ILLICIT FINANCIAL FLOWS - THE LINK BETWEEN CORRUPTION AND MONEY LAUNDERING, A SOCIO-LEGAL STUDY OF THE LAWS AND PRACTICE IN THE UNITED KINGDOM AND NIGERIA

VEERENDRA CHAUHAN

A thesis submitted in partial fulfilment of the requirements of the University of the West of England, Bristol for the degree of PhD in Law

Faculty of Business and Law, University of the West of England, Bristol

Student Number: 88650780

Date of Submission: 10 September 2021

Word Count: 61,328

ACKNOWLEDGEMENTS

I would like to thank and acknowledge the help and support I have had from my two distinguished supervisors, Professor Nic Ryder and Professor Umut Turksen, without whom I could not have achieved the completion of this thesis.

I would also like to thank Michelle and our children, Kione, Amani and Sachi who have supported me without question over the years and encouraged me to complete this thesis.

ABSTRACT

The subject of Illicit Financial Flows is currently not on the agenda of governments, regulators, or compliance departments of corporations who are endowed with the responsibility to counter financial crime, but it should be. Because, without addressing IFFs, effectiveness of measures to counter financial crimes and money laundering cannot be optimised. The literature relating to illicit financial flows (IFFs) is limited, superficial and inconclusive. The current approach to IFFs takes largely an economic view that looks at analysing flows of illicit capital from developing countries to developed countries. This method fails to identify the link between legal (e.g. financial secrecy and transfer price abuse) and illegal (e.g. corruption and money laundering) components of IFFs. The objectives of this thesis address the shortfall in the literature by critically analysing the interconnectivity of financial secrecy within IFFs and how the legal aspect of IFFs enables and facilitates corruption and money laundering. The thesis also scrutinises the detrimental impact of IFFs on society and the lack of a legislative agenda to tackle IFFs from law-making bodies and supra-national bodies.

There are seven hypotheses which provide the framework of the interconnected aspects of IFFs relevant to this thesis. The first hypothesis suggests that IFFs are detrimental to society and they are not adequately considered by governments, in isolation or collectively. The second hypothesis advocates that financial secrecy contributes to corruption and money laundering. Transfer price abuse is the subject of the third hypothesis and it is put forward that it is an enabler of corruption and money laundering. The fourth hypothesis challenges the validity of the Corruption Perceptions Index (CPI) for the UK by comparing it with the Financial Secrecy Index (FSI) and analysing key bribery cases in the UK. Nigerian case studies are used to put forward the fifth hypothesis that suggests that anti-corruption legislation and government efforts in Nigeria have little impact due to lack of political will and the existence of tribal allegiances. The sixth hypothesis proposes that banking institutions do not have a clear policy on financial secrecy and this leaves them prone to IFFs. The final hypothesis identifies a symbiotic relationship between Nigeria and the UK and its Overseas Territories which affords the necessary constituents for IFFs.

The primary research question for this thesis is whether financial secrecy facilitates IFFs and, consequently if that contributes to corruption and money laundering. This thesis takes a socio-legal methodology examining existing practices which show that legal IFFs are a paradigm of developed countries that have a damaging impact on anti-corruption and anti-money laundering efforts in developing countries. Case studies in Nigeria and the UK are used to highlight this where doctrinal research methods are used to analyse the law and comparative law research methods that have been used to identify policy implications and suggestions. This includes bringing the subject of IFFs within the FATF standards, for Nigeria to introduce and enforce legal instrument such as the Unexplained Wealth Order, and for the UK to take a fresh look at its perception of corruption and how financial secrecy impedes this.

The originality of this thesis culminates when all the hypotheses are linked to introduce the idea that a harmful symbiotic relationship exists between Nigeria and the UK. The CPI in the UK is contradicted because of financial secrecy rules and safeguards offered to large multi-national corporations so that they can avoid criminal sanctions. At the same time, Nigeria has significant corruption problems that stem from the lack of political will and the existence of tribal allegiances and there is a dependence on the UK for financial secrecy services that allows corrupt Nigerian officials to utilise these legal services for ill gains. The silence on IFFs and financial secrecy from banking institutions exasperate any solutions put forward. Money laundering, despite heavy regulation, continues to grow. If the bigger issue of managing and curbing IFFs is tackled, this could have an impact on the anti-corruption and AML agenda.

Table of Contents

TABLE OF ABBREVIATIONS

AML	Anti-money laundering
BAe	British Aerospace
BBA	British Banking Association
BEPS	Base Erosion and Profit Shifting
BIS	Bank of International Settlements
BPI	Bribe Payers Index
CBN	Central Bank of Nigeria
CDD	Customer due diligence
CPI	Corruption Perceptions Index
DPA	Deferred prosecution agreement
EBF	European Banking Federation
EFCC	Economic and Financial Crimes Commission
ESRC	Economic and Social Research Council
EU	European Union
FATF	Financial Action Task Force
FCA	Financial Conduct Authority
FCPA	Foreign Corrupt Practices Act 1977
FinCEN	Financial Crime Enforcement Network
FIU	Financial intelligence unit
FSA	Financial Services Authority
FSI	Financial Secrecy Index
GDP	Gross domestic product
GFI	Global Financial Integrity
IBFed	International Banking Federation
ICC	International Chamber of Commerce
ICIJ	International Consortium of Investigative Journalists
IFFs	Illicit financial flows
IMF	International Monetary Fund
KYC	Know your customer

MLA	Mutual legal assistance
MNC	Multinational corporation
NCA	National Crime Agency
NDLEA	National Drug Law Enforcement Agency
NGO	Non-Government Organisation
OECD	Organization for Economic Co-operation and Development
PEP	Politically exposed person
PPI	Payment protection insurance
PRA	Prudential Regulatory Authority
SAR	Suspicious activity report
SDG	Sustainable Development Goal
SFO	Serious Fraud Office
SMCR	Senior Management and Certification Regime
SOCA	Serious Organised Crime Agency
TJN	Tax Justice Network
UBO	Ultimate beneficial owner
UK	United Kingdom
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime
US	United States of America
UWO	Unexplained wealth orders

TABLE OF CASES

Alamieyeseigha v CPS [2005] EWHC 2704 (Admin)

Abacha v Secretary of State for the Home Department (No 2) [2001] EWHC Admin 424 (Divisional Court)

Corner House Research and others v Director of the Serious Fraud Office [2008] UKHL 60; [2009] 1 AC 756

Federal Republic of Nigeria v JP Morgan Chase Bank, NA [2021] EWHC 1192 (Comm)

Federal Republic of Nigeria v Santolina Investment Corporation and Others [2007] EWHC 437 (Ch)

Geary [2010] EWCA Crim 1925

James Onanefe Ibori [2013] EWCA Crim 815

Tesco Supermarkets Ltd v Nattrass [1972] AC 153 HL

United States v BNP Paribas SA, 2014 (U.S. Department of Justice)

TABLE OF UNITED KINGDOM LEGISLATION

Anti-terrorism Crime and Security Act 2001

Bribery Act 2010

Companies Act 2006

Criminal Finances Act 2017

Criminal Justice Act 1998

Criminal Law Act 1977

Financial Services Act 2012 (Misleading Statements and Impressions) Order 2013

Money Laundering and Terrorist Financing (Amendment) Regulations 2019

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

Prevention of Corruption Act 1906

Prevention of Corruption Act 1916

Proceeds of Crime Act 2002

Public Bodies Corrupt Practices Act 1889

Small Business, Enterprise and Employment Act 2015

Terrorism Act 2000

Theft Act 1968

TABLE OF EUROPEAN UNION LEGISLATION

'Commission Decision (EU) 2017/1283 of 30 August 2016 on State Aid SA.38373 (2014/C) (ex 2014/NN) (ex 2014/CP) Implemented by Ireland to Apple' (2017) Official Journal of the European Union

Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee - Fighting Corruption in the EU, COM/2011/0308 final (2011)

Council Directive of 10 June 1991 on Prevention of the Use of the Financial System for the Purpose of Money Laundering (91/308/EEC) (1991)

Council Framework Decision 2003/568/JHA of 22 July 2003 on Combating Corruption in the Private Sector (2003)

Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on Prevention of the use of the Financial System for the Purpose of Money Laundering (2001)

Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 Coordinating the Procurement Procedures of Entities Operating in the Water, Energy, Transport and Postal Services Sectors (2004)

Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the Coordination of Procedures for the Award of Public Works Contracts, Public Supply Contracts and Public Service Contracts (2004)

Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Terrorist Financing (2005)

Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing (2015)

Directive (EU) 2018 of the European Parliament and of the Council of 23 October 2018 on Combating Money Laundering by Criminal Law (2018)

Directive (EU) 2018 of the European Parliament and of the Council of 30 May 2018 Amending Directive (EU) 2015/849 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing (2018)

European Council - The Stockholm Programme — An Open and Secure Europe Serving and Protecting Citizens (2010/C 115/01) (2010)

TABLE OF OTHER LEGISLATION

Arms Export Control Act 1976 (US)

Central Bank of Nigeria (Anti-Money Laundering and Combating the Financing of Terrorism in Banks and other Financial Institutions in Nigeria) Regulations, 2013

Constitution of the Federal Republic of Nigeria 1999

Corrupt Practices and other Related Offences Act 2000 (Nigeria)

Criminal Code Act 2004 (Nigeria)

Economic and Financial Crimes Commission (Establishment) Act 2002 (Nigeria)

Economic and Financial Crimes Commission (Establishment) Act 2004 (Nigeria)

Foreign Corrupt Practices Act 1977 (US)

Money Laundering (Prohibition) (Amended) Act, 2012 (Nigeria)

Money Laundering (Prohibition) Act 2004 (Nigeria)

Money Laundering (Prohibition) Act, 2011 (Nigeria)

Nigerian Extractive Industries Transparency Initiative (NEITI) Act 2007

Penal Code (Northern States) Provisions Act 2004 (Nigeria)

Public Procurement Act 2007 (Nigeria)

Swiss Federal Law on Banks and Savings Banks SR 952.0 of 8 November 1934; version as at 1 January 2019 (1934)

TABLE OF INTERNATIONAL TREATIES AND CONVENTIONS

African Union Convention on Preventing and Combating Corruption 2003

Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the Fight Against Corruption involving Officials of the European Union Communities or Officials of Member States of the European Union 1997

Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the Protection of the European Communities' Financial Interests 1995

Council of Europe Additional Protocol to the Criminal Law Convention on Corruption 2003

Council of Europe Civil Law Convention on Corruption 1999

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 1990

Council of Europe Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism 2005

Council of Europe Criminal Law Convention on Corruption 1999

Joint Action 98/742 of 22 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on Corruption in the Private Sector

OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997

OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, 26 November 2009 (With amendments adopted by Council 18 February 2010 to reflect the inclusion of Annex II, Good Practice Guidance on Internal Controls, Ethics and Compliance)

Protocol drawn up on the basis of Article K.3 of the Treaty on European Union to the Convention on the protection of the European Communities' financial interests - Statements made by Member States on the adoption of the Act drawing up the Protocol 1996

Second Protocol, drawn up on the basis of Article K.3 of the Treaty on European Union, to the Convention on the Protection of the European Communities' Financial Interests - Joint Declaration on Article 13 (2) - Commission Declaration on Article 7 (1997)

Statute of Council of Europe 1949

Treaty on the Functioning of the European Union 2012

United Nations Convention against Corruption 2003

United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988

United Nations Convention against Transnational Organized Crime 2000

CHAPTER 1 – INTRODUCTION

The purpose of this study

The purpose of this thesis is to show that financial secrecy contributes to corruption and money laundering. Accordingly, it is necessary to provide the definitions of key terms which are also described and analysed in detail in specific chapters. For example, IFFs are not defined by law but have been described as follows:

> For simplicity, we treat illicit here to mean immoral and illegal, there also exist potentially immoral, but not illegal capital flows, such as those arising from aggressive tax avoidance.[1]

Financial secrecy is a broad term which is underpinned by financial information not shared with legitimate authorities, such as law enforcement agencies or tax authorities. Similar to IFFs, financial secrecy is not defined by law but has been explained by Cobham *et al* as 'an economic activity undertaken offshore essentially whose backbone is a secrecy jurisdiction'.[2]

Corporate secrecy is defined as 'the deliberate and dishonest concealment of the true purpose and nature of transactions, assets and liabilities for personal or corporate gain'.[3] It involves the creation of an anonymously owned company usually formed in a secrecy jurisdiction. This can entail *inter alia*, the formation of legal entities and structures, i.e. trusts, companies, foundations, etc., where the ownership, accounts and purpose are kept secret.

Transfer pricing is defined as 'prices or payments for transfers (i.e. internal sales) of goods and services between sections of the same company or group.'[4] Transfer price abuse or transfer mis-pricing (used interchangeably) is described by Murphy as:

[1] Max Everest-Phillips, 'The Political Economy of Controlling Tax Evasion and Illicit Flows' in Peter Reuter (ed), *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (The World Bank 2012).
[2] Alex Cobham, Petr Janský and Markus Meinzer, 'The Financial Secrecy Index: Shedding New Light on the Geography of Secrecy' (2015) 91 Economic Geography 281. 'Financial secrecy' is explained in detail in Chapter 4.
[3] Robert Chambers, 'Corporate Secrecy; the Final Barrier to Corporate Governance' (2006) 2 International Journal of Business Governance and Ethics 43.
[4] Messaoud Mehafdi, 'The Ethics of International Transfer Pricing' (2000) 28 Journal of Business Ethics 365.

> Two or more entities under common control that are trading across international borders price transactions between them at rates designed to secure a tax advantage that would not be available to third parties trading in the same goods or services across the same borders.[5]

The definition of 'money laundering' that is used in this thesis is provided by the explanatory notes accompanying the Proceeds of Crime Act 2002 as follows:

> Money laundering is the process by which the proceeds of crime are converted into assets which appear to have a legitimate origin, so that they can be retained permanently or recycled into further criminal enterprises.[6]

The wide definition of corruption used by the World Bank is adopted for this thesis:

> Corruption takes various forms and is practiced under all forms of government, including well-established democracies. It can be found in the legislative, judicial, and executive branches of government, as well as in all forms of private sector activities.[7]

It is important to highlight that IFFs have two key characteristics. The first characteristic is that IFFs involve cross-border movement of money that is illegally earned, transferred or utilised. The second characteristic relates to the wider aspects of IFFs, which include transfer price abuse by multinational companies. Financial secrecy is common to both characteristics of IFFs, as the ultimate beneficial owner tends to be hidden.[8] This thesis explores whether financial secrecy provides a distinctive mechanism of how corruption and/or money laundering are

[5] Richard Murphy, 'Accounting for the Missing Billions' in Peter Reuter (ed), *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (World Bank 2011). 'Transfer pricing' and 'transfer price abuse' are explained in detail in Chapter 4.
[6] Proceeds of Crime Act 2002 - Explanatory Notes - 6 - Money Laundering.
[7] 'Helping Countries Combat Corruption: The Role of the World Bank' (The World Bank Group 1997),19.
[8] 'What's an Illicit Financial Flow?' (*Financial Transparency Coalition,* 2019) <https://financialtransparency.org/whats-an-illicit-financial-flow/> accessed 28 January 2019.

manifested through IFFs moving beyond traditional predicate[9] crimes, i.e. the legal activities of transfer price abuse when distributed through the means of financial secrecy can contribute or facilitate corruption and/or money laundering.

Practices such as transfer price abuse enable IFFs and the widespread use of financial secrecy by legitimate corporations and criminals alike. Such practices obfuscate the true ownership of assets and bring about a toxic combination of illegal and/or unethical practices that ultimately harm the poorest societies in developing countries.[10]

Financial secrecy is used by criminals to move and utilise their ill-gotten gains; but there is also a grey area (where transfer price abuse utilises the same financial secrecy methods) which may contribute to corruption and/or money laundering. It is estimated that up to $36tn is held in secrecy jurisdictions,[11] and a percentage of this figure represents illicit capital from corruption from developing countries that has found its way to banks in the UK[12] and its Overseas Territories. The UK overseas countries, some of which are secrecy jurisdictions, are classified as the Crown Dependencies, Overseas Territories and the British Commonwealth Territories,[13] herein referred to as 'Overseas Territories'.

[9] For the offence of money laundering to be established, there is a prerequisite that a criminal offence has occurred in order to generate the proceeds of crime that are being laundered. This is known as a predicate offence, which is an underlying crime that enables money laundering or terrorist finance activity. This is explored in detail in Chapter 7.

[10] 'Standard Country and Area Codes Classifications (M49)' (*United Nations Statistics Division,* 2020) <http://unstats.un.org/unsd/methods/m49/m49regin.htm#developed> accessed 1 August 2020.

[11] Nicholas Shaxson, 'Tackling Tax Havens' (*International Monetary Fund*, 2019) <https://www.imf.org/external/pubs/ft/fandd/2019/09/tackling-global-tax-havens-shaxon.htm#:~:text=Tax%20havens%20collectively%20cost%20governments,not%2Dso%2Dlegal%20means> accessed 7 February 2021.

[12] Indira M Carr and Robert Jago, 'Corruption, Money Laundering, Secrecy and Societal Responsibility of Banks' *Social Science Research Network*, 17 June 2014) <https://dx.doi.org/10.2139/ssrn.2454934> accessed 20 August 2021.

[13] The Crown Dependencies include Guernsey, Isle of Man and Jersey, where the Queen is head of state with powers to appoint government officials and laws would need to be approved in London. This is the same for what is known as Overseas Territories which include Anguilla, Bermuda, British Virgin Islands, Cayman Islands, and Gibraltar. The British Commonwealth territories, where the final court of appeal is the Judicial Committee of the Privy Council in London, are St Lucia, St Vincent and Grenadine, Antigua and Barbuda, Bahamas, Brunei Darussalam, Cook Islands, Dominica, Grenada, Mauritius and St Kitts and Nevis.

This thesis references relevant reported court cases,[14] three of which involve IFFs. Of those three cases, the first case refers to money stolen by Sani Abacha and the ongoing efforts by the Nigerian government to repatriate it and also the Abacha family attempting to find legal means to avoid prosecution and returning their ill-gotten wealth.[15] The second case refers to another corrupt Nigerian public official, Diepreye Alamieyeseigha, who was charged with money laundering offences in the UK, but managed to escape back to Nigeria whilst on bail.[16] Finally, the third case refers to that of James Ibori who was convicted for money laundering offences in the UK and sentenced to 13 years in prison.[17] The IFFs terminology is not used in the law reports of these three cases, as such the concurring or dissenting judgements are not discussed or detailed in this thesis. Hence, a broader approach is needed and taken in this thesis to identify the IFFs implications through analysing socio-legal factors, which are demonstrated in detail in the Nigerian Case Studies.[18]

The other cases are used to demonstrate and support specific assertions or findings from the thesis, but are not strictly related to the purpose of the thesis or the research question. Because of this, these cases have not been analysed in great detail, although the rationales and summaries of these cases are provided here. The *BAe (Al Yamamah) Bribery Case*[19] for example, is used to show a selective law enforcement in favour of large MNCs, described in detail in chapter 6. The case *of Tesco Supermarkets Ltd v Nattrass*[20] is used to show the evolution of corporate criminal liability which is also referred to in chapter 6. The case of *United States v BNP Paribas*[21] illustrates the susceptibility of banks with respect to receiving the proceeds from crime, which is detailed in chapter 7. Finally, *R v Geary*[22] is utilised to support the argument

[14] See Table of Cases.
[15] *R (on the application of Abacha) v Secretary of State* for the Home Department (No 2) [2001] EWHC Admin 424 (Divisional Court).
[16] Federal Republic of Nigeria v Santolina Investment Corporation [2007] EWHC 437 (Ch).
[17] *R v James Onanefe Ibori* [2013] EWCA Crim 815.
[18] The term 'Nigerian Case Studies' refers collectively to the examples of IFFs between Nigeria and the UK and their implications. The case of Sani Abacha is described in Chapter 5 to show the scope of IFFs; the case of Diezani Alison-Madueke, which is still on-going and is described in detail in Chapter 6, focuses on corruption; and the cases of Diepreye Alamieyeseigha and James Ibori are analysed in detail in Chapter 7 to show the interdependency of IFFs and money laundering.
[19] R (on the application of Corner House Research and others) v Director of the Serious Fraud Office [2008] UKHL 60; [2009] 1 AC 756.
[20] Tesco Supermarkets Ltd v Nattrass [1972] AC 153 HL.
[21] *United States v BNP Paribas SA*, 2014 (U.S. Department of Justice).
[22] *R v Geary* [2010] EWCA Crim 1925.

that a subjective knowledge that property in question is the proceeds of crime is required for a successful conviction for money laundering, and that the definition of 'criminal property' was not met according to anti-money laundering legislation. This last case is also explained in chapter 7.

The thesis also refers to the Nigerian Case Studies,[23] which provide in-depth analysis of key political figures in Nigeria that have been involved in IFFs. These case studies provide instances where illicit capital has been transferred from Nigeria to the UK and its Overseas Territories through secrecy jurisdictions,[24] using financial secrecy to facilitate IFFs. The finding from the literature review confirms that IFFs are in the infancy in the research, legal and political agendas[25] and, as such, there are a very limited number of reported cases that vaguely resemble an IFFs case.

There are numerous examples of secrecy jurisdictions where corrupt money can be safely stored, such as bribes received by corrupt politicians or oil revenues that have been embezzled or stolen. For example, Sani Abacha transferred illicit funds from the Central Bank of Nigeria to his personal accounts in Jersey (a British Crown Dependency represented by the UK government internationally).[26] The responsibility and vulnerability of the UK banking sector in facilitating IFFs are explored against the background of financial secrecy. Jurisdictions which offer financial secrecy or confidentiality rules provide protection for individuals and corporations by enabling them to transfer illicit financial capital usually from developing countries. These viewpoints are seldom discussed together, and they form the basis of this thesis to investigate the links between IFFs, secrecy, corruption and money laundering.

[23] See n 18.

[24] Secrecy jurisdiction is defined as a region that 'provides facilities that enable people or entities to escape or undermine the laws, rules and regulations of other jurisdictions elsewhere, using secrecy as a prime tool'; see Alex Cobham, Petr Janský and Markus Meinzer, 'The Financial Secrecy Index: Shedding New Light on the Geography of Secrecy' (2015) 91 Economic Geography 281.

[25] See Chapter 2.

[26] Bonnie Malkin, 'US freezes $458m hidden by former Nigerian leader Sani Abacha' *The Telegraph* (London, 5 March 2014) <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/nigeria/10679487/US-freezes-458m-hidden-by-former-Nigerian-leader-Sani-Abacha.html> accessed 13 January 2020.

This thesis critically examines whether the financial secrecy used by criminals to move and utilise their ill-gotten gains is the same method used by corporations and wealthy individuals that engage in transfer price abuse and aggressive tax avoidance which may contribute to corruption and/or money laundering. One of the most important aspects of tackling corruption and money laundering is the critical role and hidden impact of IFFs and financial secrecy, a topic not discussed or researched to the same extent as corruption and money laundering. At the same time, there is little legislative or regulatory provision to address IFFs per se; this is described in detail in chapter 5, which assesses the lack of legislation and the interdependence with financial secrecy, corruption and money laundering. Some of the components of IFFs do have comprehensive legislative and regulatory provisions, such as bribery and corruption (described in chapter 6), money laundering (described in chapter 7) and tax avoidance/ evasion (described in chapter 4). The challenge lies in both the wording and an understanding of what IFFs are, because they encompass both of these characteristics. IFFs can comprise proceeds of crime (this is illegal) and IFFs can also comprise transfer price abuse (this is legal but seen as ethically dubious). Both positions are examined in detail to test the hypothesis, which brings into consideration Platt's observation, 'Capital whether criminal or not is power'.[27]

Need for this research and research question

It is often NGOs, such as Transparency International or the International Consortium of Investigative Journalists (ICIJ), that identify injustices and campaign for social change. Global Witness, another NGO whose remit is to challenge the abuses of power, stated that:

> The engine of corruption exists far beyond the shores of countries like Nigeria; it's driven by our [UK] international banking system, anonymous shell companies, and by the secrecy that we have afforded big oil, gas and mining operations, and, most of all, by the failure of our politicians to back up their rhetoric.[28]

[27] Stephen Platt, Criminal Capital - How the Finance Industry Facilitates Crime (Palgrave Macmillan UK 2015) 206.
[28] Charmian Gooch, 'Ted Blog - Global Issues Ted Talks - Further Reading and Citations on Global Corruption's Hidden Leaders' (*TED Talks,* 2013) <http://blog.ted.com/2013/07/09/further-reading-and-citations-on-global-corruptions-hidden-leaders/> accessed 8 August 2020.

The need and justification for this research arises from the fact that corruption and money laundering continue to be prolific throughout the world, whether it is in developing countries or developed countries, whether it is in public institutions or in private commercial organisations. Money laundering detection rates are alarmingly low[29] and IFFs play a major part of this, due to their nature that includes both legal and illegal flows of money.

The research questions for this thesis are:

- 'Does financial secrecy facilitate IFFs and contribute to corruption and money laundering? If so, how?'

This question is further delineated by examining some of constituents of IFFs. Therefore, the following question is also posed:

- 'Should practices such as transfer price abuse be classed as illicit and do they contribute to corruption and money laundering?'.

To answer these research questions, a socio-legal research methodology – which is described and justified in detail in chapter 3 – is used to critically examine the concept of IFFs and the laws (or lack of them, as the case may be) relating to IFFs and their constituents. These legal instruments (law in books) and their application (law in action as demonstrated by the case studies) primarily refer to anti-corruption and anti-money laundering provisions and the thesis demonstrates if and the extent to which they are applied. In tandem with the socio-legal approach, doctrinal and comparative law research methods are also utilised in this thesis. The doctrinal approach establishes the law, or lack of it, and the soft law[30] provisions pertaining to IFFs. A comparative law research method is employed to look at the UK and Nigerian legal systems because of the cross-border cases that exist with respect to IFFs. The research methodology and research methods are explained in detail in chapter 3.

[29] John Christensen, 'Africa's Bane: Tax Havens, Capital Flight and the Corruption Interface' (Real Instituto Elcano 2009), 9.

[30] Soft law and is not binding within any national or international law court, see Kenneth W. Abbott and Duncan Snidal, 'Hard and Soft Law in International Governance' (2000) 54 International Organization 421.

Hypotheses

Seven interrelated hypotheses have been formulated that examine specific aspects of the research questions:

1. Illicit financial flows are detrimental to society and are not yet adequately considered by governments and law-making bodies.
2. Financial secrecy, a key component of illicit financial flows, contributes to corruption and money laundering.
3. Transfer price abuse, a component of illicit financial flows, is one of the enablers of corruption and money laundering, especially in developing countries such as Nigeria.
4. The perception of corruption in the UK is contradicted by practice due to the UK's role in financial secrecy and the lack of criminal prosecution of companies involved in corruption.
5. Anti-corruption legislation / efforts do not have any impact in Nigeria due to lack of political will and the existence of tribal allegiances.
6. There is a lack of clear policy on anti-money laundering and financial secrecy by banking institutions, which leaves banks vulnerable to IFFs.
7. A symbiotic relationship exists between the UK (including its Overseas Territories) and Nigeria, which provides the necessary constituents for IFFs.

Hypothesis 1: Illicit financial flows are detrimental to society

'IFFs' is a relatively new term that encompasses not only the movement of money from illegal activities, such as the proceeds of crime, bribery and corruption, and tax evasion, but also from legal activities such as transfer price abuse. IFFs require further attention by governments and law-making bodies as there is a lack of understanding of their impact, and hence regulatory appreciation of them is minimal or absent.

Hypothesis 2: Financial secrecy contributes to corruption and money laundering

The term 'financial secrecy' has up to three components, as explained in detail in Chapter 4 – secrecy jurisdictions, corporate secrecy and, in some jurisdictions, banking secrecy. Examining this hypothesis enables each aspect of the research question to be realised, i.e., whether it has a part to play in facilitating bribery and corruption and money laundering.

Hypothesis 3: Transfer price abuse is an enabler of corruption and money laundering

Transfer price abuse enables corruption and money laundering, and is a core component of IFFs, especially in developing countries such as Nigeria, a country identified for study in this thesis. The mechanisms used to move money by corporations (through transfer price abuse) and criminals employ similar methods, principally financial secrecy. This poses a significant challenge for governments and enforcement agencies fighting financial crime, since detection and management of criminal activity become more difficult, as IFFs encompass both legal and illegal activity. Transfer pricing is used by large multinational corporations (MNCs) to optimise their tax liabilities, using secrecy jurisdictions and financial services provided to enable tax optimisation. Transfer price abuse is when this practice moves towards aggressive tax avoidance and tax evasion using the same method of financial secrecy. Criminals also use the same method to launder their proceeds of crime and hide the ultimate beneficial owners of assets. However, what will be highlighted are examples of transfer price abuse that would be a cause of concern to understand why such a practice is used, if not to hide the ultimate beneficial owner of assets for either tax avoidance or tax evasion purposes.

Hypothesis 4: The perception of corruption in the UK is contradicted by its role in financial secrecy

This hypothesis is introduced to provide evidence to the research question of ***how*** financial secrecy operates in practice in the UK and its Overseas Territories and why this is contradictory to the UK having a favourable CPI.[31] In the UK, the perception of corruption contradicts the role that the UK and its Overseas Territories play with respect to financial secrecy which facilitates IFFs. The UK, despite scoring positively on the CPI, is implicated in the wider picture of IFFs as it has a poor score on the Financial Secrecy Index (FSI),[32] especially when its Overseas Territories are considered. In addition, there are examples of corruption cases where large MNCs (such as British Aerospace, Rolls-Royce and Airbus) manage to avoid criminal

[31] The Corruption Perceptions Index (CPI) is explained and appraised in Chapter 4 and then again, in more detail, in Chapter 6.

[32] The Financial Secrecy Index (FSI) is explained initially and appraised in Chapter 4 and, in more detail, in Chapter 5.

prosecution.[33] Combined with this, the public appreciation of what would constitute corruption is at odds with what is legally permissible.[34]

Hypothesis 5: Anti-corruption legislation / efforts do not have any impact in Nigeria

Nigeria is used as a case study to show how extensive IFFs are in that country and where the use of secrecy jurisdictions and corporate secrecy is prevalent. This hypothesis identifies a factor that contributes to IFFs in Nigeria and will not abate unless enforcement of corrupt acts is taken more seriously. The benefits of corruption outweigh the penalties for corruption by Nigerian public officials. Combined with the lack of political will and the impact of tribal allegiances, these are significant obstacles that limit bringing corrupt officials to justice when dealing with cases of corruption.

Hypothesis 6: There is a lack of clear policy on anti-money laundering and financial secrecy by banking institutions

Hypothesis 6 puts the focus on banking institutions not acknowledging the harmful effects of financial secrecy and its role that contributes to IFFs and, ultimately, money laundering. There is a lack of clear policy on financial secrecy and, to some degree, AML policy from the institutions that represent most banks, i.e. the International Banking Federation (IBFed),[35] the European Banking Federation (EBF)[36] and the British Banking Association (BBA) (now a part of UK Finance),[37] This lack of guidance allows IFFs and makes banks susceptible to money laundering.

Hypothesis 7: A symbiotic relationship exists between the UK (including its Overseas Territories) and Nigeria

[33] The corruption cases involving British Aerospace, Rolls-Royce and Airbus are assessed in detail in Chapter 6.
[34] David Ellis and David Whyte, 'Redefining Corruption: Public Attitudes to the Relationship Between Government and Business' (*Centre for Crime and Justice Studies,* 2016) <https://www.crimeandjustice.org.uk/publications/redefining-corruption> accessed 7 February 2021.
[35] 'About IBFed' (*International Banking Federation*, 2020) <http://www.ibfed.org.uk/about/> accessed 14 March 2020.
[36] 'About Us' (*European Banking Federation*, 2021) <https://www.ebf.eu/about-us/> accessed 27 August 2021.
[37] 'UK Finance - Representing Finance and Banking' (*UK Finance,* 2020) <https://www.ukfinance.org.uk/about-us/> accessed 14 March 2020.

Hypothesis 7 sets out a novel and original, but potentially toxic, inter-dependency between Nigeria and the UK, which is shown through the Nigerian Case Studies[38] on how a symbiotic relationship has developed and harmed both countries. This hypothesis provides the evidence to the research question showing how financial secrecy provided by the UK enables corruption and money laundering in Nigeria. The demand and appetite for a range of financial services that the UK and its Overseas Territories can provide – for example, corporate secrecy and secrecy jurisdictions for corrupt Nigerian public officials – may be too tempting to resist. The hypothesis suggests that there is a symbiotic relationship between the UK and Nigeria, in that corruption in Nigeria is rife and this is facilitated by the financial secrecy services that are abundant in the UK and its Overseas Territories.

Overview and structure of thesis

The following section provides a summary of the remaining chapters, highlighting key concepts, findings and recommendations where appropriate.

Chapter 2 provides the current knowledge base in the subject of IFFs, and it identifies the gaps therein and where this thesis resides amongst the literature. The findings provide a contribution to knowledge and make the connection that, whilst legal IFFs are permissible by law, they are rejected by society, and indeed are harmful to developing countries. The theoretical framework describes the process and helps clarify the hypotheses to be proved.

Chapter 3 explains and substantiates why a socio-legal research methodology (among others) is adopted for this thesis and focuses on the law – or lack of it, in the case of IFFs – and how that manifests itself in society.

Chapter 4 provides a basis for understanding IFFs and their ancillary components. The parameters of IFFs are explained and set out to enable analysis of the hypotheses. The terms ‘illicit’ and ‘illegal’ are explained. The definitions of IFFs are explored, and the wider meaning – i.e. to include legal activities such as tax avoidance, transfer price abuse and profit shifting (which are also explained) – is put forward for use as the foundation for this study and

[38] See n 18.

potentially for future research studies. The notion that transfer price abuse is a core aspect of IFFs, and could potentially enable or facilitate corruption and money laundering, is introduced and examined especially in developing countries. The term 'financial secrecy' – which includes secrecy jurisdictions, corporate secrecy and banking secrecy – is explained in detail, as one of the hypotheses suggests that it is a core enabler of IFFs, which is analysed in subsequent chapters. The vulnerability of banks with respect to a lack of policy on financial secrecy and possibly money laundering is introduced, to provide the setting to complete the range of hypotheses that will be explored in the thesis. Nigeria, a jurisdiction which is rife with corruption, is introduced and examined to illustrate its symbiotic relationship with the UK and its Overseas Territories which facilitate IFFs through their financial secrecy rules.

Chapter 5 illustrates that there is a lack of legislative intervention for IFFs which could enable, or be enabled by, corruption leading to money laundering. The chapter further clarifies how transfer price abuse has a part to play in corruption and money laundering. The chapter concludes with a detailed analysis of the case study of Sani Abacha to show the interdependent IFF relationships between Nigeria and the UK and its Overseas Territories.

