin, cocaine and amphetamines has expanded dramatically across Africa as a whole, growing into a roughly US\$6–7 billion annual illicit industry, according to conservative estimates. Estimates vary widely as to the amount of drugs money flowing specifically into the sub-region of West Africa. In 2007, UNODC conservatively estimated that 40–50 tons of cocaine, with an estimated value of US\$1.8 billion, passed through West Africa (UNODC 2008). By contrast, it is estimated that the amount of cocaine transiting West Africa was at least five times the UNODC figure (Kurtzleben 2009).

The only non-oil legal export from the region of greater value than cocaine is cocoa, primarily from Côte d'Ivoire. The value of cocaine transiting West Africa surpasses even gold exports from Ghana and bauxite exports from Guinea (*ibid.*). Besides oil-rich Nigeria, criminal proceeds from drug trafficking in West Africa probably average about 10 percent of typical government revenues – which indicates how under-resourced most West African governments are, compared to TOC groups. The worst case is Guinea-Bissau, whose status as the region's leading cocaine hub means that the value of its trafficking economy exceeds its tiny formal economy (Bybee 2011). Drug trafficking may be the most important variable that explains empirical data suggesting that cash remittances from Europe have increased dramatically in recent years in a number of West African countries. In Côte d'Ivoire, Ghana, Nigeria and Senegal, as examples, there has been a doubling or tripling of remittances (Akyeampong 2005). While all these countries have large expatriate populations, this sudden growth is difficult to explain without reference to the illicit drugs trade. The currency of one small West African nation, the Gambia, experienced a rapid appreciation of its value starting at the end of July 2007. The dalasi appreciated 25.9 percent in value against the dollar in one single day on 27 September 2007, likely due to money laundering related to a new hub for the cocaine trade that was reportedly set up in the Gambia after (temporary) disruptions in Guinea-Bissau and Guinea.

In June 2010, concrete evidence of the link to Guinea-Bissau and money flooding the economy came in the form of the arrest in the Gambia of five Venezuelans – one of whom confessed to having moved from Guinea-Bissau

– and in the seizure of 2,196 kilos of cocaine with a street value of US\$ 1 billion, about half of Gambia’s annual Gross National Product in 2010. The Gambian authorities, with the help of UK anti-drug officials, also arrested a Dutch national of Lebanese origin (Bybee 2011). Because the scale of the illicit drugs trade in West Africa is unknown, its exact contribution to each country’s GDP is unknown. Most analysts, however, conclude that being a drug transit state is, in net terms, very detrimental to a country’s development.

Economically, the influx of drug and other dirty monies into the local market can seem like a balm on poverty in the short term. There may be a building boom, with construction providing needed jobs and better quality accommodation. Over time, however, much of this money begins to leave the country. Eventually, the tourism and business sectors start to suffer too. Investors are less inclined to do business in drug transit countries because unstable environments are risky and operating in higher-crime areas entails higher business costs. Drug money investments also risk exacerbating inflation and may contribute to high property prices that disadvantage those engaged in illicit economic activities. TOCs also hinder development in other ways by undermining the rule of law, governance, the environment and health.

### **Efforts to combat drug trafficking**

Given West Africa’s underdevelopment and the global nature of drug trafficking, it is clear that the governments of the sub-region cannot respond to this problem – and illicit trafficking in general – without the help and cooperation of regional organisations and the international community. West African nations, for the most part, welcome the aid and cooperation of the international community. Ongoing programmes by the UN, European Union (EU) and the US to aid West Africa’s anti-narcotics efforts include the following: (i) UN/EU assistance; (ii) the West Africa Coast Initiative (WACI), officially launched in December 2009; (iii) AFRICOM; and (iv) USAID. These agencies address some of the key governance considerations related to TOCs, including justice sector strengthening and anti-corruption efforts. USAID has also commissioned analytical research to better understand the relationship between development and drug trafficking.

### **Conclusion**

This article has sketched out the context and history of drug trafficking in the West African sub-region; analysed the ways DTOs are structured and the evolving patterns in trafficking; exposed the negative impact of drugs on West

Africa's governance, society and economy; and highlighted international and US counter-narcotics efforts. It is hoped that all the parties involved can rise up and tackle the illicit financial flows that undermine democratic governance and security in West African sub-region, and Africa as a whole.

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## **Beyond Recrimination: The Rule of Law and Nigeria's Anti-graft War**

Isaac Olawale Albert\*

The idea of rights is nothing but the concept of virtue applied in the world of politics. By means of the idea of rights, men have defined the nature of license and of tyranny ... no man can be great without virtue, no any nation great without respect for rights (Tocqueville 1991 [1835]: 219).

### **Abstract**

The existing literature on corruption in Nigeria and several other parts of the world focuses exclusively on recrimination, namely the securitisation or demonisation of the people accused of corruption and privileging the need to punish them. Atomised in these extant studies is the fact that anti-graft regimes equally have the responsibility to protect the rights of these accused persons in line with the principle of the rule of law. Refusal to protect these rights constitutes a form of corruption in itself. This article considers this issue as crucial to the assessment of the anti-graft war in Nigeria, since 2015 when Muhammadu Buhari became the president of the country. Attention is called to three of the nagging rule of law issues in the country seeking to be actionably addressed: (i) the abusive manner in which some of the accused persons are apprehended; (ii) how they are subjected to 'media trial' though the government eventually loses many of the celebrated cases; and (iii) how the Federal Government disobeys court orders to release some of the accused persons. This questions the credibility of the ongoing anti-graft war in the country and casts an air of authoritarianism around the regime of President Muhammadu Buhari. What Nigeria needs at this moment, in its democratisation effort, is an anti-corruption process that is based on the rule of law. Suggestions are made on how to deal with some of the emerging issues.

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## Résumé

La littérature existante sur la corruption au Nigéria et dans plusieurs autres régions du monde porte exclusivement sur les récriminations, à savoir la titrisation ou la diabolisation des personnes accusées de corruption et privilégiant la punition à leur infliger. Atomisé dans ces études est la responsabilité de protéger les droits de ces accusés qui incombe aux régimes anti-corruption, conformément au principe de primauté du droit. Le refus de protéger ces droits constitue une forme de corruption en soi. Cet article considère que cette question est cruciale pour l'évaluation de la lutte anti-corruption au Nigeria depuis 2015, date à laquelle Muhammadu Buhari a été élu président du pays. L'attention porte sur trois problèmes récurrents de règle de droit qui doivent être traités de manière agressive dans le pays : (i) la manière abusive avec laquelle certaines personnes accusées sont appréhendées, (ii) la manière dont elles sont soumises à des «procès médiatiques» dont beaucoup sont perdus par le gouvernement (iii) l'obstination du gouvernement fédéral à ordonner aux tribunaux de libérer certains des accusés. Cela remet en question la crédibilité de la lutte anti-corruption en cours dans le pays et projette une image d'autoritarisme du régime du Président Muhammadu Buhari. À l'heure actuelle, le Nigéria a besoin d'un processus de lutte contre la corruption fondé sur la primauté du droit. Des suggestions sont faites sur la manière de traiter certaines des questions émergentes.

## Introduction

Nigeria is richly blessed with material and human resources. However, bad governance and corruption make it difficult for the country to harness its great potentials and make any steady movement towards sustainable development. Hence, the country remains one of the poorest in the world. To deal with the hydra-headed problem of widespread corruption, several federal institutions have been established by successive regimes in the country. These include the Code of Conduct Bureau, the Recovery of Public Property Act 1984, the Miscellaneous Offences Act 1984, the Bank and Other Financial Institutions Act 1991, the Failed Banks (Recovery of Debts) Act 1994, the Advance Fee Fraud Act 1995, the Nigeria Drug and Law Enforcement Agency Act 1998, the Nigerian Deposit Insurance Corporation Act 1998, the Independent Corrupt Practices and Other Related Offences Commission Act 2000, and the Economic and Financial Crimes Commission Act 2004. There is also the Monitoring of Revenue Allocation to Local Government Act 2006, the Money Laundering Act 2007 and the Public Procurement Act 2007. That corruption persists in Nigeria and indeed is assuming epidemic proportions is to suggest that

these agencies have performed below expectations. Consequently, Nigerians decided during the 2015 election to appoint a president they believed could deal with the corruption cases in the land with deserved vigour. This was the context under which Muhammadu Buhari came to power in 2015.

Unfortunately, many of the tried high-profile corruption cases handled by the Buhari administration failed in court on technical grounds. The core focus of this article is not so much on the failure of the corruption cases but on the civil liberty questions in the handling of the accused persons. This issue is poorly treated in existing studies and an attempt is made here to include it in anti-corruption discourses. The article does not deny the reality of corruption in Nigeria; neither does it aim to say nothing has been achieved by the administration of President Buhari. It simply insists that due process must be followed by the Nigerian state as it fights corruption; and the rights of accused persons must be respected.

### **Theoretical pathway**

Corruption is considered a criminal activity and a form of human rights violation, in the sense that it puts resources that should be in the hands of the generality of the people into the pockets of a select few who might ultimately use such resources to the disadvantage of the society. It is a crime against humanity: a serious offence against hardworking citizens and the state that is saddled with the responsibility for defending them against subversive forces. It destroys a society's social capital and has a negative effect on a people's happiness (You 2006; Helliwell 2006). Different countries of the world have mechanisms for curbing the menace.

It is unfortunate that scholars are wary of writing about the problem and the means for dealing with it. America is not an exception to this general picture. As Johnston (2005: 809) observed, 'American political science as an institutionalized discipline has remained uninterested in corruption for generations'.