Chapter 6 examines if and to what extent international, regional (e.g. European Union) and national anti-corruption legislation have had an impact on the UK and Nigeria. This inquiry also reveals if corruption offences are effectively prosecuted in these countries. It is known that secrecy jurisdictions[39] can be, and are, used for IFFs, but what is evident in this thesis is that the UK and its Overseas Territories, when combined, are at the top of the FSI.[40] In contrast however, the UK is ranked as the 11th country in the Transparency International CPI,[41] which suggests that there is a low level of perceived corruption in the UK. This is at odds with the FSI, and this anomaly is explored in Chapter 6.

[39] Secrecy jurisdictions, banking secrecy and corporate secrecy are explained and discussed in more detail in Chapter 4.
[40] 'Financial Secrecy Index 2020 - Narrative Report on the United Kingdom' (*Tax Justice Network,* 2020) <https://www.financialsecrecyindex.com/PDF/UnitedKingdom.pdf> accessed 6 August 2020.
[41] 'Corruption Perceptions Index 2020' (*Transparency International,* 2021) <https://www.transparency.org/cpi2020> accessed 11 August 2021.

Chapter 7 examines the international and regional anti-money laundering regimes with particular reference to the UK and Nigeria. This is done to understand why money laundering offences continue to grow, despite increasing legislation and regulation. Additionally, this chapter considers money laundering from a different perspective, particularly with respect to how banks have become susceptible to money laundering, despite considerable legislative reforms in this sector. Financial secrecy is identified as a determining factor which is used by criminals and corporations for IFFs. The banking institutions that govern banks are silent on policies that could affect financial secrecy and help curb IFFs, which is troubling. This contentious issue is explored to understand the key factors behind this trend. Chapter 7 also affirms the symbiotic relationship that exists between Nigeria and the UK and its Overseas Territories which provides an environment for IFFs to flourish.

Chapter 8 considers each hypothesis in turn and examines the findings discovered in the literature review throughout the thesis, and it provides recommendations where appropriate.

CHAPTER 2 – LITERATURE REVIEW AND THEORETICAL FRAMEWORK

Introduction

The purpose of this chapter is to critically review the literature in the field of illicit financial flows (IFFs), focusing on how financial secrecy and transfer price abuse enable and facilitate corruption and money laundering. The specific issues generated by the hypotheses are examined against the literature to show where this thesis sits within that knowledge base. This will include similarities, gaps and original contributions to the existing literature.

The findings from the current literature are provided in this chapter in terms of testing the hypotheses against the existing knowledge base. These findings are then confirmed or invalidated. New theories arising from the thesis are confirmed in line with the hypothesis supported with evidence.

The literature review is a vital stage of the research process and can be described as 'the foundation and inspiration for substantial, useful research'.[42] The literature review involves the identification and critique of existing research in the subject area that may be relevant to the research objectives of particular research. Fink advocates that:

> A research literature review is a systematic, explicit, and reproducible method for identifying, evaluating and synthesizing the existing body of completed and recorded work produced by researchers, scholars and practitioners.[43]

This component of the research helps to establish the academic opinion in the area, and assesses the plethora of financial crime literature available, to pinpoint an original contribution to knowledge that only has an emerging and limited academic presence. The key gap in the literature derives from the lack of inquiry into the relationship of IFFs with financial secrecy, corruption and money laundering. Accordingly, the relevant literature is critically examined, and the novel position of this thesis within that knowledge base is provided. Furthermore, the

[42] David N Boote and Penny Beile, 'Scholars Before Researchers: On the Centrality of the Dissertation Literature Review in Research Preparation' (2005) 34 Educational Researcher 3.
[43] Arlene Fink, *Conducting Research Literature Reviews: from the Internet to Paper* (Sage Publications 2013) 3.

findings demonstrate the original contribution to knowledge and highlight the gaps and areas for further research. The literature review confirms that, whilst there is an abundance of research about corruption and money laundering in isolation, there is a significant absence of research regarding IFFs. Reuter concludes that the study of IFFs is immature and states that 'this profound ignorance [of IFFs] is not the consequence of confusing research results. It reflects the lack of any sustained research agenda'.[44]

There is no agreed definition of IFFs, and this thesis firmly sits in the wider understanding of IFFs from the perspectives provided by Everest-Phillips,[45] Picciotto[46] and Cobham.[47] Chapter 4 provides the grounding and baseline on the IFF literature pertinent to this thesis. The starting point is Baker's publication 'Capitalism's Achilles Heel'[48] where he continues to raise awareness of IFFs[49] with the creation of his organisation, Global Financial Integrity (GFI).[50] Its researchers have largely contributed to the economics approach on the quantification of IFFs,[51] which continues to evolve and develop.[52] The literature review reveals that the current research outputs on IFFs are generally based on economics rather than law, which is confirmed by Baker, 'the discussion does not examine the drivers or consequences of the activities that generate most IFFs, such as bribery and tax evasion'.[53] The extent of IFFs is also initially established by

[44] Peter Reuter, 'Illicit Financial Flows and Governance: The Importance of Disaggregation' (Background Paper for the World Development Report, World Bank 2017) <https://openknowledge.worldbank.org/handle/10986/26210> accessed 22 January 2021.
[45] Max Everest-Phillips, 'The Political Economy of Controlling Tax Evasion and Illicit Flows' in Peter Reuter (ed), *Draining Development? Controlling Flows of Illicit Funds from Developing Countries*, The World Bank 2012).
[46] Sol Picciotto, 'Tax Evasion and the Offshore System' (2017) 4 Kurswechsel 7.
[47] Alex Cobham, 'The Impacts of Illicit Financial Flows on Peace and Security in Africa' (TANIA High Level Forum on Security in Africa 2014), 3 <https://media.africaportal.org/documents/IFFs_and_Security_1.pdf> accessed 21 January 2021.
[48] Raymond Baker, *Capitalism's Achilles Heel: Dirty Money and How to Renew the Free-Market System* (John Wiley & Sons 2005).
[49] Raymond Baker, 'Pan African Lawyers Union Keynote Address' (*Global Financial Integrity,* 5 July 2017) <http://www.gfintegrity.org/press-release/pan-african-lawyers-union-keynote-address/> accessed 19 February 2019.
[50] 'Global Financial Integrity - About' (*Global Financial Integrity,* 2019) <http://www.gfintegrity.org/> accessed 1 November 2019.
[51] Joseph Spanjers and Matthew Salomon, 'Illicit Financial Flows to and from Developing Countries: 2005-2014' (Global Financial Integrity 2017).
[52] Joseph Spanjers and Håkon Frede Foss, 'Illicit Financial Flows and Development Indices 2008-2012' (Global Financial Integrity 2015) <https://gfintegrity.org/illicit-financial-flows-and-development-indices-2008-2012/> accessed 27 January 2021.
[53] Peter Reuter, 'Illicit Financial Flows and Governance: The Importance of Disaggregation' (Background Paper for the World Development Report, World Bank 2017), 2 <https://openknowledge.worldbank.org/handle/10986/26210> accessed 22 January 2021.

Baker,[54] which Nitsch[55] argues against as lacking evidence, and where Hogg[56] and Blackenburg and Khan[57] arrive at a middle ground. For the purposes of this thesis, the author contends that, whichever size is adopted, the magnitude of IFFs is still significant enough to warrant attention of governments, legislators and policy makers.

The notion of transfer price abuse is introduced as an illicit but legal activity, and Hypothesis 3 suggests that it contributes to corruption and money laundering. Within the current literature, Murphy[58] provides the basis of transfer price abuse alongside the Financial Transparency Coalition;[59] and Mehafdi,[60] similar to this thesis, confirms that it is illicit. Baker[61] takes this stance a stage further, as does this thesis, suggesting that transfer price abuse contributes to corruption in developing countries; and Sikka and Willmott,[62] similar to the position of this thesis, introduce the concept of the vulnerability of banks in receiving laundered money as a result of transfer price abuse. Otusanya *et al*.[63] affirm, in line with this thesis, that transfer price abuse in developing countries will, at best, shift profits from where they are needed most and, at worst, contribute to enabling bribery and corruption.

Trade mis-invoicing[64] is discussed by Ndikumana as an illegal activity which has an indirect link with transfer price abuse, which is legal. One of the challenges in this thesis was the pace of

[54] Raymond Baker, *Capitalism's Achilles Heel: Dirty Money and How to Renew the Free-Market System* (John Wiley & Sons 2005) 172.
[55] Volker Nitsch, 'Trillion Dollar Estimate: Illicit Financial Flows from Developing Countries' (Darmstadt Discussion Papers in Economics, 227, EconStor 2016) <https://www.econstor.eu/handle/10419/141281> accessed 27 January 2021.
[56] Andrew Hogg and others, *Death and Taxes: The True Toll of Tax Dodging* (Christian Aid, 2008) 2.
[57] Stephanie Blackenburg and Mushtaq Khan, 'Governance and Illicit Flows' in Peter Reuter (ed), *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (World Bank 2012).
[58] Richard Murphy, 'Accounting for the Missing Billions' in Peter Reuter (ed), *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (World Bank 2011).
[59] 'Country by Country Reporting' (Financial Transparency Coalition, 2020) <https://financialtransparency.org/issues/country-by-country-reporting/> accessed 7 August 2020.
[60] Messaoud Mehafdi, 'The Ethics of International Transfer Pricing' (2000) 28 Journal of Business Ethics 365.
[61] Raymond Baker, 'Illicit Financial Flows: The Scourge of the Developing World' Huffington Post (New York 7 January 2013) <http://www.huffingtonpost.com/raymond-baker/illicit-financial-flows_b_2427495.html?utm_hp_ref=tw> accessed 1 April 2019.
[62] Prem Sikka and Hugh Willmott, 'The Dark Side of Transfer Pricing - its Role in Tax Avoidance and Wealth Retentiveness' (2010) 21 Critical Perspectives on Accounting 342.
[63] Olatunde Julius Otusanya, Sarah Lauwo and Amal Hayati Ahmad-Khair, 'The Culpability of Accounting Practice in Promoting Bribery and Corruption in Developing Countries' (2017) 8 International Journal of Economics and Accounting 106.
[64] Leonce Ndikumana, 'Curtailing Capital Flight from Africa' (Friedrich-Ebert-Stiftung Global Policy Development 2017), 4.

evolution of IFFs and the extent to which they have been reported. In 2017, GFI introduced trade mis-invoicing as a large component of IFFs; prior to this, GFI referred to transfer price abuse as an established and legal form of IFFs (in other words, tax avoidance). Whilst GFI has now endeavoured to focus on illegal IFFs only,[65] there is great confusion within GFI's own literature which also recognises and includes transfer price abuse as IFFs.[66]

Cobham provides the basis of what financial secrecy entails.[67] Reuter,[68] Meinzer[69] and Murphy[70] all confirm the role that secrecy plays in undermining regulation. Janský and Prats[71] suggest that tax evasion and avoidance is the primary goal of using secrecy jurisdictions. Palan *et al*[72] introduce the concept, which is in line with this thesis, that secrecy jurisdictions exist in consensus with governments via regulation or laws[73] or via secret agreements with companies concerned,[74] and this thesis suggests that, whilst corporations that take a riskier approach to tax management will use secrecy destinations, so too will criminals who want to launder money. Banking secrecy exists in some jurisdictions – Ping,[75] Carr and Jago[76] provide the status of it, focusing on Switzerland. The terminology clarifying corporate secrecy is established by Chambers,[77] namely identifying the link of financial secrecy that enables harmful practices such

[65] 'Trade Misinvoicing' (Global Financial Integrity, 2019) <https://www.gfintegrity.org/issue/trade-misinvoicing/> accessed 29 March 2019.
[66] Michelle Fletcher, 'The Transfer Pricing Labyrinth' (Global Financial Integrity, 2014) <https://www.gfintegrity.org/transfer-pricing-labyrinth/> accessed 8 January 2018.
[67] Alex Cobham, Petr Janský and Markus Meinzer, 'The Financial Secrecy Index: Shedding New Light on the Geography of Secrecy' (2015) 91 Economic Geography 281.
[68] Peter Reuter, 'Introduction and Overview: The Dynamics of Illicit Flows' in Reuter (ed), *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (The World Bank 2012).
[69] M Meinzer, 'Where to Draw the Line? Identifying Secrecy for Applied Research' (Tax Justice Network 2012), 8.
[70] Richard Murphy, 'What Do You Do to Oppress People, Turn Their State into a Tax Haven' (Tax Research UK, 2013) <http://www.taxresearch.org.uk/Blog/2013/08/12/what-do-you-do-to-oppress-people-turn-their-state-into-a-tax-haven/> accessed 26 September 2019.
[71] Petr Janský and Alex Prats, 'International Profit-Shifting out of Developing Countries and the Role of Tax Havens' (2015) 33 Development Policy Review 271.
[72] Ronen Palan, Richard Murphy and Christian Chavagneux, *Tax Havens - How Globalization Really Works* (Cornell University Press 2013) 4.
[73] For example, see He Ping, 'Banking Secrecy and Money Laundering' (2004) 7 Journal of Money Laundering Control 376.
[74] For example, see Aaron Pressman, 'How Apple uses the Channel Island of Jersey in Tax Strategy' (*Fortune,* 2017) <http://fortune.com/2017/11/06/apple-tax-avoidance-jersey/> accessed 16 March 2020.
[75] He Ping, 'Banking Secrecy and Money Laundering' (2004) 7 Journal of Money Laundering Control 376.
[76] Indira M Carr and Robert Jago, 'Corruption, Money Laundering, Secrecy and Societal Responsibility of Banks' *Social Science Research Network*, 17 June 2014) <https://dx.doi.org/10.2139/ssrn.2454934> accessed 20 August 2021.
[77] Robert Chambers, 'Corporate Secrecy; the Final Barrier to Corporate Governance' (2006) 2 International Journal of Business Governance and Ethics 43.

as corruption and money laundering which are facilitated by IFFs. Further literature analysis on financial secrecy is provided in this chapter by exploring the hypotheses below.

The impact of IFFs on developing countries is a key concept running through this thesis, as the literature review shows that, in Nigeria, both forms of IFFs (that is, illegal and legal) form the basis of the detriment left when illicit capital leaves Nigeria. GFI analysed the impact of IFFs from developing countries. The 2019 GFI Report proposes policy measures to curtail illicit flows that include increasing transparency in the global financial system and measures related to tax haven secrecy, anonymous companies, and money laundering techniques.[78]

In chapter 4, the problems that exist in Nigeria are introduced, whereby this thesis argues that there is a series of conditions that leave Nigeria struggling with anti-corruption efforts. The literature reviewed for the Nigerian corruption dynamic is initially provided by Shehu,[79] who provided a detailed account of corruption in Nigeria and assesses whether its leaders had any positive impact on countering it. Holman suggests that Buhari, the incumbent President, has good intentions on anti-corruption, but the impact is yet to be seen.[80] The literature shows that corruption is indeed endemic in Nigeria, where Otusanya contends that even legislators are active in corruption;[81] and further literature analysis is provided below in line with specific hypotheses concerning lack of political will for enforcement and the existence of tribal allegiances.

The literature on the vulnerability of banking stems from Baker's view, who questions and condemns Western banks for accepting illicit capital arising from IFFs from developing countries. This is further explored below, assessing the literature with respect to the hypothesis that banks are silent on financial secrecy policy and practice. This thesis contends that such a trend is driven by the notion in the banking industry that non-complacency 'may cut off the

[78] 'Illicit Financial Flows to and from 148 Developing Countries: 2006-2015' (Global Financial Integrity 2019), 23.
[79] Abdullahi Y Shehu, 'Combating corruption in Nigeria - Bliss or Bluster?' (2005) 12 Journal of Financial Crime 69.
[80] Michael Holman, 'Mixed Report Card for Nigeria's President Buhari' Financial Times (7 November 2017) <https://www.ft.com/content/39f614a4-9188-11e7-83ab-f4624cccbabe> accessed 10 January 2020.
[81] Olatunde Julius Otusanya and others, 'Sweeping it Under the Carpet: The Role of Legislators in Corrupt Practice in Nigeria' (2015) 22 Journal of Financial Crime 354.

hand that feeds them'. The literature review for the specific themes that emerge from the hypotheses is discussed below.

Hypothesis 1: Illicit financial flows are detrimental to society and are not yet adequately considered by governments and law-making bodies

Reuter confirms that IFFs have not been the subject of detailed inquiry, and what literature that exists out there is immature.[82] This poses a weakness in countering financial crimes, as IFFs circumvent traditional approaches to tackling corruption and money laundering. Furthermore, this thesis identifies and demonstrates the fact that there is an absence of research looking at IFFs, bribery and corruption and money laundering together, and there is even less literature that links financial secrecy to IFFs. Addressing this gap is one of the novel contributions to knowledge of this thesis which differentiates it from other studies conducted on the subject of IFFs. Whilst the media coverage of IFFs has increased following the revelations from the Panama[83] and Paradise Papers,[84] there is little literature looking at the subject of IFFs alone or looking at interlinks between IFFs, corruption[85] and money laundering together, all of which are connected to the secrecy jurisdictions, banking secrecy and corporate secrecy to IFFs. This thesis focuses on this niche field of inquiry by analysing the dynamic relationship between the UK and Nigeria where the parameters of IFFs can be explored and tested. Chapter 5 provides further details on this assumption/hypothesis that IFFs are detrimental to society and are not yet adequately addressed by governments and national or international law-making bodies.

[82] Peter Reuter, 'Illicit Financial Flows and Governance: The Importance of Disaggregation' (Background Paper for the World Development Report, World Bank 2017), 24 <https://openknowledge.worldbank.org/handle/10986/26210> accessed 22 January 2021.

[83] 'The Panama Papers: Exposing the Rogue Offshore Finance Industry' (*The International Consortium of Investigative Journalists,* 29 January 2019) <https://www.icij.org/investigations/panama-papers/> accessed 1 April 2019.

[84] 'The 'Paradise Papers' and the Long Twilight Struggle Against Offshore Secrecy' (*International Consortium of Investigative Journalists,* 2017) <https://www.icij.org/investigations/paradise-papers/paradise-papers-long-twilight-struggle-offshore-secrecy/> accessed 15 February 2020.

[85] There are scholars who make the link between IFFs and corruption. See Quentin Reed and Alessandra Fontana, 'Corruption and Illicit Financial Flows: The Limits and Possibilities of Current Approaches' (U4 Anti-Corruption Resource Centre 2011); Ann Hollingshead, 'Understanding the Relationship Between Corruption and Illicit Financial Flows' (*Financial Transparency Coalition,* 2014) <https://financialtransparency.org/understanding-the-relationship-between-corruption-and-illicit-financial-flows/> accessed 17 February 2020.

Hypothesis 2: Financial secrecy, a key component of illicit financial flows, contributes to corruption and money laundering

Young questions the purpose of secrecy jurisdictions and the West's duplicity in hindering AML and anti-corruption efforts.[86] Unger and Busuioc emphasise how large industrialised economies such as the UK maintain an interdependent relationship with their secrecy jurisdictions (referred to as Overseas Territories throughout this thesis), where both need each other to stay competitive.[87] Cobham clarifies various aspects of IFFs, addressing the point of illegality and secrecy, which is a core theme of this thesis:

> 'Illicit financial flows' (IFF) is an umbrella term for a broad group of cross-border economic and financial transactions, of which the common element is not illegality but the use of financial secrecy to remain hidden from public and regulatory view.[88]

Christensen criticises the purpose of secrecy jurisdictions and considers that they contribute to the deterioration of developing countries by IFFs and tax evasion.[89] Financial secrecy is a major component of IFFs, where Christensen and Cobham both provide compelling literature on the role and nature of financial secrecy. They opine that secrecy jurisdictions do not serve any purpose other than helping those who want to evade or avoid tax and/or those who want to launder money.[90] The position of this thesis is affirmed by Janský who stated that:

> Secrecy jurisdictions provide services that enable the residents of other countries to escape the laws and regulations of their home economies, evade tax, or hide their legally or illegally obtained assets.[91]

[86] Mary Young, 'Western Hypocrisy and the Never Changing Face of Financial Secrecy Jurisdictions: Burying the 1975 UN agenda' (2017) The European Law Review 11.
[87] Brigitte Unger and Elena Madalina Busuioc, *The Scale and Impacts of Money Laundering* (Edward Elgar Publishing 2007) 12.
[88] Alex Cobham and Petr Janský, 'Illicit Financial Flows: An overview' (Intergovernmental Group of Experts on Financing for Development, Paris, 8-10 November 2017).
[89] John Christensen, 'The Hidden Trillions: Secrecy, Corruption, and the Offshore Interface' (2012) 57 Crime, Law and Social Change 325.
[90] Ibid, 341.
[91] Petr Janský, Markus Meinzer and Miroslav Palanský, 'Is Panama Really Your Tax Haven? Secrecy Jurisdictions and the Countries they Harm' (2018) IES Working Papers 23/2018 IES FSV Charles University.

Cobham and Janský introduce a notion that countries which have a high degree of financial secrecy, such as Switzerland, do well in corruption indexes.[92] Murphy adds to the debate, describing the purpose of secrecy jurisdiction as simply to hide the ultimate beneficial owner.[93] Baker puts forward the view of how Western banks and businesses use secret transactions and ignore laws while handling $1tn in illicit proceeds each year.[94] He also illustrates how businesses, criminals and kleptocrats employ similar techniques to shift funds and how these tactics negatively affect individuals, institutions and countries.[95]

The subject of banking secrecy and secrecy jurisdictions[96] is investigated by Young, who confirms that secrecy jurisdictions and banking confidentiality undermine the effectiveness of AML and anti-corruption efforts, and re-affirms this position suggesting a 'Western hypocrisy' towards the impact of financial crime in secrecy jurisdictions.[97] Cobham, who introduced the FSI, suggests that, contrary to popular belief, it is not only the popular tax haven islands that harbour secrecy in relation to global financial flows, but also the major economies in the world, including the UK, are equally involved. He further explains that:

> The FSI ranks countries and jurisdictions according to their contribution to opacity in global financial flows, revealing a quite different geography of financial secrecy from the image of small island tax havens that may still dominate popular perceptions and some of the literature on offshore finance. Some major (secrecy-supplying) economies now come into focus.[98]

[92] Alex Cobham and Petr Janský, 'Illicit Financial Flows: An overview' (Intergovernmental Group of Experts on Financing for Development, Paris, 8-10 November 2017) 5.
[93] Richard Murphy, 'Accounting for the Missing Billions' in Peter Reuter (ed), *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (World Bank 2011).
[94] Raymond Baker, 'Illicit Financial Flows: The Scourge of the Developing World' Huffington Post (New York 7 January 2013) <http://www.huffingtonpost.com/raymond-baker/illicit-financial-flows_b_2427495.html?utm_hp_ref=tw> accessed 1 April 2019.
[95] Ibid.
[96] Young uses the term 'offshore financial centre' but, for consistency in this thesis, the term 'secrecy jurisdiction' is used to mean the same as offshore financial centres and tax havens.
[97] Mary Alice Young, *Banking Secrecy and Offshore Financial Centres: Money Laundering and Offshore Banking* (Routledge 2013); Mary Alice Young, 'The Exploitation of Offshore Financial Centres: Banking Confidentiality and Money Laundering' (2013) 16 Journal of Money Laundering Control 198; Mary Young, 'Western Hypocrisy and the Never Changing Face of Financial Secrecy Jurisdictions: Burying the 1975 UN agenda' (2017) The European Law Review 11.
[98] Alex Cobham, Petr Janský and Markus Meinzer, 'The Financial Secrecy Index: Shedding New Light on the Geography of Secrecy' (2015) 91 Economic Geography 281.

Otusanya illustrates the fact that financial intermediaries are involved in money laundering cases deriving from the political elite in Nigeria, outlining the journey from the corrupt act – often a bribe, theft and/or fraud – to the banks accepting the proceeds using intermediaries to launder it.[99] He aptly makes the link between secrecy jurisdictions, banking secrecy and corporate secrecy,[100] although the term 'illicit financial flows' is not used; which suggests that, whilst IFFs are becoming an established term through the work of organisations such as Global Financial Integrity and the OECD, there is a gap in the development of the subject attributed to financial secrecy, corruption and money laundering in academia. Finally, Otusanya further develops his arguments looking at how corrupt Nigerian officials have used financial secrecy to move illicit capital abroad,[101] affirming the position of this thesis on these findings.

Hypothesis 3: Transfer price abuse is an enabler of corruption and money laundering

Transfer price abuse is a key component of IFFs which are components of money laundering, fraud and corruption. However, transfer price abuse is not prohibited by law. Therefore, it remains to be a legal activity if one assesses it by the letter of the law as opposed to the spirit of the law. Subsequently, court cases involving transfer price abuse are rare or not relevant for the purposes of this thesis. Accordingly, a specific case on transfer price abuse is not included in this thesis albeit the relevant and limited literature on transfer price abuse are critiqued by academic vigour. Transfer pricing in isolation is beyond the scope of this thesis, and 'transfer price abuse' is a term which shifts the focus from the corporate practice of transfer pricing that is necessary and allowed by law, to ensure goods are priced accordingly when they move beyond jurisdictions, to taking advantage of that practice and abusing it aggressively to avoid and potentially evade tax – transfer price abuse.

One of the cases that was reviewed for this study is the long-running dispute between the Indian authorities and Vodafone.[102] The case has elements of transfer pricing abuse but was

[99] Olatunde Julius Otusanya, Solabomi Omobola Ajibolade and Eddy Olajide Omolehinwa, 'The Role of Financial Intermediaries in Elite Money Laundering Practices: Evidence from Nigeria' (2012) 15 Journal of Money Laundering Control 58.
[100] Ibid.
[101] Olatunde Julius Otusanya and Sarah Lauwo, 'The Role of Offshore Financial Centres in Elite Money Laundering Practices: Evidence from Nigeria' (2012) 15 Journal of Money Laundering Control 336.
[102] Nic Fildes and Stephanie Findlay, 'Vodafone wins long running €3bn Indian tax battle' *Financial Times* (New Delhi, 25 September 2020) <https://www.ft.com/content/be5db92a-4cb4-4b3d-8f23-64faf44e6bd0> accessed 27 March 2021.

deemed irrelevant for the purposes of this thesis. The case was initiated by the Indian government following the acquisition by Vodafone in 2007 of Hutchison Essar, India's second largest mobile phone network, but there followed a lengthy tax dispute. Vodafone won its case in 2012 at the Indian Supreme Court but the Indian government pursued retrospective tax demands with interest and penalties. The reason why this case was picked out was that the literature review suggested that there were some transfer price abuse implications;[103] however, it focused on the issue of transfer pricing in its entirety, which is outside the scope of this thesis. The corporate practice of transfer pricing is necessary to ensure that goods are priced accordingly when they move beyond jurisdictions; transfer price abuse is taking advantage of that practice to aggressively avoid tax and potentially evade tax.

Transfer price abuse has been recognised as a practice for facilitating/enabling corruption and money laundering, especially in developing countries. This is heavily connected to the fact that corporations use financial secrecy (an enabler and facilitator of bribery and corruption) for transfer pricing and transfer price abuse.

The literature on transfer price abuse is very limited and key contributors to the knowledge base are detailed below. Picciotto highlights that transfer price abuse may not be illegal but it is established and classified as illicit.[104] Cobham and Janský confirm that transfer price abuse takes advantage of financial secrecy to achieve the aims of profit shifting and/or tax avoidance or evasion.[105] They also provide a solid basis for understanding IFFs[106] and concur with the views of Baker,[107] which also correlate with the conclusion reached in this thesis that there is a clear link between transfer price abuse and secrecy destinations that contribute to and/or facilitate corruption and money laundering.

[103] GS Sekhar, 'Transfer Pricing – A Case Study of Vodafone (2016) 6 International Journal of Engineering Science 6207.
[104] Sol Picciotto, 'Tax Evasion and the Offshore System' (2017) 4 Kurswechsel 7.
[105] Alex Cobham and Petr Janský, 'Illicit Financial Flows: An overview' (Intergovernmental Group of Experts on Financing for Development, Paris, 8-10 November 2017) 2.
[106] Ibid 5.
[107] Raymond Baker, 'Illicit Financial Flows: The Scourge of the Developing World' Huffington Post (New York 7 January 2013) <http://www.huffingtonpost.com/raymond-baker/illicit-financial-flows_b_2427495.html?utm_hp_ref=tw> accessed 1 April 2019.

Janský and Prats[108] offer a radical approach to curb transfer price abuse, a practice which they suggest harms developing countries.[109] Accordingly, they suggest that implementing a unitary method of taxing MNCs could curb this practice whereby artificial movement of profits to secret or difficult-to-find companies with no real commercial activity would not yield any benefits for the MNCs. This would also allow taxes to be paid in countries where the economic activity is carried out and, if that is a developing country, it would aid poverty and could contribute to anti-corruption measures. If MNCs stopped the practice of transfer price abuse,[110] then one large chunk of the IFFs would be eradicated, making the identification of criminal activity easier when dealing with IFFs.

Zucman makes a three-stage action plan to curb tax evasion and avoidance.[111] Stage One involves creating a global public register of financial wealth. Where these exist already, they are often disparate and should be merged. This should be combined with an automatic exchange of information between foreign tax authorities and the banks of tax havens. Such a financial register would effectively end financial secrecy. Stage Two of the plan would be to impose trade tariffs that are greater than the income derived from acting as a tax haven. Zucman's example that is cited considers that Germany, France and Italy would be able to force Switzerland to disclose all assets held there by their residents by imposing a 30% customs duty on all goods imported from Switzerland. The theory is that the costs of paying the tariff would be more than the revenue generated through the facilitation of tax evasion and avoidance. Stage Three is taxing MNCs' global profits as a consolidated whole, rather than the country-by-country profit reporting that currently allows them to pay considerably less tax. The action plan is a good blueprint for change and would have a significant impact on tax evasion and tax avoidance, and it would also have a positive influence on tackling corruption and money laundering. However, the three-stage plan may not be adopted by international bodies and governments, since tax avoidance, which would make up the significant proportion of this

[108] Petr Janský and Alex Prats, 'International Profit-Shifting out of Developing Countries and the Role of Tax Havens' (2015) 33 Development Policy Review 271.
[109] Ibid.
[110] Transfer price abuse is discussed in detail in Chapter 4.
[111] Gabriel Zucman, *The Hidden Wealth of Nations: The Scourge of Tax Havens* (University of Chicago Press 2015) 4.

global financial wealth, is not illegal, and so the plan may not capture the hearts and minds of governments and regulators.

This thesis takes the position that transfer price abuse can enable IFFs, corruption and money laundering and, by making this connection more visible, will have a greater impact in persuading authorities to act.

Hypothesis 4: The perception of corruption in the UK is contradicted by reality due to the UK's role in financial secrecy

The CPI[112] is compared to the FSI[113] to ascertain if the UK has a low level of perceived corruption, as identified in the CPI. The favourable position of the UK in the CPI does not align with the high level of financial secrecy in the UK, as identified in the FSI. Comparison of the CPI against the FSI is a novel aspect of this thesis. Furthermore, the UK would appear top of the FSI if its Overseas Territories are amalgamated,[114] which is juxtaposed with the UK being ranked 11th on the CPI. As financial secrecy enables corruption and money laundering, as identified in Hypothesis 2 and further detailed in chapters 4 and 5, the CPI ranking of the UK is contradictory and does not reflect the reality therefore should be challenged.

The CPI is often used by countries and companies globally to assess corruption risk ratings. In addition, annual publication of the CPI raises awareness with respect to corruption. However, the accuracy and reliability of the CPI is difficult to accept. The thesis identified Thomson and Shah's writings, who suggested that the CPI was limited and inaccurate.[115] Xypolia was more assertive about the CPI's failings, stating that the corruption rankings are one of the great deceptions of our era. Accordingly, she opined that:

[112] 'Corruption Perceptions Index 2020' (Transparency International, 2021) <https://www.transparency.org/cpi/2020> accessed 8 August 2021.
[113] 'Financial Secrecy Index 2020' (*Tax Justice Network,* 2020) <https://fsi.taxjustice.net/en/> accessed 24 February 2020.
[114] 'Financial Secrecy Index 2020 - Narrative Report on the United Kingdom' (Tax Justice Network, 2020) <https://www.financialsecrecyindex.com/PDF/UnitedKingdom.pdf> accessed 6 August 2020.
[115] Theresa Thompson and Anwar Shah, 'Transparency International's Corruption Perceptions Index: Whose Perceptions Are They Anyway?' (University of Maryland and the World Bank 2005) <http://siteresources.worldbank.org/PSGLP/Resources/ShahThompsonTransparencyinternationalCPI.pdf> accessed 17 February 2020.

> What these indexes have in common is that they are all largely based on surveys about perceptions on corruption – personal judgements, not hard data. They don't reflect the actual degree of corruption in a country but rather what Westerners think of the political culture.[116]

Such academic opinions contribute to the assertions made by the hypothesis regarding the inaccuracy of the CPI ranking for the UK. In addition and importantly, this thesis shows that the UK, despite the recognition of its Bribery Act 2010 as one of the most robust anti-corruption legal instruments in the world, should come under scrutiny for its links with financial secrecy (discussed above and in chapter 5). This criticism is further supported by the examination of the UK's approach and track record to enforcement of its anti-corruption regime against some of the UK's biggest corporations. Based purely on its statutes (law in books), the UK's anti-corruption regime looks credible and comprehensive, especially with the Bribery Act 2010 having been in force for several years. However, as this thesis illustrates, there have been significant cases (law in action), such as the BAe (Al Yamamah) bribery case,[117] the Rolls-Royce deferred prosecution agreement (DPA)[118] and, most recently, the Airbus bribery and corruption case,[119] which all show a selective or ineffective enforcement of the law in in favour of these large MNCs. The DPA is a legal instrument that enables a company to admit wrongdoing to a court without the impact of a full criminal conviction,[120] which could include prohibition from working with public contracts. These examples are discussed in detail in Chapter 6.

Alexander provides a detailed study of various corruption scandals between 2007 and 2009.[121] One of the most relevant cases in the context of this thesis was the BAe (Al Yamamah) bribery

[116] Ilia Xypolia, 'Corruption Rankings are one of the Great Deceptions of our Era' (The Conversation 2016) <https://www.researchgate.net/profile/Ilia_Xypolia/publication/303326024_Corruption_rankings_are_one_of_the_great_deceptions_of_our_era/links/573cd6eb08ae9ace840fe599/Corruption-rankings-are-one-of-the-great-deceptions-of-our-era.pdf> accessed 8 August 2020.
[117] R (on the application of Corner House Research and others v Director of the Serious Fraud Office Criminal Appeal from Her Majesty's High Court of Justice) [2008] UKHL 60; [2009] 1 AC 756.
[118] 'Rolls Royce Deferred Prosecution Agreement' (*Serious Fraud Office* 2017) <https://www.sfo.gov.uk/cases/rolls-royce-plc/> accessed 10 March 2018.
[119] Susan Hawley, 'State Sponsored Bribery' (*Corruption Watch,* 2017) <https://68e905eb-0313-410f-90fe-26992c5f37d6.filesusr.com/ugd/54261c_38511e7837d341f7b4fd46fc7cbc15ef.pdf> accessed 28 January 2020.
[120] Crime and Courts Act 2013 schedule 17.
[121] Richard Alexander, 'Corruption as a Financial Crime' (2009) 30 Company Lawyer 98.

case.[122] Pope and Webb confirm that the OECD put pressure on the UK in 2003, 2005 and 2007 to update its bribery laws,[123] and the catalyst could have been the BAe (Al Yamamah) bribery case in 2008, where the House of Lords overturned a decision confirming that the Director of the Serious Fraud Office (SFO) did have a legal right to drop the case, based on national security. At the time, the OECD further commented on its disappointment with the UK's inability to implement the OECD Anti-Bribery Convention,[124] and there was discussion that this decision was in contravention of Article 5 of the Convention.[125] This is considered in more detail in Chapter 6.