In 2016, the UN Office on Drugs and Crime, Country Office in Nigeria published a *Bibliography of Corruption in Nigeria* (UN 2016) in which it was clearly shown that the study of corruption is not popular globally. While taking a critical look at the Nigerian picture, data from other parts of the world were showcased and the period covered was 1957 to 2013. Within this period, Nigeria recorded the highest number of publications on corruption in the world: 332, against America's 66, the United Kingdom's 61, and Switzerland's one (*ibid.*: 6). Of these Nigerian publications, 287 came from Political Science, 97 from Economics, 39 from Law and 28 from Religious Studies (*ibid.*: 5). Most of the Nigerian works were published from 1999, when Nigeria transited to civil rule, to 2013. The highest number of

publications came out from 2006 to 2007 (*ibid.*: 4). One peculiar thing that came out of these publications is that they are silent on issues relating to the human rights of accused persons. They focused largely on recrimination.

The foregoing notwithstanding, some pictures are emerging globally on anti-graft measures. Fighting the menace could unfold in two major ways. The first (soft approach) is by attacking the root causes of corruption through gradual institutional and societal transformation in a manner that would make corruption less attractive to the people. In this case, people are paid good wages and all efforts are made towards ensuring that people have fewer incentives for engaging in corrupt practices. The second is the coercive (hard) approach, in which the state tries to stamp out corruption by coming down heavily on individuals and corporate bodies considered corrupt. Strong state institutions are needed for ensuring the success of the two approaches (Mauro 1995; Rose-Ackerman 2004).

What are these state institutions and what constitutes their strength when it comes to the fight against corruption? The three core institutions needed here are the executive, legislative and judiciary arms of government. Each of them has key roles to play in ensuring the success of an anti-graft regime. They must build synergic relationships for ensuring the success of the war. The connecting rod is the rule of law. In this respect, the executive would propose the anti-graft laws, the legislature would pass the laws and carry out the oversight function of ensuring that the laws are obeyed, and the judiciary would deal with cases of infraction of the laws, not only by the individuals and bodies for which the laws were created but also by the government pursuing anti-graft policies. The connecting rod of the different levels of intervention is adherence to the rule of law by these institutions.

To what extent is the rule of law observed by those engaged in the anti-corruption war? This is the question this article attempts to answer, with focus on the unfolding situation in Nigeria. The take-off point for this kind of analysis is the World Justice Project's definition of the rule of law in a manner that emphasises the significance of the following four universal principles: (i) the government and its officials and agents as well as individuals and private entities are accountable under the law; (ii) the laws are clear, publicised, stable and just, are applied evenly and protect fundamental rights, including the security of persons, property and certain core human rights; (iii) the process by which the laws are enacted, administered and enforced is accessible, fair and efficient; and (iv) justice is delivered in a timely way by competent, ethical and independent representatives and neutrals who are of sufficient number, have adequate resources and reflect the make-up of the communities they serve.

The main thrust of the rule of law discourse is that government officials and citizens are bound by the law and will abide by it. This is about equal access to the law and equality before the law. The definition of the rule of law, provided by the United Nations Security Council (UNSC) captures these essential elements as being:

a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with *international human rights norms and standards*. It requires, as well, measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, *participation in decision-making*, legal certainty, avoidance of arbitrariness and procedural and legal transparency (UNSC 2004).

In this respect, there are three distinct features of rule of law discourses. They are (i) government limited by law, (ii) formal legality, and (iii) 'the rule of law, not man'.

A society pursuing anti-graft policies must establish its innocence by showing respect for the civil liberties of all citizens. Those accused of any crime, no matter how weighty, must be presumed to be innocent until the cases against them have been proven beyond reasonable doubt. They have some basic rights that must be respected. The paradox is that those handling them must abide by some non-negotiable fundamentals of a fair trial.

On the contrary, those handling corruption cases are often so sentimental about their enterprise that they assume that the accused persons are guilty as charged. Attempts are made to tamper with the trials in a manner that ensures convictions. It is notable that studies on anti-corruption hardly ever treat this fundamental issue as a democratic practice. The studies are often on recrimination: the establishment of the nature of the corrupt practices and how they are punished or not punished.

This article begins on the note that any anti-graft task must confront four core stakeholders, each with their own rights and duties: the accused person, the prosecuting authority, the judge in the matter, and the public whose basic rights are considered to have been violated by the alleged corrupt practices. Human rights standards presume that the accused person is innocent until the case is proven beyond reasonable doubt. In this way, the burden of proof rests with the prosecuting authority that the person actually committed the offence, and the judge bases judgment on the evidence provided by the jury and the defence of the accused person. To what extent can these principles be applied to the ongoing anti-graft war in Nigeria? What are the present challenges in Nigeria?

## Questionable ‘sting operations’

The first major problem with the anti-graft war in Nigeria pertains to how the accused persons are interdicted. In most cases, their homes are broken into, in some cases at night, and several of them have their property damaged in the process without any compensation, even when security operatives responsible for the operations find nothing incriminating against the suspects. The outcomes of these security operations are usually presented to viewers at home on the many television channels in the country. Broken doors, windows, vaults, tables and sometimes the cash recovered from the homes are shown to viewers. On the other hand, viewers of such news are not told that the consent of the property owners was obtained before they were broken into or whether they refused to open the buildings and the structures in them peacefully. Such buildings are usually sealed up at the end of each operation.

A good example to illustrate the nature of this problem is the experience of the former Minister of the Federal Capital Territory (FCT), Bala Mohammed, who has had his home at Asokoro Abuja seized since May 2016 without the Economic and Financial Crimes Commission (EFCC) granting him and members of his family the opportunity to leave with any of their personal effects. This approach to law enforcement can be deemed insensitive to human security, more so because the matter is yet to be resolved more than one year later. Having waited endlessly to be granted access back to the building, Mohammed had to approach a High Court of the FCT, Gudu District, Abuja on 7 June 2017 seeking to be granted the permission to retrieve his personal effects from the building (Richards 2017: 43). He is still waiting for the matter to be decided. There are several cases like this, most especially in Abuja, a city littered with many seized private buildings and hotels.

Nigerians are not scared of the abuses associated with property seizures as much as of how individuals accused of corruption by the government are stalked and arrested. In July 2017, Mrs Patience Jonathan, the wife of the immediate past president of Nigeria, through her lawyer, Granville Abibo, accused the EFCC of bugging her phone lines and sending threatening text messages to her (Akinkuotu and Hanafi 2017: 7). Mr Abibo called attention to another particular experience of the former First Lady in the following terms:

On May 3, 2017, officials of the FIRS, in a convoy of about 20 trucks and over 70 personnel, raided our client’s NGO – Aridolf Jo Resort Wellness and Spa Limited – situated at Kpansia Expressway, Bayelsa State, and orchestrated a massive destruction of personal properties belonging to our client without

any lawful court order or search warrant and caused mayhem there under the guise of trying to collect unpaid taxes without following any due process provided by the law to do so (Akinkuotu and Hanafi 2017: 7).

Before this particular experience, Mrs Jonathan had petitioned the House of Representatives on how she was being constantly harassed by the EFCC and the National Drug Law Enforcement Agency (NDLEA).

The most controversial of the anti-graft 'sting operations' were the ones conducted against some Nigerian judges arrested in October 2016 by the Department of State Service (DSS) over corruption allegations. The arrests were based on petitions against them and the huge sums of money found in their personal accounts as revealed by Bank Verification Numbers (BVNs). Nigerians were happy with the arrest of the judges, given the age-long criticism of the rate of corruption in the country's judiciary. But the ways the judges were arrested were considered subversive of due processes in the country. For example, the arrest of one of them, Justice Adeniyi Ademola of the Federal High Court, was done at 1.00 am.

Narrating how he was arrested, Justice Ademola observed that he initially mistook the DSS operatives for armed robbers. They numbered up to 45 and were masked. They stormed his official residence at House 30, Ogbemudia Crescent, Apo Legislative Quarters, Abuja. He claimed to have been woken up by the operatives' loud sound of banging, breaking and hitting. When they forcefully gained entrance into the building they showed him a search warrant but declined the suggestion that Ademola should be allowed to call his lawyer. They arrested him and told him that the action was based on 'the petition of Hon. Jenkins Duvie dated April 4, 2016 to the National Judicial Council and granting bail to Col. Sambo Dasuki and the unconditional release of Nnamdi Kanu' (Nnochiri 2016b).

This was widely condemned by some Nigerians, most especially lawyers, who consider it to be a violation of the principle of rule of law. The Nigerian Bar Association reacted sharply to the arrests. First and foremost, it observed that if the Nigerian state has any problem with any judicial officer, the matter ought to have been referred to the National Judicial Council for processing, and if the security agencies in the country were to wade into such matters at all, the judges ought not to have been treated as they were handled. Breaking into the home of a High Court judge discredits the Nigerian judicial system. Commenting on this, Yunus Uztaz, a Senior Advocate of Nigeria (SAN), declared:

The action the DSS took against these judges was very bad. It is not good at all. You cannot go and arrest a judge in his house at 1am. This is not a military era .... Nobody is saying that if a judge committed an offence that

he should not be questioned. We operate a democratic system that is based on the principle of the rule of law. Going to waylay judicial officers in their home around 1am cannot be an example of the rule of law in action. It is not done in any civilised society.... What the DSS did is in clear breach of separation of powers and laid down procedure for doing things. It was an invasion of the judges' right to privacy (Nnochiri 2016a).

Similarly, a human rights lawyer, Mr Ebum Olu-Adegboruwa, condemned the sting operation. He argued that any fight against corruption must be done in accordance with acceptable standards and principles of law. He described the scenario as 'breathing down on the judicial arm of government under the guise of fighting corruption' and as a 'mindless invasion of the homes of judges by the DSS' which he considered 'totally condemnable' on the grounds that 'the judiciary is the arm of government that stabilizes democracy and so, should not be exposed to ridicule or opprobrium' (*Vanguard* 2016). A constitutional lawyer, Mr Paul Umuzuruigbo, was also opposed to the idea of the anti-graft policy of the government violating stipulated rules and procedures. He opined that:

Any fight against corruption must be done under the rule of law, and there is no law that authorizes the invasion of the home of a judge at an unholy hour of the night .... Being public officers, there is no way these judicial officers would have absconded or run away from normal arrest during the day, if need be. It is the height of lawlessness and gross intolerance to go about the arrest of judicial officers in the way and manner played out by the DSS (*Vanguard* 2016).