The literature for the Rolls-Royce case was obtained initially from media outlets such as the Financial Times on 9 December 2012.[126] There was a delay of 12 months for the SFO to confirm an investigation,[127] and very limited information was released after that point. Eventually, a DPA was agreed on 17 January 2017.[128] Davidson suggests that DPAs enable companies to buy their way out of corruption charges, and thus criminal liability, but they may be the best way of dealing with bribery and corruption in the current political and business world.[129] However, this thesis asserts that the Rolls-Royce DPA and the BAe (Al Yamamah) bribery cases contradict both the CPI and the spirit of the law, where no individuals were prosecuted for bribery or corruption offences. Barrington encapsulates the position succinctly:

[122] R (on the application of Corner House Research and others v Director of the Serious Fraud Office Criminal Appeal from Her Majesty's High Court of Justice) [2008] UKHL 60; [2009] 1 AC 756.
[123] Tim Pope and Thomas Webb, 'The Bribery Act 2010' (2010) 25 Journal of International Banking Law and Regulation 480.
[124] OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997.
[125] Article 5 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997 relates to enforcement and states that a country shall not be influenced by considerations of national economic interest.
[126] Carola Hoyos, 'Rolls-Royce Bribery Claims Date to 2006' *The Financial Times* (London 9th December 2012) <http://www.ft.com/cms/s/0/75aa410e-4229-11e2-979e-00144feabdc0.html#axzz2F80scNa4> accessed 8 August 2020.
[127] 'SFO Statement - Rolls Royce 23 December 2013' (*Serious Fraud Office,* 2013) <https://www.sfo.gov.uk/2013/12/23/statement-rolls-royce-2/> accessed 8 August 2020.
[128] 'SFO Completes £497.25m Deferred Prosecution Agreement with Rolls-Royce PLC' (*Serious Fraud Office,* 2017) <https://www.sfo.gov.uk/2017/01/17/sfo-completes-497-25m-deferred-prosecution-agreement-rolls-royce-plc/> accessed 10 March 2018.
[129] Jeffrey Davidson, 'The Implications of the Rolls-Royce DPA' (*Commercial Dispute Resolution,* 2017) <https://www.cdr-news.com/categories/expert-views/7535-the-implications-of-the-rolls-royce-dpa> accessed 13 February 2020.

> It is absurd that yet again a company can admit to bribery and yet neither the bribe payers nor the management team that allowed the crime to happen are held responsible.[130]

The CPI does need modernising to reflect that corruption cannot be confined to public office, and the fact that IFFs and money laundering are an integral part of corruption and the perception of it.

To fully address this hypothesis, it was necessary to explore the meaning of corruption and its legal basis through a comprehensive literature review. Chauhan suggests that there is no comprehensive legal definition,[131] whilst Mikkelsen warns of legislation driving the corruption agenda.[132] Treisman adopts the traditional definition of corruption,[133] that is tied to public office, and Budima further echoes this traditional approach, stating that developing countries are prone to corruption and need more regulation and support from the developed world.[134]

This thesis establishes that while various legal provisions recognise and define certain practices (e.g. bribery) as corrupt, there is not a consensus on the legal definition of corruption internationally, regionally or within the UK or Nigeria. Whilst Lambsdorff states that theorising about absolute definitions is ineffective,[135] Treisman follows the traditional definition, focusing on the abuse of public office.[136] The United Nations Convention Against Corruption 2003 (herein referred to as 'UNCAC'), the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997 (herein referred to as the 'OECD Anti-Bribery Convention') and the Bribery Act 2010 do not define corruption. Transparency International and the World Bank provide the most useful terms of reference for corruption,

[130] Barney Thompson, 'SFO Ends Investigations into Rolls-Royce and GSK' *Financial Times* (22 February 2019) <https://www.ft.com/content/4c931be4-3695-11e9-bb0c-42459962a812> accessed 25 February 2019.
[131] Viri Chauhan, 'Why Corruption is Not Legally Defined' (2014) Financial Regulation International 6.
[132] Kim Sass Mikkelsen, 'In Murky Waters: A Disentangling of Corruption and Related Concepts' (2013) 60 Crime, Law and Social Change 357.
[133] Daniel Treisman, 'The Causes of Corruption: A Cross-National Study' (2000) 76 Journal of Public Economics 399.
[134] Gjeneza Budima, 'Can Corruption and Economic Crime be Controlled in Developing Economies, and if so, is the Cost Worth it?' (2006) 13 Journal of Financial Crime 408.
[135] Johann Graf Lambsdorff, *The Institutional Economics of Corruption and Reform* (Cambridge University Press 2007) 15.
[136] Daniel Treisman, 'The Causes of Corruption: A Cross-National Study' (2000) 76 Journal of Public Economics 399.

that include both the public and private sectors as well as developed and developing countries.[137]

Budima deliberates why developing countries are more prone to corruption and exploitation by criminals and concludes that, locally, corruption can only be controlled through state mechanisms and media support and societal backing, alongside international support, collaboration and enforcement of multi-lateral regulations.[138] This is very much the classic view that developing countries need more regulation and support from the developed world. The gap in Budima's work is that there is no reference to the drivers or facilitators of corruption – for example, Nigerian public officials who have amassed huge wealth through illegal means and transfer that illicit capital through secrecy jurisdictions such as Jersey and it finds its way into UK banks; or the banking services in developed countries enabling such illicit wealth to be transferred and reintegrated into the economy. Otusanya suggests that, owing to corruption in politics and business, especially at the highest levels in government, corruption continues to blight developing countries such as Nigeria, where large sums of assets belonging to the public have been misappropriated away from legitimate development to rob the country of much-needed infrastructure investment to alleviate poverty.

The work of Christensen corroborates the view taken in this thesis whereby it is accepted that corruption is harmful for developing countries, but it is less well acknowledged that secrecy jurisdictions contribute to the 'impoverishment of countries by encouraging and enabling illicit financial flows and tax evasion'.[139] Christensen also makes the point that, if the 'supply side of corruption' is not tackled, the hope of ending dependency on foreign aid diminishes.[140]

Otusanya confirms what is perceived by many – that corruption is an impediment to development in developing countries – and provides a powerful and well-known statement:

[137] The definitions and extent of corruption are examined in detail in Chapter 6.
[138] Gjeneza Budima, 'Can Corruption and Economic Crime be Controlled in Developing Economies, and if so, is the cost worth it?' (2006) 13 Journal of Financial Crime 408.
[139] John Christensen, 'The Hidden Trillions: Secrecy, Corruption, and the Offshore Interface' (2012) 57 Crime, Law and Social Change 325.
[140] Ibid.

'corruption enriches a few, impoverishes many'.[141] However, not contesting that statement, the perception of corruption in the UK is misguided and shows a misleading interpretation of corruption in the UK. Smith, quoting John-Mark Iyi, acknowledges that looting by African leaders is common, but admonishes European governments and banks that champion transparency but provide various means to transfer illicit funds back through their financial systems.[142] Lambsdorff[143] was the originator of the CPI and, whilst it is now ubiquitous as a benchmark for discussing corruption. There are critics, such as Thompson and Shah,[144] who conclude that quantifying corruption into a single index to compare countries is imprecise and misleading, because corruption and practices that drive it, as illustrated in this thesis, is a complex issue. Cobham and Janský illustrate their position with reference to Switzerland:

> The illicit flows agenda emerged in a fair degree as an opposition to a view which saw corruption as a problem overwhelmingly in lower-income countries. In 2007, the Tax Justice Network began the process to create the Financial Secrecy Index, which identifies major financial jurisdictions like Switzerland – which typically does very well in perceptions of corruption – as central to the problem of producing and promoting corrupt flows elsewhere.[145]

Hypothesis 5: Anti-corruption legislation / efforts do not have any impact in Nigeria due to lack of political will and the existence of tribal allegiances

[141] Olatunde Julius Otusanya, 'Corruption as an Obstacle to Development in Developing Countries: A Review of Literature' (2011) 14 Journal of Money Laundering Control 387, 406.
[142] David Smith, 'Switzerland to Return Sani Abacha 'Loot' Money to Nigeria' The Guardian (18 March 2015) <https://www.theguardian.com/world/2015/mar/18/switzerland-to-return-sani-abacha-loot-money-to-nigeria> accessed 20 November 2019.
[143] Johann Graf Lambsdorff, *The Institutional Economics of Corruption and Reform* (Cambridge University Press 2007) 236.
[144] Theresa Thompson and Anwar Shah, 'Transparency International's Corruption Perceptions Index: Whose Perceptions Are They Anyway?' (University of Maryland and the World Bank 2005) <http://siteresources.worldbank.org/PSGLP/Resources/ShahThompsonTransparencyinternationalCPI.pdf> accessed 17 February 2020.
[145] Alex Cobham and Petr Janský, 'Illicit Financial Flows: An overview' (Intergovernmental Group of Experts on Financing for Development, Paris, 8-10 November 2017).

The principal challenge identified through the literature review in Nigeria with respect to IFFs is that the benefits of corruption in Nigeria outweigh the penalties of corruption. Oke suggests that custodial sentences are not an effective deterrent, and freezing the money of corrupt public officials would be more effective – the introduction of Unexplained Wealth Orders (UWOs), as have been introduced in the UK, could provide a useful deterrent.[146] This thesis concurs with this position, although the introduction of such an instrument would be strongly contested by the political elite in Nigeria who would recognise the significant constraint that it could put on their finances if UWOs were introduced and used effectively.[147] The literature review also identified tribal allegiances in successive governments that saw corrupt officials go free in Nigeria – Ibori being a good example – while Adigun suggests that this is another protective mechanism that fosters corruption in Nigeria.[148]

Garside suggests that the illicit funds placed in UK financial centres from Nigeria have put pressure on Nigeria to reform its laws and banking practices.[149] Albert evolves the argument to suggest that the law should be enforced in Nigeria, as 'corrupt public officials live free in Nigeria'[150] and controversially advocates that the immunity clause in the Constitution of the Federal Republic of Nigeria 1999, herein referred to as the 'Nigerian Constitution', does not stop corruption cases being brought to justice but delays them. [151] Both these positions are rejected by this thesis. Garside is espousing the general commentary that places Nigeria wholly at fault, in that it is only the Nigerian laws and banking practices that need to change. This thesis holds the view that legislative reform for anti-corruption and AML will have little impact in Nigeria where there is scant regard for the rule of law. Albert's position undermines the power that the immunity clause provides for corrupt leaders. The fact that it simply is in place allows corrupt acts to accumulate with impunity. This thesis suggests that removing the immunity

[146] Tayo Oke, 'Money Laundering Regulation and the African PEP: Case for Tougher Civil Remedy Options' (2016) 19 Journal of Money Laundering Control 32.
[147] Maruf Adeniyi Nasir, 'The Viability of Recent Enforcement Mechanism to Combat Money Laundering and Financial Terrorism (AML/CFT) in Nigeria' (2019) 22 Journal of Money Laundering Control 417.
[148] Olalekan Adigun, 'Corruption with Tribal Marks: Explaining the Ethnic Nature of Political Corruption in Nigeria' (University of Lagos 2017).
[149] Siobhan Michelle Garside, 'Corruption and Money Laundering - International Asset Recovery from Politically Exposed Persons in the UK, Nigeria, Russia and China' (Norwegian University of Life Sciences 2016) <https://nmbu.brage.unit.no/nmbu-xmlui/handle/11250/2443256> accessed 28 January 2021.
[150] Akume T Albert, 'Combating Corruption in Nigeria and the Constitutional Issues Arising: Are they Facilitators or Inhibitors?' (2016) 23 Journal of Financial Crime 700.
[151] Ibid. The immunity clause in the Nigerian Constitution is also discussed in Chapter 6.

clause would be the strongest message to the political elite and businesses that the anti-corruption agenda is serious. This is consistent with the views of Markovska and Adams,[152] but the novel and effective measure which is put forward by this thesis is that the UK should also reciprocate actions, such as putting in place controls that restrict financial activities and IFFs conducted by Nigerian politically exposed persons (PEPs) in the UK. Whilst it has been identified in the research that the problems of IFFs between the UK and Nigeria are wide-ranging, then so should be the solutions.

The literature review identified relevant and recent cases in Nigeria which reveal and illustrate the key contentious issues surrounding the law and its application as well as the enabling connections between the two countries, Nigeria and the UK, which are examined in the thesis. Despite legislative reforms, the breaches continue from corrupt public officials. The literature review indicates that legislation is not impacting the fight against corruption and money laundering effectively; and, on the premise of this thesis, legal instruments do not yet appropriately address IFFs. IFFs from Nigeria to the UK over many years are clearly demonstrated by a plethora of literature on the Sani Abacha case – for example, the report from the High-Level Panel on IFFs from Africa,[153] and the Global Witness report on Nigerian corruption that focused on the Abacha and Alamieyeseigha cases and the role of UK banks.[154] These are analysed in detail in Chapter 5.

The literature for the case of Ibori was mainly ascertained from the legal proceedings in the UK, and the appeal case just focused on sentencing, but provided a good overview of the first and second indictments.[155] The previous conviction of Ibori in 2012 was not recorded in official court reports, but only in the press, which has been used extensively. Maton and Daniel provide the most comprehensive analysis of the Alamieyeseigha and Ibori cases,[156] and this thesis has sought to extend this to the current day, where the Abacha case continues to find its way into

[152] Anna Markovska and Nya Adams, 'Political Corruption and Money Laundering: Lessons from Nigeria' (2015) 18 Journal of Money Laundering Control 169.
[153] 'Illicit Financial Flow - Report of the High-Level Panel on Illicit Financial Flows from Africa' (Commissioned by the AU/ECA Conference of Ministers of Finance, Planning and Economic Development, 2015).
[154] 'International Thief - How British Banks are Complicit in Nigerian Corruption' (Global Witness 2010).
[155] *R v James Onanefe Ibori* [2013] EWCA Crim 815.
[156] James Maton and Tim Daniel, 'The Kleptocrat's Portfolio Decisions' in Peter Reuter (ed), *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (World Bank 2012).

numerous courtrooms where governments attempt to repatriate stolen assets to Nigeria.[157] The Alison-Madueke case[158] has relied mostly on newspaper reports and a case in a Houston court in the US that implicated her.[159] This case demonstrates the difficulty in identifying evidence to secure a conviction, even though there is confirmation showing that the former Oil Minister is living well beyond her means – for example, where US prosecutors seized $144m in assets that included a yacht and an apartment in New York.[160]

To test the hypothesis that corruption legislation is not effective in Nigeria, a literature review of the international and regional legislation and soft law[161] was conducted in addition to the legal regimes of Nigeria and the UK. This includes an assessment of international perspectives via the anti-corruption legislation and soft-law instruments, whereby the provisions of UNCAC[162] and the OECD Anti-Bribery Convention[163] are examined in terms of their implementation and effectiveness. The OECD Anti-Bribery Convention[164] is classed as soft law and is not binding within any national or international law court.[165] The relevant provisions of the Financial Action Task Force (FATF) Recommendations 2012[166] are also considered, which are primarily AML measures and minimum international standards.

[157] 'U.S. Enters into Trilateral Agreement with Nigeria and Jersey to Repatriate Over $300 Million to Nigeria in Assets Stolen by Former Nigerian Dictator General Sani Abacha' (US Department of Justice - Office of Public Affairs, 2020) <https://www.justice.gov/opa/pr/us-enters-trilateral-agreement-nigeria-and-jersey-repatriate-over-300-million-nigeria-assets> accessed 5 February 2020.
[158] The case study of Alison-Madueke is described in detail in Chapter 6.
[159] David J Lynch, 'Nigeria's Former Oil Minister Named in US Bribery Complaint' *Financial Times* (15 July 2017) <https://www.ft.com/content/88a4b26a-68d7-11e7-8526-7b38dcaef614> accessed 9 November 2019.
[160] Ibid.
[161] Kenneth D. Beale and Paolo Esposito, 'Emergent International Attitudes Towards Bribery, Corruption and Money Laundering' (2009) 75 Arbitration 360.
[162] United Nations Convention against Corruption 2003.
[163] OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997.
[164] Ibid.
[165] Kenneth D. Beale and Paolo Esposito, 'Emergent International Attitudes Towards Bribery, Corruption and Money Laundering' (2009) 75 Arbitration 360.
[166] 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, the FATF Recommendations 2012' (Financial Action Task Force 2012).

Carr[167] and Davis[168] are advocates of UNCAC as an international instrument to tackle corruption, whereas Daniel and Maton[169] and Nadipuram[170] favour the mechanisms of the OECD Anti Bribery Work Group that bases its approach on measuring implementation of the OECD Anti-Bribery Convention[171] in Member States. In the UK, it was OECD influence which led to the implementation of the Bribery Act 2010.[172] The finding in this thesis is that UNCAC has the greatest ability to influence and raise the awareness of corruption due to its global coverage, yet it does not provide adequate enforcement mechanisms. By contrast, the OECD Anti-Bribery Convention, which is arguably out of date as it only covers the bribing of a public official, does have greater influence in the OECD countries.[173]

Daniel and Maton also question UNCAC as to its effectiveness in Nigeria.[174] This thesis concurs with this position of extending the remit wider to include all applicable legislation in Nigeria that addresses IFFs, corruption and money laundering that has not been appropriately adopted and enforced. The adoption of existing international legal standards or creation of new legislation will not have any impact on the fight against financial crimes in Nigeria, because the benefits of corruption outweigh the penalties for corruption; this, combined with the lack of political will and the existence of tribal allegiances, is an impediment to progress.

The extent of corruption is exceptionally difficult to establish by hard data, as confirmed by Ryder and Harrison,[175] and there is a decreasing amount of literature that attempts to quantify it. The figures published by the World Bank in 2004 are the most frequently quoted,[176] but are

[167] Indira Carr, 'Corruption, Legal Solutions and Limits of Law' (2007) 3 International Journal of Law in Context 227.
[168] Kevin E. Davis, 'The Prospects for Anti-Corruption Law: Optimists Versus Skeptics' (2012) Hague Journal on the Rule of Law 319.
[169] Tim Daniel and James Maton, 'Is the UNCAC an Effective Deterrent to Grand Corruption?' in Jeremy Horder and Peter Alldridge (eds), *Modern Bribery Law: Comparative Perspectives* (Cambridge University Press 2013).
[170] Abhay M Nadipuram, 'Is the OECD the Answer? It's Only Part of the Solution' (2013) 38 The Journal of Corporation Law 635.
[171] OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997.
[172] David Lawler, *Frequently Asked Questions in Anti-Bribery and Corruption* (Wiley 2012).
[173] Nicola Ehlermann-Cache, 'The impact of the OECD Anti-Bribery Convention' (*OECD,* 2008) <http://www.oecd.org/mena/investment/41054440.pdf> accessed 17 February 2018.
[174] UNCAC and its effectiveness are discussed in Chapter 6.
[175] Karen Harrison and Nicholas Ryder, *The Law relating to Financial Crime* (Ashgate Publishing 2013) 143.
[176] 'The Costs of Corruption' (*The World Bank,* 2004) <https://www.worldbank.org/en/search?q=costs+of+corruption> accessed 20 August 2021.

inadequate as a more up-to-date quantification is required. The economists at GFI who compile the IFF data from developing countries[177] would be able to bring the estimations of corruption up to date, since corruption is considered an aspect of IFFs. This point reconciles with the finding in the thesis that the interlinked activities of IFFs, corruption and money laundering should be analysed together.

The thesis has found that there was a lack of policy for a sustained anti-corruption strategy at the EU level,[178] especially compared to its evolved Fourth AML Directive,[179] and subsequent amendments and developments in the Fifth AML Directive[180] and the Sixth AML Directive.[181] The thesis also contends that the FATF could make a pronounced impact on corruption if it were to add the anti-corruption elements within its FATF Recommendations. For the EU, this could improve their anti-corruption strategy too, as the Fourth AML Directive and subsequent AML Directives have consistently followed the FATF Recommendations.

The literature review reveals that, in the case of Nigeria, IFFs out of Nigeria[182] exceeded foreign aid,[183] and the implications suggest that curbing IFFs in Nigeria could result in money remaining in Nigeria for anti-poverty efforts, and that could reduce the reliance on foreign aid. This is beyond the scope of this thesis and a recommendation for further research.

[177] Joseph Spanjers and Matthew Salomon, 'Illicit Financial Flows to and from Developing Countries: 2005-2014' (Global Financial Integrity, 2017).
[178] This is explained in detail in Chapter 6.
[179] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the Prevention of the use of the Financial System for the Purposes of Money Laundering or Terrorist Financing.
[180] Directive (EU) 2018 of the European Parliament and of the Council of 30 May 2018 Amending Directive (EU) 2015_849 on the Prevention of the use of the Financial System for the Purposes of Money Laundering or Terrorist Financing.
[181] Directive (EU) 2018 of the European Parliament and of the Council of 23 October 2018 on Combating Money Laundering by Criminal Law.
[182] 'Illicit Financial Flows to and from 148 Developing Countries: 2006-2015' (Global Financial Integrity 2019), 31.
[183] 'Development Aid at a Glance Statistics by Region 2019 Edition' (*OECD*, 2019) <https://www.oecd.org/dac/financing-sustainable-development/development-finance-data/Africa-Development-Aid-at-a-Glance-2019.pdf> accessed 25 August 2021.

Hypothesis 6: There is a lack of clear policy on anti-money laundering and financial secrecy by banking institutions which leaves banks vulnerable to illicit financial flows

AML efforts are inhibited by the silence of banking institutions on both AML policy and the impact of financial secrecy. There is an absence of AML policies at the IBFed, the EBF and the BBA which creates a lack of direction and leadership for the banking industry. As these institutions represent the combined views of tens of thousands of banks across the world, they should be leading the dialogue and substantive efforts to tackle IFFs. Chapter 7 critically assesses this point to validate the hypothesis.

It is possible that the most important aspect of tackling money laundering is the least discussed, which is the absence of mandatory AML policies for IFFs or a code of conduct which should be prescribed by the main international banking bodies – IBFed, EBF and BBA. Whether intentional or unintentional, this revelation contributes to the hypothesis that banks do have a significant vulnerability as well as a facilitative role in the flow of illicit financial capital. The literature review indicates that there is not a mandated banking document that provides a collective strategy on preventative measures that banks should adopt for countering (encompassing prevention, detection and reporting etc) IFFs.

The Bank of International Settlements (BIS) represents the interests of 60 central banks, whose members globally make up 95% of the world's GDP.[184] BIS supports and acts as a bank to central banks, to achieve monetary and financial stability and foster international co-operation. The Basel Committee, which is a part of BIS closely aligned to the aims of BIS,[185] sets global standards for the prudential regulation of banks, and publishes guidelines as to how banks should include money laundering and financing of terrorism within their overall risk management.[186] The FATF Recommendations are fully supported by the Basel Committee,[187]

[184] 'About BIS' (*Bank of International Settlements,* 2020) <https://www.bis.org/about/index.htm?l=2> accessed 14 March 2020.
[185] 'Basel Committee Overview' (*Bank for International Settlements,* 2020) <https://www.bis.org/bcbs/index.htm> accessed 8 August 2020.
[186] 'Sound Management of Risks Related to Money Laundering and Financing of Terrorism' (Bank for International Settlements, Basel Committee on Banking Supervision 2017).
[187] Nicholas Ryder*, Money Laundering, an Endless Cycle? A Comparative Analysis of the Anti-Money Laundering Policies in the United States of America, the United Kingdom, Australia and Canada* (Routledge 2012).

and considerable interaction can clearly be seen between the two bodies in addressing money laundering issues. Both the Bank of England and the Central Bank of Nigeria are members of BIS, but it is not entirely clear what impact, if any, BIS has had on the conduct of banks with respect to AML to comply with the guidelines proposed. The central banks appear to adopt AML policy, namely the FATF Recommendations, but there has been no strong or explicit statement that sets down an independent AML approach for central banks. The IBFed is an international body that represents the collective views of national banking associations, and among its membership are 18,000 banks, including more than two-thirds of the largest 1,000 banks which manage assets of over €75tn.[188] With the continuing number of scandals, particularly in the area of money laundering, it is surprising that there is no global AML policy; the IBFed simply states that it works closely with the FATF.[189] Similarly, the EBF, a member of the IBFed, does not have a visible AML policy. The UK's BBA,[190] now UK Finance,[191] is listed as a member of the EBF and states that it has an AML policy, but there is no publication or guidance document to that effect, and the last update to its 'policy' web page was in 2014 when addressing the implementation of the EU's Fourth AML Directive. These findings suggest that these bodies have excluded clear and up to date AML standards from their core set of objectives, which is troublesome because, without a clear AML mandate, the possibility of a connected global approach to AML becomes less likely.

Hypothesis 7: A symbiotic relationship exists between the UK (including its Overseas Territories) and Nigeria, which provides the necessary constituents for illicit financial flows

This thesis asserts that there is a reciprocal challenge where the UK plays a large part in the receiving of illicit funds. Iyi has condemned African leaders who 'loot their national treasuries'[192] and stated that, if countries like the UK expound transparency and accountability,

[188] 'About IBFed' (*International Banking Federation,* 2020) <http://www.ibfed.org.uk/about/> accessed 14 March 2020.
[189] 'Financial Crime WG' (*International Banking Federation,* 2018) <http://www.ibfed.org.uk/working-groups/financial-crime-wg/> accessed 28 November 2019.
[190] 'About Us BBA' (*British Banking Association,* 2017) <https://www.bba.org.uk/about-us/> accessed 1 December 2019.
[191] 'UK Finance - Representing Finance and Banking' (UK Finance, 2020) <https://www.ukfinance.org.uk/about-us/> accessed 14 March 2020.
[192] David Smith, 'Switzerland to Return Sani Abacha 'Loot' Money to Nigeria' The Guardian (18 March 2015) <https://www.theguardian.com/world/2015/mar/18/switzerland-to-return-sani-abacha-loot-money-to-nigeria> accessed 20 November 2019.

they should not have the capability to transfer illicit funds to the UK. Malgwi concurs with this position, suggesting that the UK is not as clean as it appears with respect to corruption and IFFs, as it is the main recipient of illicit capital from Nigeria.[193] Palmer re-iterates how UK banks have been vulnerable to facilitating corruption in Nigeria and subsequent IFFs from Nigeria, enabling corrupt public officials to exploit state assets to afford a 'luxury lifestyle while many Nigerians continue to live in poverty'.[194] Peel describes the history of Nigeria, which became more lawless due to its crude oil pumped through its cities,[195] to more recently recognising the 'dark side of London's success'.[196] This thesis concurs with Palmer and Peel and extends the research and analysis to other factors that contribute to IFFs in Nigeria. For example, the Nigerian Constitution prohibits Nigerian public officials from opening bank accounts or holding assets outside of Nigeria,[197] but the UK institutions were either not aware of this at the time (which is unlikely as they have strong in-house legal teams and compliance officers) or turned a blind eye (which is more likely), in order to capture the funds. Secrecy jurisdictions, banking secrecy and corporate secrecy are the key enablers that corrupt Nigerian officials continue to exploit for IFFs and enjoy the proceeds of their crimes.

The UK and Nigeria have a co-dependency that is likely to sustain IFFs, despite efforts from various bodies such as the OECD, as the gains outweigh the legal consequences for both the corrupt Nigerian official and the UK banks that allow corrupt assets to enter the financial systems. The pledges and reforms proposed by the current president, Muhammadu Buhari, are assessed to ascertain if Nigeria can break free from its corrupt past. When asked at a UK anti-corruption summit whether Nigeria was 'fantastically corrupt',[198] Buhari responded with a

[193] Charles A Malgwi, 'Fraud as Economic Terrorism: The Efficacy of the Nigerian Economic and Financial Crimes Commission' (2005) 12 Journal of Financial Crime 144.
[194] Robert Palmer, Sentencing of Former Nigerian Politician Highlights Role of British and US banks in Money Laundering (Global Witness 2012).
[195] Michael Peel, *A Swamp Full of Dollars: Pipelines and Paramilitaries at Nigeria's Oil Frontier* (I. B. Tauris 2009).
[196] Michael Peel, 'The Dark Side of London's Success' *The Financial Times* (5 December 2017) <https://www.ft.com/content/cb8e7b32-a358-11dc-b229-0000779fd2ac> accessed 7 December 2019.
[197] Constitution of the Federal Republic of Nigeria 1999 Fifth Schedule, Part 1- Code of Conduct for Public Officers, s3 prohibits holding a bank account outside Nigeria, s11 imposes that there should be declaration of interests.
[198] The words used by Cameron to describe Nigeria; see Segun Idowu Adeniyi and Wale Henry Agbaje, 'Stemming the Tide of Undecided Fraud Court Cases in Nigeria: Forensic Accountant Roles' (2017) 9 Journal of Academic Research in Economics.

simple 'Yes', and added, with the intention of highlighting also the failure of the Western governments and banks:

> What would I do with an apology? I need something tangible. I am not going to demand any apology from anyone. What I am demanding is a return of assets.[199]

Nigeria's anti-corruption chief, Ibrahim Mahu, stated that approximately $37bn (£25.6bn) in stolen money from Nigeria has been routed through London.[200] The Chair of the Committee on Financial Crimes and Corruption, Chukwuka Utazi, asserted that the UK was hypocritical and suggested that the summit was merely a talking shop:

> Let these governments return all these stolen funds in London, then we can believe what he [Cameron] is saying. If he just comes here and makes guarded statements like he did yesterday, we as a nation are not happy about it. Great Britain, as a great ally of Nigeria, should do better than they're doing for this country. Hypocritical - that's just the word. It takes two to tango. The problem of this country [UK] is in receiving stolen assets, ill-gotten money, and keeping it here, and telling our country that they're not doing the right thing is not the way to solve the problem.[201]

The Nigerian Case Studies[202] provide evidence to support the view that, without the facilitation from banks and other financial services organisations in the UK, corruption would prove more difficult for certain public officials to hide and enjoy the proceeds of their crimes. Garside suggests that the dual reciprocation that banks and governments engage in contributes to IFFs and money laundering:

[199] Patrick Wintour and Ruth Maclean, 'Nigeria not seeking a Cameron apology, but 'wants its assets back'' *The Guardian* (11 May 2016) <https://www.theguardian.com/politics/2016/may/11/nigeria-not-seeking-cameron-apology-wants-assets-back> accessed 15 December 2019.
[200] Ibid.
[201] Ibid.
[202] See n 18.

> With much of Nigeria's illicit funds placed into Western financial centres (such as Switzerland and the UK), Nigeria has faced increased diplomatic pressure to reform laws and banking practices.[203]

One cannot isolate secrecy jurisdictions, IFFs, corruption and money laundering, and they should be treated together to effectively fight financial crime – this is a key finding of this thesis.

The scale and impact of the cases provided the impetus for an investigative report by Global Witness,[204] questioning the banks' role in the illicit transfer of corrupt money. This led to the Financial Services Authority (FSA) considering the issue.[205] At the same time, efforts to curb IFFs are hampered by the simple truth that the Nigerian political class is driven by self-interest and other tribal considerations which is prioritised over that of the public need. [206]

Theoretical Framework

The theoretical framework can be described as 'a coherent account of a particular phenomenon or aspect of the world'.[207] It enables research to be recognised as leading edge, having been benchmarked against others. The theoretical framework embeds research in the 'state of the art'[208] or, to put it another way, as something that provides an original contribution to the existing knowledge base.

It is accepted that IFFs are activities that are harmful to society that include among other things the flow of money from the proceeds of crime, bribery and corruption, money laundering, trade mis-invoicing and tax evasion. IFFs also include activities which are legal, but viewed as ethically unsound, such as transfer price abuse and aggressive tax avoidance. In this thesis the

[203] Siobhan Michelle Garside, 'Corruption and Money Laundering - International Asset Recovery from Politically Exposed Persons in the UK, Nigeria, Russia and China' (Norwegian University of Life Sciences 2016), 30 <https://nmbu.brage.unit.no/nmbu-xmlui/handle/11250/2443256> accessed 28 January 2021.
[204] 'Undue Diligence How Banks do Business with Corrupt Regimes' (Global Witness 2010); 'International Thief Thief - How British Banks are Complicit in Nigerian Corruption' (Global Witness 2010).
[205] 'Banks' Management of High Money-Laundering Risk Situations' (Financial Services Authority 2011).
[206] Kempe Ronald Hope Sr, 'Corruption in Nigeria' in *Corruption and Governance in Africa* (Palgrave and Macmillan, Cham 2017).
[207] Sanne Taekema, 'Theoretical and Normative Frameworks for Legal Research: Putting Theory into Practice' (2018) 02 Law and Method.
[208] Sanne Taekema, 'Theoretical and Normative Frameworks for Legal Research: Putting Theory into Practice' (2018) 02 Law and Method.

parameters have also been set to include legal forms of IFFs, but it is accepted that the subject of IFFs is blurred as to whether legal forms of IFFs should be included.[209] Managing and curbing IFFs are on the agenda of important bodies including the OECD and the World Bank. However, one factor that enables the flow of illicit capital, and is possibly even a catalyst, is financial secrecy, which is often overlooked by governments and legislators both at international and national levels. This is a finding in the literature review and is subsequently explored and tested further in Chapters 4 and 5. IFFs are explained in detail in Chapter 4, where the terms 'illicit' and 'illegal' are analysed and clarified. It is accepted that illegal forms of IFFs are inherently damaging, as they contribute to criminality and impair lives and society in both developing and developed countries. What is less known, but becoming more prevalent, is the use of financial secrecy, which is legal, but also has a big facilitative role in IFFs. In some ways, legal IFFs such as transfer price abuse legitimise the use of financial secrecy, as both activities are not against the law. Using an analogy of laundered money that is co-mingled with clean money which makes it difficult to distinguish between the two; in the same way for legal and illegal forms of IFFs, the fact that both use the vehicle of financial secrecy to move the illicit capital. This complex nexus presents a formidable challenge for governments and law-making bodies to deal with IFFs effectively. IFFs are already in the financial system, and without any legal definition and clear requirement to counter IFFs, it becomes very difficult to detect and identify any potential dirty money. This aspect of the theoretical framework is explored in more detail in Chapter 5. This is the first aspect of the theoretical framework which is used in subsequent chapters to explain the findings of the thesis and support elaboration of new theories.