Discussion of the matter by the Nigerian public called attention to two issues: (i) the propriety of arresting and trying judges for corruption; and (ii) whether it was proper to have broken into their homes as was happening. The majority of lawyers who spoke on the matter do not see anything wrong with the trial of a judge but in the way they were mishandled. For example, a constitutional lawyer and human rights activist, Mr Kayode Ajulo, argued that: 'If the judges flouted the law, nothing stops them from being investigated. What I am however not comfortable with is their trial in the media .... The DSS have the powers to conduct sting operations. It is done even in the advanced countries. So far that procedure was followed, it is allowed. Sting operations have its own procedure .... If the judges did anything wrong, they should be investigated. I am part of the people that believe that our judiciary should be cleansed. The DSS must have acted on information they received. In our Criminal Act, there are times you can arrest people without a warrant, one of such example is if an offence is committed in your presence .... However, no matter the circumstance, the law must be allowed to follow its due course' (Nnochiri 2016a).

However, there are some Nigerians who believe that fighting corruption requires some of the draconian steps taken by Nigerian law enforcement agencies. One of them is a Lagos-based lawyer, Mr Justice Chimezie, who argued that Nigerians should bother less with whether or not the arrest of the judges was constitutional. What should be uppermost in the minds of the people, in his opinion, is that some offences had been committed and must be punished. According to him, 'Whether the arrest is constitutional or not, the fact still remains that there are allegations of corruption hanging on the necks of these judges. The onus resides with them to establish their innocence of the allegations. I think we must learn to put aside sentiments in dealing with issues that touch on national consciousness' (Nnochiri 2016a).

The Minister of Justice and Attorney-General of the Federation, Mr Abubakar Malami, joined the public debate on 16 October 2016 by releasing a legal review from the presidency in which it was claimed that the DSS complied fully with extant laws by conducting the raid against the judges. It was argued that staff of the DSS are conferred with the powers of Superior Police Officers in the discharge of their responsibilities as they relate to searches and arrests. The DSS was said to have followed Section 148 of the Administration of Criminal Justice Act (ACJA), which provides that: 'A search warrant may be issued and executed at any time on any day, including a Sunday and public holiday.' Section 149 of the ACJA provides for how the search can be conducted in the following terms: '(1) Where any building or other thing or place liable to search is closed, a person residing in or being in charge of the building, thing or place shall, on demand of the police officer or other person executing the search warrant, allow him free and unhindered access to it and afford all reasonable facilities for the police officer or other person executing the search warrant may proceed in the manner prescribed by Sections 9, 10, 12 and 13 of this Act.' It was argued that Sections 9, 10, 12 and 13 allow the DSS to use force in the search of a person arrested. It makes it legal for them to break open any outer or inner door or window of any house or place whether that of the suspect to be arrested or any other person or, otherwise, effect entry into such house or place. The presidential review argued that these provisions are said to be similar to the provisions of Sections 7 and 112 of the Criminal Procedure Law and were followed by the DSS (Daniel and Nnochiri 2016).

Hence, the presidency challenged the two judges of the Federal High Court to go to court to prove their innocence. The spokesperson argued that Nigeria was not the first country in the world where such action was taken against judges. He maintained, *inter alia*, that 'The Federal Bureau of Investigation, FBI, in the United States of America (a body similar to DSS)

has at various times, prominently in January 2013, May 2014, and November 2015 arrested a number of judges for bribery, corruption and other similar offences; subjected the judges to trial at the end of which the convicted judges were imprisoned .... Nearer home, neighbors like Ghana and Kenya had also cleansed their respective judiciaries through investigation and prosecution of judges suspected of commission of corruption' (Daniel and Nnochiri 2016).

The case of Namadi Sambo, the former vice-president of Nigeria (2010–15), shows that not all the sting operations were based on accurate information. Security operatives searched his houses in Abuja and Kaduna several times and found nothing incriminating on each occasion. At one stage, he started fearing that the agenda was to plant some incriminating 'evidence' in his house. The last of the raids was carried out on 28 June 2017 in Kaduna. It was a joint operation of the DSS and the Independent Corrupt Practices and Other Related Offences Commission (ICPC). Heavily armed security operatives arrived in a white Toyota Hilux, a Toyota Corolla and a Coaster bus, a Toyota Hilux van and a dark-colored Toyota Corolla car. While some of them blocked the major road leading to the residence to ward off motorists and other passers-by plying the road, others went into the residence to search it. At the end of it all, they found nothing incriminating, and left. That was the fifth time of going to carry out same operation (Muhammad 2017). What precisely were they looking for?

The testimony of an eyewitness to the Kaduna raid suggests what could have happened during the search. He said, 'When they came out, they look so rough, evidence that maybe they break into some areas (ceiling) in the house. We saw police, SARS, DSS .... They threatened to shoot us. They blocked all the road leading to this place' (Agande 2017a). In a statement released by Sani Umar, the Special Adviser to the former vice-president, the Kaduna invasion was not the first of such assault on the property of the former vice-president in both Abuja and Kaduna. He observed that:

On each occasion valuable fittings were deliberately destroyed .... The recent desperation exhibited by some security agencies in carrying out a raid on an unoccupied residence, blocking all entry and exit points, in a commando-style and coming along with a bullion van speaks volume about the clandestine intention of the security operatives ... the consistency with which the searches occurred, and the intervals between them portray a desire of a fault-finding mission. We are apprehensive that a repeat of such episode will not be surprising if an incriminating object is planted in his residence in order to willfully and deliberately incriminate him .... We hope it is not a way to try to give a dog a bad name in order to hang it (Agande 2017b).

What was now amounting to unwarranted harassment of a leading member of the opposition drew the anger of former ministers in the administration of President Goodluck Jonathan. In a Resolution reported on 4 July 2017, they unanimously ‘condemned in very clear terms the persecution and decimation of the opposition and the unwarranted invasion of the residence of the immediate past Vice President of the Federal Republic of Nigeria, Namadi Sambo, and the continued harassment and detention of key members of the opposition’ (Williams-Smith 2017).

The Nigerian public got to know later that the sting operations were based on false information provided by a ‘whistle blower’, Abubukar Sani. The security services did too little to double-check the information given to them before striking. Upon this realisation, the ICPC had to arraign the man before Justice Aliyu Tukur of the Kaduna State High Court on a two-count charge of providing false information and misleading public officers while on lawful duty. The Counsel to the Commission said that Sani reported to the ICPC on 21 June 2017 that he had helped to carry some money in local and foreign currencies, believed to be ill-gotten and believed to still be in the house, from Kaduna airport to the Kaduna home of the former vice-president in 2013 (*The Nation* 2017: 7). This particular case shows how cheaply the anti-graft agencies could allow themselves to be misled. Sambo’s house was not searched once but several times. Were all the searches motivated by false alarmists? Should the raids have been so abusive of the rights of the former vice-president? What compensation was there for such embarrassment?

### **Media trial of accused persons**

The second human rights question connected with the ongoing anti-graft war in Nigeria is what Nigerians call ‘media trial’ of the accused persons. By this is meant how the Nigerian state exposes unverified or unverifiable information about the persons accused of corruption in the public sphere. The arrest of some of the accused persons takes place in front of television cameras and the clips, along with the evidence (palatial buildings, Nigerian and foreign currencies found on the person), are then shown to angry viewers in the evening. Following such public display of the ‘evidence’, radio and television stations across the country would continuously sponsor discussions of the ‘offence’ and call for suggestions on what should happen to the ‘criminals’. Even before the matter is taken to court, most of the cases would have been decided in the media by very bitter discussants.

The unhealthy sentiment against such accused persons is compounded by how they are brought to court. They are often in armed security vehicles, sometimes in handcuffs and guarded by fierce-looking security men. Their exit from the vehicles, entry into the court room, pensive look in the courtroom, and journey back to the prison are shown to viewers at home in desperate efforts to show that the government is fighting corruption in the land. The defendants often look defenceless. The only consolation they get is usually from their lawyer as family members are not granted quality access to them.

The Nigerian media often report the courtroom scenarios in a manner that promotes more negative public sentiments against the accused persons. In some cases, the schools not built and clinics not served with drugs are shown as 'evidence' against the accused persons. Those of them who dare shake hands with their well-wishers in the courts are accused of not taking the cases against them seriously. Cameras zoom in on the faces of some of them in pensive moods to show the amount of shame they have brought upon themselves by their 'criminal acts'. The following day, newspapers will carry news and pictures of the accused persons in different sentimental postures, with a view to increasing their sales. Discussants on television and social media pick up the issues from there. In some cases, officials of the Nigerian state appear on television to present arguments against the accused persons as if they are in a court of law. They cite sections of Nigerian laws in support of the prosecution and predict what will eventually happen to the accused persons. By the time the cases are decided by the courts, the personal image of the accused persons will have been thoroughly wrecked. Many of them eventually win the cases against them, but they react by withdrawing into their shells not appearing frequently at public functions.

### **Tale of failed court trials**

The paradox is that the Nigerian state often loses many of the celebrated anti-corruption cases. The government often blames this on the lawyers who defended the accused persons as well as the judges that handled the cases. Several of these cases were lost in April 2017. That month, Justice Abdulazeez Anka of the Federal High Court in Lagos passed a judgment vacating a frozen account of a Senior Advocate of Nigeria, Mike Ozekhome, who was ordered to forfeit 75 million naira found in the lawyer's Guaranty Trust Bank account. The lawyer had 'offended' the Federal Government by representing the Governor of Ekiti, Ayo Fayose, in court. The latter, a member of the opposition party and the most vocal antagonist of President Buhari, was accused of corruption and his personal account was frozen by

the EFCC without any court order. The EFCC was later ordered to unfreeze the account. The money found in the account of his lawyer, Ezekome, was said by the EFCC to have been paid to him from the supposedly stolen money. Hence, the money was tagged 'proceeds of crime'. Ozekhome argued on the other hand that what he was paid was a professional fee and it was not his business to know where his client got the money.