The phenomena of IFFs includes criminal activity, corruption, and commercial activity which would be deemed illegal, for example tax evasion. However, the notion IFFs also include legal activities such as transfer price abuse are also examined in depth in this thesis, as it is put forward that this legal activity enables and facilitates corruption and money laundering. The phenomena of secrecy jurisdictions are accepted and that there in nothing criminal about their existence. The notion that secrecy jurisdictions are used for unethical and illegal practices is what is being analysed at depth in this thesis. The phenomena of activities which are perceived

[209] 'Illicit Financial Flows are Hard to Stop - Dirty Money' *The Economist* (31 January 2019) <https://www.economist.com/finance-and-economics/2019/02/02/illicit-financial-flows-are-hard-to-stop> accessed 12 March 2019.

to be corrupt, but in fact are legal, for example 'revolving door appointments' or the use of financial secrecy to obfuscate the true ownership of assets. These legal activities in themselves are perceived as corrupt and this thesis analyses this dichotomy in detail to put forward that these legal activities are an enabler to corruption and money laundering.

The phenomena arising in this thesis are now described within the context of the theoretical model. Firstly, financial secrecy serves no useful purpose to society and facilitates IFFs. Secondly, corrupt and criminal practices manifest themselves through IFFs, but so do practices that are legal (for example, transfer price abuse, profit shifting and aggressive tax avoidance that would be perceived as corrupt by the general population).[210] Thirdly, the perception of corruption is outdated and at odds with reality, especially in developed countries such as the UK, which is clearly demonstrated by comparing the CPI with the FSI. Corruption is treated differently in the UK and in Nigeria: in the UK, there seems to be some protection against criminal prosecution for large MNCs; and, in Nigeria, there is a lack of political will for enforcement against corrupt public officials.

Brookes provides a basis to develop a theoretical framework for corruption and suggests that:

> Placing corruption into theoretical frameworks reaches across sectors and or national boundaries and deals with understanding the concept on an international scale.[211]

The Theoretical Framework for this thesis

The themes for this thesis envelop a number of areas in addition to corruption and thus the theoretical framework has been developed as follows:

The theoretical framework for this thesis comprises three main concepts. Firstly, the conduit that enables IFFs is financial secrecy, which enables corruption and money laundering and has not currently got the attention of legislators. Secondly, the CPI for the UK is contradicted by the

[210] David Ellis and David Whyte, 'Redefining Corruption: Public Attitudes to the Relationship Between Government and Business' (*Centre for Crime and Justice Studies*, 2016) <https://www.crimeandjustice.org.uk/publications/redefining-corruption> accessed 7 February 2021.
[211] Graham Brooks, *Criminology of Corruption: Theoretical Approaches* (Springer 2016) 3.

FSI for the UK, and the UK has a selective approach to enforcement of corruption cases against large MNCs. The third part is the symbiotic relationship between Nigeria and the UK for IFFs where the provisions of financial and corporate secrecy services allow corrupt Nigerian officials to engage in corrupt activities and launder the proceeds of their crimes.

The findings from the literature review establish that the mechanism that enables IFFs is financial secrecy. However, the literature review also reveals that IFFs comprise both illegal activity (such as bribery and corruption) as well as legal activities (such as transfer price abuse). In addition, the literature review establishes that transfer price abuse also enables and facilitates bribery and corruption and money laundering, which is a problem; and the thesis proposes that this does need to be addressed urgently by governments and law makers at international and national levels. Whilst the illegal aspects of IFFs are dealt with through financial crime legislation and regulation to a degree in disparate ways, the legal aspects of IFFs as a whole have not been addressed by regulators or legislators.

The literature review confirms that IFFs as a whole are lacking a legislative and regulatory agenda as well as any significant research programmes.[212] The components of IFFs are currently treated in isolation, and the impact of IFFs on corruption and money laundering is not yet fully appreciated. At the core of this is the understanding and position of IFFs. GFI now only considers illegal IFFs,[213] so does the World Bank.[214] Forstater proposes that IFFs should only contain illegal activity.[215] This thesis takes the position that IFFs also include legal activity such as transfer price abuse, which is supported by Picciotto,[216] Everest-Phillips,[217] Cobham and

[212] Peter Reuter, 'Illicit Financial Flows and Governance: The Importance of Disaggregation' (Background Paper for the World Development Report, World Bank 2017),24 <https://openknowledge.worldbank.org/handle/10986/26210> accessed 22 January 2021.
[213] 'Illicit Financial Flows' (Global Financial Integrity, 2019) <https://gfintegrity.org/issue/illicit-financial-flows/> accessed 11 November 2019.
[214] 'Illicit Financial Flows' (World Bank, 2017) <http://www.worldbank.org/en/topic/financialsector/brief/illicit-financial-flows-iffs> accessed 11 April 2019.
[215] Maya Forstater, 'Illicit Financial Flows, Trade Misinvoicing, and Multinational Tax Avoidance: The Same or Different?' (2018) Center for Global Development 28.
[216] Sol Picciotto, 'Tax Evasion and the Offshore System' (2017) 4 Kurswechsel 7.
[217] Max Everest-Phillips, 'The Political Economy of Controlling Tax Evasion and Illicit Flows' in Peter Reuter (ed), *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (The World Bank 2012).

Janský,[218] Young,[219] Baker,[220] Cobham *et al*[221] and Christensen.[222] This thesis explicitly suggests that financial secrecy is a legal construct that facilitates illegal behaviour that is contained within IFFs. This means that financial secrecy is a method that will enable the flow of dirty money (criminal and illicit) as well as clean money, which poses considerable challenges for banks, regulators and policy makers. This is the construct of the first aspect of the theoretical framework and is critically evaluated in subsequent chapters.

The CPI places the UK in 11th place (meaning that the UK has a low level of perceived corruption amongst the 180 countries that feature in the CPI), [223] but this thesis contests this position as it is contradicted by the FSI which places the UK and its Overseas Territories as being the most financially secretive.[224] The findings from the literature review evidence that the legal and legitimate activity of financial secrecy is facilitating corruption and money laundering. A new and additional theory is put forward by the thesis which shows a lack of policy and leadership by banking institutions on financial secrecy and, subsequently, money laundering and IFFs flourish. To challenge the CPI ranking for the UK further, the literature review demonstrates/establishes that, in high value anti-corruption cases which involve MNCs, the UK has a selective approach to enforcement which supports the contradiction of the UK CPI. This also leads to the conclusion that having robust anti-corruption laws is not enough and effective application of the law must exist in equal measure.

This second aspect of the theoretical framework compares the UK's CPI against the UK's FSI, and it is found that the UK's CPI is at odds with the FSI whereby financial secrecy a key driver

[218] Alex Cobham and Petr Janský, 'Illicit Financial Flows: An overview' (Intergovernmental Group of Experts on Financing for Development, Paris, 8-10 November 2017).
[219] Mary Alice Young, Banking Secrecy and Offshore Financial Centres: Money Laundering and Offshore Banking (Routledge 2013).
[220] Raymond Baker, 'Illicit Financial Flows: The Scourge of the Developing World' Huffington Post (New York 7 January 2013) <http://www.huffingtonpost.com/raymond-baker/illicit-financial-flows_b_2427495.html?utm_hp_ref=tw> accessed 1 April 2019.
[221] Alex Cobham, Petr Janský and Markus Meinzer, 'The Financial Secrecy Index: Shedding New Light on the Geography of Secrecy' (2015) 91 Journal of Economic Geography 281.
[222] John Christensen, 'On Her Majesty's Secrecy Service' in David Whyte (ed), *How Corrupt is Britain* (Pluto Press 2015).
[223] 'Corruption Perceptions Index 2020' (Transparency International, 2021) <https://www.transparency.org/cpi2020> accessed 11 August 2021.
[224] 'Financial Secrecy Index 2020' (Tax Justice Network, 2020) <https://fsi.taxjustice.net/en/> accessed 24 February 2020.

and facilitiator of financial crime and IFFs. The CPI provides a measure of public sector corruption in a country. The FSI provides a measure of the level of financial secrecy established in a country, and is indicative of IFFs. The literature review clearly demonstrates that the UK and its Overseas Territories amalgamated would appear as the most secretive on the FSI, compared to the 11th least corrupt on the CPI. This shows a level of contention, especially with the various corruption scandals that have hit the UK in the last decade.[225] Transparency International, recognising the public-sector bias on the CPI, stated for the first time in its 2018 CPI that money laundering is excluded from the CPI and referred to the Danske Bank scandal,[226] potentially the biggest money laundering case of all time involving circa €200bn,[227] yet Denmark is listed as the least corrupt country globally on the CPI.[228] This aspect of the theoretical framework proposes that a wider understanding of corruption and IFFs should be raised, which is a combination of practices when interpreted legislatively (through bribery offences) and as a sociological and criminological phenomenon. It has been shown that the public generally have a higher moral standard than what is demonstrated by people serving in public office.[229] In the survey conducted by the Centre for Crime and Justice Studies, Ellis and White observe 'the British public view as worthy of censure a number of practices in government that are not currently regarded as corrupt'.[230] The author advocates that NGOs that currently raise awareness of IFFs and financial crime should continue to publish and make available their research and investigations to continue to educate the public on the harms of IFFs.

[225] See Neil Hodge, 'Airbus Resolves Global Bribery Scandal for Record $4B' (*Compliance Week,* 2020) <https://www.complianceweek.com/anti-bribery/airbus-resolves-global-bribery-scandal-for-record-4b/28387.article> accessed 24 February 2020; 'SFO Completes £497.25m Deferred Prosecution Agreement with Rolls-Royce PLC' (Serious Fraud Office, 2017) <https://www.sfo.gov.uk/2017/01/17/sfo-completes-497-25m-deferred-prosecution-agreement-rolls-royce-plc/> accessed 29th January 2020.

[226] 'Trouble at the Top - Why High Scoring Countries Aren't Corruption-Free' (*Transparency International,* 2019) <https://www.transparency.org/news/feature/trouble_at_the_top_why_high_scoring_countries_arent_corruption_free> accessed 11 February 2019.

[227] Juliette Garside, 'Is Money Laundering Scandal at Danske Bank the Largest in History' *The Guardian* (21 September 2018) <https://www.theguardian.com/business/2018/sep/21/is-money-laundering-scandal-at-danske-bank-the-largest-in-history> accessed 24 February 2020.

[228] 'Corruption Perceptions Index 2020' (Transparency International, 2021) <https://www.transparency.org/cpi2020> accessed 27 August 2021.

[229] David Ellis and David Whyte, 'Redefining Corruption: Public Attitudes to the Relationship Between Government and Business' (*Centre for Crime and Justice Studies,* 2016) <https://www.crimeandjustice.org.uk/publications/redefining-corruption> accessed 7 February 2021.

[230] Ibid.

The general public are largely unaware of the complexities of corruption in what is legal and standard practice versus what is illegal; and, in the same way, what would be classed as illicit. The level of knowledge is disproportionate between the general public and the professional sector, where the public would classify as a corrupt act something that is legal (for example, the movement of senior employment positions from public-sector jobs to private-sector jobs, known as 'revolving doors'). A wider understanding of corruption is put forward in Chapter 6, viewing it as a sociological phenomenon, and interpreting the practices from a legislative perspective initially and then applying a socio-legal lens for further analysis. For example, the BAe (Al Yamamah) bribery case[231] indicates a level of protection offered by the UK against criminal prosecution of MNCs that have engaged in corrupt practices such as bribery. This contentious issue analysed in detail in Chapter 6 with reference to BAe case as well as the well documented corruption cases involving Rolls-Royce[232] and Airbus.[233]

The third part of the theoretical framework uses the Nigerian Case Studies to show how IFFs, financial secrecy, bribery, corruption and money laundering are intertwined, which reveals a new theory that shows a symbiotic relationship between Nigeria and UK. The provision of financial secrecy services in the UK, coupled with the lack of anti-corruption enforcement and the existence of tribal allegiances in Nigeria, allows Nigerian officials to engage in corrupt activities and launder money.

The banks' vulnerability to IFFs and inevitably to money laundering is paramount, but the banking institutions such as the IBF are silent on this issue, which suggests a vested interest in allowing legal IFFs. Nigeria and the UK have a mutual but dubious benefit by the relationship that allows and enables IFFs from Nigeria to the UK.

[231] R (on the application of Corner House Research and others v Director of the Serious Fraud Office Criminal Appeal from Her Majesty's High Court of Justice) [2008] UKHL 60; [2009] 1 AC 756.
[232] 'Rolls Royce Deferred Prosecution Agreement' (*Serious Fraud Office,* 2017) <https://www.sfo.gov.uk/cases/rolls-royce-plc/> accessed 8 August 2020.
[233] 'SFO Enters into €991m Deferred Prosecution Agreement with Airbus as part of a €3.6bn Global Resolution' (*Serious Fraud Office,* 2020) <https://www.sfo.gov.uk/2020/01/31/sfo-enters-into-e991m-deferred-prosecution-agreement-with-airbus-as-part-of-a-e3-6bn-global-resolution/> accessed 25 February 2020.

Conclusion

The literature review confirms that the research and study in the area of IFFs is immature, despite Baker's research. Whilst this finding from Hypothesis 1 is straightforward and there is little to argue against the two findings, the issue that remains and clouds progress in the fight against IFFs is the lack of understanding of what IFFs are and what they should comprise. For this reason, chapter 2 clarifies this distinction and provides the contribution to knowledge to enable further research in this area. Furthermore, considering the primary research aim, this thesis illustrates that there is a need for holistic legislation whereby all of the interlinked disciplines identified in the various themes (that is, AML, corruption, bribery and IFFs) are addressed together.

The literature review identified that one of the many challenges, in dealing with the subject of IFFs, is that it comprises many parts that are normally dealt with in isolation. For example, as described in chapter 2, IFFs comprise criminal activity that generates cash, corrupt activity (such as bribery payments and theft by corrupt public officials), and commercial activity which is not illegal (such as tax abuse). All of these activities are normally dealt with in isolation, and this is an issue, as they are invariably connected, and a finding from the literature review was that connections need to be more pronounced by governments and regulators in order to deal with the issue effectively. The final dimension that adds to this complexity is the role of financial secrecy. The findings from the literature review confirm Hypothesis 2 that financial secrecy is an enabler of IFFs and also contributes to corruption and money laundering. The original contribution to the knowledge base in the area of IFFs is that financial secrecy is not yet explicitly connected to IFFs in terms of societal understanding of both financial secrecy and IFFs. Financial secrecy is the underlying method that enables IFFs, that in turn facilitate corruption and money laundering.

One of the reasons why the perception of financial secrecy is not being connected to criminal activity within IFFs is the connection with tax avoidance, a legal activity. Since it is not illegal, the accepted societal view is that it concerns a few wealthy individuals and, whilst legal, it is ethically dubious. However, financial secrecy is also utilised for corporations through a variety of methods, as described in chapter 2 (principally, transfer price abuse). The finding from the literature review confirms Hypothesis 3 that transfer price abuse is an enabler for corruption

and money laundering, particularly in developing countries such as Nigeria. The literature review also revealed that developing countries suffer in two ways from transfer price abuse. The first is that it enables corruption and money laundering. Secondly, perhaps practically more important issue is that IFFs relate to the lost tax revenues by the developing countries, as valuable tax payments are filtered out of the country through IFFs. The original contribution to knowledge within Hypothesis 3 rests on the distinction between illicit and illegal. Transfer price abuse is illicit but legal, and causes harm to society; it should be addressed more authentically by governments, standard setters and regulators.

Hypothesis 4 challenges the status quo on the perceptions of corruption, and shows how it is flawed and contradicted by practice in the UK. The findings from the literature review confirms the traditional view that the perception of corruption for developing countries such as Nigeria depict the reality. However, when the UK is examined in more depth, with the perception that corruption is not ingrained in society, many challenges arise. Whilst it is true that most of society in the UK would not deem the UK as a country troubled with corruption, this thesis reveals that there are two hidden aspects which can challenge such a perception. The first is to do with the UK and its Overseas Territories' involvement in financial secrecy services and, as explored in Hypothesis 2, financial secrecy is a primary enabler of corruption and money laundering in IFFs. Establishing the interrelationship between the CPI and the FSI is a novel finding and contribution to the knowledge base by this thesis. Based on the findings in this thesis, it can be asserted with conviction that the UK is faring very well in the CPI as a country that is perceived with low corruption. However, this position is contradicted with the FSI ratings where the UK appears at the top of the table for financial secrecy. The second hidden aspect is how the UK has provided a degree of shelter to large MNCs when they were investigated for bribery and corruption offences. Two cases – the BAe (Al Yamamah) bribery case, and the Rolls-Royce DPA, explored in the literature review and then assessed in more detail in Chapter 6 – support this assertion. Through the use of national security interests in the BAe case and with the notion of the DPA in the Rolls-Royce case, without any individuals being prosecuted for any criminal activity, the UK's tepid and selective enforcement practices have dented its standing and commitment for countering financial crimes.

The literature review analysed Hypothesis 5 in relation to the Nigerian position and reviewed key corruption cases and government dynamics to show that legislation and anti-corruption efforts will not improve the anti-corruption position in Nigeria due to lack of collective political will and the existence of strong tribal allegiances. The finding that the removal of the immunity clause in the Nigerian Constitution could play a part in changing behaviours of corrupt politicians is countered with the finding that sanctions, where enforced, still do not outweigh the pay-offs from corrupt activities. One of the recommendations tied to the findings of Hypothesis 5 was for Nigeria to introduce provisions similar to the UK's UWOs, and this has been implemented recently to some degree in Nigeria through the Executive Order No 6, which allows the freezing of assets of suspected corrupt persons pending outcome of investigations.[234]

The AML regulations and compliance requirements placed on banks are comprehensive and burdensome, and they are costly. It has been suggested that governments might have imposed on them a requirement that they act as gatekeeper or policeman to detect money laundering.[235] However, the literature review confirms Hypothesis 6, with the finding that there is a lack of clear AML policy, particularly regarding financial secrecy by the institutions that govern and/or represent the majority of the banks in the world. This finding leaves banks in a vulnerable position because of the dichotomy where, on the one hand, regulators and governments seek greater AML assurances but, on the other, the banking institutions are silent on key issues such as financial secrecy.

When all of the constituents of Hypotheses 1 to 6 are brought together, a disconcerting finding is confirmed for Hypothesis 7 where an unworthy symbiotic relationship exists between Nigeria and the UK. The UK benefits from illicit capital held in its banks which has flowed in from Nigeria through the very constructs developed and facilitated by the UK, namely financial secrecy. Corrupt Nigerian public officials benefit from their proceeds and use financial secrecy services offered by the UK and its Overseas Territories. Both countries point the finger at each other, and both countries need to address fundamental flaws in their operating models to break this

[234] Maruf Adeniyi Nasir, 'The Viability of Recent Enforcement Mechanism to Combat Money Laundering and Financial Terrorism (AML/CFT) in Nigeria' (2019) 22 Journal of Money Laundering Control 417.
[235] Joan Wadsley, 'Money Laundering: Professionals as Policemen' (1994) Conveyancer and Property Lawyer 275.

unhealthy co-dependence. This includes addressing financial secrecy in the UK and its Overseas Territories and for Nigeria to establish an anti-corruption political backbone. When Palmer states that UK banks have facilitated corruption in Nigeria,[236] there is more than one culprit in this statement.

It is clear that illegal IFFs are detrimental to society, but the theoretical framework asserts that legal IFFs (such as transfer price abuse) can also enable corruption and money laundering – a concept in its infancy. If legal IFFs are viewed in isolation, they may be perceived as a perfectly acceptable practice – for example, if they are not illegal, banks and corporations do not have any compliance burdens as no law is being broken. However, when the theoretical framework phenomena are examined in turn (for example, financial secrecy serves no purpose to society and facilitates IFFs), the case for legal IFFs is weakened considerably. Financial secrecy has been shown to be a legal construct that is used by criminals to launder their proceeds of crime. It is also used comprehensively by MNCs and wealthy individuals to avoid and minimise their tax burdens. The phenomenon regarding the perception of corruption in the UK being contradicted is demonstrated by the prominence of financial secrecy in the UK and its Overseas Territories, combined with the observation of the lack of enforcement of corruption penalties against individuals in large MNCs, such as British Aerospace, Rolls-Royce and Airbus. The phenomenon in this theoretical framework is that, in Nigeria, the anti-corruption legislation is not enforced against corrupt Nigerian officials due to a lack of political will and the existence of tribal allegiances. The final two aspects bring about the purpose of this thesis, in that it is observed that the banking institutions are silent on the detrimental impact of secrecy and, consequently, IFFs and money laundering to some degree. All of these factors then provide the means for the symbiotic relationship identified between Nigeria and the UK, where IFFs are facilitated by the appetite of corrupt Nigerian officials to steal state oil revenues and then use the financial secrecy services that exist in the UK and Overseas Territories to launder their proceeds of crime. The thesis now moves on to Chapter 3 to provide the research methodology and research methods for this thesis.

[236] Robert Palmer, Sentencing of Former Nigerian Politician Highlights Role of British and US banks in Money Laundering (Global Witness 2012).

CHAPTER 3 – RESEARCH METHODOLOGY & RESEARCH METHODS

Introduction

The purpose of this chapter is to explain the research methodology and the research methods adopted for this thesis. The term 'research methodology' can be defined as 'a method or body of methods used in a particular field of study or activity'.[237] Watkins and Burton further clarify that the research methodology can also be used to refer to the thinking that takes place outside of the practical aspects of a research project.[238] This thesis employs a socio-legal research methodology, which places legal analysis and legislation within a societal context and examines the law in operation and whether the intention of the law has been achieved.[239] Wheeler and Thomas describe it as 'an interface with a context within which the law exists, be that a sociological, historical, economic, geographical or other context'.[240]

The term 'research method' relates to the practice of legal research where the knowledge is enhanced, the thesis is tested and the research question answered.[241] This thesis uses doctrinal, comparative law and socio-legal research methods which are explained below initially and then in detail further in this chapter.

The doctrinal research method (also known as 'black letter' law research) is the traditional form of legal method which focuses on the understanding of the legal landscape of mainly statutes and case law.[242] Doctrinal research has been the main legal research method used by academics for the last 200 years and represents the basis for most legal research.[243] An important aspect of doctrinal research is that it is derived from authoritative sources such as rules, principles, precedents and academic journal publications.[244]

[237] R Cryer, T Hervey and B Sokhi-Bulley, *Research Methodologies in EU and International Law* (Hart 2011) 5.
[238] Dawn Watkins and Mandy Burton, *Research Methods in Law* (2nd Edition, Routledge 2016) 2.
[239] Caroline Morris and Cian Murphy, *Getting a PhD in Law* (Hart Publishing 2011) 34.
[240] Sally Wheeler and Phil Thomas, 'Socio-Legal Studies' in D Hayton (ed), *Law's Future(s)* (Hart Publishing 2000).
[241] R Cryer, T Hervey and B Sokhi-Bulley, *Research Methodologies in EU and International Law* (Hart 2011) 5.
[242] Mike McConville and Wing Hong Chui, 'Introduction and Overview' in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (Edinburgh University Press 2017).
[243] Terry Hutchinson, 'Doctrinal Research: Researching the Jury' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (Routledge 2018).
[244] Rob van Gestel and Hans-W Micklitz, 'Revitalizing Doctrinal Legal Research in Europe: What About Methodology?' (European University Institute Working Papers 2011),5.

The comparative law research method is a way to find legal solutions to legal problems and to address any assumptions in how legal systems operate – for example, looking outside one's own jurisdiction to see how legal problems have been solved elsewhere.[245] Wilson comments that 'Comparative law has usually been seen as an extension of the study of national law and justified in terms of the benefits it brings to national legal system'. [246]

The socio-legal research method is interdisciplinary, drawing on tools and insights of disciplines such as sociology, criminology, ethics and politics, and thus it questions the role that the law plays in society, or examining the law as a form of social system or cultural practice.[247] The socio-legal method described by Dobson and Johns is 'a consideration of the social factors involved and/or the social impact of the current law and practice'.[248]

This chapter now describes in more detail the methodology and methods adopted for this thesis. The socio-legal methodology is a natural choice for this thesis, as the hypotheses show several interconnecting themes that require detailed legal analysis and the examination of the law in operation or action, or lack of it, and whether the intention of the laws has been achieved within a context – be that sociological, cultural, geographical or something else. The doctrinal research method is used to establish the laws that encompass IFFs and, where they exist, to test this with socio-legal method to see if they operate in practice. The comparative law research method is used to compare the laws in Nigeria and UK, to understand if there are opportunities to adopt legislation and/or practices that might prove useful for either country.

Socio-legal research methodology

A simple way to describe methodology is the approach taken that will address the research questions of how to find the relevant information, organisation and interpretation of the findings.[249] This thesis take a socio-legal methodology, and Thomas suggests that, for socio-

[245] Caroline Morris and Cian Murphy, *Getting a PhD in Law* (Hart Publishing 2011) 37.
[246] Geoffrey Wilson, 'Comparative Legal Scholarship' in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (Edinburgh University Press 2017).
[247] Caroline Morris and Cian Murphy, *Getting a PhD in Law* (Hart Publishing 2011) 35.
[248] Ian Dobson and Francis Johns, 'Legal Research as Qualitative Research in in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (Edinburgh University Press 2017).
[249] F Coomans, F Grunfeld, M Kamminga, 'Methods of Human Rights Research' (2010) 32 Human Rights Quarterly 179, 183.

legal research, the law is a component part of the wider social and political structure, is inextricably related to it in an infinite variety of ways, and can therefore only be properly understood if studied in that context.[250] The socio-legal research methodology allows the acceptance that the law is not viewed as a self-governing force to which citizens are subjected, but instead it moulds and is moulded by broader social, political, economic and cultural considerations. The Socio-Legal Studies Association provide a useful definition:

> Socio-legal studies embraces disciplines and subjects concerned with law as a social institution, with the social effects of law, legal processes, institutions and services and with the influence of social, political and economic factors on the law and legal institutions.[251]

With such a wide range of disciplines to draw research from, the importance of socio-legal research has gained popularity. Harris suggested that academic lawyers were turning to sociology[252] to explore their ideas, whereas Thomas describes socio-legal research as the 'emergence of a new legal paradigm';[253] and Cotterrell opined that socio-legal scholarship is 'the most important scholarship currently being undertaken in the legal world'.[254]

The Economic and Social Research Council (ESRC) states that socio-legal studies is an umbrella term for what is now an exciting, wide-ranging and varied area of research activity, 'an approach to the study of law and legal processes which covers the theoretical and empirical analysis of law as a social phenomenon'.[255] The ESRC report states that socio-legal research:

> Displays considerable eclecticism in the subject matter, theorising and methodology, ranging from macro-theoretical scholarship through empirical

[250] P Thomas, 'Curriculum Development in Legal Studies' (1986) 20 Law Teacher 112.
[251] 'Statement of Principles of Ethical Research Practice' (Socio-Legal Studies Association, 2021) < https://www.slsa.ac.uk/index.php/ethics-statement> accessed 27 August 2021.
[252] Donald R Harris, 'The Development of Socio-Legal Studies in the United Kingdom' (1983) 3 Legal Studies 315.
[253] PA Thomas, 'The Case of Disappearing Fleas and Bustards' (1997) Socio Legal Studies 19.
[254] Roger Cotterrell, *Law's Community: Legal Theory in Sociological Perspective* (Oxford University Press 1997) 314.
[255] Fiona Cownie and Anthony Bradney, 'Socio-Legal Studies: A Challenge to the Doctrinal Approach' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (Routledge 2017).

> analyses designed to test and generate theoretical propositions to experimental designs and small-scale case studies.[256]

However, there are criticisms with socio-legal methodology, suggesting that it is unsophisticated, resulting in the production of poor-quality data[257] and, consequently, questionable analysis.[258] Cownie puts forward that this is particularly true of socio-legal researchers whose background is in law, where there are challenges since doctrinal law does not engage with other disciplines.[259] However, the norm is that, like this thesis, a combination of research methods will be applied. It is acknowledged that socio-legal methodology points to a wide breadth of research among which there are varying methods of research, and the term itself has been described as controversial and imprecise. At the same time, it is becoming the principal mode of legal research according to Cownie and Bradney,[260] advocating that socio-legal research provides a rich variety of research. This thesis focuses on three areas under the umbrella of the socio-legal methodology: first, the role of financial secrecy; secondly, the perception of corruption; and, thirdly, the symbiotic nature of the relationship between Nigeria and the UK and IFFs.

The socio-legal strategy focusing on the impact of financial secrecy is reflected through understanding how financial secrecy enables and facilitates corruption and money laundering. Practices exist which demonstrate that legal IFFs and financial secrecy are a construct of developed economies that have a detrimental impact on anti-corruption and anti-money laundering efforts and impact developing countries the most. Case studies in Nigeria and the UK are used to highlight this.

The finding that there is no legal definition of corruption, combined with the CPI being flawed for the UK, provides a body of research to consider together the socio-legal impact of IFFs, bribery and corruption and money laundering in Nigeria and the UK. It is accepted that

[256] Ibid, 35.
[257] The aims of this thesis do not include generating any original / empirical data but rely on existing information and secondary data.
[258] Nicola Lacey, 'Normative Reconstruction in Socio-Legal Theory' (1996) 5 Social & Legal Studies 131.
[259] Fiona Cownie, *Legal Academics: Cultures and Identities* (Hart Publishing 2004) 54.
[260] Fiona Cownie and Anthony Bradney, 'Socio-Legal Studies: A Challenge to the Doctrinal Approach' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (Routledge 2017).

corruption is widespread in Nigeria, and this is reflected in the CPI for Nigeria, whilst the CPI for the UK is very low. These two positions provide an interesting phenomenon, as there is mutual co-dependency between the UK and Nigeria, where financial secrecy enables IFFs between the two countries, and the CPI for the UK is contested. The socio-legal methodology is used to analyse this in detail, investigating aspects of government policy, economics, culture, criminology, ethics and the enforcement of law. Culture plays an important part in understanding corruption, and countries where aspects of corruption are the norm in everyday transactions may appear troublesome to developed countries with a low level of perceived corruption.[261] Hooker considers the impact of culture on corrupting behaviour as what would be acceptable in one country but frowned upon in another.[262] Furthermore, Adesoji and Rotimi summarise the challenge and corroborate the socio-legal methodology:

> Unfortunately, Nigerian society itself has not only aided corruption in different ways; it has also trivialised the anti-corruption war. For example, a public office bearer is expected to leave his term in office stupendously rich. How the wealth comes about does not matter. Otherwise such a person is labelled as someone who cannot 'make it' in life. The Nigerian society also often shields away from justice by using different excuses, such as the allegation of persecution on grounds of ethnic, religious or political learning. Thus, by condoning corruption and protecting corrupt officials, society makes light the seriousness of the anti-corruption campaign.[263]

The Nigerian Case Studies[264] are a good example of this, and the comparison of the CPI between the UK and Nigeria, and the cross-referencing to the FSI with the UK to show flaws in the perception of corruption, align with this research method showing the diversity of the exploration. Finally, the wilful blindness to secrecy jurisdictions, banking secrecy and corporate secrecy by the UK and its banks provide grounds for a socio-legal analysis setting that enables

[261] David H Bayley, 'The Effects of Corruption in a Developing Nation' (1966) 19 The Western Political Quarterly 719.
[262] John Hooker, 'Corruption from a Cross-Cultural Perspective' (2009) 16 Cross Cultural Management: An International Journal 251.
[263] Abimbola Adesoji and Olukemi Rotimi, 'Nigeria and its Anti-Corruption War: The Cases of Dariye and Alamieyeseigha' (2008) 38 Africa Insight 159.
[264] See n 18.

corrupt Nigerian public officials as well as MNCs to utilise financial services that facilitate the flow of illicit financial capital.

Research methods

The research methods represent the tools used for research – for example, interviews are a qualitative method. Doctrinal, comparative law and socio-legal research methods are used for this thesis. The doctrinal approach establishes the law, or lack of it, and soft law for IFFs. This is further examined in Chapter 5, and a doctrinal investigation is provided in Chapters 6 and 7, assessing corruption and money laundering legislation respectively. A comparative law research method is utilised to look at the UK and Nigerian legal systems and cases with respect to financial crime. The novel finding is that both countries enable IFFs from Nigeria to the UK. In the UK, the abundance of secrecy jurisdictions and associated services allows this illicit capital to be eventually laundered through the Offshore Territories and pass through the UK banking systems. The socio-legal method is employed to address effectiveness of the law in practice.

Doctrinal Research Method

The doctrinal approach is sometimes seen as a self-contained system that is independent of other academic disciplines and politically neutral.[265] It is also referred to as 'pure theoretical research', aimed at finding a specific statement of law or a more complex and in-depth analysis of legal reasoning.

Hutchinson provides a seven-step approach to the doctrinal research method:

1. assembling relevant facts;
2. identifying the legal issues;
3. analysing the issues with a view to searching for the law;
4. locating and reading background information (including legal dictionaries, legal encyclopaedias, textbooks, law reform reports, policy papers, loose-leaf services, journal articles);

[265] Mike McConville and Wing Hong Chui, 'Introduction and Overview' in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (Edinburgh University Press 2017).

5. locating and reading the primary sources (including legislation and delegated legislation and case law);
6. synthesising all the issues in context; and
7. arriving at a tentative conclusion.[266]

Doctrinal research involves looking at the primary sources of data, statutes and case law. It involves locating, reading, analysing and linking the new information to the known body of the law.

Criticisms of the doctrinal approach refer to it as nothing more than scholarship and, as a result, deem it less convincing or esteemed than research methods used in the sciences or social sciences.[267] The limitations of doctrinal research methodology have had a prolonged critique, as it is 'being merely descriptive or expository, or about the dry, mechanical application of rules',[268] or as being 'too theoretical, too technical, uncritical, conservative, trivial and without due consideration of the social, economic and political significance of the legal process'.[269] The primary drawback of doctrinal research is that the method scrutinises laws as they are. Chynoweth suggests that legal doctrines are prescriptive in nature and 'they make no attempt either to explain, predict, or even to understand human behaviour'.[270] Real-life situations do not affect the validity of doctrinal research, as the law is fundamentally normative[271] and independent of its social context, and thus makes it impractical to assess the legal rules' ability in curtailing the phenomenon. However, Hutchinson contends that:

> Valid research is built on sound foundations, so before embarking on any theoretical critique of the law or empirical study about the law in operation,

[266] Ibid.
[267] Douglas W Vick, 'Interdisciplinarity and the Discipline of Law' (2004) 31 Journal of Law and Society 163.
[268] Ibid.
[269] Ashish Kumar Singhal and Ikramuddin Malik, 'Doctrinal and Socio-Legal Methods of Research: Merits and Demerits' (2012) 2 Educational Research Journal 252.
[270] Paul Chynoweth, 'Legal Research' in Andrew Knight and Les Ruddock (eds), *Advanced Research Methods in the Built Environment* (Wiley 2008).
[271] Christopher McCrudden, 'Legal Research and the Social Sciences' (2006) Law Quarterly Review 632.