The second major case lost by the Federal Government was that of Justice Adeniyi Ademola and his wife, Olabowale. The High Court of the FCT, to which they were taken, discharged them of all the 18-count charges of fraud brought against them. These charges included fraudulent diversion of huge sums in local and foreign currencies, as well as possession of firearms and involvement in the collection of gratification. This is the judge whose house was broken into at 1:00 am by the security agencies.

The EFCC case, filed before a Federal High Court in Lagos in November 2016, seeking an order that the Skye Bank account of the former First Lady of Nigeria, Mrs Jonathan, be frozen, also failed. The commission had contended that the account, harboring US\$ 5.8 million, must have been proceeds of crime. The court ordered the EFCC to unfreeze the account. The same week the case was lost by the government, a Federal Court discharged and acquitted a former Niger Delta minister, Elder Godsdai Orubebe, of all corruption allegations (Ezeamalu 2017). He was accused by the ICPC of diverting 1.97 billion naira meant for the compensation of owners of property on the Eket Urban section of the East-West Road in Eket, Akwa Ibom State. The case was thrown out when the Attorney General of the federation strangely came up with the argument that the case filed against the former minister did not exist.

The most celebrated of the failed anti-graft cases was that of the Senate President, Dr Olusola Saraki. The case lasted for 21 months: from 15 September 2015 to 17 June 2017. Saraki was accused by the Code of Conduct Bureau, shortly after his controversial emergence as Senate President, of false asset declaration, and arraigned before the Code of Conduct Tribunal. The management of the case, like many others, was so sloppy that the charges against him were adjusted three times. In his defence, Saraki argued that the allegations against him were based on petitions from complainants who never appeared as witnesses to testify, and that the petitions upon which the allegations were based did not form part of the documents presented in court. He won the 13-court charge in June 2017 on the grounds that evidence provided against Saraki was 'incurably defective' (Okakwu 2017). One other ground for Saraki's acquittal is that the Code of Conduct failed to invite him before filing the charges against him (Adesomoju 2017: 40).

The latest of the cases lost by the EFCC at the time of writing was that of Bala Ngilari, a former Governor of Adamawa State. He was discharged and acquitted on 20 July 2017 by an Appeal Court sitting in Yola, the Adamawa State capital, presided over by Justice Folashade Omoleye. Ngilari was jailed for five years by a Yola High Court presided over by Justice Nathan Musa on a five-count charge of spending over 160 million naira on the award of a contract for the purchase of 25 Toyota Hilux trucks without due process. He was charged along the Secretary to the State Government, Ibrahim Andrew Welye, and the former Commissioner for Finance, Sanda Lamurde, who had earlier been discharged and acquitted by the lower court, due to lack of evidence. However, Ngilari was jailed. The appellate court set aside the ruling of the lower court based on the grounds that the former Governor was not a procurement entity; he could not be charged as if he was an ordinary procurement officer (Yusuf 2017).

Failing to look at the matter strictly from the context of the rule of law, both the Federal Government and the Nigerian public blamed the failed cases on Nigerian lawyers, and the judiciary which is said to be opposed to the anti-graft drive of the Buhari administration. At the All Nigerian Conference of Judges in 2015, Buhari blamed the problems faced by the anti-graft regime on ‘judicial corruption’, ‘dilatatory tactics by lawyers sometimes with the apparent collusion of judges ... to stall trials indefinitely [and] denying the state and the accused persons of a judicial verdict’, and a ‘negative perception arising from long delays in the trial process ... that have damaged the international reputation of the Nigerian judiciary, even among its international peers’ (*The Guardian* 2015).

The president may not be totally wrong but the blame lies more with the handling of the cases by agents of the government, namely the EFCC and prosecutors, most especially. Most of the cases failed on technical grounds, suggesting that the government was more interested in the anti-graft war at the emotional level than having the capacity to actualise it. It was usually a case of weak prosecution and weak evidence. On the other hand, the accused persons have strong survival instincts and massive financial resources to hire the right kinds of lawyers to win the cases. Commenting on the complex nature of the situation, Adeniyi Akintola, a Senior Advocate of Nigeria, observed that:

The judiciary is not to blame. The Federal Government may have a good intention, but the approach is bad .... Some of the cases in court have to be reviewed and withdrawn where necessary .... Some of the charges in court are lousy and cannot be sustained because they are laughable .... In some cases, the proof of evidence says, “investigation is ongoing and yet to be concluded”, yet you rush same to court. In some, the prosecution witnesses

testified under cross examination that “no money was stolen or missing”, and in some, the prosecution witnesses say, “the law under which the accused is brought has not been domesticated in the state and no law known as PPA is in existence in this state”. Still, the prosecution forges on with the case .... In some, the prosecutors have no business being prosecutors. In fact, they are disasters. I wouldn't know whether the Presidential Advisory Committee has access to the court proceedings when trials are going on. Only the lazy, ignorant commentators will blame the judiciary on this issue .... Those who know how the system works and appreciate the position of the law and our inquisitorial and adversary judicial system, know that morality has no place in judicial decisions, neither would your emotion matter. It is not how you and I feel, but what the law says .... The fight is too media-driven; it gives room for culprits to cover their tracks. Cases are not won on the pages of newspapers or in the newsroom (*The Punch* 2017: 2).

Calling attention to why many of the cases failed, Mike Kebonkwu, a human rights activist, stated:

In a situation where the anti-graft agencies rush to court with suspects before gathering evidence or without gathering tangible evidence, hoping that the judiciary should do its job for it, is an affront on the Nigerian Constitution. In all the high profile cases being prosecuted by the anti-graft agencies, I am not aware of any conviction being recorded. All we see are the small fries and foot-soldiers being convicted while the barons are left to escape like the last drama that played out in the Code of Conduct Tribunal, where the principal member of the National Assembly was discharged and acquitted (Kebonkwu: 2017: 20).

The opinion of Chief Rafiu Balogun, the National Legal Adviser to the Nigerian Bar Association, is not different from that of Chief Akintola. He said, ‘One thing I have noticed in this country is that we usually rush to court. Do the lawyers working for the Economic and Financial Crimes Commission have sufficient evidence before rushing to court? ... What about investigation and the EFCC lawyers? It is only in Nigeria that people rush to court and later, they begin to search for evidence’ (*The Punch* 2017: 2).

Another lawyer, Mr Godwin Udofia, came to the same conclusion that the problem is more with the handling of the cases:

In most of the failed corruption cases in our courts in recent times, we see the government first hurriedly arresting a suspect, subjecting him to media trial, then rushing to arraign the accused with bogus charges .... Because the charges are bogus, they can lay up to 50 or 150 charges and the accused will assemble a formidable and credible defence team, while the prosecution will be laboring to make the charges stick .... In that case, you cannot blame the judiciary when the case collapses .... In criminal trials, the courts act

principally on materials or evidence placed before them. Of course the court is not a magician, neither is it a spirit or armed with the power of clairvoyance to descend to the arena of combat to fish for evidence in which to nail the accused .... This is not absolving the judiciary of blame, but in the tardiness of investigation, the prosecution is responsible for the failure of the corruption cases in recent times' (*The Punch* 2017: 2).

A Port Harcourt-based human rights activist, Dr Jackson Menazu blames it all on the government. He, too, feels that suspects should not be arrested until there is substantial evidence against them. He cited the case of the former Governor of Delta State, James Ibori, who was tried in Nigeria several times and no conviction could be secured until he was tried once in the United Kingdom and jailed.

The former Nigerian President, Chief Olusegun Obasanjo, interpreted the problem from the angle of conspiracy theory. To him, those prosecuting the cases deliberately wanted them to be lost. He said, 'If I am a lawyer and I want the opponent to win the case, what I will file will be "wishy washy" .... And if I file a "wishy washy" case, the opponent will see the loophole and he will get out of it .... Secondly, thorough investigation is very important. Now, investigation must be thorough, it must be proper and it must be really taken seriously .... Third, our judges must be committed in fighting corruption' (Ezeamalu 2017).

### **The Federal Government's disobedience of court orders**

One critical issue raised by Justice Ademola and others, but which is atomised in the discussion of their detention experiences, is that they were targeted for ordering the release of Col. Sambo Dasuki, Nigeria's former National Security Adviser who was detained on charges of mismanaging money set aside for fighting Boko Haram, and Nnamdi Kanu, the leader of the Indigenous People of Biafra (IPOB). Dasuki was accused of being involved in the Boko Haram arms scandal and has been in detention since 2015. Justice Ademola alleged that he was being persecuted by the government for granting Dasuki bail. The government is still keeping the former National Security Adviser. While approaching the court for another order to be discharged from further trial, Dasuki claimed that he was released from prison on 29 December 2015 after fulfilling the conditions for his bail. He was re-arrested immediately by the DSS and has been in detention since then without being taken to court for any new charges.

The two other prominent Nigerians with same problem are Mr Nnamdi Kanu of the IPOB (as noted above), and the Islamic Movement of Nigeria (IMN) leader, Sheikh Ibrahim El-Zakzaky and his wife. Dasuki has blamed

his continued detention and the detention of Kanu and El-Zakzaky on President Buhari who said live on television on 30 December 2015 that they do not deserve to be granted bail. He prayed for the court to grant him bail. He, like the others, are still in detention.

The case of the former National Security Adviser, Colonel Sambo Dasuki (rtd.) who is facing trial for allegedly diverting and sharing over US\$ 2.2 billion, meant for arms procurement for the anti-Boko Haram war to politicians and cronies is the most celebrated of the cases. It deserves deeper attention in this article. Dasuki has been in detention since December 2015. He has been granted bail by three different courts but the orders were not obeyed. Dasuki is not the only person affected by this recourse of the Nigerian state to self-help. This violates Section 287 of the constitution, which the president swore to uphold. This section of the Nigerian law imposes a binding duty on all authorities and persons to obey the judgments of all courts. In this context, the flagrant disobedience of court orders constitutes a serious threat to the rule of law in the country.

Frustrated by the failure of his efforts to get justice in Nigeria, Dasuki took the Federal Government before the ECOWAS Regional Court, demanding his release and also a payment of 500 million naira as compensatory damages for his unlawful detention and seizure of property since December 2015. During the hearing of the matter in May 2016, William Obiora, a DSS officer provided two contradictory reasons why Dasuki was still in detention despite some court orders to the contrary. The first is that he was still detained for personal security. The DSS claimed that some ongoing investigations revealed that Dasuki could be harmed by some of the politicians implicated in the arms deal for which he was standing trial. The second is that he could escape from Nigeria if allowed to go home. On the other hand, Roberts Emukperuo, who represented Dasuki, argued that his client never requested protection from the Nigerian state. He also tendered an affidavit confirming that as of 24 August 2015, the DSS had completed its investigation on the matter. He found it difficult to accept further detention of his client on any of the two grounds. The matter was decided on 4 October 2016, during which the presiding judge of the ECOWAS court, Justice Friday Nwoke, ruled that the arrest and detention of Dasuki was unlawful, arbitrary and amounted to a mockery of democracy and the rule of law. The court ruled in favour of Dasuki and directed that the Federal Government should pay him a sum of 15 million naira as damages. Dasuki is still in detention; the government failed to release him.

## Discussion

President Muhammadu Buhari warmed himself in the heart of Nigerians as an anti-corruption crusader when he led Nigeria from 1983 to 1985. He performed so well during that time that Wikipedia has characterized his political philosophy as ‘Buharism’. The political philosophy is defined thus:

Buharism is a term rooted in the politics of Nigeria, referring to the economic principles and the political ideology of the military government of Nigeria headed by General Muhammadu Buhari from 31 December 1983 to 27 August 1985. This ideology shares common features with fascism; the government was a right-wing nationalist government that pursued corporatist economic programs and curtailed personal freedoms. Economic reforms were characterised as moving the political economy away from the control of a “parasitic” elite, and into the control of an emerging “productive” class. Buharism represented a two-way struggle: with external global capitalism and with its internal agents and advocates (<https://en.m.wikipedia.org/wiki/Buharism>).

Arising from the foregoing is the fact that Buhari’s anti-graft policies succeeded in the 1980s through authoritarian methods: curtailing of personal freedoms. But he now has to do the same job in a democratic setting that places great emphasis on the rule of law. It is in this respect that the regime faces some challenges in the ongoing anti-graft policy. The way and manner that persons suspected of corruption have been arrested under the new administration and the way the regime disobeys court orders to release detained persons suggest that the administration has little or no respect for the rule of law.

The second observation is that the new regime does not have a good strategy for handling the anti-graft cases. In most cases, the accused persons were arrested and taken to court before the Nigerian state started to search for evidence against them. This enabled many of the accused persons to win their cases on technical grounds. Dealing with this problem would require that all the anti-graft agencies in the country must be better trained on how to handle the kind of delicate cases that come to them for investigation and prosecution.

The failed cases are blamed on the lawyers that defended the accused persons and the judges that handled the cases. Under the rule of law, such persons should not be blamed. First and foremost, any accused person is presumed innocent until the cases against them have been proven beyond reasonable doubt. Hence, there is nothing wrong in lawyers offering to defend them. Even when the accused person would eventually go to court to take the plea of being guilty, he still needs legal representation. That a lawyer wins his case is also not to suggest that he is corrupt but competent.

A similar case can be made in favour of judges who passed judgments against the Nigerian state. The work of these judges is to ensure that the rights of all persons are protected. The evidence before judges and how well this is argued also determines the kind of judgments they pass. Legal processes are not based on sentiment but evidence. To deal with this problem, the anti-corruption agencies must tighten their loose ends in their investigations and methods of prosecution.

The lapses in some of the judicial trials seem to have provided some corrupt Nigerians with new ways of having their cake and eating it. The ongoing problem of the government losing almost all anti-corruption cases and turning round to blame the judiciary pushes Nigeria in the direction of what is known as the 'sticky' thesis of corruption (Rothstein and Uslaner 2005). Once this becomes widespread, as is now witnessed in Nigeria, it becomes very difficult to curb. In this kind of situation, a pliable citizen would simply say: 'Well, if everybody seems corrupt, why shouldn't I be corrupt?' (Myrdal 1968: 409). The impression created here is that if the corrupt persons in society are setting new precedents in law by being corrupt and getting away with it, it makes no sense for other people to be honest in the rotten society in which they find themselves, as corruption cannot be changed from below but through committed state interventions.

## **Conclusion**

The point made in this article is that the ongoing anti-graft war in Nigeria reflects a number of civil liberty problems that ought to be addressed immediately, as a way of making the system more credible. The rights of suspects must be respected, not only through the processes of their arrest but also in their treatment thereafter. The cases charged against them must be proven beyond reasonable doubt. Until then, they should be presumed to be innocent of the charges against them and protected under the law. Much needs to be done by the government along these lines.

The foregoing notwithstanding, the administration of President Buhari has definitely set new precedents in the management of corruption in Nigeria. The administration broke the myth of the sacrosanct authority of high judges and the Senate President by having them arrested and charged for corruption. This is new to Nigerians. By arresting so many judges for corruption and trying the Senate President, Dr Saraki, for false asset declaration, the Buhari administration has shown once and for all that no Nigerian is above the law. This is a great contribution to rule of law traditions in Nigeria that must be commended. This boldness in confronting corruption in the Nigeria must continue but done with due respect to the rule of law.

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# **Policing Looted Funds with the Whistle: Newspaper Coverage of the Anti-corruption Crusade in Nigeria**

Oludayo Tade\*

## **Abstract**

This article examines the Whistle Blowing Policy (WBP) in Nigeria's anti-corruption crusade between 2016 and 2017. It seeks to understand how looters innovate to keep loots, following the implementation of this policy, and the extent to which looting undermines governance and amplifies insecurity. This is vital as the perception of Nigerian corruption globally has been dismal in the last five years. Corruption slackens development and becomes a major security threat in Nigeria, as collective patrimony/public monies are siphoned or diverted into private pockets. Relying on newspaper data on coverage of corruption, this article argues that 'incentivising patriotism' through the WBP has contributed to citizens' participation in the anti-corruption crusade in Nigeria and enhanced recoveries of illicitly acquired monies. The policy has forced looters to adopt traditional money-keeping strategies to keep looted monies in private fortes, septic-tanks, stores, and/or to abandon the same in airport and market shops. The article concludes by showing the value of what the recovered looted monies could have done to enhance governance and development, to underscore how illicit monies undermine security and democratic governance in Nigeria.

## **Résumé**

Cet article examine la politique de lancement d'alerte lancée par le Nigéria entre 2016 et 2017 dans le cadre de sa croisade anti-corruption. Il tente de comprendre comment les pilleurs font preuve d'innovation pour conserver des fonds après la mise en œuvre de cette politique et dans quelle mesure le pillage sape la gouvernance et amplifie l'insécurité. Ceci est essentiel car la perception de la corruption nigériane dans le monde a été lamentable au cours

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des cinq dernières années. La corruption ralentit le développement et devient une menace majeure pour la sécurité au Nigeria car le patrimoine collectif (fonds publics) est siphonné ou détourné. En me fondant sur des données médiatiques sur la couverture de la corruption, j'affirme que «l'encouragement au patriotisme» par le biais de la *WBP* a contribué à la participation des citoyens à la lutte anti-corruption au Nigeria et à améliorer la récupération de fonds acquis illicitement. Cette politique a obligé les pillards à adopter des stratégies traditionnelles de conservation de fonds et sauvegarder les sommes pillées dans des locaux privés, des fosses septiques, des magasins et/ou les abandonner dans des aéroports et des magasins. L'article termine en montrant les réalisations faites avec les fonds récupérés pour améliorer la gouvernance et le développement, et mettre en évidence l'impact nuisible des fonds illicites sur la sécurité et la gouvernance démocratique au Nigeria.

## **Introduction**

A major straw that broke the camel's back in the 16-year rule of the People's Democratic Party (PDP) during the 2015 general election in Nigeria was pervasive corruption. Nigerians voiced their frustrations with a vote for the All Progressive Congress (APC) presidential candidate, Muhammadu Buhari, who promised to fight corruption, defeat terrorism and fix the economy. Notwithstanding his ascendancy to the presidency, corruption remains a major setback to the provision of democratic goods for the masses. It is therefore not surprising that Nigeria's ranking on the international Corruption Perceptions Index, conducted by Transparency International, has been gloomy due to the ravaging impact of the phenomenon on governance and development in Africa's largest economy. From 2010 through to 2016, Nigeria's best ranking on the global Corruption Perceptions Index has been 136 out of the 176 countries in the analysis.<sup>1</sup> This 'sleeping giant' has struggled at best to treat public sector corruption cosmetically. While there have been superficial efforts to check the menace, the corruption edifice is yet to crumble.<sup>2</sup> While former President Olusegun Obasanjo kickstarted some kind of battle against corruption with the creation of anti-corruption agencies (the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and Other Related Offences Commission, the Buhari administration in 2015 would later show a more committed fight against public sector corruption introducing the compulsory Biometric Verification Number (BVN) for all bank account holders, consolidation of accounts of government agencies into one single account (Treasury Single Account (TSA)), capping it in 2016 with the Whistle Blowing Policy (WBP). While the BVN policy paved the way for the WBP, this study analyses the effects of the WBP in the number of recovered funds within five months of

its enforcement. In showing this, this article relies on newspaper reportage of the recovered funds, to understand the strategies for concealment of the loot, the denial of ownership of the discovered funds, and the value of such funds for the provision of public goods.