> it is incumbent on the researcher to verify the authority and status of the legal doctrine being examined.[272]

Therefore, doctrinal research has initially been undertaken in this thesis to set the parameters of the relevant legal framework and to gain a broad understanding of the legislation, policies and academic opinion of IFFs and their associated components. The doctrinal objective for this thesis is to establish what hard- and soft-law provisions exist with respect to IFFs, bribery and corruption and money laundering internationally, regionally and nationally. The doctrinal research method involves undertaking a critical examination of the essential features of the legislation and case law. Therefore, the relevant components are amalgamated to establish the content of the law.[273] This has been done for corruption and money laundering. However, in addressing IFFs, it has not been possible to refer to a specific legal instrument, because no specific legislation on IFFs exists. Consequently, other legal regimes governing various aspects of financial crime had to be used disparately in order to address IFFs. This lack of legal framework on IFFs is a novel finding of the thesis, but also a gap that potentially leaves IFFs open to money laundering risks for governments and regulators to deal with.

The contemporary nature of the subject matter has meant that the rules, principles and academic literature pertaining to some of the concepts and subject areas which the thesis analyses have not yet been established. This is the case for IFFs, which means that some literature sources have had to be from non-academic resources such as GFI and the ICIJ that broke the stories regarding IFFs through the Panama[274] and Paradise[275] Papers. For banking scandals and developments on banking malfeasance, key reporters[276] from the Financial Times

[272] Terry Hutchinson, 'Doctrinal Research: Researching the Jury' in Dawn Watkins and Mandy Burton (eds), Research Methods in Law (Routledge 2018).
[273] Ibid.
[274] Geoff Dyer, Max Seddon and Richard Milne, 'Panama Papers Leak Highlights Global Elite's Use of Tax Havens' *Financial Times* (4 April 2016) <https://www.ft.com/content/549c1e96-f9e7-11e5-8f41-df5bda8beb40> accessed 21 September 2019.
[275] George Turner, 'TJN Responds to the Paradise Papers' (*Tax Justice Network,* 2017) <https://www.taxjustice.net/2017/11/05/press-release-tjn-responds-paradisepapers/> accessed 10 March 2020.
[276] The key reporters on the subject of financial crime and IFFs from the Financial Times are Caroline Binham, Philip Augar, Martin Arnold, Tom Burgess, William Wallis, Cynthia O'Murchu and Carola Hoyos.

led the development of content. These are valid sources of information and has provided ample evidence for investigations by law enforcement agencies around the world.[277]

To this extent, for this thesis, the UK law and associated literature were freely available and accessible that allows considerable interrogation. The same could not be said of the Nigerian legislation and legal commentary, which was considerably less comprehensive and available. Where it existed, it was sometimes incomplete and there was a need to refer to several sources to ensure completeness of statutes and legal analysis. Legal commentary was to a high standard in some cases, such as Markowski and Oke,[278] but it was often let down when sources were incomplete or incorrect, which meant that certain positions could not be asserted, as a source was not available or did not exist, as in the case of Aluko and Bagheri.[279] An example of how the doctrinal approach was used in this thesis is the finding that there is no legal definition of corruption.[280] Initially, aspects of various legislatures were isolated, such as the United Nations Convention against Corruption 2003, the Bribery Act 2010, the OECD Anti-Bribery Convention,[281] the relevant Council of Europe Conventions[282] and European Union (EU) Conventions and Directives, the Financial Action Task Force recommendations, and the Nigerian anti-corruption legislation. These were combined with assessing policy from government agencies such as the Serious Fraud Office (SFO) and non-government organisations (NGOs), including Transparency International, to establish what the law was with respect to corruption, and then attempting to identify a legal definition.

Socio-Legal Research Method

The socio-legal research method for this thesis examines how effective the laws in practice are for constituent aspects of IFFs (primarily the laws with respect to corruption and money

[277] 'Panama Papers Four Years on: Anonymous Companies and Global Wealth - The Case to End Corporate Secrecy is Stronger than Ever' (Transparency International, 9 April 2020) <https://www.transparency.org/en/news/panama-papers-four-years-on-anonymous-companies-and-global-wealth> accessed 27 August 2021.

[278] Anna Markovska and Nya Adams, 'Political Corruption and Money Laundering: Lessons from Nigeria' (2015) 18 Journal of Money Laundering Control 169; Tayo Oke, 'Financial Crime Prosecution, Legal Certainty and Exigency of Policy: Case of Nigeria's EFCC' (2014) 21 Journal of Financial Crime 56.

[279] Ayodeji Aluko and Mahmood Bagheri, 'The Impact of Money Laundering on Economic and Financial Stability and on Political Development in Developing Countries: The Case of Nigeria' (2012) 15 Journal of Money Laundering Control 442.

[280] Viri Chauhan, 'Why Corruption is Not Legally Defined' (2014) Financial Regulation International 6.

[281] OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997.

[282] The Council of Europe as an organisation and its Conventions are explained and discussed in Chapter 6.

laundering, and the lack of them relating to IFFs as a whole) and how that has manifested into other business practices that seek to undermine anti-money laundering and anti-corruption efforts. The finding of the lack of specific law addressing IFFs is significant and shows the difficulties in this area that lead to contested practices such as transfer price abuse.

Comparative Law Research Method

A simple definition of comparative law is 'the comparing of different legal systems with the purpose of ascertaining the similarities and differences'.[283] However, it is clear from many scholars that it moves beyond this basic definition to providing an awareness of the social and cultural fabric of a legal system,[284] thus enabling an exploration of the similarities, differences and, most importantly, gaps that may allow financial crime to go unpunished.

Collins provides a very comprehensive approach and five-step plan to jusitify and utilise comparative law research method that was adapted to suit this thesis:

1. Identify some aspect of domestic law, which seems confused or lacks a clear rationale;
2. Identify the social problem, that is the recurrent source of dispute between citizens, which this aspect of the domestic law addresses;
3. Examine the legal doctrines and techniques by which one or more foreign legal systems tackle the same problem (or avoid it);
4. Evaluate the foreign legal system to decide whether its approach is superior either in technique or result; and
5. Analyse the domestic legal system once again to reveal the conceptual obstacles to the achievement of more satisfactory results either in technique or policy goals.[285]

Comparative law research can be invaluable for finding solutions through looking at the approach in different jurisdictions to a singular issue to improve legislation.[286] This practice has been adopted by law reform agencies such as the UK Law Commission, which looks at

[283] Michael Bogdan, *Comparative law* (Kluwer 1994).
[284] Vernon Valentine Palmer, 'From Lerotholi to Lando: Some Examples of Comparative Law Methodology' (2005) 53 American Journal of Comparative Law 261.
[285] Hugh Collins, 'Methods and Aims of Comparative Contract Law' (1991) 11 Oxford Journal of Legal Studies 396.
[286] Ibid.

developments implemented in other common law jurisdictions.[287] Since most aspects of the thesis are multi-jurisdictional, i.e. looking at key Nigerian Case Studies[288] that have a UK connection, comparative legal analysis and methods are adopted to establish the key similarities, differences and gaps in law and practice on IFFs, corruption and money laundering in the UK and Nigeria. For example, one of the recommendations borne out of this thesis is to introduce UWOs in Nigeria,[289] similar to what the UK has adopted through the Criminal Finances Act 2017, which is a powerful tool to address criminal assets.[290] Currently, the threat of imprisonment for money laundering or corruption offences in Nigeria has little impact,[291] but the impact of not accessing the wealth illegally acquired could have a bigger impact and could act as a deterrent.

Corruption and money laundering are global problems, and the choice of the UK as a jurisdiction to be examined in this thesis stems from the fact that it has comprehensive anti-financial crime legislation. However, the subject of secrecy jurisdictions and banking malfeasance is an Achilles' heel for the UK, as it undermines the perceptions of corruption that the UK has managed to attain through the CPI. Nigeria is chosen because the Nigerian Case Studies[292] demonstrate the IFFs that go unabated from Nigeria to the UK, and the symbiotic relationship between Nigeria and the UK which reveals the double standards when corrupt money has been allowed to enter the UK freely. From a practical point of view, another reason for choosing Nigeria is its language, English, whereby the understanding, review and comparison of the literature is made easier for the researcher.

The comparative law research method is particularly useful with the advent of globalisation, where Eberle contends 'in our increasingly globally linked world, comparative law needs to take

[287] Geoffrey Wilson, 'Comparative Legal Scholarship' (2007) in in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (Edinburgh University Press 2017).
[288] See n 18.
[289] Rahmon Olalekan Yussuf, 'Anti-Money Laundering Framework in Nigeria: An Umbrella with Wide Leakage' (2017) 66 Journal of Law, Policy and Globalization 172.
[290] Maruf Adeniyi Nasir, 'The Viability of Recent Enforcement Mechanism to Combat Money Laundering and Financial Terrorism (AML/CFT) in Nigeria' (2019) 22 Journal of Money Laundering Control 417.
[291] Tayo Oke, 'Money Laundering Regulation and the African PEP: Case for Tougher Civil Remedy Options' (2016) 19 Journal of Money Laundering Control 32.
[292] See n 18.

an ever more crucial role'.[293] This suggests that common interests and traditions between jurisdictions can be realised and the experience from other countries can be learned. However, the differences between the UK and Nigeria are stark and it would be fair to question the comparison; why not the US or Australia? The reason goes back to the hypothesis that the UK and Nigeria, whilst worlds apart from the perspective of poverty, rule of law, and corruption in public office, have some dual reciprocities that provide a novel research finding in this thesis, and this is what is explored from a comparative law perspective. Corrupt Nigerian public officials use the UK and its associated Overseas Territories to transfer and launder their proceeds of crime. This is discussed at various stages in the thesis by reference to the use of secrecy jurisdictions and the use of banking and corporate secrecy, the impact that IFFs have on a developing country such as Nigeria, the actual process of corruption and money laundering, and describing in detail the Nigerian Case Studies[294] that involve IFFs from Nigeria to the UK. And to this point, Razak asserts that comparative law research 'stimulates awareness of the cultural and social characters of the law and provides a unique understanding of the way law develops and works in different cultures'.[295] The use of comparative law allows the analysis of anti-corruption and money laundering law across the two jurisdictions to see if there are any lessons that could be learned from each jurisdiction examined, and also to understand if any legislation is contrary to international legal instruments, such as the UN Conventions or FATF Recommendations.

Similarities and differences between the two jurisdictions are identified to seek opportunities for proposed reform. One example is the provision in the Nigerian Constitution that forbids public officials from having bank accounts overseas. Whilst this is a Nigerian provision, if AML legislation in the UK made this a breach, failing to conduct appropriate due diligence, for example, would have a significant impact on corrupt Nigerian officials attempting to launder proceeds of crime. Accordingly, the varying approaches of the UK and Nigeria lend themselves to comparative law research that will probe the discrepancies in these jurisdictions around the impact of IFFs.

[293] Edward J Eberle, 'The Method and Role of Comparative Law' (2009) 8 Washington University Global Studies Law Review 451.
[294] See n 18.
[295] Adilah Abd Razak, 'Understanding Legal Research' (2009) 4 Integration & Dissemination 19.

Conclusion

This chapter has clarified the difference between a research methodology and a research method, where the former is the approach and the latter is the substance.[296] The socio-legal research methodology is described, as is the rationale for taking such an approach. The doctrinal, comparative law and socio-legal research methods are also defined and why they were adopted for this thesis. The socio-legal methodology was assessed in more detail, highlighting its benefits and potential shortcomings. Using this methodology to assess IFFs is appropriate, as the assumptions of the nature of law are challenged and the relationship between law and a number of social factors (such as ethics, culture, government and governance) are examined and addressed. Three key areas are the focus of the research methodology and research methods, namely financial secrecy, the UK's CPI, and the symbiotic relationship between Nigeria and the UK with respect to IFFs, and these concepts are the basis of the theoretical framework and the hypotheses, all of which fit neatly into the socio-legal research approach.

Hutchinson's seven-step approach[297] provides the framework of how the doctrinal method was used for this thesis. However, it was not adequate, in isolation, for answering the research questions, as the legislation for IFFs as a whole does not exist and the academic literature is immature. This raises issues such as the abuse of financial secrecy and transfer pricing that produce consequences that enable and facilitate corruption and money laundering. Hence, a socio-legal method is employed to research this broad and interdisciplinary topic, to understand if the law (where it exists) performs in practice as intended.

The comparative law research method was defined and explained using Collins' five-step plan,[298] and two findings were revealed using this method. The first was the introduction of UWOs in the UK and how this could be used in Nigeria to make sure that the cost of corruption (i.e., the enforcement of sanctions) outweighs the benefits of corruption. The second was the prohibition of public officials from holding a foreign bank account, in accordance with the

[296] F Coomans, F Grunfeld, M Kamminga, 'Methods of Human Rights Research' (2010) 32 Human Rights Quarterly 179, 183.
[297] Terry Hutchinson, 'Doctrinal Research: Researching the Jury' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (Routledge 2018).
[298] Collins, 'Methods and Aims of Comparative Contract Law' (1991) 11 Oxford Journal of Legal Studies 396.

Nigerian Constitution, that could be employed as a control in UK banks to deter IFFs from Nigerian officials.

The thesis now moves on to providing clear definitions and distinctions for IFFs.

CHAPTER 4 – ILLICIT FINANCIAL FLOWS – DEFINITIONS, CLARIFICATION AND BACKGROUND

Introduction

The purpose of this chapter is to introduce and examine the subject of illicit financial flows (IFFs)[299] and to establish a baseline of the accepted meaning and understanding of the term and its related links. This will allow the assessment of the first hypothesis in subsequent chapters that IFFs are not being adequately considered by government and law-making bodies. In order to adequately assess IFFs, the term 'illicit' is scrutinised. Whilst there are differences of opinion, the chosen definition of IFFs aligns with the natural English-language definition of 'illicit' and thus includes activities which are illegal as well as legal. The subject of IFFs is then tackled, to establish a definition and scope fit for the purpose of this thesis. The make-up and extent of IFFs are explained, which include activities such as bribery, corruption and money laundering, as well as aggressive tax avoidance, transfer price abuse and profit shifting, and where these topics sit – i.e. whether they are illicit and illegal (for example, bribery) or whether they are illicit and legal (for example, transfer price abuse).

It is contended as a hypothesis that transfer price abuse is one of the enablers of corruption and money laundering, especially in developing countries such as Nigeria, and this notion is introduced in this chapter. The second hypothesis of this thesis is that financial secrecy, whilst legal, facilitates corruption and money laundering. To enable an assessment of this hypothesis in subsequent chapters, the term 'financial secrecy' is explained in detail, which includes secrecy jurisdictions, corporate secrecy and, in some jurisdictions, banking secrecy. Criminal enterprises make use of financial secrecy to launder and hide their proceeds of crime, and corporations use financial secrecy to minimise their tax liabilities. Examples of corrupt Nigerian public officials enabling IFFs from their country are provided in subsequent chapters, as well as

[299] IFFs have two aspects: the first focuses on the cross-border movement of money that is illegally earned, transferred, or utilized as per the definition used by Global Financial Integrity. See 'Illicit Financial Flows' (*Global Financial Integrity*, 2020) <http://www.gfintegrity.org/issue/illicit-financial-flows/> accessed 8 August 2020. The second addresses the wider aspects of illicit flows, including transfer price abuse by multinational companies. Financial secrecy is common to IFFs as the ultimate beneficial owner tends to be hidden by those carrying them out. See 'What's an Illicit Financial Flow?' (*Financial Transparency Coalition*, 2019) <https://financialtransparency.org/whats-an-illicit-financial-flow/> accessed 28 January 2019.

examples that examine if transfer price abuse in developing countries contributes to and/or enables corruption and money laundering.

Nigeria and the UK are the countries chosen for this study in order to assess the hypothesis that there is a symbiotic relationship between the two countries on the subject of IFFs. To test this, the Nigerian socio-legal position is introduced in this chapter, to outline the severe challenges that Nigeria faces, from an anti-corruption enforcement perspective, combined with the UK banking infrastructure that is vulnerable to a lack of policy on financial secrecy. This chapter now moves on to clarifying the terms used in the context of IFFs.

The definition of illicit financial flows

This thesis takes the English-language dictionary definition of the word 'illicit', and the wider definition of IFFs. The Cambridge Dictionary defines 'illicit' as 'illegal or disapproved of by society'.[300] The term 'illicit' can include activities that are illegal – for example, dealing with illicit drugs such as cocaine – but it also includes activities that are legal but may be unethical – such as an illicit (extra-marital) love affair, which is not illegal. The term 'illegal' is more straightforward and is defined as 'contrary to or forbidden by law, especially criminal law'.[301] Everest-Phillips concurs with the English-language interpretation as the most appropriate definition of IFFs:

> For simplicity, we treat illicit here to mean immoral and illegal, there also exist potentially immoral, but not illegal capital flows, such as those arising from aggressive tax avoidance.[302]

[300] 'Meaning of illicit in the English Dictionary' (*Cambridge University Press,* 2019) <https://dictionary.cambridge.org/dictionary/english/illicit> accessed 7 January 2019.
[301] 'Definition of Illegal in English' (*Oxford Dictionaries,* 2018) <https://en.oxforddictionaries.com/definition/illegal> accessed 4 December 2018.
[302] Max Everest-Phillips, 'The Political Economy of Controlling Tax Evasion and Illicit Flows' in Peter Reuter (ed), *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (The World Bank 2012).

The term 'IFFs' has generated a great deal of discussion and controversy since it was first introduced by Baker in 2005,[303] and to date there is still no agreed definition.[304]

IFFs are an activity that is often disregarded by law enforcement agencies since some of the parties involved are legitimate corporations[305] and banks,[306] but criminal activity will also fall within the scope of IFFs. As IFFs have evolved, so have the definitions. For instance, Cobham states that 'illicit financial flows are not necessarily illegal',[307] and Picciotto's wider classification of IFFs is becoming more accepted, whereby he asserts that tax avoidance is included in IFFs:

> I argue that a broad definition of IFFs is essential, since they all use the offshore tax haven and secrecy system, which indeed multinationals helped to construct, for the purposes of avoidance of tax as well as financial regulation.[308]

Forstater sides with the narrower interpretation of IFFs which, in its most basic form, equates 'illicit' with 'illegal',[309] yet this stance is at odds with the dictionary definition and excludes a vast amount of activity which, according to Everest-Phillips and Picciotto, is illicit but not illegal. GFI provides a basic definition of IFFs as 'money that is illegally earned, transferred or utilized';[310] which is ironically at odds with its own prodigious efforts making the world aware of the harmful impact of IFFs that includes transfer price abuse, that was acknowledged in its own publications.[311] However, it does appear that GFI has moved away from including legal forms of IFFs (such as transfer price abuse) and now only focuses on illegal forms of IFFs, such

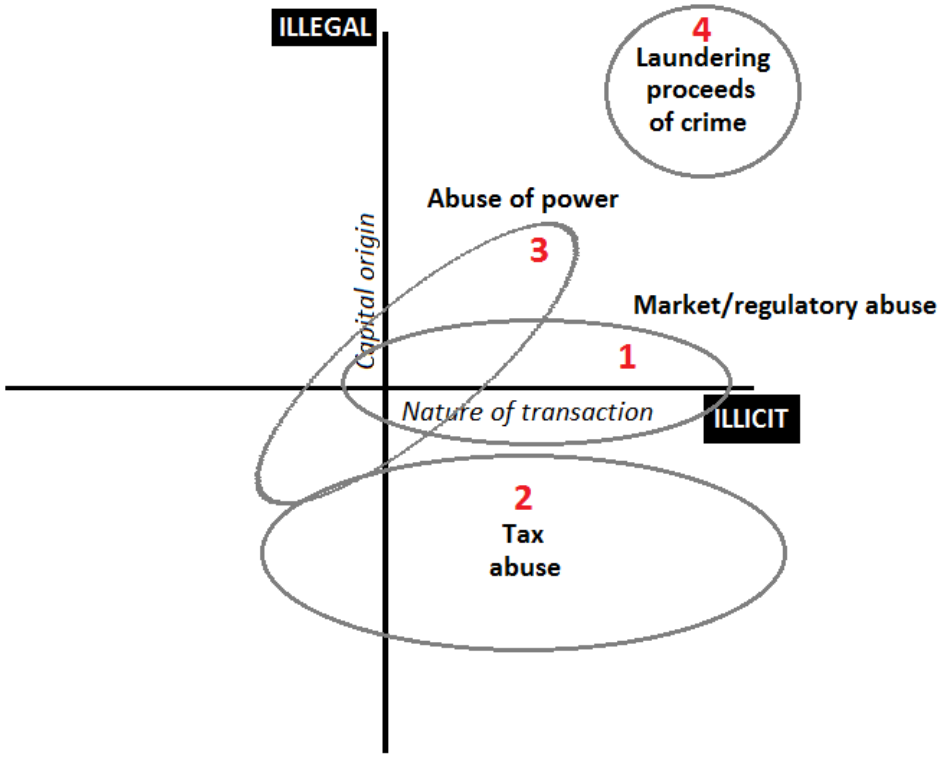
[303] Raymond Baker, *Capitalism's Achilles Heel: Dirty Money and How to Renew the Free-Market System* (John Wiley & Sons 2005) 118.
[304] Maya Forstater, 'Illicit Financial Flows, Trade Misinvoicing, and Multinational Tax Avoidance: The Same or Different?' (2018) Center for Global Development 28.
[305] Andrew Hog and others, *Death and Taxes: The True Toll of Tax Dodging* (Christian Aid, 2008) 2.
[306] Prem Sikka and Hugh Willmott, 'The Dark Side of Transfer Pricing - its Role in Tax Avoidance and Wealth Retentiveness' (2010) 21 Critical Perspectives on Accounting 342.
[307] Alex Cobham and Petr Janský, 'Illicit Financial Flows: An overview' (Intergovernmental Group of Experts on Financing for Development, Paris, 8-10 November 2017).
[308] Sol Picciotto, 'Tax Evasion and the Offshore System' (2017) 4 Kurswechsel 7.
[309] Maya Forstater, 'Illicit Financial Flows, Trade Misinvoicing, and Multinational Tax Avoidance: The Same or Different?' (2018) Center for Global Development 28.
[310] 'Illicit Financial Flows' (*Global Financial Integrity,* 2019) <https://gfintegrity.org/issue/illicit-financial-flows/> accessed 11 November 2019.
[311] Michelle Fletcher, 'The Transfer Pricing Labyrinth' (*Global Financial Integrity,* 2014) <https://www.gfintegrity.org/transfer-pricing-labyrinth/> accessed 8 January 2018.

as trade mis-invoicing,[312] even though the impact of transfer price abuse has been discussed as a form of IFFs, as reported by Forbes Magazine, citing the GFI organisation.[313] The World Bank has taken a similar approach by focusing on 'flows and activities that have a clear connection with illegality'.[314] Whilst this approach polarises the argument against the difference between 'illicit' and 'illegal', and provides governments and regulators with a clearer direction for policy reform, it seems at the same time a fabrication that goes against natural language and legal precision. Most importantly, it negates the impact that financial secrecy has, which is used to facilitate IFFs – in both illegal and legal forms. To manage IFFs, one must look at financial secrecy conferred on clients. This phenomenon, that enables and allows IFFs that can facilitate corruption and money laundering, is at the heart of this thesis.

Cobham shows the demarcation between illicit and illegal in Figure 1, displaying four IFF types on a quadrant diagram showing the scope of what is legal and what is illicit. For the purposes of this thesis, only parameters 4 (laundering proceeds of crime) and 2 (tax abuse) are relevant. The proceeds of crime clearly sit in the 'illegal and illicit' quadrant (top right). Tax abuse, which would include aggressive tax avoidance and transfer price abuse, sits in the 'legal and illicit' quadrant (bottom right). Legitimate tax planning and transfer pricing would sit in the 'legal and licit' quadrant (bottom left).

[312] Trade mis-invoicing is explained in detail below in this chapter.
[313] Richard Morais C, 'Illicit Transfer Pricing Endangers Shareholders' (*Forbes,* 2014) <https://www.forbes.com/2009/08/28/transfer-pricing-illegal-glaxo-dodging-taxes-personal-finance-transferprice.html#1e2fa6b33cd7> accessed 8 January 2019.
[314] 'Illicit Financial Flows' (*World Bank,* 2017) <http://www.worldbank.org/en/topic/financialsector/brief/illicit-financial-flows-iffs> accessed 11 April 2019.

Figure 1 – Main IFF types by nature of capital and transaction[315]



For the purposes of this thesis, the wider approach taken by Picciotto,[316] Everest-Phillips[317] and Cobham and Janský [318] is adopted. This approach would also concur with the challenges of the perceptions of corruption, where society would largely see the practice of transfer price abuse as an illegal activity.[319] Differentiating various categories of IFFs is important, because this clarifies where there is a gap in the law. Baker provides a breakdown of IFFs (shown in Figure 2) of dirty money in three categories: criminal (for example, proceeds of drug trafficking, human trafficking, contraband, and other illegal activities that generate cash); corrupt (which would include bribery payments and theft by government officials); and commercial proceeds arising

[315] Alex Cobham, 'The Impacts of Illicit Financial Flows on Peace and Security in Africa' (TANIA High Level Forum on Security in Africa 2014), 3 <https://media.africaportal.org/documents/IFFs_and_Security_1.pdf> accessed 21 January 2021.
[316] Sol Picciotto, 'Tax Evasion and the Offshore System' (2017) 4 Kurswechsel 7.
[317] Max Everest-Phillips, 'The Political Economy of Controlling Tax Evasion and Illicit Flows' in Peter Reuter (ed), *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (The World Bank 2012).
[318] Alex Cobham and Petr Janský, 'Illicit Financial Flows: An overview' (Intergovernmental Group of Experts on Financing for Development, Paris, 8-10 November 2017).
[319] David Ellis and David Whyte, 'Redefining Corruption: Public Attitudes to the Relationship Between Government and Business' (*Centre for Crime and Justice Studies*, 2016) <https://www.crimeandjustice.org.uk/publications/redefining-corruption> accessed 7 February 2021.

from import and export transactions conducted to manipulate customs duties, VAT, income taxes, excise taxes, or other origins of government revenues.[320]

Figure 2 – Cross-border flows of global dirty money (US$ billions)[321]

Crime	Global		Developing and transitional economies	
	High	*Low*	*High*	*Low*
Criminal	549	331	238	169
Corrupt	50	30	40	20
Commercial	1 000	700	500	350

With regard to the commercial category, there are different views on whether transfer price abuse (or, in simpler terms, tax avoidance by large MNCs) should be included. GFI suggests that trade mis-invoicing makes up the majority of the commercial flow of IFFs.[322]

Extent of illicit financial flows

The extent of IFFs is examined through Baker's initial estimates[323] and subsequently through the GFI organisation.[324] Both estimates are at the higher end, compared to that of Nitsch.[325] Quantifying illicit flows is just as problematic as assessing the magnitude of bribery, corruption and money laundering.[326] Nevertheless, it is still important to consider the scale of the problem with reference to various sources which indicate that there is a considerable amount of discrepancy within the figures that make up IFFs.[327] The UN suggests that more than $50bn a

[320] 'Analytical Methodologies Utilized by Global Financial Integrity' (*Global Financial Integrity,* 2014) <http://www.gfintegrity.org/wp-content/uploads/2014/09/GFI-Analytics.pdf> accessed 8 January 2019.
[321] Raymond Baker, *Capitalism's Achilles Heel: Dirty Money and How to Renew the Free-Market System* (John Wiley & Sons 2005) 172.
[322] 'Trade Misinvoicing' (*Global Financial Integrity,* 2019) <https://www.gfintegrity.org/issue/trade-misinvoicing/> accessed 29 March 2019.
[323] Raymond Baker*, Capitalism's Achilles Heel: Dirty Money and How to Renew the Free-Market System* (John Wiley & Sons 2005) 172.
[324] 'Illicit Financial Flows' (Global Financial Integrity, 2019) <https://gfintegrity.org/issue/illicit-financial-flows/> accessed 11 November 2019.
[325] Volker Nitsch, 'Trillion Dollar Estimate: Illicit Financial Flows from Developing Countries' (Darmstadt Discussion Papers in Economics, 227, EconStor 2016) <https://www.econstor.eu/handle/10419/141281> accessed 27 January 2021.
[326] The extent of corruption and money laundering is discussed in detail in Chapters 6 and 7 respectively.
[327] Stephanie Blackenburg and Mushtaq Khan, 'Governance and Illicit Flows' in Peter Reuter (ed), *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (World Bank 2012).

year is transferred illegally out of Africa.[328] Baker estimates that the annual IFFs were approximately $1tn a year, and half of this amount[329] flowed from developing countries and transitional economies.[330] Christian Aid suggests more conservative estimate of $160bn loss a year to developing countries due to tax evasion/avoidance,[331] which is supported by Blackenburg and Khan.[332] GFI suggests that between $1.1tn and $1.9tn is attributed to IFFs in developing countries.[333] However, there are critics who contest the extent of IFFs quoted by GFI. For example, Nitsch argues that 'the trillion-dollar estimate of illicit financial flows from developing countries lacks evidence and is uncorroborated'.[334] Even with the criticisms of the estimates, it is unequivocal that IFFs are substantial and need to be addressed at all levels. This can and should include a legal academic research perspective, identifying what forms of financial flows are illegal and need to be prohibited and/or regulated; and, from an ethical perspective, identifying which are legal but cause harm to society and/or contribute to corruption and money laundering.

Differentiating between transfer pricing, transfer price abuse, profit shifting and trade mis-invoicing

Whilst the substantive subject of transfer pricing is beyond the scope of this thesis, it is important to provide the context and background to show how the practice was established and thereafter its abuse contributing to the IFFs paradigm.

MNCs will endeavour to reduce their tax liabilities by employing all and every avenue available to them. According to Sharman, examples of tax avoidance across regions and countries were

[328] David Smith, 'Switzerland to Return Sani Abacha 'Loot' Money to Nigeria' *The Guardian* (18 March 2015) <https://www.theguardian.com/world/2015/mar/18/switzerland-to-return-sani-abacha-loot-money-to-nigeria> accessed 20 November 2019.
[329] Raymond Baker, *Capitalism's Achilles Heel: Dirty Money and How to Renew the Free-Market System* (John Wiley & Sons 2005) 172.
[330] A transition economy is as an economy that is changing from being one under government control to being a market economy (one in which companies are not controlled by the government).
[331] Andrew Hog and others, *Death and Taxes: The True Toll of Tax Dodging* (Christian Aid, 2008) 2.
[332] Stephanie Blackenburg and Mushtaq Khan, 'Governance and Illicit Flows' in Peter Reuter (ed), *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (World Bank 2012).
[333] 'Illicit Financial Flows to and from 148 Developing Countries: 2006-2015' (Global Financial Integrity 2019).
[334] Volker Nitsch, 'Trillion Dollar Estimate: Illicit Financial Flows from Developing Countries' (Darmstadt Discussion Papers in Economics, 227, EconStor 2016) <https://www.econstor.eu/handle/10419/141281> accessed 27 January 2021.

evident in the late nineteenth century.[335] An example from the USA, when tax rates rose to 94% for the top rate of tax which was required to finance the Second World War, provided the motivation to avoid/evade tax.[336] Policy makers introduced the Revenue Act 1937 to address this, but there was always a dynamic tension between policy makers in capturing tax revenue and MNCs that were looking to minimising and/or avoiding tax liability.

One of the first offshore financial centres was established during the Second World War, where a tax convention between the USA and the Netherlands Antilles enabled considerable business in tax arbitrage through offshore companies.[337] Other countries followed suit, creating offshore operations for companies.[338]

Prior to the enactment of a landmark anti-tax avoidance rules known as Subpart F,[339] the view from the US internal Revenue Service was that many tax payers managed to defer payment of US tax on movable income such as dividends, interest, rents and royalties, by earning such income through foreign corporations. By locating these corporations in low- or no-tax jurisdictions, the income was taxed at a very low rate (until it was repatriated to the US), significantly reducing their overall tax liability.[340] The purpose of Subpart F was to eradicate deferral of US tax on some categories of foreign income which was introduced in 1962 to combat tax avoidance, and other countries followed suit. MNCs responded to policy makers by innovative international tax schemes – for example, Apple's 'Double Irish with a Dutch sandwich'.[341] The scheme reduced Apple's tax liability by routing profits through Irish subsidiaries and the Netherlands and then to the Caribbean. This type of practice was adopted

[335] Jason Sharman, *Havens in a Storm: The Struggle for Global Tax Regulation* (Cornell University Press 2006).
[336] Jeff Hadan, 'How do you feel about a 94% tax rate?' (*CBS News*, 7 December 2011) <https://www.cbsnews.com/news/how-would-you-feel-about-a-94-tax-rate/> accessed 2 April 2021.
[337] Joseph Isenbergh, *International Taxation* (Foundation Press 2000).
[338] Ronan Palan, 'History of Tax Havens' (*History and Policy*, 1 October 2009) <http://www.historyandpolicy.org/policy-papers/papers/history-of-tax-havens> accessed 2 April 2021.
[339] 'Subpart F Overview' (US Internal Revenue Service 2014) <https://www.irs.gov/pub/int_practice_units/DPLCUV_2_01.PDF> accessed 6 April 2021.
[340] 'Subpart F Overview' (US Internal Revenue Service 2014) <https://www.irs.gov/pub/int_practice_units/DPLCUV_2_01.PDF> accessed 6 April 2021.
[341] Charles Duhigg and David Kocieniewski, 'Apple's Tax Strategy Aims at Low-Tax States and Nations*, The New York Times*, (New York, 28 April 2012) <https://www.nytimes.com/2012/04/29/business/apples-tax-strategy-aims-at-low-tax-states-and-nations.html> accessed 2 April 2021.

by many MNCs, and more complicated schemes became widespread, such as transfer pricing.[342]

Transfer pricing is a legal practice and is the price agreed for the sale of internal goods within the same businesses across different international divisions.[343] Transfer pricing is required in order to govern the internal markets of MNCs and to track performance of the international divisions. There is considerable attention given to transfer price abuse, and there have been attempts by organisations such as the Financial Transparency Coalition (which actively encourage country-by-country reporting by global MNCs) to make them pay appropriate taxes in the countries where they are due.[344] Murphy suggests that global corporations have taken advantage of transfer pricing or used transfer mis-pricing to avoid paying tax in the right place at the right rate and at the right time, denying that state's treasury its tax revenues.[345]

The practice of transfer mis-pricing may not be illegal, but it is illicit and ethically questionable.[346] It has been suggested that transfer price abuse contributes to corruption in developing countries,[347] and it is a normal activity within and across corporations.[348] Sikka and Willmott intimate that banks could be implicated if transfer price abuse can lead to and facilitate corruption and that laundered money could enter the banking system as legitimate funds.[349]

[342] A Matsuoka, 'What Made Base Erosion and Profit Shifting Project Possible? Identifying Factors for Building Momentum for Reform of International Taxation' (2018) 25 Journal of Financial Crime 795.
[343] Alan Rugman and Lorraine Eden, *Multinationals and Transfer Pricing* (Routledge 2017) 1.
[344] 'Country by Country Reporting' (*Financial Transparency Coalition,* 2020) <https://financialtransparency.org/issues/country-by-country-reporting/> accessed 7 August 2020.
[345] Richard Murphy, 'Country by Country Reporting' in Thomas Pogge and Krishen Mehta (eds), *Global Tax Fairness* (Oxford University Press 2016).
[346] Messaoud Mehafdi, 'The Ethics of International Transfer Pricing' (2000) 28 Journal of Business Ethics 365.
[347] Raymond Baker, 'Illicit Financial Flows: The Scourge of the Developing World' *Huffington Post* (New York 7 January 2013) <http://www.huffingtonpost.com/raymond-baker/illicit-financial-flows_b_2427495.html?utm_hp_ref=tw> accessed 1 April 2019; Quentin Reed and Alessandra Fontana, 'Corruption and Illicit Financial Flows: The Limits and Possibilities of Current Approaches' (U4 Anti-Corruption Resource Centre 2011).
[348] Rochelle Toplensky, 'Amazon and Apple Hit by EU Tax Crackdown' *Financial Times* (Brussels 4 October 2017) <https://www.ft.com/content/69ee1da6-a8ed-11e7-93c5-648314d2c72c> accessed 29 December 2019.
[349] Prem Sikka and Hugh Willmott, 'The Dark Side of Transfer Pricing - its Role in Tax Avoidance and Wealth Retentiveness' (2010) 21 Critical Perspectives on Accounting 342.