## **Review of related literature**

Corruption is a global phenomenon and has been around from time immemorial. Despite its global presence, the dimension of its operation varies across continents, with that of Africa gargantuan. Nigeria, being the most populous country and blessed with rich human and material resources, leads other countries with a corruption-ruined economy. According to Akindele (2005), corruption has become severely endemic to public life in most, if not all, African states through its terminal contamination. It threatens governance and halts economic growth. In Nigeria and many African countries, corruption drains over US\$ 140 billion per year (Ribadu 2007). This shows that corruption is a major problem in developing countries, a problem which diverts scarce resources away from development and eradication of poverty (Odugbemi 2000). This has been largely so because there continues to be a rise of political dinosaurs, tyrants, tropical gangsters and far too few statesmen as leaders (Goldsmith 2000) whose aims of being in governance is for personal aggrandisement. The hydra-headedness of corruption remains extremely problematic for effective and accountable governance in most African societies (Akindele 2005), Nigeria included, where corruption is perpetrated in the form of funds misappropriation, bribery, embezzlement, nepotism and money laundering (illicit money) to mention but a few factors.

Understanding the foregoing, there are certain numbers of explanations of the causes of corruption in African societies. These ranges from cultural relativity, low salary syndrome, imitation, institutional and rent-seeking explanations (Gire 1999; Kallon 2003; UNDP 2004). According to the cultural relativity argument, the covetousness of corruption in developing countries occurs when gift-giving becomes a bribe resulting from new consciousness developed among students, military officials, public office holders and others. The cultural relativity school contends that confusion between bribes and gifts, the process of modernisation, the burden of the extended family system, and the lack or absence of a public domain, are responsible for corruption in African societies (Myrdal 1968; Huntington 1968; 1979).

Corruption in Nigeria and other developing countries has also been explained in terms of low salaries and strong kinship ties. This perspective opines that public officials in developing countries are corrupt because their

salaries are so low that they cannot make ends meet by depending solely on their meagre salaries. Furthermore, strong kinship ties characteristic of these societies place nepotistic pressure on public officials. Accordingly, they resort to corrupt activities to make ends meet and help their relatives (Akerlof and Yellen 1990; Kpundeh 1995). Although this might be plausible for medium and low-level public officials, it does not explain why highly paid public officials partake in corrupt activities. Although low salaries may not be a justification for graft, this perspective offers insight into the wide-spread corruption, cronyism and nepotistic activities in Nigeria.

Another explanation is derived from the theory of imitation, arising from the proclivity of human beings to copy or imitate the lifestyles of other individuals believed to have accomplished important things in the society (Obuah 2010). Using Maslow's concepts of hierarchy of needs and Bandura's observational learning theory, Gire suggested that corruption is prevalent and reproduced in Nigeria because of the imitation of the lifestyle and behaviour of other members of the Nigerian society who are, or have been, in positions of authority (Gire 1999). This conception is true in the context of cases treated in this article, as they concern high profile persons in public office.

Furthermore, the United Nations Development Programme's (UNDP) institutional theory offers an interesting perspective on corruption. According to this perspective, corruption arises when public officials have wide-ranging authority, little accountability and perverse incentives, or when their accountability responds to informal, rather than formal, forms or regulation. For institutional theorists, the causes of corruption result from a failure of state institutions and their lack of capacity to manage society by means of a framework of social, judicial, political and economic checks and balances, or where there is monopoly control of public officials wielding discretionary powers in the absence of accountability systems (UNDP 2004). The institutional explanation is pertinent to understanding the breadth and depth of corruption among governors and chairpersons of states and local government areas in Nigeria since 2000.

Finally, rent-seeking has been used to explain the incidence of corruption in Nigeria. According to this perspective, corruption results from too much government intervention in the economy, which creates rent-seeking opportunities. Rent seeking is a redistributive activity that takes up resources. Corruption therefore results from rent-seeking when someone has a monopoly over goods or services and has discretion to decide who receives what, when it is received, and how much is received (Klitgaard 1988; 1991). Rent-seeking through corruption by public officials can

hurt innovative activities; and since innovation drives economic growth, public rent-seeking can distort and hamper growth, even more severely than production (Shleifer and Vishny 1998). Public rent-seeking includes, but is not limited to, the following: taking bribes for issuance of business licences or permits; taxes on documents; taking bribes to obtain import licences; and taking bribes to influence bids for privatisation of state-owned enterprises or for government contracts. I now turn to review the extant work on whistle-blowing.

## **Whistle-blowing**

Corruption seems to be on the rise, considering the rate at which it has been perpetrated in recent times and greatly perpetrated by employees, management of organisations and people in governance. To curb this menace, many anti-corruption policies have been established all over the world and in Nigeria, with several techniques to get them implemented. Despite several key developments the Nigerian government has put in place, the same indications of corruption such as financial recklessness, unethical practices and weak governance are still on the increase. This is part of the reason why the present Nigerian government puts up several other anti-corruption crusades where whistle-blowing is a key source of information in the crusade. Near and Miceli (1985) gave a common description of whistle-blowing as when organisation members (former or current) disclosed illegal, illicit, immoral or illegitimate practices under the control of employers, to persons or organisations that may be able to effect action. Whistle blowing is all-pervasive and is pertinent to all organisations and envelopes all the employees – the ones who indulge in fraudulent or illegal activities (Drew 2010). For any whistle to be blown, there must be a genuine concern about a crime, criminal offence, miscarriage of justice, danger to health and safety or environment or concern about the cover up of any of these (Onakoya and Moses 2016). They assert further that whistle-blowing should not be mistaken for complaint, because every organisation has customer services or other relevant departments which handle complaints.

Fasua and Osifo-Osagie (2017), gave the following as major characteristics of whistle-blowing:

- disclosure of wrongdoings connected to the workplace;
- a public interest dimension such as reporting of illicit offences, unethical practices among others rather than personal grievance;
- exposure of wrongdoings via designated channels and/or to designated authorities.

From these characteristics, the following can be deduced as types of information expected to be disclosed by a whistle-blower in the Nigerian context: violation of the government's financial regulations e.g. failure to comply with the Financial Regulations Act, Public Procurement Act and other extant laws; mismanagement or misappropriation of public funds and assets (e.g. properties and vehicles); information on stolen public funds; information on concealed public funds; financial malpractice or fraud; theft; collecting/soliciting bribes; corruption; diversion of revenues; underreporting of revenues; conversion of funds for personal use; fraudulent and unapproved payments; splitting of contracts; procurement fraud (kickbacks and over-invoicing etc.); and violation of public procurement procedures, among others.

Two types of whistle-blowers that could exist in any organisation were identified by Read and Rama (2003). These are internal and external whistle-blower. Internal whistle-blowers are habitually more aware of unethical acts within the organisation they belong to but may be under threat of the consequences of blowing the whistle, such as losing their job or being ostracised within the organisation. External whistle-blowers, on the other hand, are those outside the organisation in question who may be less threatened from the consequences of whistle-blowing but may not have as much knowledge of unethical acts in the particular organisation, or may not be aware of the extent of the unethical acts.

Whistle-blowers are meant to have a sense of moral standards, which passionately drives them over and above other considerations, in making a decision on whether to blow the whistle or not (Jos, Tompkins and Hays 1989). Despite their intent to protect the public good, whistle-blowers are at times viewed negatively and seen as disloyal or disgruntled employees (Onakoya and Moses 2016).

Having understood what whistle-blowing is and its characteristics, the next thing to think about is the effectiveness of whistle-blowing. How effective can whistle-blowing be? There have been several mechanisms proposed by several authors and researchers. According to the National Audit Office of the banking sector, whose duty it is to examine the systems, structures and behaviours in place to enable effective whistle-blowing arrangements, for whistle-blowing arrangement to work, the culture of an entity needs to support and permit the systems, structures and behaviours through which it can work effectively (National Audit Office 2014). This is in line with ICAN (2014 cited in Fasua and Osifo-Osagie 2017) which states that firms should state their policy on whistle-blowing arrangements within the framework of their code of conduct. This is done by instructing every worker to make

known their concerns about illicit or unethical activities/behaviour in the organisation, and to ask questions if there are doubts. It further adds that the firm will not tolerate any action taken by an employee in the firm against a worker who has whistle-blown in good faith his/her concerns about unethical or illegal behaviour, while disciplinary action would be taken against any worker who knowingly makes a fallacious report. For this to work, the firm must pay attention to the importance of whistle-blowing awareness throughout the firm; embedding whistle-blowing arrangement awareness in the culture, systems and procedures; and the role of audit committees to ensure the allegation is true ICAN (2014).

Furthermore, Ponemon (1994) in Fasua and Osifo-Osagie (2017) suggests that the first ethical responsibility of the auditor or audit committee, acting as recipients of whistle-blowing reports, is to establish if the accusation is true or false. Determining the reliability of whistle-blowing reports is important because frivolous and unwarranted reports could have dysfunctional results. The responsibility for determining and operating effective whistle-blowing arrangements lies with the audit committee and the executive, reporting to the board. However, looking at possible conflicts of interest, the executive will need to delegate the routine operations to a body that is considered to be independent (Chartered Institute of Internal Auditors 2014). Whistle blowing promotes public good and a safer society. Nigeria as a country, for instance, stands to benefit from whistle-blowing as an anti-corruption tool through efficient allocation of resources, preservation of national wealth and improved well-being of the citizenry. These benefits lead to positive perception, improved ratings in global indices, and ultimately the attraction of foreign investors (Onakoya and Moses 2016).