Trade mis-invoicing is a fraudulent activity which is illegal and comprises the intentional mis-reporting of the value of a customs transaction,[350] and it should not be confused with transfer mis-pricing, although, as GFI points out:

> Because they often both involve mis-pricing, many aggressive tax avoidance schemes by multinational corporations can easily be confused with trade mis-invoicing. However, they should be regarded as separate policy problems with separate solutions.[351]

MNCs can and do engage in trade mis-invoicing which would be classed as tax evasion, thus it is illegal.[352] However, whilst the differentiation between transfer price abuse and trade mis-invoicing is clear in legal terms, the quantification of either is still difficult to establish. A large proportion of what is classed as IFFs derives from both trade mis-invoicing and transfer price abuse. The common factor is that MNCs will manipulate transfer pricing for tax avoidance or fraudulently trade mis-invoice for tax evasion purposes. The point to note is that the MNCs use the same means as criminals employ to accomplish their tax avoidance or evasion, aided by financial secrecy.

The OECD introduced the Base Erosion and Profit Shifting (BEPS) action plan to encourage MNCs to avoid these activities. BEPS refers to tax avoidance tactics that take advantage of gaps and mismatches in tax rules to artificially shift profits to low- or no-tax locations,[353] which includes transfer pricing.[354] The OECD initiative was approved by the G20 countries to ascertain ways of providing globally standardised tax rules. According to the Tax Justice Network, MNCs are estimated to shift $1.38 trillion worth of profit into secrecy jurisdictions annually, costing

[350] 'Trade Misinvoicing' (Global Financial Integrity, 2019) <https://www.gfintegrity.org/issue/trade-misinvoicing/> accessed 29 March 2019.
[351] Ibid.
[352] Maya Forstater, 'Illicit Financial Flows, Trade Misinvoicing, and Multinational Tax Avoidance: The Same or Different?' (2018) Center for Global Development 28.
[353] 'Base Erosion and Profit Shifting' (*OECD,* 2018) <http://www.oecd.org/tax/beps/> accessed 4 February 2019.
[354] 'Inter-company Transactions: How does BEPS Change Transfer Pricing' (*Lexology,* 2017) <https://www.lexology.com/library/detail.aspx?g=92f57906-40a3-4fa4-976f-872ac15223d9> accessed 4 February 2019.

countries $245 billion in lost corporate tax each year.[355] This has a negative impact on both developing and developed countries, as profits are shifted largely to secrecy jurisdictions including Luxembourg, Switzerland, Bermuda and Singapore.[356] The simple conclusion from an ethical perspective is that the profit should be recorded in the country where it was generated, so that the appropriate taxes would benefit the people of that country. Secondly, because profit shifting uses financial secrecy, the legitimate money will pass through channels that have been used for illegitimate purposes by criminals.

Financial secrecy includes secrecy jurisdictions, banking secrecy and corporate secrecy

Financial secrecy is unlike legitimate confidentiality, where it is completely appropriate for a bank to keep a customer's details confidential. The term 'financial secrecy' is synonymous with secrecy jurisdictions and tax havens. However, there are other factors that are included within the scope of financial secrecy. Banking secrecy in certain jurisdictions will fall under this umbrella, as will corporate secrecy and non-cooperation. The term 'financial secrecy' is used in this thesis to include all of these factors.

The term 'secrecy jurisdictions' is used interchangeably with 'tax havens', and Reuter suggests that they can undermine effective financial regulation in both developing and developed countries.[357] Secrecy jurisdictions intentionally create legal rules to undermine the regulation or legislation of other jurisdictions to attract capital which will benefit and be of use to those not resident in that secrecy jurisdiction. Examples of recognised secrecy jurisdictions are the British Virgin Islands, Jersey and Bermuda, to name a few.[358] Murphy states that:

[355] 'What is profit shifting?' (*Tax Justice Network*, 2021) <https://taxjustice.net/faq/what-is-profit-shifting/> accessed 27 August 2021.
[356] 'The Scale of Base Erosion and Profit Shifting (BEPS)' 2019) <https://www.taxjustice.net/scalebeps/> accessed 4 February 2019.
[357] Peter Reuter, 'Introduction and Overview: The Dynamics of Illicit Flows' in Peter Reuter (ed), *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (The World Bank 2012).
[358] M Meinzer, 'Where to Draw the Line? Identifying Secrecy for Applied Research' (Tax Justice Network 2012), 8.

> Secrecy jurisdictions create a deliberate, legally backed veil of secrecy that ensures that those from outside the jurisdiction making use of its regulation cannot be identified to be doing so.[359]

The role of a secrecy jurisdiction is generally 'increasing the incentives for, and enabling, tax evasion and avoidance practices'.[360] Secrecy jurisdictions offer very low or zero tax rates[361] and, when combined with the secrecy provisions, they are very attractive for entities that want to avoid detection for tax and to maximise profits. Entities that take a riskier approach will use secrecy jurisdictions to avoid and possibly evade tax, and criminals will use secrecy jurisdictions to place and launder their proceeds of crime. Palan *et al* contend that secrecy jurisdictions, contrary to conventional thinking, do not exist solely on the peripheries of the global economy but rather they are an integral aspect of it.[362] They do not subsist in opposition to governments, but rather in consensus with them, and secrecy jurisdictions are environments for tax avoidance and evasion that fit more appropriately into the global finance and business sector that manages the wealth of corporations, countries and individuals. The sovereign aspect of secrecy jurisdictions allows them to be separate, but this also allows their use by foreign jurisdictions to take advantage of the primary function and benefit of secrecy jurisdictions.

Banking secrecy is well established in several countries including Switzerland, Liechtenstein, Austria, Luxembourg, the Channel Islands and Gibraltar.[363] It provides that financial institutions will not expose a customer's financial information and will have a right to resist a third party's

[359] Richard Murphy, 'What Do You Do to Oppress People, Turn Their State into a Tax Haven' (*Tax Research UK,* 2013) <http://www.taxresearch.org.uk/Blog/2013/08/12/what-do-you-do-to-oppress-people-turn-their-state-into-a-tax-haven/> accessed 26 September 2019.

[360] Petr Janský and Alex Prats, 'International Profit-Shifting out of Developing Countries and the Role of Tax Havens' (2015) 33 Development Policy Review 271. The difference between tax evasion and tax avoidance is that the former is illegal, and statute or common law will forbid the practice with the offences that will include a fine and/or a custodial sentence; tax avoidance is not illegal and is often cited as 'sharp practice' that is sometimes seen as unethical when the balance tips more towards tax evasion. The use of secrecy jurisdictions is seen to be a questionable activity by many organisations such as the Tax Justice Network and the International Consortium of Investigative Journalists (ICIJ).

[361] Nicholas Shaxson, 'Explainer: What is a Tax Haven' *The Guardian* (9 January 2011) <https://www.theguardian.com/business/2011/jan/09/explainer-what-is-tax-haven> accessed 19 February 2020.

[362] Ronen Palan, Richard Murphy and Christian Chavagneux, *Tax Havens - How Globalization Really Works* (Cornell University Press 2013) 4.

[363] Indira M Carr and Robert Jago, 'Corruption, Money Laundering, Secrecy and Societal Responsibility of Banks' *Social Science Research Network*, 17 June 2014) <https://dx.doi.org/10.2139/ssrn.2454934> accessed 20 August 2021.

enquiries, protecting the customer's interests. From the customer's perspective, banking secrecy provides protection against third parties seeking financial information regarding their accounts.[364] The well-known example is that of the Swiss Federal Law on Banks and Savings 1934 (known as the Swiss Banking Act 1934 as amended),[365] which stipulates that clients' details must remain secret, and revealing the personal details would constitute an offence punishable with a fine of 250,000 CHF and three years in prison. Article 47 of the Swiss Banking Act 1934 states that a person will be guilty if he discloses:

> A secret that is entrusted to him in his capacity as body, employee, appointee, or liquidator of a bank, as body or employee of an audit company or that he has observed in this capacity.[366]

As a result of banking secrecy, insufficient tax exchange information with other jurisdictions and hiding the ultimate beneficial ownership contribute to the notion that secrecy jurisdictions enable IFFs, and banks are an integral part of this paradigm. However, Switzerland indicated a change in its approach to bank secrecy laws and implied that it is ready to stop acting as a safe haven for unlawful wealth from corrupt leaders.[367] It also agreed with the OECD to exchange data with 60 other countries that would mark an end to its banking secrecy.[368] However, the Tax Justice Network states that the Swiss banking secrecy laws remain firmly in place, with some exceptions where they have obtained the necessary information, notably the United States.[369]

There has been increased attention on corporate reporting, by organisations such as Transparency International,[370] highlighting that corporations use secrecy jurisdictions and

[364] He Ping, 'Banking Secrecy and Money laundering' (2004) 7 Journal of Money Laundering Control 376.
[365] Swiss Federal Law on Banks and Savings Banks SR 952.0 of 8 November 1934; version as at 1 January 2019.
[366] Ibid.
[367] Norman Mugarura, 'Tax Havens, Offshore Financial Centres and the Current Sanctions Regimes' (2017) 24 Journal of Financial Crime 200.
[368] John Manning, 'Switzerland Signs Deal to end Banking Secrecy' (*International Banker,* 2013) <https://internationalbanker.com/banking/switzerland-signs-deal-to-end-banking-secrecy/> accessed 5 March 2018.
[369] 'Financial Secrecy Index 2018 - Narrative Report on Switzerland' (*Tax Justice Network,* 2018) <https://www.financialsecrecyindex.com/PDF/Switzerland.pdf> accessed 5 March 2018.
[370] *Transparency in Corporate Reporting* (Transparency International 2014).

corporate secrecy to minimise their tax liabilities through transfer pricing.[371] The flow of illicit capital is appearing on global agendas as a top priority,[372] and examples of targeting transfer price abuse have been publicised by both Global Witness[373] and Transparency International.[374]

One of the notable cases involving corruption and use of corporate secrecy is that of Teodorin Obiang, son of the President of Equatorial Guinea, who spent $38m of state funds to purchase a private jet using an anonymous company based in the British Virgin Islands.[375] Global Witness stated that:

> Anonymous companies lie at the heart of some of the worst problems of our time. Corrupt politicians, tax evaders, terrorists, drug gangs, people traffickers and warlords all use them to cover their tracks. Put simply, they are otherwise normal companies whose real ownership is hidden, either intentionally or by default.[376]

The aim of corporate secrecy is to hide the ultimate beneficial owner of a company which will have some form of financial capital, illicit or otherwise. That capital will eventually reside in or flow through a banking system, usually in the secrecy jurisdiction, and the accountability of banks is questioned in receiving this capital that could be the proceeds of crime, and hence the banks are facilitating money laundering, either unwittingly or without completing the appropriate due diligence.

[371] Andrew Hog and others, *Death and Taxes: The True Toll of Tax Dodging* (Christian Aid, 2008).
[372] Alvin Mosioma, Subrat Das and Oriana Suarez, 'G20- Time to Halt the Flow of Illicit Money' *Sidney Morning Herald* (18th September 2014) <http://www.smh.com.au/comment/g20-time-to-halt-the-flow-of-illicit-money-20140917-10hzw3.html#ixzz3DgfGxKUN> accessed 19 September 2019.
[373] 'TED Prize Winner Charmian Gooch Announces Global Campaign to Abolish Anonymous Companies' (*Global Witness,* 2014) <http://www.globalwitness.org/library/ted-prize-winner-charmian-gooch-announces-global-campaign-abolish-anonymous-companies> accessed 17 February 2020.
[374] 'Ending Secrecy to End Impunity: Tracing the Beneficial Owner' (Transparency International 2014) <http://www.transparency.org/whatwedo/pub/policy_brief_02_2014_ending_secrecy_to_end_impunity_tracing_the_beneficial> accessed 16 February 2020.
[375] 'Corporate Secrecy in the UKs Tax Havens' (Global Witness, 2017) <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/paradise-papers/> accessed 6 March 2020.
[376] Charmian Gooch, 'The Difference Between Corporate Privacy and Secrecy' (*Global Witness,* 2014) <https://ideas.ted.com/the-difference-between-corporate-privacy-and-secrecy/> accessed 6 March 2020.

Viswanatha points out the increased focus on IFFs by regulators[377] and the subject of IFFs is becoming more noticeable,[378] with the push for secret or shell companies to be revealed and true beneficial ownerships identified;[379] the link between corruption and money laundering is established. The paradox is that the setting up of anonymous shell companies, a form of corporate secrecy, is used not only by legitimate organisations to maximise their profits but also by criminals to hide, layer and eventually integrate their illegal money into the legitimate economy. This combination hinders AML efforts and can facilitate the growth of financial crimes such as tax evasion.[380] This distinction lies at the core of legislative[381] and political attention[382] that has been attributed to corporate secrecy and making public the true beneficial ownership of companies.[383] The awareness of the detrimental impacts of financial secrecy need to be raised in the public and private sectors so that it is understand how financial secrecy is key to IFFs and inevitably corruption and money laundering.

The impact of illicit financial flows on developing countries

IFFs are also referred to as 'illegal capital flight',[384] usually from a developing country, such as Nigeria, to a developed country, such as the UK. The UN classifies countries in three categories:

[377] Aruna Viswanatha, 'After BNP, U.S. Targets Range of Firms in Crackdown on Illicit Money Flows' (*Reuters,* 2014) <https://www.reuters.com/article/us-bnp-paribas-investigation-targets-ins/after-bnp-u-s-targets-range-of-firms-in-crackdown-on-illicit-money-flows-idUSKBN0F634520140701> accessed 2 July 2020.

[378] 'Joint Statement on the Fight against Illicit Financial Flows, by OECD Secretary-General Angel Gurría and Thabo Mbeki, Chair of the High-Level Panel on Illicit Financial Flows from Africa' (*OECD,* 2017) <https://www.oecd.org/g20/topics/taxation/joint-statement-on-the-fight-against-illicit-financial-flows-by-angel-gurria-and-thabo-mbeki.htm> accessed 10 January 2020.

[379] 'Ending Secrecy to End Impunity: Tracing the Beneficial Owner' (Transparency International 2014) <http://www.transparency.org/whatwedo/pub/policy_brief_02_2014_ending_secrecy_to_end_impunity_tracing_the_beneficial> accessed 16 February 2020.

[380] Norman Mugarura, 'Tax Havens, Offshore Financial Centres and the Current Sanctions Regimes' (2017) 24 Journal of Financial Crime 200.

[381] 'Anti-Money Laundering - Stronger Rules to Respond to New Threats' (*European Commission - Europa Press Releases Database,* 2013) <http://europa.eu/rapid/press-release_IP-13-87_en.htm?locale=en> accessed 28 July 2020.

[382] 'David Cameron Writes to Britain's Tax Havens, Calling for Transparency' *The Guardian* (20 May 2013) <http://www.theguardian.com/politics/2013/may/20/cameron-offshore-tax-havens-transparency> accessed 15 February 2020.

[383] 'TED Prize Winner Charmian Gooch Announces Global Campaign to Abolish Anonymous Companies' (Global Witness, 2014) <http://www.globalwitness.org/library/ted-prize-winner-charmian-gooch-announces-global-campaign-abolish-anonymous-companies> accessed 17 February 2020.

[384] Dev Kar and Sarah Freitas, 'Illicit Financial Flows from Developing Countries: 2001-2010' (Global Financial Integrity 2012).

developed regions (or countries), developing regions (or countries), and least developed countries.[385] Developing countries are defined as:

> Countries that generally lack a high degree of industrialization, infrastructure, and other capital investment, sophisticated technology, widespread literacy, and advanced living standards among their populations as a whole. [386]

It is usually the developing countries which are most prone to illicit financial outflows, as this is where large infrastructure projects take place and the rule of law,[387] enforcement, transparency and accountability are often weak.

As explained above, illicit financial outflows from a developing country can include both illegal and legitimate money, and challenges arise as the same methods are used to disguise the true origin of that flow, whether it is legal or illegal. A key driver of IFFs is the proceeds of corruption in developing countries, which is supported by the flows of money that leave that country and work their way through the banking systems of a developed country. The flows of money may be legitimate, in the form of, for example, a payment for consultancy services to a British company. They may also be legitimate and illicit (for example, profits from transfer mis-pricing). Finally, they may be illegitimate and illicit (for example, embezzled funds from oil revenues). GFI noted that approximately 45% of IFFs end up in offshore financial centres, and 55% in developed countries.[388] This suggests that illicit financial outflows from developing countries

[385] 'Standard Country and Area Codes Classifications (M49)' (United Nations Statistics Division, 2020) <http://unstats.un.org/unsd/methods/m49/m49regin.htm#developed> accessed 1 August 2020. The World Bank is moving away from this classification, see 'World Bank to Change Classification of Countries' *The Economic Times, India* (31 May 2016) <http://economictimes.indiatimes.com/news/economy/indicators/world-bank-to-change-classification-of-countries-india-will-now-be-called-lower-middle-income/articleshow/52512636.cms?prtpage=1> accessed 8 August 2019; and Tariq Khokhar and Umar Serajuddin, 'Should We Continue to use the Term "Developing World"' (*World Bank,* 2016) <http://blogs.worldbank.org/opendata/should-we-continue-use-term-developing-world> accessed 8 August 2019.

[386] 'Developing Countries' (*Dictionary of International Trade,* 2020) <https://www.globalnegotiator.com/international-trade/dictionary/developing-countries/> accessed 1 August 2020.

[387] The rule of law, in its most basic form, is the principle that no one is above the law. The principle is intended to be a safeguard against arbitrary governance, whether by a totalitarian leader or by mob rule, see Tom Bingham, *The Rule of Law* (Allen Lane 2010).

[388] 'Illicit Financial Flows' (*Global Financial Integrity,* 2017) <http://www.gfintegrity.org/issue/illicit-financial-flows/> accessed 20 February 2020.

end up in banks in developed countries such as the UK, as well as its Overseas Territories such as the British Virgin Islands.

Link between transfer price abuse and illicit financial flows from developing countries

The link between transfer price abuse and IFFs from developing countries is a relatively new idea. For example, ambiguous transfers, where corporations shift their profit centres to countries where they pay considerably less tax, is transfer pricing. If the profit is shifted from a developing country which does not yet address transfer price abuse within its laws and regulations, this means that, even though the transaction is potentially illegal at worst and morally dubious at best, the developing country will not have the skills or legal expertise to claw back the financial benefit from the tax revenues that should have been paid.[389]

Illicit financial flows in Nigeria

Looking at the countries where IFFs are most prolific is telling: Nigeria is a prime example of a developing country where the high level of illicit capital outflow estimated can have an impact on economic progress and poverty alleviation efforts.[390] It is not absolutely clear where this illicit flow of capital flight ends up. Baker suggests that it ends up in tax havens and shell corporations where the true identity of the beneficiary is extremely difficult to isolate;[391] and it is the poor majority that will bear the brunt of the money leaving the country where it could have been used to improve living standards and public services.

The literature review[392] has revealed an observation, that would benefit from further research but falls outside the scope of this thesis, that Western countries gain more by providing aid,[393] as a by-product of foreign aid, which provides opportunities to sell in services and facilities such

[389] Olatunde Julius Otusanya, Sarah Lauwo and Amal Hayati Ahmad-Khair, 'The Culpability of Accounting Practice in Promoting Bribery and Corruption in Developing Countries' (2017) 8 International Journal of Economics and Accounting 106.
[390] Joseph Spanjers and Matthew Salomon, 'Illicit Financial Flows to and from Developing Countries: 2005-2014' (Global Financial Integrity 2017), 1.
[391] Raymond Baker, 'Illicit Financial Flows: The Scourge of the Developing World' Huffington Post (New York 7 January 2013) <http://www.huffingtonpost.com/raymond-baker/illicit-financial-flows_b_2427495.html?utm_hp_ref=tw> accessed 1 April 2019.
[392] The literature review is provided in Chapter 3.
[393] 'IFF Background' (*United Nations - Economic Commission for Africa,* 2015) <https://www.uneca.org/pages/iff-background> accessed 11 February 2020.

as infrastructure projects, defence and weapons systems, and expertise for extractive industries which are highly lucrative. This facilitates extensive financial outflow, of which some will be illicit from these developing countries through mechanisms such as transfer price abuse. The combination of services and large projects creates the demand to facilitate financial flow which is satisfied through corporate service providers, offshore banking, secrecy and tax havens. From the comparable data available, in Nigeria, these illicit capital outflows[394] exceeded the amount of direct foreign aid. [395] This raises questions of the role of foreign aid in developing countries: if the value of the illicit outflows is greater, should the international community put more effort into reducing IFFs and enabling national revenues to be legitimately used in the local environment? For example, part of the IFFs will correspond to tax not collected by the developing country, which could be used for local needs and poverty alleviation.[396] Nigeria's President Buhari stated that the country lost $157.5bn in IFFs in 10-year period and commented that the money could have been used to fund public services or to alleviate poverty.[397]

Muhammadu Buhari's attempted reform and the Nigerian problem

The combination of secrecy jurisdictions turning a blind eye to illicit capital flow, and the lack of political will and action to deal with corrupt officials in Nigeria, leaves the country's progress and its people in a precarious position. Otusanya submits that legislators in developing countries are actively engaged in corruption.[398] Shehu suggests that the only leaders who actually impacted corruption were the Murtala/Obasanjo regime in 1975-76 and the Buhari/Idiagbon regime in 1984-85.[399] With Buhari back in power as President of Nigeria in April

[394] 'Illicit Financial Flows to and from 148 Developing Countries: 2006-2015' (Global Financial Integrity 2019), 23.
[395] Development Aid at a Glance Statistics by Region 2019 Edition' (*OECD*, 2019) <https://www.oecd.org/dac/financing-sustainable-development/development-finance-data/Africa-Development-Aid-at-a-Glance-2019.pdf> accessed 25 August 2021.
[396] Joseph Spanjers and Matthew Salomon, 'Illicit Financial Flows to and from Developing Countries: 2005-2014' (Global Financial Integrity 2017), xii.
[397]Joseph Olaoluwa, 'Illicit financial flows: Nigeria lost $157.5 billion in almost 10 years – Buhari' (*Nairametrics*, 26 September, 2019) <https://nairametrics.com/2019/09/26/illicit-financial-flows-nigeria-lost-157-5-billion-between-2003-and-2012-buhari/> accessed 27 August 2021.
[398] Olatunde Julius Otusanya and others, 'Sweeping it Under the Carpet: The Role of Legislators in Corrupt Practice in Nigeria' (2015) 22 Journal of Financial Crime 354.
[399] Abdullahi Y. Shehu, 'Combating corruption in Nigeria - Bliss or Bluster?' (2005) 12 Journal of Financial Crime 69.

2015,[400] and subsequently re-elected in 2019 for a second term,[401] it is not clear yet whether he will reform Nigeria, beyond the anti-corruption rhetoric espoused by him, and previous governments, to little effect.

Buhari introduced the Money Laundering (Prevention and Prohibition) Bill 2016 which was not passed as legislation. It stipulated a set of money laundering offences[402] and, as in the UK, any crime would be classed as a predicate offence if proceeds were generated from that crime. Buhari acted swiftly, focusing on evolving anti-money laundering legislation, to bring it into line with international measures, in particular making it an offence if knowledge or suspicion of money laundering was not reported. However, the Economic and Financial Crimes Commission (EFCC) were very critical of the Bill, stating that there were too many escape routes for money launderers and that the existing Money Laundering (Prohibition) Act 2011 should remain,[403] which is the case as confirmed by Ojukwu-Ogba and Osode.[404]

Buhari's Information Minister, Lai Mohammed, stated that the government had squeezed out corruption, increased government spending and founded a 'single treasury account'.[405] Additionally, Buhari pledged to repatriate $4bn of Abacha loot sitting in European banks, yet there is no clear agreement with the UK,[406] and negotiations to repatriate wealth owed to Nigeria continue with other governments.[407]

[400] William Wallis, 'Buhari's APC Wins Landslide Victory in Nigeria State Elections' *Financial Times* (Lagos 13 April 2015) <http://www.ft.com/cms/s/0/19ddfe2c-e1fc-11e4-bb7f-00144feab7de.html?siteedition=uk#axzz3epIo8q9f> accessed 20 December 2019.
[401] Neil Munshi, 'Muhammadu Buhari Wins Second Term as President of Nigeria' *Financial Times* (26 February 2019) <https://www.ft.com/content/0ebd29b4-3a18-11e9-b72b-2c7f526ca5d0> accessed 1 February 2020.
[402] Esoimeme Ehi Eric, 'The Nigerian Money Laundering (Prevention and Prohibition) Bill, 2016: A Critical Appraisal' (2017) 20 Journal of Money Laundering Control 79.
[403] Bennett Oghifo, 'EFCC Advises against Passage of Money Laundering Bill' (*This Day Live,* 2016) <https://www.thisdaylive.com/index.php/2016/04/16/efcc-advises-against-passage-of-money-laundering-bill-2016/> accessed 12 December 2019.
[404] Nelson E. Ojukwu-Ogba and Patrick C. Osode, 'A Critical Assessment of the Enforcement Regime for Combatting Money Laundering in Nigeria' (2020) African Journal of International and Comparative Law 85.
[405] David Piling, 'Fragile Upturn Belies Nigeria's Need for Structural Reform' *The Financial Times* (<https://www.ft.com/content/30eb9e60-9188-11e7-83ab-f4624cccbabe> accessed 21 December 2019.
[406] Nathanel Abromov, 'Why States Struggle to Repatriate Looted Assets' *The Financial Times* (11 May 2016) <https://www.ft.com/content/322c1854-dcb9-3e31-a191-6651afd5776b> accessed 21 December 2019.
[407] 'U.S. Enters into Trilateral Agreement with Nigeria and Jersey to Repatriate Over $300 Million to Nigeria in Assets Stolen by Former Nigerian Dictator General Sani Abacha' (*US Department of Justice - Office of Public Affairs,* 2020) <https://www.justice.gov/opa/pr/us-enters-trilateral-agreement-nigeria-and-jersey-repatriate-over-300-million-nigeria-assets> accessed 5 February 2020.

Corruption courts are also planned to speed up such cases, and it will be seen whether the judiciary are able to divorce themselves from the clutches of criminals and corruption to enforce anti-corruption and money laundering legislation, especially if Buhari can improve and 'empower' the judiciary though improved funding and living conditions.[408] However, the historical non-enforcement of money laundering and corruption offences in Nigeria, as seen in the Ibori example,[409] suggests that this may be pomposity. It depends whether the legislature will be immune to corruption and if they can enforce the law impartially without political, tribal or financial pressures and interferences.

Holman states, regarding Buhari, that, although he is 'genuine in his attempt to tackle corruption, he has been unable to bring to book the powerful forces behind it'.[410] In contrast, Munshi believes that Buhari is making progress.[411] It can be argued that the people of Nigeria, whilst condemning corruption, seem to condone corrupt political actors who have robbed the country's wealth. A key Nigerian case, that is assessed in detail to illustrate the audacity of some corrupt Nigerian officials, is that of Diepreye Alamieyeseigha who was welcomed as a hero, after fleeing the UK from money laundering charges;[412] and so was Ibori after he returned from serving a prison sentence for money laundering.[413] Until Buhari or his successor can overcome these fundamental cracks in Nigerian society and change tribal customs to the condemnation of criminals, no matter what their stature, there will be little progress in countering corruption in Nigeria.

[408] Michael Holman, 'Mixed Report Card for Nigeria's President Buhari' *Financial Times* (7 November 2017) accessed 10 January 2020.
[409] The case of James Ibori is described in detail in Chapter 7.
[410] Michael Holman, 'Mixed Report Card for Nigeria's President Buhari' Financial Times (7 November 2017) accessed 10 January 2020.
[411] Neil Munshi, 'Nigeria Makes Anti-Corruption Moves Amid Criticism over Progress' *Financial Times* (29 January 2020) <https://www.ft.com/content/42ae53b2-411d-11ea-a047-eae9bd51ceba> accessed 29 January 2020.
[412] Rory Carroll, 'Nigerian State Governor Dresses up to Escape £1.8m charges in the UK' *The Guardian* (23 November 2005) <https://www.theguardian.com/world/2005/nov/23/hearafrica05.development> accessed 20 December 2019.
[413] 'Delta State Governor, Speaker Celebrate Ex-Convict James Ibori on Birthday' (*Sahara Reporters,* 2017) <http://saharareporters.com/2017/08/04/delta-state-governor-speaker-celebrate-ex-convict-james-ibori-birthday> accessed 20 December 2019.

Illicit financial flows and banking

Banks have been involved in many financial scandals,[414] and the subject of IFFs uncovers examples of corruption on the largest scale, more commonly referred to as 'grand corruption'.[415] Baker questions the role of Western banks that have often legitimised the receipt of such illegal capital flight.[416] An infamous quote and purported statistic by Christensen stated that, according to a Swiss banker, of the proceeds of crime that flow through Switzerland, only 0.01% is detected.[417] The additional challenge for banks is that they will not be concerned with legal activities such as transfer mis-pricing. The banks can accept this capital transaction without question, allowing it to bypass AML checks and measures; however, since the same methods are used for both legal flows (such as transfer price abuse) and illegal flows (such as proceeds of crime), there is a high probability that a significant percentage is co-mingled[418] and not detected. GFI suggests that this illicit capital ends up in the banks of developed countries:

> Every dollar that leaves one country must end up in another. Very often, this means that illicit financial outflows from developing countries ultimately end up in banks in developed countries like the United States and United Kingdom, as well as in tax havens like Switzerland, the British Virgin Islands, or Singapore.[419]

This leads to the question of if, and to what extent, the banks are vulnerable to accepting and facilitating IFFs and the inevitable link with bribery, corruption and money laundering.

[414] 'Conduct Costs Project Report 2017' (CCP Research Foundation 2017). This report identifies banking costs due to financial crime and a result encapsulates conduct issues with respect to money laundering, sanctions breaches and bribery and corruption.
[415] Quentin Reed and Alessandra Fontana, 'Corruption and Illicit Financial Flows: The Limits and Possibilities of Current Approaches' (U4 Anti-Corruption Resource Centre 2011).
[416] Raymond Baker, 'Illicit Financial Flows: The Scourge of the Developing World' Huffington Post (New York 7 January 2013) <http://www.huffingtonpost.com/raymond-baker/illicit-financial-flows_b_2427495.html?utm_hp_ref=tw> accessed 1 April 2019.
[417] John Christensen, 'Africa's Bane: Tax Havens, Capital Flight and the Corruption Interface' (Real Instituto Elcano 2009), 9.
[418] Co-mingling refers to the mixing of proceeds of crime with legitimate funds to conceal the origin of the proceeds from crime.
[419] 'Illicit Financial Flows' (Global Financial Integrity, 2021) <http://www.gfintegrity.org/issue/illicit-financial-flows/> accessed 8 August 2021.

Conclusion

This chapter has defined and explained the components of IFFs and set the parameters and grounding to enable analysis of the hypotheses in subsequent chapters. The difference between 'illicit' and 'illegal' was established, and the definitions of IFFs were examined. The clarification concerning the wider use of IFFs to be adopted for this thesis was discussed and established. The make-up and extent of IFFs was introduced to show that IFFs include both illegal activities (such as corruption, money laundering and trade mis-invoicing)[420] and legal activities (such as transfer price abuse and profit shifting), to illustrate how they fit into the IFF paradigm.

The term 'financial secrecy' was explained and defined, as well as its components which are secrecy jurisdictions or tax havens, corporate secrecy and banking secrecy. Hypothesis 2 proposes that financial secrecy is a key driver of IFFs, corruption and money laundering; this has been explored in detail in this chapter, and the hypothesis is further tested in subsequent chapters.

IFFs are normally associated with developing countries, and this concept was assessed for Nigeria and how IFFs are an impediment to progress for Nigeria on many levels. For example, it was found that IFFs in Nigeria exceeded the foreign aid provided to Nigeria, which is a disquieting fact and should be further investigated, but is outside the scope of this thesis. The socio-legal aspect of IFFs was analysed for Nigeria initially in this chapter that focused on two principles: that the benefits of corruption currently outweigh the penalties for corruption for Nigerian public officials; and that tribal allegiances play a very important role in the lack of enforcement of corruption offences in Nigeria. The tenure of the current President Buhari was examined to initially conclude that the rhetoric did not match the results for fighting corruption in Nigeria, and this sets up an examination of Hypothesis 5, namely anti-corruption legislation in Nigeria having little or no impact on enforcement against corrupt public officials, which is explored further in subsequent chapters. Finally, the concept of the vulnerability of banks with respect to IFFs was introduced to test Hypothesis 6 in later chapters – that is, whether the lack

[420] Trade mis-invoicing is explained in this chapter and is an illegal activity, which is out of scope for the purposes of this thesis, but it is recommended that it should be included for future research of IFFs.

of policy for financial secrecy in the banking institutions leaves banks susceptible to money laundering. The thesis now moves on to the absence of legislation and the interdependence of IFFs and financial secrecy.