However, just as there are benefits of whistle-blowing, so also there are obstacles and issues that surround whistle-blowing. In most places of employment, employees are the ones who will be the first to stumble through the misconduct of other employees, but they may be reluctant to expose these employees due to fear of retaliation or loss of the friendship of colleagues. Employees in this predicament have the following options: to remain silent, to raise their concern through an internal procedure, to raise the concern through an external body such as a regulator, or to make a disclosure to the media (Rachagan and Kuppusamy 2013).

There are at least four important obstacles to whistle-blowing. First, regulators can be understaffed and not have the resources needed to adequately process whistle-blowing cases. Second, lower level staff regulators who process whistle-blowing cases can be inexperienced and not understand the importance of a whistle-blowing case. Third, regulators may be under

pressure from the politicians who appointed them or other 'powers that be' to ignore whistle-blowing cases. Fourth, there are high risks to the whistle-blower for blowing the whistle to regulators (Nielsen, Balachandra and Nielsen 2013).

## **Methods**

For data sourcing, newspaper reportage on recovered looted funds as a result of the WBP was used. In doing this, I focused attention on recoveries between December 2016 and June 2017. This is because this was a period of devoted reportage on recoveries due to the WBP. The newspapers utilised were *The Nation* and *The Punch* newspapers. Both are national newspapers who devoted enough attention to reporting recoveries arising from the WBP. In the two papers, we isolated reportage focused on whistle-blowing and other recoveries, consequent upon the anti-corruption crusade of the Buhari administration. We analysed 55 news items comprising headlines, articles and editorials. Issues covered were strategies of keeping looted monies, strategies of recoveries, the original purpose the monies was allocated to serve before diversion to private pockets, and the social welfare worth of the recovered loot. We complemented this with government circulars on the policies for a nuanced discussion. These were methodically examined, using content analysis.

## **Discussion of findings: policing corruption the tipster way**

With a dedicated online portal for citizens with valuable information that may lead to the recovery of looted funds and an incentive, which ranges between 2.5 to 5 per cent of the recovered funds, the governance of corruption in Nigeria under the Buhari administration is different. The WBP was designed to achieve increased exposure of financial or financial-related crimes; support the fight against financial crimes and corruption; improve the level of public confidence in public entities; enhance transparency and accountability in the management of public funds; improve Nigeria's Open Government Ranking and Ease of Doing Business Indicators; and aid the recovery of public funds that can be deployed to finance Nigeria's infrastructure deficit.

The anti-corruption crusade which started with compulsory registration of all bank account holders in Nigeria to have a single BVN made it difficult for corrupt public office holders to keep their looted monies in formal financial houses under the radar of government. The BVN provided an easy way for government to use individual BVNs to track the funds in

the accounts of those being probed, and verify if they are clean or have a 'skeleton in their cupboard'. The Central Bank of Nigeria (CBN) in April 2017 sent a circular to Other Financial Institutions (OFIs) to ensure that all customers are enrolled on the BVN linked to their accounts without which they would not be allowed to make withdrawals (CBN Circular, 21 April 2017). The Bank had envisaged that the policy would minimise fraud, check for money laundering and boost financial inclusion. It became compulsory that unconsolidated accounts were barred from being operated by the CBN which provided regulatory frameworks for the banks. In doing this, the noose was tightened against anyone who was desirous of running his monies within the formal financial institutions. Simultaneously, the Federal Government ordered Federal Government agencies to consolidate all their accounts into one TSA. Through this, it was easier to monitor injections and leakages in government spending. Once the government perfected all its plans on these two vital components, the WBP was announced to encourage citizens' active participation in fighting corruption by volunteering information and reaping the benefits, which I call here 'incentivising patriotism'.

Data indicated that almost immediately the WBP came into existence with the announcement of the incentives, people started coming forth with information. The anonymity provided by the Federal Ministry of Finance on the WBP also encouraged many who had 'seen' but could not 'say' to begin to 'see' and 'say'. This is a rational action, considering the cost and benefit accruable to such an effort. The response rate was phenomenal with 2,351 tips. These came within the first three months of the programme. The *Nation* newspaper, in its editorial (26 March 2017, p. 8), quoted the Minister of Finance as saying that:

We receive 282 tips through calls, 412 through SMS, 95 through website, 194 through e-mails and 51 through others; however, only 154 of the tips are actionable. Some of the tips include contract inflation and conversion of Government Assets to Personal Use, ghost workers, payment of unapproved funds, embezzlement of salaries of terminated personnel and improper reduction of financial penalties. The tipsters also informed the government of non-remittance of pension and NHIS deductions, failure to implement projects for which funds have been provided, embezzlement of funds received from donor agencies, embezzlement of funds meant for payment of enrolments and violation of TSA regulations by keeping funds in commercial banks. The ministry also got tips on violation of FIRS (VAT) regulations by adjusting Value Added Tax payment, non-procurement of equipment required for aviation safety, money laundering and diversion of funds meant for approved projects. Others are illegal sale of government assets, diversion of Revenue (IGR), financial misappropriations

(embezzlement), and concealed bailout funds, mismanagement of Micro finance banks, illegal recruitment and violation of procurement Act. (Nduka Chiejina, *The Nation*, 26 March 2017, p. 8).

The significance of the information supplied is justified by the fact that the executing team of the WBP could take action on 154 tips. Consequent upon this action, some monies were recovered, which led 'dubious' public servants to innovate ways of keeping such stashed funds away from the prying eyes of whistle-blowers. In what follows, I discuss strategies deployed by corrupt public officers to keep their illegally acquired monies and properties in anticipation of being tracked down by the Federal Government of Nigeria.

### ***Strategies of keeping looted funds***

*The Punch* and *The Nation* newspapers framed corrupt persons as 'looters' who later scheme to hide their loot away from the public by keeping it in an unusual place. Data showed that looted funds were taken away from the formal banking industry to informal settings. In informal settings, the ingenuity of looters was put to work as they kept the monies soaked away in cemeteries, abandoned properties, airports, and trading but isolated shops, among other places. Two factors may be responsible for moving money out of the formal banking sector: (i) the low value of the Nigerian naira made those with huge cash pull their monies outside formal banking to trade in dollars and facilitate their easy movement; government had also limited the available dollars issued in the market; (ii) knowing that with the BVN an account number can easily be traced, fraudulent government state officials (looters) withdrew their monies from deposit banks to safe havens within and outside their houses. This is another way of seeing looters as highly connected individuals who already have insiders who also supply them with information about the policy direction of government. Not all hid their looted monies outside their houses, others have forte rooms within their households where such monies were kept, with the house owner having exclusive access to it. Security agencies isolated such rooms in the house of serving judges during one of their raids, following a whistle-blower tip off. What this implies is that whistle-blowers are also insiders to those exposed. In this light, whistle-blowers could be family members, co-workers, domestic servants/staff, neighbours, to mention but a few. In a security raid at the house of the Justice of Federal High Court, Justice Ademola Adeniyi, the Department of State Security Services (DSS) agent narrated how they got to the money. Narrating the incident, a DSS representative, Mr Ihuoha opined that:

When we entered, we saw justice Ademola in the master's bedroom upstairs in his night wears. As we continued our search on the ground floor, we

encountered a locked bedroom. We requested the keys, but we were not given. We then had no option but to force open the door. Inside the bedroom, we saw a locked wardrobe which we also forced open when the keys were not made available to us. Inside the wardrobe we found a Ghana-must-go bag containing various N1,000 denomination notes to the tune of N39.5 million after counting it on the spot. We also found another locked room with a total sum of N8.5m in N1,000 denomination. In the Masters bedroom, in an open wardrobe we found the sum of N6m, 121,179 US dollars, 4,400 euros, 80 pounds, 1,010 Indian rupees (*The Punch*, 18 January 2017, p. 11).

Another reported recovery in *The Nation* (11 February 2017, p. 8) was that of a former Group Managing Director of NNPC:

A special operation conducted by operatives of the EFCC on a building belonging to a former Group Managing Director of the NNPC, Dr. Andrew Yakubu, in Kaduna yielded the recovery of a staggering sum of \$9,772,800 and another £74,000. The huge cash was hidden in a fire-proof safe. He admitted the ownership of the money which he described as a gift.

The two cases reported above are those concerning individuals in positions of trust but who failed to uphold the best ethical mien expected of persons occupying such positions. They also chose the best way to ensure protection of 'their looted monies' by keeping it in fire-proof and in locked but secured rooms with the house.

Another strategy used by looters was the creation of fictitious accounts anonymous enough not to be linked to them. Doing this would guarantee the safety of their monies. This however becomes impossible without the active connivance of banking staff. Unfortunately, this whistle-blower is from within that industry. The whistle-blower alerted the Federal Ministry of Finance and action was taken:

The office of the Attorney-General of the Federation was alerted to about \$131,676,600.51 in a fictitious account in the bank. When the government moved in, the bearer of the fake account could not explain the source of the cash. There was the case of another person who had \$15 million and N7 billion in his account. These funds were suspected to be proceeds of crime. Again, some whistle blowers who knew about these huge deposits alerted the government. The third person could not explain how he came about N1 billion. Interestingly, all the suspects willingly gave up these slush funds.

Other looters abandoned ownership of huge sums of money when it was tracked down where the monies were hidden. For instance, 49 million naira was abandoned at a Nigeria airport by an unknown passenger. *The Punch* (15 March 2017, p. 12) quoted the spokesperson of the EFCC Wilson Uwujaren as saying:

During a routine baggage screening, five sacks were unattended to and without tags; they contained fresh bulk items suspected to be money. Upon examination, the bags were found to contain crispy naira notes of N200 denomination in 20 bundles, totalling N40 million and N50 denomination in 180 bundles, totalling N9 million with seals purportedly emanating from the Nigerian Security Printing and Minting Plc. seen on the packs.