CHAPTER 5 – ILLICIT FINANCIAL FLOWS – THE LACK OF LEGISLATION AND THE INTERDEPENDENCE WITH FINANCIAL SECRECY, CORRUPTION AND MONEY LAUNDERING

Introduction

The purpose of this chapter is to demonstrate that there is a lack of legislative agenda for dealing with IFFs and to confirm the relationship between corruption and money laundering where financial secrecy is a key driver of IFFs. Furthermore, transfer price abuse is shown to be an enabler of corruption and money laundering. The hypotheses examined in this chapter in more detail are:

- Hypothesis 1: Illicit financial flows are detrimental to society and are not yet adequately considered by governments and law-making bodies;
- Hypothesis 2: Financial secrecy, a key component of illicit financial flows, contributes to corruption and money laundering; and
- Hypothesis 3: Transfer price abuse, a component of illicit financial flows, is one of the enablers of corruption and money laundering, especially in developing countries such as Nigeria.

This chapter explores the national and international legislation and soft laws that address various components of IFFs. It also identifies the challenges that governments and anti-financial crime organisations face in the context of the nefarious nature and impact of IFFs. The lack of a legislative framework that is designed to address and counter IFFs means that the topic sits in a grey area where decisive action on IFFs is in short supply. The link between corruption and money laundering is confirmed in this chapter. The links between IFFs, corruption and money laundering which are subtler, as the role of tax abuse is blurred is explained and established. The chapter analyses in more detail this inter-connectiveness with examples from the revelations by the Panama Papers[421] and campaigns by NGO groups such as the Tax Justice

[421] Lawrence J Trautman, 'Following the Money: Lessons from the Panama Papers Part 1: Tip of the Iceberg' (2016) 121 Penn State Law Review 807.

Network and Global Witness.[422] The FSI is assessed focusing on the UK and its associated Overseas Territories.

The chapter concludes with a detailed case study of Sani Abacha, to show IFFs and the use of financial secrecy to enable the corrupt actions of the former president, and how those proceeds of crime were laundered through international banking systems.

The law and soft law analysis of illicit financial flows

There is a limited and disparate approach to IFFs with respect to legislation and soft law. There are no specific laws or Conventions that describe it or deal with it, but there have been several initiatives that seek to address the issue which are discussed in this chapter that mainly comprise efforts by the OECD. To review this area appropriately, it is necessary to take a comprehensive approach to analyse aspects of IFFs within existing legislation that may provide future opportunities for development.

The UN Convention against Corruption 2003 refers to outlawing illicit enrichment and concealment of illicit assets,[423] including corruption where officials have stolen public assets from the state. This would naturally fit into the concepts and definitions of IFFs, as the capital usually finds its way through secrecy jurisdictions and bank accounts in developed countries. In 2015, the UN declared 17 Sustainable Development Goals (SDGs) to transform the world.[424] Goal 16 sets the goal of promoting just, peaceful and inclusive societies and 'by 2030 to significantly reduce illicit financial flows'.[425] The extent of IFFs for developing countries, which is estimated to be around $1.26tn annually, is also acknowledged by the UN.[426] However, the 2017 UN Progress Report on the SDGs does not provide any information regarding IFFs or financial crime.[427]

[422] 'Chancing It - How Secret Company Ownership is a Risk to Investors' (Global Financial Integrity and Global Witness 2016).
[423] United Nations Convention against Corruption 2003, Articles 20 and 24.
[424] 'Sustainable Development Goals' (*United Nations,* 2015) <http://www.un.org/sustainabledevelopment/sustainable-development-goals/> accessed 10 January 2017.
[425] 'Goal 16: Promote Just, Peaceful and Inclusive Societies' (*United Nations,* 2015) <http://www.un.org/sustainabledevelopment/peace-justice/> accessed 10 January 2020.
[426] Ibid.
[427] The Sustainable Development Goals Report 2017 (United Nations Publications 2017).

The OECD represents 38 countries with a focus on economic development.[428] The UK is a member of the OECD, and Nigeria is not. The Sahel and West Africa Club, of which Nigeria is a member, promotes and facilitates links between OECD members and West Africa.[429] The OECD has an important role with respect to countering IFFs, and it has concerns that its member countries are becoming safe places for illicit assets where transparency of ownership is disregarded. For example, 27 of the OECD Member States score below expectations on information available for beneficial ownership of corporate vehicles and trusts.[430] Whilst the OECD has begun to address the subject of IFFs, its recommendations do not have a status of law and therefore will have limited impact, particularly on corporations practising transfer price abuse. Furthermore, Janský observes that the combination of IFFs and financial secrecy contributes to making poor countries poorer; developed countries have a responsibility to curb IFFs.[431]

The G7 is a forum bringing together the leaders of Canada, France, Germany, Italy, Japan, the UK and the United States to discuss responses to global challenges.[432] The leaders form these countries discussed the importance of addressing IFFs at a G7 meeting in Bari in Italy in May 2017,[433] and endorsed the FATF standards.[434] The FATF standards appear to be the guiding principles for countering IFFs, as they have been designed to counter money laundering (as well as terrorist financing); and, whilst the FATF 2012 Recommendations do not specifically refer to IFFs, they cover various aspects of IFFs, such as transparency and beneficial ownership of legal persons and arrangements.[435]

[428] List of the 38 OECD countries as of 22 August 2021: Australia, Austria, Belgium, Canada, Chile, Columbia, Costa Rica, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States; see 'Our Global Reach' (*OECD,* 2021) <https://www.oecd.org/about/members-and-partners/> accessed 22 August 2021.
[429] Leonce Ndikumana, 'Curtailing Capital Flight from Africa' (Friedrich-Ebert-Stiftung Global Policy Development 2017),4.
[430] 'OECD Illicit Financial Flows from Developing Countries: Measuring OECD Responses' (OECD 2014).
[431] Petr Janský, 'Updating the Rich Countries' Commitment to Development Index: How They Help Poorer Ones Through Curbing Illicit Financial Flows' (2015) 124 Social Indicators Research 43.
[432] 'G7' (*European Commission,* <https://ec.europa.eu/info/food-farming-fisheries/farming/international-cooperation/international-organisations/g7_en> accessed 9 March 2020.
[433] 'FATF at the G7 in Bari, Italy' (*Financial Action Taskforce,* 2017) <http://www.fatf-gafi.org/publications/fatfgeneral/documents/fatf-at-g7-meeting-in-bari-italy.html> accessed 10 January 2020.
[434] 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, the FATF Recommendations 2012' (Financial Action Task Force 2012).
[435] Ibid, FATF Recommendations 24 and 25.

The G20 comprises the finance ministers and central bank governors from 19 countries and the European Union, and it promotes itself as the 'premier forum for international economic cooperation'.[436] The G20 and the OECD have made joint commitments to tackle IFFs. Especially after the revelation of the Panama Papers, it became clear that the use of secrecy, offshore financial centres and shell companies was a common method for illegal activity.[437] The joint statement recognises the breadth of IFFs and the way they inhibit progress for developing African countries.[438] The High Level Panel on Illicit Financial Flows was established as a result of a mandate from the 4th Joint African Union Commission/United Nations Economic Commission for Africa (AUC/ECA) Conference of African Ministers of Finance, Planning and Economic Development in 2011.[439] The purpose of the panel is to focus on Africa's development and to rely on its own resources as much as possible. The panel report acknowledges that there is a lack of regulatory framework and information asymmetry between multinational organisations, which have the best legal advisors globally, compared to limited resources and expertise of a developing country. This advantage can facilitate transfer price abuse that can deny a developing country its due taxes.

The OECD has several initiatives, often partnered with other agencies, to tackle IFFs. The OECD was asked by the former UK Prime Minister David Cameron to consider if multinationals should report their profits to tax authorities on a country-by-country basis,[440] and this was included for consideration in the OECD's BEPS program.[441] BEPS was agreed by the OECD and G20 countries in 2013 to encourage countries to share tax information in order to assess transfer pricing and its associated issues.

[436] 'What Is the G20' (*New York Times,* 2019) <https://www.nytimes.com/2019/06/27/world/asia/what-is-the-g20.html> accessed 12 March 2020.
[437] Lawrence J Trautman, 'Following the Money: Lessons from the Panama Papers Part 1: Tip of the Iceberg' (2016) 121 Penn State Law Review 807.
[438] 'Joint Statement on the Fight against Illicit Financial Flows, by OECD Secretary-General Angel Gurría and Thabo Mbeki, Chair of the High-Level Panel on Illicit Financial Flows from Africa' (OECD, 2017) <https://www.oecd.org/g20/topics/taxation/joint-statement-on-the-fight-against-illicit-financial-flows-by-angel-gurria-and-thabo-mbeki.htm> accessed 10 January 2020.
[439]'Illicit Financial Flow - Report of the High-Level Panel on Illicit Financial Flows from Africa' (Commissioned by the AU/ECA Conference of Ministers of Finance, Planning and Economic Development 2015) 43.
[440] 'Policy Paper - 2013 Lough Erne G8 Leaders' Communiqué' (*UK Government,* 2013) <https://www.gov.uk/government/publications/2013-lough-erne-g8-leaders-communique> accessed 12 September 2019.
[441] 'OECD/G20 Base Erosion and Profit Shifting Project, Action 13 - Country by Country Reporting Implementation Package' (OECD 2015).

The OECD provides a number of recommendations to member countries and classifies the bulk of IFFs as money laundering, tax evasion and international bribery.[442] In relation to countering money laundering, the OECD recommends Member States: to implement the 2012 FATF Recommendations; to introduce appropriate customer due diligence with both financial and non-financial institutions; to ensure transparency of beneficial owners and make such data available to authorities; to strengthen regulatory and supervision systems; and to enforce these regimes, particularly in relation to non-financial institutions.[443]

Regional and national legislative actions impact IFFs. For example, the transparency of ultimate beneficial owners, a legal requirement under the EU's Fourth Anti-Money Laundering (AML) Directive 2017.[444] Here, the EU Member States must hold a register of ultimate beneficial owners (UBOs) and the Directive requires firms to have the ability to identify the UBO in any aspect during customer due diligence.[445] The Fourth AML Directive[446] addresses this issue of corporate secrecy, where the European Commission suggested that the lack of transparency regarding the UBOs of companies can be abused by criminals. This Directive recommends making visible the ownership structures of companies, trusts and their legal arrangements, as well as more demanding checks on electronic funds transfers that will make it hard for criminals and terrorists to obscure their activities.[447] Zucman suggests that one of the ways to deal with corporate secrecy and the problem of tax avoidance/evasion is to have an automatic exchange of information between all secrecy jurisdictions and foreign tax authorities.[448] The Fifth AML Directive is a response to the Panama Papers scandal and terrorist attacks in Paris (Nov 2015) and Brussels (Mar 2016). In the UK, the Directive has been adopted into the Money Laundering and Terrorist Financing (Amendment) Regulations 2019,[449] and a public beneficial ownership register has been established.[450] If the UBO is secret, this, combined with shell companies,

[442] OECD Illicit Financial Flows from Developing Countries: Measuring OECD Responses (OECD 2014).
[443] Ibid.
[444] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the Prevention of the use of the Financial System for the Purposes of Money Laundering or Terrorist Financing.
[445] Ibid.
[446] Ibid.
[447] 'Frequently Asked Questions: Money Laundering' (European Commission Memo 2013).
[448] Gabriel Zucman, *The Hidden Wealth of Nations: The Scourge of Tax Havens* (University of Chicago Press 2015) 5.
[449] Money Laundering and Terrorist Financing (Amendment) Regulations 2019.
[450] 'Learning the Lessons from the UKs Public Beneficial Ownership Register' (Open Ownership and Global Witness 2017).

allows criminals to hide illicit capital and/or launder money. The Criminal Finances Act 2017 in the UK also addresses tax evasion, especially a failure to prevent it by commercial organisations.[451] However, the subject of IFFs is not addressed or acknowledged in the UK legislatures mentioned above, and this thesis asserts that this is a substantive gap in the legislation, and other provisions such as the Bribery Act 2010 end up having limited impact because they focus only on the bribery aspect of IFFs. The Nigerian statutes are less developed than those found in the UK, and unsurprisingly there is no legislation associated with IFFs.

The current legal instruments of UN, EU, UK and Nigeria which are examined in this thesis do not explicitly acknowledge or refer to IFFs, but they do so indirectly. Accordingly, stakeholders rely on the AML provisions or the anti-corruption provisions to address IFFs. This is inadequate, as it only addresses the illegal IFFs (those from bribery and corruption and the proceeds of crime) and leaves a substantive legislative gap in the area of transfer price abuse.

Baker makes recommendations for developing and developed countries to resolve, for regulators and legislators to consider, and for banks and corporations to adopt.[452] In particular, he recommends that beneficial ownership information on companies must be mandatory and publicly available. This is happening in the UK,[453] and regionally through the Fifth AML Directive,[454] and internationally through the FATF Recommendations.[455] Where this is proving difficult or time consuming, the recommendation from Baker is to instruct banks that no account can be held where the UBO (a human being) is not known. The second relevant recommendation is the requirement for country-by-country reporting of tax paid by multinational corporations that will contribute significantly towards tax avoidance and tax evasion. Murphy first introduced the concept of 'country-by-country' reporting in 2003, proposing information criteria that would enable national tax authorities to publish basic

[451] Criminal Finances Act 2017, Part 3 – Corporate offence of failure to prevent the facilitation of tax evasion, ss 45-45.
[452] 'Pan African Lawyers Union: Raymond Baker Keynote Address' (Global Financial Integrity, 2017) <http://www.gfintegrity.org/press-release/pan-african-lawyers-union-keynote-address/> accessed 19 February 2019.
[453] 'Learning the Lessons from the UKs Public Beneficial Ownership Register (Open Ownership and Global Witness 2017); Small Business, Enterprise and Employment Act 2015.
[454] Money Laundering and Terrorist Financing (Amendment) Regulations 2019.
[455] 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, the FATF Recommendations 2012' (Financial Action Task Force 2012).

information about a multinational's operation. This was updated in 2006 with a wider analysis of how transfer price abuse relates to IFFs.[456] Baker's recommendations are pragmatic and not complicated, and he has extended co-operation between his organisation, GFI, and the legal community.[457] As highlighted in this thesis, the subject of IFFs has not yet captured the lawyers' sense of duty, but it ought to.

The link between corruption and money laundering

The link between corruption and money laundering is not especially remarkable, as bribery and corruption are generally predicate crimes, a pre-requisite for money laundering offences. The interconnection with bribery and corruption is firmly established;[458] and Chaikin and Sharman suggest that these crimes are interdependent:

> Corruption and money laundering are symbiotic: not only do they tend to co-occur, but more importantly, the presence of one tends to create and reciprocally reinforce the incidence of the other.[459]

In the UK and Nigeria, all crimes can be predicate offences for money laundering if proceeds of the crime are used.[460] Governments, legislators and policy makers have not questioned the fact that bribery, corruption and money laundering have been dealt with in isolation, mainly because it is easier to deal with it in this way. The link is more recognised now that the FATF is stating that 'the fight against corruption is inextricably intertwined with that against money laundering'[461] and UNCAC is making the relationship more explicit.[462]

[456] Richard Murphy, 'Country by Country Reporting' in Pogge and Mehta (eds), *Global Tax Fairness* (Oxford University Press 2016).
[457] 'Pan African Lawyers Union: Raymond Baker Keynote Address' (*Global Financial Integrity*, 2017) <http://www.gfintegrity.org/press-release/pan-african-lawyers-union-keynote-address/> accessed 19 February 2019.
[458] Ann Hollingshead, 'Understanding the Relationship Between Corruption and Illicit Financial Flows' (*Financial Transparency Coalition*, 2014) <https://financialtransparency.org/understanding-the-relationship-between-corruption-and-illicit-financial-flows/> accessed 17 February 2020.
[459] David Chaikin and J. C. Sharman, *Corruption and Money Laundering: A Symbiotic Relationship* (Palgrave Macmillan 2009) 1.
[460] Proceeds of Crime Act 2002 - Explanatory Notes - 6 - Money Laundering.
[461] 'FATF Laundering the Proceeds of Corruption' (Financial Action Task Force 2011), 6.
[462] United Nations Convention against Corruption 2003, Article 14: Measures to prevent money-laundering.

One of the challenges that governments and organisations face emanates from the disparate approaches to dealing with financial crimes. Bribery, corruption and money laundering have traditionally been researched by the academia and addressed by governments and international organisations in isolation, even though they are intrinsically linked. This inhibits the understanding of the relationship between them and inevitably has consequences for policy makers and regulators to tackle the problem. Hinterseer describes the link between corruption and money laundering as:

> A process that employs financial, accounting, legal and other instruments in conjunction with an object that has either been used in, or derived from, unlawful activity.[463]

There is a simple reason for dealing with corruption and money laundering together; it is one of synergy. Data compiled by Transparency International indicates that most of the countries surveyed have not illustrated a decline in corruption.[464] Since corruption and money laundering are linked, it makes sense that they should also be tackled together. Awareness of, and legislation for, both corruption and money laundering are prolific, but this should now be matched by wide-ranging and successful implementation.[465] The International Monetary Fund (IMF) also recognised this as a concern, and both corruption and money laundering are a fundamental aspect of their work because of the negative impact they have on national and regional economies.[466] The FATF addresses corruption in its 2012 Recommendations,[467] and provides specific guidance on dealing with the proceeds of corruption,[468] indicating that corrupt money will require the use of similar types of laundering processes as other types of illegal activity and predicate offences (e.g. drugs and human trafficking).[469]

[463] Kris Hinterseer, *Criminal Finance: The Political Economy of Money Laundering in a Comparative Legal Context* (Kluwer Law International 2002) 11.
[464] 'Global Corruption Barometer' (Transparency International 2020) <https://www.transparency.org/en/gcb#> accessed 20 July 2020.
[465] David Chaikin and J. C. Sharman, *Corruption and Money Laundering: A Symbiotic Relationship* (Palgrave Macmillan 2009) 14.
[466] 'Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT)' (*International Monetary Fund,* 2020) <https://www.imf.org/external/np/leg/amlcft/eng/aml1.htm#financingterrorism> accessed 28 June 2020.
[467] 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, the FATF Recommendations 2012' (Financial Action Task Force 2012).
[468] 'Specific Risk Factors in the Laundering of Proceeds of Corruption' (Financial Action Task Force 2012).
[469] Ibid, 38.

The link between illicit financial flows, corruption and money laundering

Reed and Fontana acknowledge that corruption pervades IFFs, and they raise the question of answerability of Western countries, banks and corporations and make the link between bribery, corruption, illicit flows and money laundering.[470] The link between IFFs and corruption and money laundering has been established in Chapters 2 and 5 of this thesis, predominantly by showing that IFFs are facilitated by financial secrecy where the true origin of the source and beneficial owner of the money is hidden. This applies to both illegal IFFs (such as corruption and money laundering) and legal IFFs (such as transfer price abuse). To re-iterate the point, an example is the way in which trusts, offshore accounts and secrecy legislation are used to move proceeds of crime by criminals and aggressive tax avoidance by wealthy individuals and large multinational corporations.[471] IFFs are a term and concept that will need to evolve to enable banks, corporations, regulators and governments to address the various aspects of how IFFs contribute to a variety of illegal activities.

Transfer price abuse sits in a grey area, which Reuter illustrates by showing how legal lines can be blurred for developing countries:

> Assume that a multinational corporation violates norms of transfer pricing as laid down by the OECD but that there are not yet domestic laws implementing the OECD guidelines[472] (as is true in many developing nations). Thus, there is no domestic illegality.[473]

This is relevant because, within the subject of IFFs, transfer price abuse is included in the subject of tax evasion and tax avoidance, which has a contentious link to bribery and corruption and money laundering.[474]

[470] Quentin Reed and Alessandra Fontana, 'Corruption and Illicit Financial Flows: The Limits and Possibilities of Current Approaches' (U4 Anti-Corruption Resource Centre 2011).
[471] George Parker, 'George Osborne Vows Crackdown on Banks that Facilitate Tax Evasion' *Financial Times* (London 23 February 2015) <http://www.ft.com/cms/s/0/95c5c1b4-bb7d-11e4-aa71-00144feab7de.html?siteedition=uk#axzz3SfCAW34N> accessed 25 February 2020.
[472] The OECD approach to IFFs is also described below in this chapter.
[473] Peter Reuter, 'Illicit Financial Flows and Governance: The Importance of Disaggregation' (Background Paper for the World Development Report, World Bank 2017),10 <https://openknowledge.worldbank.org/handle/10986/26210> accessed 22 January 2021.
[474] IFFs and transfer price abuse are discussed in detail in Chapters 4 and 5.

The issue of transfer price abuse is important, with many large multinational organisations appearing in newspaper headlines[475] and increased public awareness of how companies manage their tax affairs. Whilst not illegal, transfer price abuse falls under IFFs. Murphy has demonstrated 'hints of significant tax avoidance' by the largest 50 FTSE companies, using data from the companies, which increased the net deferred provisions from £8bn in 2000 to £46bn in 2006. In other words, they reduced the amount they paid in tax that publicly published company accounts are unlikely to expose.[476] Murphy suggests that BP Plc in the UK has more than 3,000 subsidiaries in over 150 jurisdictions. Is this an effective corporate strategy or an example of transfer price abuse? Furthermore, UK listed companies are legally required to publish[477] key information in their annual accounts that includes names, places of incorporation, and percentage of holdings for all their subsidiaries. Murphy contends that only 33 of the 100 FTSE companies did so, and no company has been prosecuted for not providing this information.[478] Additionally, the largest accountancy firms all have offices in secrecy jurisdictions, and it must be questioned whether their presence is to serve the local population or to facilitate this potential flow of illicit capital? Murphy concludes that $160bn a year is lost by developing countries due to transfer mis-pricing by multinational corporations, and this may be hidden from the financial accounts to abuse transfer mis-pricing, and secrecy destinations may be used to hide these transactions. The issue here is that, whilst large corporations can navigate their way around the complexities of transfer pricing to ensure that they stay legal, secrecy destinations and complex corporate structures are used to facilitate this. The developing country will not gain tax revenues that should rightfully remain in and benefit that country. At the same time, the same secrecy jurisdictions and corporate services are also used by criminals, which makes distinguishing dirty money more difficult. This leaves an unpalatable scenario that is detrimental to society.

[475] 'Netflix and eBay Find the Holes in the UK Tax Net' *Financial Times* (London 12 October 2017) <https://www.ft.com/content/b4b481de-af57-11e7-beba-5521c713abf4?myftTopics=b42acd4c-e8a7-3034-8b92-af9126651348#myft:my-news:grid> accessed 16 June 2020.
[476] Richard Murphy, 'Accounting for the Missing Billions' in Peter Reuter (ed), *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (World Bank 2011).
[477] Companies Act 2006.
[478] Richard Murphy, 'Accounting for the Missing Billions' in Peter Reuter (ed), *Draining Development Controlling Flows of Illicit Funds from Developing Countries* (World Bank 2011).

The FSI[479] is published by the Tax Justice Network (TJN), an NGO that provides research, analysis and advocacy on the subject of tax evasion and avoidance, offshore tax havens and voices concerns about these harmful practices.[480] The FSI provides a ranking of secrecy jurisdictions globally. If the UK were assessed including its Overseas Territories, then its ranking for secrecy would be first.[481] Switzerland is ranked third on the FSI.[482] However, it is not the Swiss Banking Act 1934 that enables this, it is the lack of international corporate transparency on company ownership and other financial instruments which places Switzerland near the top of the table.[483] Nigeria does not appear on the FSI, as it is often the developed countries which provide financial services that are most likely to offer secrecy conditions. However, Nigeria does appear close to the top of the illicit financial flows table, ranked 20th out of 149 countries, with IFFs of $140bn in 2014, and placed 19th with cumulative IFFs of $1.2tn between 2005 and 2015.[484] This correlation is important because it provides the link that connects Nigeria, where there are significant illicit financial outflows, with the banking/financial services in the UK and its Overseas Territories. The realisation that UK banks can provide the financial vehicles for Nigeria to transfer illicit financial capital may be unpalatable,[485] but it is becoming more widely recognised.[486]

The Panama Papers *exposé* revealed examples of illicit wealth, some of which was derived from bribery, corruption and tax evasion, which was made public, with millions of documents showing criminals, heads of state and celebrities using secret structures to hide their wealth in

[479] 'Financial Secrecy Index 2020' (*Tax Justice Network*, 2020) <https://fsi.taxjustice.net/en/> accessed 24 February 2020.
[480] 'Who We Are' (*Tax Justice Network,* 2018) <https://www.taxjustice.net/about/who-we-are/> accessed 6 March 2018.
[481] 'Financial Secrecy Index 2020 - Narrative Report on the United Kingdom' (Tax Justice Network, 2020) <https://www.financialsecrecyindex.com/PDF/UnitedKingdom.pdf> accessed 6 August 2020.
[482] 'Financial Secrecy Index 2020' (*Tax Justice Network*, 2020) <https://fsi.taxjustice.net/en/> accessed 24 February 2020.
[483] Patrick Emmenegger, 'The Politics of Financial Intransparency: The Case of Swiss Banking Secrecy' (2014) 20 Swiss Political Science Review 146, 151.
[484] Joseph Spanjers and Matthew Salomon, 'Illicit Financial Flows to and from Developing Countries: 2005-2014' (Global Financial Integrity 2017).
[485] 'British Banks Complicit in Nigerian Corruption, Court Documents Reveal' (*Global Witness,* 2010) <http://www.globalwitness.org/library/british-banks-complicit-nigerian-corruption-court-documents-reveal> accessed 15 November 2019.
[486] 'International Thief Thief - How British Banks are Complicit in Nigerian Corruption' (Global Witness 2010).

tax havens.[487] The revelations[488] have brought the subject of secrecy jurisdictions to the forefront of public awareness and elicited critical observations of large corporations and high-profile individuals. This is not to say that all these illicit transactions were illegal, but they could be considered as ethically dubious and against certain standards (for example, transparency and accountability) which developed and democratic countries advocate. This is sometimes described as operating within the letter, but not the spirit, of the law. Financial crime can manifest itself through banking systems in many ways, which can include the abuse of systems, processes and the evasion of controls that are designed to detect breaches (in particular, money laundering).[489] The records date back 40 years and contain information about 214,000 offshore entities linked to individuals in over 200 countries and regions, from heads of state, politicians and company owners to billionaires. The information leaked in Panama Papers includes a list of 33 entities blacklisted by the United States of America for dealing with Mexican drug cartels, involvement in terrorist organisations and abusing sanctions imposed on countries such as Iran and North Korea.[490]

The Paradise Papers was a leak of 13 million documents, most of them from the Bermudian law firm Appleby, to Süddeutsche Zeitung, a German newspaper that shared the documents with the ICIJ and other media partners. Tax Justice Network stated that:

> The Paradise Papers have once again highlighted the failure of governments around the world to deal with the scourge of tax dodging and financial crime facilitated by offshore financial centres, and we commend the ICIJ on their fearless investigative journalism.[491]

[487] Lawrence J Trautman, 'Following the Money: Lessons from the Panama Papers Part 1: Tip of the Iceberg' (2016) 121 Penn State Law Review 807.
[488] Geoff Dyer, Max Seddon and Richard Milne, 'Panama Papers Leak Highlights Global Elite's Use of Tax Havens' Financial Times (4 April 2016) <https://www.ft.com/content/549c1e96-f9e7-11e5-8f41-df5bda8beb40> accessed 21 September 2019.
[489] 'Banks' Management of High Money-Laundering Risk Situations' (Financial Services Authority 2011).
[490] 'The Panama Papers: Exposing the Rogue Offshore Finance Industry' (The International Consortium of Investigative Journalists, 29 January 2019) <https://www.icij.org/investigations/panama-papers/> accessed 1 April 2019.
[491] George Turner, 'TJN Responds to the Paradise Papers' (*Tax Justice Network*, 2017) <https://www.taxjustice.net/2017/11/05/press-release-tjn-responds-paradisepapers/> accessed 10 March 2020.

The clients of Appleby include the rich and elite, from royalty to prime ministers, and corporations such as Apple, Nike, Facebook and Glencore. Professional firms that collaborated with Appleby include the large accounting firms such as KPMG, Ernst & Young and PricewaterhouseCoopers, in addition to global banks such as Citigroup, Bank of America, HSBC, Credit Suisse and Wells Fargo.[492]

The Paradise Papers and the Panama Papers show explicitly that the 'corrupted international infrastructure' allows the elite to escape tax and regulations.[493] The challenge lies in determining what is deemed illegal, and what is illicit and legal.

Amongst many large corporations, Apple Inc.,[494] which bases part of its company structure in Ireland, is under scrutiny that it used transfer mis-pricing as a part of its business strategy. Barrera and Bustamante are unequivocal in their analysis:

> While Apple's tax avoidance is legal, it is clearly unethical in its use of tax havens, mainly Ireland, and shell companies like Apple Sales International.[495]

Apple stated that 'we follow laws, and if the system changes we will comply'[496] in a press release on 6 November 2017; in other words, according to Christensen, Apple will continue with their practices if it is not illegal.[497] The European Commission ruled on 30 August 2016 that Ireland provided undue tax benefits to Apple[498] to the value of €13bn, which is illegal under EU state aid rules, because it enabled Apple to pay significantly less tax than other businesses; and

[492] Peter Boyle, 'Paradise papers: Not Just a Few Corporate 'Bad Apples'' Green Left Weekly (Sydney, 19 November 2019) 3.
[493] Ikramul Haq, 'From Panama to Paradise' (*The International News,* 2017) <https://www.thenews.com.pk/print/243652-From-Panama-to-Paradise> accessed 7 March 2019.
[494] Rita Barrera and Jessica Bustamante, 'The Rotten Apple: Tax Avoidance in Ireland' (2017) The International Trade Journal.
[495] Ibid.
[496] 'The Facts about Apple's Tax Payments' (*Apple,* 2017) <https://www.apple.com/uk/newsroom/2017/11/the-facts-about-apple-tax-payments/> accessed 8 August 2020.
[497] Ramus Christensen, 'Law and Morality in the Paradise Papers - The Global Responsible Tax Project' (*KPMG,* 2017) <https://responsibletax.kpmg.com/page/law-and-morality-in-the-paradise-papers#comments> accessed 7 March 2020.
[498] Howard Glockman, 'The Real Story on Apple's Tax Avoidance - How Ordinary It Is' (*Forbes,* 2013) <https://www.forbes.com/sites/beltway/2013/05/21/the-real-story-about-apples-tax-avoidance-how-ordinary-it-is/> accessed 2 September 2019.

that Ireland must recover the illegal aid.[499] The EU Competition Commission charged Apple with avoiding taxes by routing its non-US sales and profits through false corporate bodies not required to pay tax anywhere.[500] Ireland appealed to the Court of Justice of the European Union against the Commission's August 2016 decision. However, on 4 October 2017, the European Commission announced that it would be referring Ireland to the Court of Justice of the European Union in Luxembourg for failing to recover from Apple illegal state aid worth up to €13bn, as required by a Commission decision.[501] Apple has paid €14.3bn with interest, which is being held in escrow, and the court began to hear the appeal on 17 September 2019.[502] On 15 July 2020, the EU judges announced their decision to nullify the European Commission order to pay back the €14.3bn taxes to Ireland.[503] The EU is appealing against the decision where the case will be heard by the Court of Justice of the European Union, the EU's highest court, which will issue a final ruling.[504] There is still a possibility that Apple may have a potential future tax liability in Ireland, depending on the outcome. Whilst Apple confirms that it does indeed follow the laws, some observed practices question whether it also follows the spirit of the laws. Apple had sought legal advice for a new secrecy jurisdiction to hold its vast cash surplus as revealed by the Paradise Papers.[505] That secrecy jurisdiction chosen by Apple was Jersey, where there is a 0% corporate tax rate for foreign companies. The ICIJ is critical of the banks and Mossack Fonseca who were also involved in creating companies in secrecy jurisdictions for their clients:

[499] 'State Aid Ireland Gave illegal Tax Benefits to Apple Worth up to €13 Billion' (*European Commission,* 2016) <http://europa.eu/rapid/press-release_IP-16-2923_en.htm> accessed 17 February 2019.
[500] Rochelle Toplensky, 'Amazon and Apple Hit by EU Tax Crackdown' Financial Times (Brussels 4 October 2017) <https://www.ft.com/content/69ee1da6-a8ed-11e7-93c5-648314d2c72c> accessed 29 December 2019.
[501] 'Commission Decision (EU) 2017/1283 of 30 August 2016 on State Aid SA.38373 (2014/C) (ex 2014/NN) (ex 2014/CP) Implemented by Ireland to Apple' (2017) Official Journal of the European Union.
[502] Joe Brennan, 'Apple Case Turns Spotlight on Ireland's Tax Affairs' *The Irish Times* (<https://www.irishtimes.com/business/technology/apple-case-turns-spotlight-on-ireland-s-tax-affairs-1.4023945> accessed 6 June 2020.
[503] Javier Espinoza and others, 'Apple Wins Landmark Court Battle with EU over €14.3bn of Tax Payments' *Financial Times* (15 July 2020) <https://www.ft.com/content/1c38fdc1-c4b3-4835-919d-df51698f18c4> accessed 1 August 2020.
[504] Javier Espinoza and Arthur Beesley, 'Brussels to Appeal Against Court Decision Quashing Apple Tax Order' *Financial Times* (25 September 2020) < https://www.ft.com/content/058d380a-a0fa-40b7-95f9-1867378daf99> accessed 28 August 2021.
[505] 'The 'Paradise Papers' and the Long Twilight Struggle Against Offshore Secrecy' (International Consortium of Investigative Journalists, 2017) <https://www.icij.org/investigations/paradise-papers/paradise-papers-long-twilight-struggle-offshore-secrecy/> accessed 15 February 2020.

> Banks have driven the creation of hard-to-trace companies in offshore havens. More than 500 banks, their subsidiaries and their branches – including HSBC, UBS and Société Générale – created more than 15,000 offshore companies for their customers through Mossack Fonseca.[506]

The links between IFFs, corruption and money laundering are often facilitated by legitimate organisations such as law firms and banks and the challenge is to hold organisations to account when practices meander from a legal and ethical position.