While the last case shows signs of desperation to move money away from the country or to another location as law enforcement agencies close in on looters, what the former cases imply is that looters had a feeling of insecurity with their loots and were thereby looking for safer havens away from formal institutions, such as banks, and the prying eyes of the law. Having unusual money requires unusual safety options. This perhaps explains the choice of locations where the recovered monies were kept and later found, following whistle-blower sell-out.

### **To what extent do looted funds undermine democratic governance?**

Looters in this study comprise those who have served the country and those still in service. Looted or diverted funds undermine security and democratic governance in Nigeria, leading to reduced life chances of the majority. This will be appreciated when we consider the individuals involved in the recovered monies, the position they hold in a democratic setting and the services they were/are required to render. It is instructive to note that unjustified monies were recovered from the houses of serving judges, former military officers, former ministers, a Special Adviser to former President Goodluck Jonathan on security, and some staff of the Independent National Electoral Commission who received money to influence the electoral outcome in Rivers State in 2016.

Election is critical to the enthronement of democracy. Once the process leading to the emergence of the winner is tinkered with corruption, the eventual occupier cannot deliver the goods in the interest of the majority. The reason is that they did not elect him. For instance, in the build-up to 2015 elections, US\$ 115,010,000 was distributed by the former Minister of Petroleum Resources to individuals and election officials (*The Punch*, 24 March 2017, p. 9). These were monies which could have been used for national development, improved service delivery or provision of public infrastructure.

This is not limited to the executive arm. The security is not saintly. A former Chief of Air Staff, Alex Badeh, who is facing trial of alleged money laundering was tracked down to his house where huge recoveries were made in dollars. As reported by *The Nation*, the ransacking of the house followed a tip-off:

We received intelligence report on another property located at No 6 Ogun River Street Maitama, which is a property owned by Badeh. When we got to the biggest room in the house, we saw a wardrobe, on opening it, we saw a bag and on opening it contained foreign currency. We saw 16 bundles of 50 U.S dollars notes and two sealed bundles containing 100,000 U.S dollars. Counting the money in our office, we discovered that it was exactly one million dollars.

Owing to his former position and involvement in the fight against Boko Haram terrorism, one could submit that such funds could have been diverted instead of being used for security purposes. This selfish cause led to loss of thousands of lives, both military and civilian.

Similar to the above is the recovery of US\$ 37.5 million from a Lagos mansion of the former Minister of Petroleum Resources, Alison Madukwe. The money was recovered by the EFCC during a raid. On 10 February 2017 the Chairman of the EFCC, Ibrahim Magu told journalists that his agency recovered US\$ 9.72m and £750,000, respectively within two weeks from the houses of public servants in Nigeria. The insatiable penchant to live above one's means may have accounted for this acquisition.

Data further showed that if the money recovered had been channelled to the services it was originally intended for, life chances of many Nigerians could have been improved. The EFCC (*The Nation*, 13 April 2017, p. 7) also reported a major recovery in Lagos. The total amount recovered is the equivalent of the monthly allocation of four States in the southwestern part of Nigeria. The EFCC spokesperson stated that this was another whistle blowing tip-off:

We acted on intelligence report that huge cash in an apartment in Osborne Towers, Ikoyi Lagos. A whistle blower who had inside knowledge of how the funds were kept in some locked up rooms in the house alerted the EFCC. As at last count, we recovered about \$43.4 million (N13.237 billion at N305 per dollar) N23 million and £27,000. The figures could be higher than what we have counted. The whistle blowing policy has added value to the anti-graft war. Some of those who looted public funds have been avoiding the banks. They kept the cash at home and we are on their trail. Imagine what over N11 billion can do in the life of this nation, while the amount traced to private accounts sums up to N4 billion.

The above narrative shows that the WBP is a major factor in the policing of looted funds in Nigeria, making it difficult for people to put money in formal banks who also run the risk of forfeiture and prosecution should a whistle-blower give a tip-off on the existence of such illicitly acquired money. Forfeiture of monies and properties illicitly acquired is in line with

the provisions of the EFCC Act. The EFCC has obtained court orders for the forfeiture of money which it suspected to be proceeds of crime. Data shows that since the introduction of the WBP in December 2016, some recovered monies have been permanently forfeited; and others temporarily because the cases are still ongoing in the law courts. Some of the forfeited funds were those discovered through the WBP. The acting Chairman Ibrahim Magu opined that 17 billion naira has been recovered through the policy alone. In obtaining the forfeiture orders, the EFCC relied on Section 17(1) of the Advance Fee Fraud and Other Related Offences Act:

Where any property has come into the possession of any officer of the commission as unclaimed property or any unclaimed property is found by any officer of the commission to be in the possession of any other person, body, cooperate or financial institution, or any property in the possession of any person, body, corporate or financial institution is reasonably suspected to be proceeds of some unlawful activity under this Act, the Money Laundering Act of 2004, the Economic and Financial Crimes Commission Act of 2004 or any other law enforceable under the EFCC Act of 2004, the High Court shall upon application made by the commission, its officers, or any other person authorized by it, and upon being reasonably satisfied that such property is an unclaimed property or proceeds of unlawful activity under the Acts stated in this subsection, make an order that the property or the proceeds from the sale of such property be forfeited to the Federal Government of Nigeria.

Sections 29 and 30 of the EFCC Act 2004 also give the Commission powers on forfeiture:

Where the assets or properties of any person arrested for an offence under this Act has been seized or any assets or property has been seized by the commission under this Act, the commission shall cause an ex-parte application to be made to the court for an interim order forfeiting the property concerned to the Federal Government and the court shall, if satisfied that there is prima facie evidence that the property concerned is liable to forfeiture, make an interim order forfeiting the property to the Federal Government. Where a person is convicted of an offence under this Act, the commission or any authorized officer shall apply to the court for the order of confiscation and forfeiture of the convicted person's assets and properties acquired or obtained as a result of the crime.

## **Conclusion**

This study has examined the governance of corruption in Nigeria 2015–17 since President Mohammadu Buhari occupied Aso Rock. Using *The Nation* and *The Punch* newspaper reportage on the anti-corruption crusade, the

article shows how the WBP has catalysed the anti-corruption war through 'incentivising patriotism'. This becomes important because prior to the implementation of the policy, very few people joined the anti-corruption crusade. Active citizen participation in the governance of the corruption battle could therefore be seen not only in terms of civic responsibility but also in terms of the inherent benefit accruable to the whistle-blower.

Following the policy introduction in December 2016, looters resorted to informal money keeping strategies. These included keeping monies in homes and unusual places like wardrobes, isolated shops, soak-away, fire-proof safes, forests and market shops. They also abandoned their loots at airports and distanced themselves from them. This is to avoid shame and prosecution. Of importance to this study is the characterisation of looters who were individuals (insiders) who occupied or occupy strategic positions in security, state government, the petroleum ministry and the judiciary. The implication of their involvement in the diversion of public funds for personal aggrandisement is security threat and infrastructural underdevelopment. They also undermined democracy through the diversion of public funds to bribe electoral umpires in the build-up to the 2015 elections. This means that where economic goals are elevated above other institutional means, corruption ensues and creates anomie in other social institutions, while stifling governance and development. Illicit acquisition of monies belonging to the collective patrimony for personal gains is a security risk, as it prevents provision of quality education, health, employment and public utilities. This explains the high unemployment and crime rates in Nigeria.

The WBP could therefore be said to be working, owing to the amount of dollars recovered into the state coffers by the EFCC. It has also engaged the citizenship in monetary policing and prevention of illicit acquisition among public office holders. Through permanent and temporary forfeitures already secured, the anti-corruption crusade is on such a pedestal that only modification of strategies will make it successful. This is because, as discovered in analysis of coverage of the WBP in the selected papers, much was achieved in the first four months of its introduction. While this is not an implication that illicit acquisition has stopped or that people are no longer blowing the whistle, it underscores the adaptation on the part of looters, through innovative strategies, to beat the current WBP. Beyond recoveries and forfeiture, prosecution of looters must follow to award punishment commensurate with the crimes committed. Such messages of deterrence can hinder future offenders, as they weigh the cost and benefit of treasury looting.

## Acknowledgements

The author appreciates Collins Udechukwu's role in data collection. I also appreciate the contributions of participants at the CODESRIA/UNOWAS International Policy Dialogue Conference held in Bamako, Mali from 19–20 October 2017.

## Notes

1. For details see [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](https://www.transparency.org/news/feature/corruption_perceptions_index_2016).
2. About 55 top officials and their businessmen collaborators diverted a total 1.3 trillion naira from the government coffers between 2006 and 2013, a study has uncovered. According to the Chairman of the Presidential Advisory Committee against Corruption, Prof. Itse Sagay, between 2006 and 2013, 55 top government officials and private businessmen illicitly diverted a total of 1.3 trillion naira, roughly at that time US\$ 7.5 million dollars, at the expense of ordinary Nigerian citizens. These include trillions squandered in a fuel subsidy scam, the billion Dansukigate scam, hundreds of millions of dollars taken from the Nigeria National Petroleum Company (NNPC) by the former minister to bribe election officials in 2015; the list goes on. A third of the stolen money could have been devoted to several relevant projects in the country. Because of the looting, Nigeria is the highest country in the world with abandoned projects. One-third of the stolen funds could have provided 600.18 kilometres of roads, 36 ultra-modern hospitals per state, education for children from primary to tertiary level at the rate of 5.34 billion naira per child, and 20,062 two-bedroom house-units. The amount stolen could have done all this. As I was putting my thoughts to paper on Thursday 1 June 2017, a newspaper headline kept screaming at me: 'N423 billion Niger Delta projects misappropriated by the Ministry of Niger Delta'. So you can see that the corruption onslaught is devastating and unrelenting thus driving us further and further from our sustainable development goals (*The Nation*, 6 June 2017, p. 12) <https://www.premiumtimesng.com/news/headlines/196981-55-nigerians-stole-over-n1-34-trillion-in-8-years-lai-mohammed.html>.

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