Sani Abacha – a case study to show components of illicit financial flows

There are many instances of IFFs through European banks by the former Nigerian President, Sani Abacha.[507] Abacha was complicit in the theft of oil revenues and transferred billions of dollars out of Nigeria.[508] Abacha facilitated illicit capital flow through the UK and the US, and has had assets seized and proceedings brought against him and his family to repatriate stolen oil revenues.[509]

The case of Sani Abacha is used to illustrate the interrelation between IFFs, financial secrecy, corruption and money laundering, within the jurisdictions of the UK and Nigeria, which is the focus of this thesis. Abacha came to power in Nigeria in 1993 and died in 1998, during which time he had stolen between $3bn and $5bn and managed to launder money through financial centres in Switzerland and the UK.[510] He diverted these funds to the members of his family's personal accounts, via banks in the UK, Jersey, Switzerland, Luxembourg, Liechtenstein, Austria

[506] 'The Panama Papers: Exposing the Rogue Offshore Finance Industry' (The International Consortium of Investigative Journalists, 29 January 2019) <https://www.icij.org/investigations/panama-papers/> accessed 1 April 2019.
[507] William Wallis, 'Liechtenstein Agrees to Return Abacha's stolen €167m to Nigeria' *Financial Times* (London <https://www.ft.com/content/c9d922ee-f6e2-11e3-b271-00144feabdc0> accessed 8 November 2019.
[508] Olatunde Julius Otusanya, 'An Investigation of the Financial Criminal Practices of the Elite in Developing Countries: Evidence from Nigeria' (2012) 19 Journal of Financial Crime 175.
[509] Bonnie Malkin, 'US freezes $458m hidden by former Nigerian leader Sani Abacha' *The Telegraph* (London, 5 March 2014) <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/nigeria/10679487/US-freezes-458m-hidden-by-former-Nigerian-leader-Sani-Abacha.html> accessed 13 January 2020; 'StAR - Stolen Asset Recovery Initiative - Corruption Cases - James Ibori (United States)' (*World Bank - UNODC,* 2014) <http://star.worldbank.org/corruption-cases/node/19584> accessed 29 December 2019.
[510] 'Leading Cases - Abacha Case' (*International Chamber of Commerce Commercial Crime Services - FraudNet,* 2011) <https://icc-ccs.org/index.php/home/resources/118-leading-cases/697-abacha-case> accessed 16 November 2019.

and the United States (US).[511] The amount of money recovered is difficult to quantify, yet Peel stated in 2009 that approximately $2.3bn of this amount has been recovered and $1bn remains frozen.[512] The US froze $313m that was hidden in banks in Jersey and $145m in bank accounts in France,[513] and the US Department of Justice stated that it was also pursuing stolen Abacha funds in other countries including the UK.[514] The funds that Abacha misappropriated are still held in these jurisdictions, and continue to be tracked and pursued. The time and cost of tracing and returning such assets are also a major challenge, especially for Nigeria, where the legal expertise may not be readily available to navigate the complex proceedings to repatriate stolen assets.[515]

The Financial Services Authority (FSA) identified failings in the anti-money laundering (AML) controls of UK banks and concluded that approximately 75% of the banks in its sample were not managing high-risk customers and politically exposed person (PEP) relationships.[516] The FSA was critical of the banks, especially when a report by the FSA ten years earlier identified similar failings[517] that looked at how the accounts linked to Abacha were managed. The report stated that there had been 'insufficient improvement in banks' AML systems and controls during this period'.[518] The FSA also highlighted that serious weaknesses were identified in the banks' systems and controls, as well as the propensity to on-board very high-risk customers without adequate due diligence when there was the prospect of large profits to be made, implying that the 'banks are handling the proceeds of corruption or other financial crime'.[519]

[511] FSA/PN/029/2001 - FSA Publishes Results of Money Laundering Investigation (Financial Services Authority, 2001).
[512] Michael Peel, A Swamp Full of Dollars: Pipelines and Paramilitaries at Nigeria's Oil Frontier (I. B. Tauris 2009).
[513] Bonnie Malkin, 'US freezes $458m hidden by former Nigerian leader Sani Abacha' *The Telegraph* (London, 5 March 2014) <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/nigeria/10679487/US-freezes-458m-hidden-by-former-Nigerian-leader-Sani-Abacha.html> accessed 13 January 2020.
[514] Ibid; also see William Wallis, 'Liechtenstein Agrees to Return Abacha's stolen €167m to Nigeria' Financial Times (London, 18 June 2014) <https://www.ft.com/content/c9d922ee-f6e2-11e3-b271-00144feabdc0> accessed 8 November 2019.
[515] Maggie Fick and David Piling, 'Nigeria Struggles to Recover Looted Billions' *Financial Times* (6 June 2016) <https://www.ft.com/content/34b4e508-2bfc-11e6-bf8d-26294ad519fc> accessed 3 January 2020.
[516] 'Banks' Management of High Money-Laundering Risk Situations' (Financial Services Authority, 2011).
[517] FSA/PN/029/2001 - FSA Publishes Results of Money Laundering Investigation (Financial Services Authority, 2001).
[518] Banks' Management of High Money-Laundering Risk Situations (Financial Services Authority, 2011).
[519] Ibid.

The FSA identified that 23 banks in London handled $1.3bn of Sani Abacha's illicit money from Nigeria between 1996 and 2001, and these accounts were linked to the Abacha family and friends. The FSA investigation also found that 15 of these banks had 'significant' control weaknesses, and the other eight had strengthened their AML controls since the accounts were opened.[520] The FSA did not name the banks,[521] which is questionable and momentarily provided a veil for the banks to hide from public criticism. However, Global Witness highlighted this issue and stated:

> After Abacha scandal the FSA hid behind a wall of secrecy, refusing to talk about the individual banks that helped the former Nigerian dictator to loot his country. This is unacceptable.[522]

The Financial Times did, however, list Barclays, HSBC, NatWest and UBS as having Abacha-related accounts.[523] Other funds have been found, either in banks or through them, in Switzerland, Luxembourg, Liechtenstein, Austria and the US.[524]

Following Abacha's death, investigations were initiated by General Abdulsalami Abubakar, and then by President Olusegun Obasanjo, to repatriate looted oil revenues.[525]

Abacha's stolen proceeds were laundered globally through banks and shell companies, including the UK, Switzerland, Luxembourg, Liechtenstein, Jersey and the Bahamas. Funds amounting to $505.5m were returned in 2005/06 by Switzerland[526] to Nigeria. While there are

[520] FSA/PN/029/2001 - FSA Publishes Results of Money Laundering Investigation (Financial Services Authority, 2001).
[521] Nicholas Ryder, 'The Financial Services Authority and Money Laundering a Game of Cat and Mouse' (2008) 67 The Cambridge Law Journal 635.
[522] 'International Thief Thief - How British Banks are Complicit in Nigerian Corruption' (Global Witness 2010).
[523] Ibid; also see 'British Banks Complicit in Nigerian Corruption, Court Documents Reveal' (Global Witness, 2010) <http://www.globalwitness.org/library/british-banks-complicit-nigerian-corruption-court-documents-reveal> accessed 15 November 2019.
[524] 'Undue Diligence How Banks do Business with Corrupt Regimes - How Banks do Business with Corrupt Regimes' (Global Witness, 2010).
[525] Abdullahi Y. Shehu, 'Combating corruption in Nigeria - Bliss or Bluster?' (2005) 12 Journal of Financial Crime 69.
[526] 'Utilization of Repatriated Abacha Loot' (World Bank and the Nigerian Federal Ministry of Finance 2006).

ongoing cases that promise to return Nigeria's stolen oil revenues,[527] incidents to pilfer the Nigerian people of its natural resources continue.[528] The case of Abacha shows the vastness of the corruption and how the use of secrecy jurisdictions was a key enabler/facility in Abacha's strategy to launder the stolen money. A clear example of the link between IFFs, corruption and money laundering are demonstrated by Abacha's use of bank accounts in Jersey, a secrecy jurisdiction, to keep liquid funds there to pay his bribes; Reuter suggests:[529]

> Tax havens, more appropriately called secrecy jurisdictions, have been inculpated in many major scandals over the last decade; they have been under attack because they can undermine effective financial regulation in other nations, both developed and developing. Once the spotlight is turned on them, it is hard not to notice that they also serve as the destination for the bribes received by many dictators.[530]

An example that demonstrates this point was an investigation to seek and recover funds from Abacha's embezzlement activities resulted in a report in November 1998, but this was not made publicly available in its entirety.[531] Nevertheless, it revealed that a total of $2.25bn had been withdrawn on the instruction of Abacha from the Central Bank of Nigeria (CBN) and had been transferred to foreign accounts to acquire property.[532] Shell companies were used that were

[527] Anjli Raval, 'Global Hunt for Nigeria's 'Missing Billions' Turns to London' *Financial Times* (7 November 2017) <https://www.ft.com/content/ba9765c4-9a37-11e7-8c5c-c8d8fa6961bb> accessed 9 November 2019. Also see Samuel Ogundipe, 'Nigeria to Repatriate N108 Billion Abacha Loot From U.S. - Buhari' *Premium Times (Abuja)* (1 October 2019) <https://allafrica.com/stories/201910010114.html> accessed 17 December 2019; 'U.S. Enters into Trilateral Agreement with Nigeria and Jersey to Repatriate Over $300 Million to Nigeria in Assets Stolen by Former Nigerian Dictator General Sani Abacha' (US Department of Justice - Office of Public Affairs, 2020) <https://www.justice.gov/opa/pr/us-enters-trilateral-agreement-nigeria-and-jersey-repatriate-over-300-million-nigeria-assets> accessed 5 February 2020.

[528] Andrew Ward, 'Eni and Shell Face Trial in Italy over Alleged Nigeria Corruption' *The Financial Times* (20 December 2017) <https://www.ft.com/content/20cba7e2-e574-11e7-97e2-916d4fbac0da> accessed 29 December 2019. Also see Neil Munshi, 'Nigeria Makes Anti-Corruption Moves Amid Criticism over Progress' Financial Times (29 January 2020) <https://www.ft.com/content/42ae53b2-411d-11ea-a047-eae9bd51ceba> accessed 29 January 2020.

[529] James Maton and Tim Daniel, 'The Kleptocrat's Portfolio Decisions' in Reuter (ed), *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (World Bank 2012).

[530] Peter Reuter, 'Introduction and Overview: The Dynamics of Illicit Flows' in Peter Reuter (ed), *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (The World Bank 2012).

[531] James Maton and Tim Daniel, 'The Kleptocrat's Portfolio Decisions' in Peter Reuter (ed), *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (World Bank 2012).

[532] Ibid.

incorporated in the Isle of Man, Virgin Islands and The Bahamas. The information relating to beneficial ownership of the shell companies was not publicly available or it was difficult to ascertain. The key purpose of these companies was to receive and transfer funds through known banks. Some common legal tools available for money launderers are bearer share companies,[533] trusts,[534] and secret numbered accounts. These make it difficult or impossible to identify the UBO of assets and property. Abacha utilised all these methods to help him move money out of Nigeria for his personal use, whereby the banks were complicit in helping him transfer funds and make payments through the financial systems in which they operate.[535]

The UK, despite its anti-financial crime rhetoric, did not initially act following Nigeria's request for mutual legal assistance (MLA) in June 2000 to identify and repatriate Abacha's stolen assets.[536] The FSA criticised the banks, but did not publicly name them or initiate fines or proceedings, even though £1.3bn was reportedly laundered through the banks in London alone.[537] Iyu identifies the root of the problem as follows:

> It would not be possible for African leaders to loot their national treasuries if there were no countries willing to receive these funds. If you preach transparency and accountability, you should not have the facility to transfer illicit funds to your own country [UK].[538]

Following the death of Abacha in 1998 and the events surrounding the transfer of his stolen funds, the new democratically elected President Olusegun Obasanjo urged the UN to create

[533] Bearer Share companies are a security entirely owned by whoever holds the physical stock certificate. The owner is never registered or tracked and this is a financial crime risk. In the UK, the issue of Bearer shares is prohibited as per the Small Business, Enterprise and Employment Act 2015.
[534] Trusts are used to manage and control the disposition of assets to beneficiaries but can also be used for money laundering purposes. See Martin S. Kenney and Elizabeth O'Brien, 'Trusts — 'True or Bare'?' (2000) 8 Journal of Financial Crime 60.
[535] 'British Banks Complicit in Nigerian Corruption, Court Documents Reveal' (Global Witness, 2010) <http://www.globalwitness.org/library/british-banks-complicit-nigerian-corruption-court-documents-reveal> accessed 15 November 2019; *The Federal Republic of Nigeria and Santolina Investment Corporation* [2007] EWHC 437 (Ch).
[536] 'Sani Abacha - United Kingdom Mutual Legal Assistance Treaty Case' (*StAR - Stolen Asset Recovery Initiative,* 2017) <https://star.worldbank.org/corruption-cases/assetrecovery/sani%20abacha> accessed 4 April 2020.
[537] 'International Thief Thief - How British Banks are Complicit in Nigerian Corruption' (Global Witness 2010), 5.
[538] David Smith, 'Switzerland to Return Sani Abacha 'Loot' Money to Nigeria' The Guardian (18 March 2015) <https://www.theguardian.com/world/2015/mar/18/switzerland-to-return-sani-abacha-loot-money-to-nigeria> accessed 20 November 2019.

and implement an international Convention to repatriate Africa's illicit wealth.[539] Within four months of his election victory in 1999, he had contacted the Swiss authorities with a request to locate and repatriate the stolen Abacha funds. The Swiss government complied and issued instructions to 1,100 financial institutions to report any funds held by Abacha.[540] Nigeria made requests for MLA to several countries including the UK. However, the UK Home Office took its time in facilitating the requests, approximately four years, owing to a series of blocking mechanisms by the Abacha family[541] and the Home Office's own reluctance, citing technical objections.[542] The FSA launched an investigation in March 2001 and reported that $1.3bn of Abacha's illicit money had passed through the UK banking systems on the way to Switzerland, Luxembourg and Liechtenstein.[543]

The Abacha case demonstrates the extent of corruption in Nigeria at the time and the use of UK secrecy jurisdictions and UK banks that facilitated the transfer and safekeeping of illicit assets from Nigeria. The Abacha family continues to fight against the repatriation of the stolen assets back to Nigeria, but no Abacha family member has yet been prosecuted for corruption, possessing illicit assets or money laundering offences,[544] nor has there been any action against the banks that facilitated or allowed this. These facts affirm the view of this thesis that not only is the political will in Nigeria lacking to tackle the perpetrators of financial crime, but also the UK failed to investigate the allegations swiftly, and did not punish the banks that allowed this to happen.

[539] Tim Daniel and James Maton, 'Is the UNCAC an Effective Deterrent to Grand Corruption?' in Jeremy Horder and Peter Alldridge (eds), *Modern Bribery Law: Comparative Perspectives* (Cambridge University Press 2013); 'Nyanga Declaration Transparency International Launches Campaign to Repatriate Africa's Stolen Wealth' (*Pambuzaka News,* 2001) <https://www.transparency.org/en/press/transparency-international-launches-campaign-to-repatriate-africas-stolen-w> accessed 25 July 2020.

[540] James Maton and Tim Daniel, 'The Kleptocrat's Portfolio Decisions' in Reuter (ed), *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (World Bank 2012).

[541] *R. (on the application of Abacha) v Secretary of State for the Home Department (No.2)* [2001] EWHC Admin 424 (Divisional Court); also see Maggie Fick and David Piling, 'Nigeria Struggles to Recover Looted Billions' Financial Times (6 June 2016) <https://www.ft.com/content/34b4e508-2bfc-11e6-bf8d-26294ad519fc> accessed 3 January 2020.

[542] 'Utilization of Repatriated Abacha Loot' (World Bank and the Nigerian Federal Ministry of Finance 2006).

[543] FSA/PN/029/2001 - FSA Publishes Results of Money Laundering Investigation (Financial Services Authority, 2001).

[544] Nicholas Ibekwe and Bassey Udo, 'Nigerian Government Acted Right in Dropping Corruption Charges Against Abacha' *Premium Times* (27 June 2014) <https://www.premiumtimesng.com/news/163976-nigerian-government-acted-right-dropping-corruption-charges-abacha-adoke.html> accessed 4 April 2020.

Conclusion

The term 'IFFs' is becoming more acknowledged internationally, particularly by international institutions such as the World Bank,[545] the United Nations,[546] and the OECD[547] through various initiatives. However, the negative impacts of IFFs are not yet understood or accepted by many, as they are with the subjects of corruption and money laundering. This thesis asserts that IFFs from developing countries have a detrimental effect on that country, which is affirmed by Baker[548] and Cobham.[549] However, the thesis extends this to suggest that the role played by corporations and banks to legitimise IFFs further contributes to corruption in those developing countries. IFFs include money from the proceeds of crime, bribery and corruption and transfer price abuse.[550] Transfer pricing is used by corporations to optimise their tax liabilities using secrecy jurisdictions and financial services provided to enable tax optimisation. It is classed as transfer price abuse when this practice moves towards aggressive tax avoidance and tax evasion. Criminals also use the same methods to launder their proceeds of crime and hide the UBOs of assets. These factors show that the UK is implicated in the wider picture of IFFs and secrecy jurisdictions that impacts developing countries. Furthermore, this thesis shows that there is a lack of legislative intervention for IFFs which could enable or be enabled by corruption leading to money laundering. There are few examples in the public domain that demonstrate banks are active in curtailing the receipt of IFFs that may curb the flow of illegal money from developing countries. Citibank prevented $50m of IFFs from an Angolan PEP who was attempting to transfer government funds to a private bank account,[551] although this example is from 2003 and, indeed, is rare.

[545] 'World Bank - Illicit Financial Flows' (*World Bank,* 2017) <http://www.worldbank.org/en/topic/financialsector/brief/illicit-financial-flows-iffs> accessed 1 November 2019.

[546] The Sustainable Development Goals Report 2017 (United Nations Publications 2017).

[547] 'Joint Statement on the Fight against Illicit Financial Flows, by OECD Secretary-General Angel Gurría and Thabo Mbeki, Chair of the High-Level Panel on Illicit Financial Flows from Africa' (OECD, 2017) <https://www.oecd.org/g20/topics/taxation/joint-statement-on-the-fight-against-illicit-financial-flows-by-angel-gurria-and-thabo-mbeki.htm> accessed 10 January 2020.

[548] Raymond Baker, 'Illicit Financial Flows: The Scourge of the Developing World' Huffington Post (New York 7 January 2013) <http://www.huffingtonpost.com/raymond-baker/illicit-financial-flows_b_2427495.html?utm_hp_ref=tw> accessed 1 April 2019.

[549] Alex Cobham and Petr Janský, 'Illicit Financial Flows: An overview' (Intergovernmental Group of Experts on Financing for Development, Paris, 8-10 November 2017).

[550] Transfer pricing and transfer price abuse are explained and discussed in detail in Chapter 2.

[551] Jeffrey Owens and Alicja Majdanska, 'How Good Governance Can Curb Illicit Financial Flows out of Africa' (2015) International Tax Review 13.

Anti-bribery enforcement actions have traditionally been used as the basis for tackling corruption, but the subject of illicit flows from developing countries to developed countries is much less discussed and debated. If the issue of managing and curbing illicit flows is tackled, this could have a greater impact on corruption, as Daniel and Maton point out; despite the legislative developments in global anti-corruption policy, 'billions of dollars are illicitly transferred between jurisdictions each year – mainly from developing countries to developed countries'.[552]

IFFs are an emerging concept, and will continue to evolve, and they should not be separated from the subjects of bribery and corruption and money laundering. GFI has taken the lead in defining and providing the extent of IFFs. However, the legal uncertainty is a gap in both the literature, policy and legal instruments and may need the likes of the FATF to bring it into its recommendations. This thesis argues that the subjects of IFFs, financial secrecy, corruption and money laundering are treated separately by governments, regulators, and legislators. This trend has a direct impact on the effectiveness of law enforcement, as these subjects are interdependent.

The next chapter outlines the legal framework and definitions pertaining to corruption and bribery and how these fit with the argument of IFFs and the challenges of corruption perceptions pitched against whether legislation impacts the fight against corruption or whether it is the banks and corporations who have to do more.

CHAPTER 6 – A SOCIO-LEGAL REVIEW OF CORRUPTION

Introduction

The purpose of this chapter is to illustrate that corruption is a multi-faceted notion that will require a similar approach to deal with it from governments and financial crime-fighting bodies. Whilst many definitions of corruption exist, the author's view is that a simpler approach needs to be taken so that it is clear for both private individuals and organisations what corruption means and how breaches can occur. The definition adopted and most suitable for this thesis is the World Bank definition (described in detail below), which encapsulates more than just

[552] Tim Daniel and James Maton, 'Is the UNCAC an Effective Deterrent to Grand Corruption?' in Jeremy Horder and Peter Alldridge (eds), *Modern Bribery Law: Comparative Perspectives* (Cambridge University Press 2013).

bribery (a type of corrupt act) and includes both the public and private sectors. However, before the definitions are explored in depth, four key areas are explained that form the basis of this chapter.

Firstly, a legal definition of corruption does not exist, which potentially causes problems for governments fighting corruption on a macro level. Secondly, the perception of corruption is compromised, in that society at large is not aware of, and standard setters such as Transparency International do not adequately consider, the hidden mechanisms (primarily financial secrecy) that facilitate corruption which are found in countries such as the UK and its Overseas Territories. Thirdly, there is no clear-cut understanding of corruption, as the law is not necessary in step with the societal understanding or perception of corruption and the impact of IFFs. In the UK, despite the introduction of the Bribery Act 2010, a degree of shelter is afforded to large multinational corporations for corruption offences, which is at odds both with the perception of corruption and with the promises that were made regarding fighting corruption in the UK.[553] New or existing anti-corruption legislation in Nigeria will not have any effect or impact on offenders; there is a lack of political will with respect to enforcement, and tribal allegiances play a more important role in determining anti-corruption policy and prosecution. Fourthly, a symbiotic relationship exists between the UK and Nigeria - whilst the countries are at opposite ends of the CPI, corrupt Nigerian public officials use financial secrecy and corrupt money flows from Nigeria through secrecy jurisdictions, such as Jersey, to the UK banks.

The hypotheses examined in this chapter in more detail are:

- Hypothesis 4: The perception of corruption in the UK is contradicted by reality due to the UK's role in financial secrecy and the approach to criminal prosecution of companies involved in corruption;
- Hypothesis 5: Anti-corruption legislation / efforts do not have any impact in Nigeria due to lack of political will and the existence of tribal allegiances; and

[553] 'George Osborne - Tough Action to Clean up Corruption.' (*BBC News,* 2014) <http://www.bbc.co.uk/news/uk-30016262> accessed 17 January 2020.

- Hypothesis 7: A symbiotic relationship exists between the UK (including its Overseas Territories) and Nigeria, which provides the necessary constituents for illicit financial flows.

This chapter starts by looking at the impact of corruption on society and uses Kofi Annan's famous quote in the foreword to the United Nations Convention against Corruption 2003, which describes it as an 'insidious plague'.[554] This is reinforced by Pope and Webb who highlight that developing countries suffer most, and observations from Transparency International and the World Bank are also used to highlight the burden that corruption imposes on society. The chapter moves on to provide a criminological and etymological analysis of corruption, which assesses its definitions and origins, and the extent of corruption is analysed to reveal that, like money laundering and IFFs, the exact quantification is far from precise; but it is still important to quantify corruption, so that appropriate measures can be taken to tackle it.

This chapter re-affirms the finding that Transparency International's CPI is thwarted and unreliable when addressing perceptions of corruption in the UK. Nigeria is perceived as grossly corrupt, compared with the UK which is perceived as largely free from corruption, even though UK corruption cases show that there is a degree of protection afforded to large UK multinationals when prosecuting bribery and corruption offences. The CPI for the UK is challenged, and the BAe corruption and the Rolls-Royce deferred prosecution agreement (DPA) cases are used to reveal this double standard.

The effectiveness of the anti-corruption legislation is examined internationally through the UN and OECD Conventions, regionally with the Council of Europe and European Union provisions, and domestically focusing on the UK and Nigeria, to understand if corruption offences are effectively prosecuted. From a regional position, the European Union's legal regime and policy, or lack of them, are examined. An obvious stance for the EU is to extend its AML provisions to include recommendations for corruption and IFFs. The UK legislation and policy for corruption are examined. The introduction of the Bribery Act 2010 makes the law very clear for bribery

[554] United Nations Convention against Corruption 2003, Foreword, iii.

offences with a UK connection; but the section 7 defence of adequate procedures and the DPA regime could be abused.

The legal provisions and institutions in Nigeria are assessed and subsequently it is concluded that a good legal framework exists in Nigeria to tackle corruption, but the ingrained lack of political will and tribal alliances that continue to plunder Nigeria's resources are stronger than the desire to curb it. Successive governments have not adequately, to date, punished those who have abused the finances of the country, and the benefits of corruption currently outweigh the penalties of corruption in Nigeria. The case study of Lamido Sanusi and Diezani Alison-Madueke, which is still playing out, again demonstrates the symbiotic nature of the relationship between corruption in Nigeria and the mechanisms of financial secrecy in the UK that have been utilised by corrupt Nigerian officials. This case study involves a $20bn deficit in the Nigerian government oil revenues identified by the former bank minister Sanusi and the potential IFFs, corruption and money laundering engineered by Alison-Madueke.

The chapter concludes with an acceptance that corruption is a complex and global problem, and that the fragmented approach to fighting it could be limiting. The thesis suggests that a FATF-type standard for corruption (as suggested in Chapter 4 for IFFs) would be welcomed, as it is for money laundering. The work of non-governmental institutions such as Global Witness, Transparency International and the ICIJ raises public awareness of the issues, and this could be utilised by governments to improve policy and harness better enforcement.

Impact of corruption and extent of corruption

Kofi Annan, the former Secretary-General of the United Nations (UN), identified that corruption is a universal problem:

> Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organised crime, terrorism and other threats to human security to flourish. This evil

> phenomenon is found in all countries—big and small, rich and poor—but it is in the developing world that its effects are most destructive.[555]

Pope and Webb elaborate on the point of developing countries suffering most, by explaining the hazards and impact caused by corruption:

> Such [corrupt] practices damage businesses through market distortion, prevention of fair competition, and by undermining confidence and business ethics. However, it is the human tragedy of corrupt business cultures that highlights the need for action in particular where bribes and embezzlement of public funds are commonplace, citizens of that state suffer the most. Money meant to be used to improve schools, hospitals, roads, water supply and the like is instead transferred to a limited group of corrupt individuals.[556]

Transparency International classifies corruption in three broad categories – as grand, petty and political, depending on the sector where it occurs and the amounts of money lost. Grand corruption comprises acts committed at senior government levels that distort policies or the central functioning of the state, enabling leaders to benefit at the expense of the public benefit. Petty corruption refers to everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who are often trying to access basic goods or services in places like hospitals, schools, police departments and other agencies. Political corruption is a manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.[557] Former World Bank President Kim stated that 'in the developing world, corruption is public enemy No. 1',[558] and this is reinforced by the efforts of Transparency International which advocates:

[555] Ibid.
[556] Tim Pope and Thomas Webb, 'The Bribery Act 2010' (2010) 25 Journal of International Banking Law and Regulation 480.
[557] 'FAQS on Corruption' (*Transparency International,* 2017) <http://www.transparency.org/whoweare/organisation/faqs_on_corruption/2/> accessed 24 November 2019.
[558] Anna Yukhananov, 'World Bank President Calls Corruption 'Public Enemy No. 1'' (*Reuters US Edition,* 2013) <http://www.reuters.com/article/2013/12/19/us-worldbank-corruption-idUSBRE9BI11P20131219> accessed 29 January 2020.

> Corruption impacts societies in a multitude of ways. In the worst cases, it costs lives. Short of this, it costs people their freedom, health, or money.[559]

The prospect of arriving at a figure that evaluates the extent of corruption is daunting, as it is 'virtually impossible to determine the exact extent'.[560] However, without visibility of these values, the undertaking to mitigate the impact of financial crime on societies becomes a harder task. Establishing effective global reporting mechanisms for the cost of financial crime will enable more visibility and awareness that provides the motivation for governments and regulators to address the issues that affect and destroy lives of the poorest and most vulnerable where the flow of illicit money is becoming easier.

The World Economic Forum estimated the extent of corruption at 5% of global GDP, approximately $2.6tn, and the amount looted by corrupt leaders was in the region of $40bn;[561] and that corruption increases the cost of doing business by 10% globally.[562] Figures published by the World Bank in 2004[563] use the figure of $1tn of bribes paid each year, set against the annual world GDP of $30tn in 2002-03. In 2014 the EU announced that annual losses attributed to corruption totalled €120bn[564] – the vast majority of this money is lost through tax revenues not collected and misdirected foreign investment.[565] The UK Anti-Corruption Plan does not attempt to provide the extent of the cost of corruption in the UK,[566] nor does the update published two years later.[567] Transparency International, quoting from its 2011 Corruption

[559] 'FAQS on Corruption' (Transparency International, 2017) <http://www.transparency.org/whoweare/organisation/faqs_on_corruption/2/> accessed 24 November 2019.
[560] Karen Harrison and Nicholas Ryder, The Law relating to Financial Crime (Ashgate Publishing 2013), 143.
[561] 'Clean Business is Good Business- The Business Case against Corruption' (*United Nations*, 2008) <https://www.unglobalcompact.org/library/158> accessed 18 August 2019.
[562] 'Global Agenda Council on Anti-Corruption & Transparency 2012-2014' (*World Economic Forum,* 2012) <http://www3.weforum.org/docs/GAC/2013/Connect/WEF_GAC_Anticorruption_Transparency_2012-2014_Connect.pdf> accessed 17 February 2020.
[563] 'The Costs of Corruption' (*The World Bank*, 2004) <https://www.worldbank.org/en/search?q=costs+of+corruption> accessed 20 August 2021.
[564] James Fontanella-Khan, 'Corruption in the EU Costs Business €120bn a Year, Study Finds' *Financial Times* (3 February 2014) <http://www.ft.com/cms/s/0/28f11862-8cf9-11e3-ad57-00144feab7de.html?siteedition=uk#axzz2sLiCCodw> accessed 4 February 2020.
[565] 'Report from the Commission to the Council and the European Parliament - EU Anti-Corruption Report' (European Commission 2014).
[566] 'UK Anti-Corruption Plan' (HM Government 2014).
[567] 'Progress Update on UK Anti-Corruption Plan' (HM Government 2016).

Report in the UK,[568] estimates that 38,000 people are involved in organised crime in the UK, which costs the economy anywhere between £20bn and £30bn per year.[569] The UK Anti-Corruption Strategy 2017–22 also does not attempt to quantify the extent of corruption in the UK, and reverts to the World Bank and IMF statistics,[570] and the Year 1 Update focuses on the accomplishments of the 2018 Transparency International CPI rating for the UK and the 2018 UK FATF review.[571] This congratulatory tone in the report is at odds with the findings in this thesis, which suggest that the extent of corruption in the UK is considerable but largely hidden through exploitation of financial secrecy by corrupt actors. In Nigeria, some estimates suggest that corruption could cost as much as 37% of the GDP of Nigeria by 2030.[572] Unfortunately, whilst this number seems large and sensational, it is not beyond the reality of how corruption is continuing its grip on Nigeria, even despite Buhari's strong rhetoric on the fight against corruption.[573]

Criminological consideration of corruption

Criminology is a scientific discipline which has crime as the object of its analysis.[574] Within the boundary of corruption, the criminological concepts include organised crime, occupational crime and corporate crime. Generally, criminology as a discipline uses criminal law as a basis on which to define crime; however, Brooks points out that the legal basis for corruption 'fails

[568] Chandrashekhar Krishnan and Robert Barrington, *Corruption in the UK - Overview, Policy, Recommendations* (Transparency International UK 2011) 2.
[569] 'UK Corruption Statistics' (*Transparency International,* 2011) <https://www.transparency.org.uk/corruption/corruption-statistics/uk-corruption-statistics/> accessed 28 November 2019.
[570] 'United Kingdom Anti-Corruption Strategy 2017 – 2022' (HM Government 2017), 16.
[571] 'United Kingdom Anti-Corruption Strategy 2017-2022 - Year 1 Update' (HM Government 2018).
[572] 'Impact of Corruption on Nigeria's Economy' (PWC 2016).
[573] Obadiah Mailafia, 'President Buhari and the Anti-Corruption War' *Vanguard* (17 October 2017) <https://www.vanguardngr.com/2017/10/president-buhari-anti-corruption-war/> accessed 21 December 2019.
[574] Wim Huisman and Gudrun Vande Walle, 'The Criminology of Corruption' in Gjalt de Graaf, Patrick von Maravić and Pieter Wagenaar (eds), *The Good Cause - Theoretical Perspectives on Corruption* (Barbara Budrich Publishers 2010).

to encapsulate the range of crimes that are part of the continuum of corruption'.[575] Within the boundary of IFFs, both legal and illegal practices can contribute to IFFs. For corruption, from a criminological perspective, Nelkin asks a similar question, 'must we draw the line?', and should the criminological study of corruption be limited to corrupt behaviour that is criminalised by the law (most commonly from bribery offences), or should the scope be extended to legal behaviour that leads to the same sort of abuse of power?[576] There is an interdependence between sociological factors and criminology, as they share characteristics such as culture and education which can influence crime and thus the level of corruption.[577] Huisman and Gudrun speculate whether the 'definition of corruption should go beyond legal boundaries', acknowledging the problem of widening the scope beyond the obvious forms of bribery offences and further blurring the boundaries between corrupt and non-corrupt acts.[578] This is pertinent because IFFs, by their nature, blur the distinction between illegal and legal practices.

From a criminological perspective, there are familiar connections between rich countries and poor countries, where lobbying (perfectly legal) is preferred and accepted by rich countries, and corruption (illegal) is commonly described as being prolific in poor countries.[579] Brookes suggests that 'criminology and sociology offer a far more nuanced approach' to corruption, as both legal but immoral acts (such as nepotism) and illegal acts (such as fraud) are part of the 'continuum of corruption'.[580]

Origin and definitions of corruption

The purpose of providing a detailed history and evolution of the term 'corruption' is important, as it demonstrates the increasing criminological and socio-legal approach to understand the corruption landscape, past and present. The origin of the word 'corrupt' can be traced back to

[575] Graham Brooks, *Criminology of Corruption: Theoretical Approaches* (Springer 2016) 26.
[576] David Nelken, 'White Collar and Corporate Crime' in Mike Maguire, Rodney Morgan and Robert Reiner (eds), *The Oxford Handbook of Criminology* (Oxford University Press 2007).
[577] Eugen Dimant and Thorben Schulte, 'The Nature of Corruption: An Interdisciplinary Perspective' (2016) 17 German Law Journal 53.
[578] Wim Huisman and Gudrun Vande Walle, 'The Criminology of Corruption' in Graaf, Maravić and Wagenaar (eds), *The Good Cause - Theoretical Perspectives on Corruption* (Barbara Budrich Publishers 2010).
[579] Nauro F Campos and Francesco Giovannoni, 'Lobbying, Corruption and Political Influence' (2007) 131 Public Choice 1.
[580] Graham Brooks*, Criminology of Corruption: Theoretical Approaches* (Springer, 2016) 4.

the Latin word *corrumpere,* which means to break or destroy.[581] Literally translated, it is the total or collected decay or dissolution, and there is no indication in Latin that there is a connection with respect to public office. Treisman defines corruption as 'the misuse of public office for private gain'.[582] However, as the demarcation of public office and private corporation is blurred, this definition is neither adequate nor desirable in the modern world. Mikkelsen breaks down the meaning of corruption, but still conforms to the public office definition and explains that it is a subset of particularistic governing.[583] In the context of corruption, particularism is the 'exclusive attachment to one's own group, party, or nation'[584] and includes patronism, nepotism, clientism, and 'pork barrel' politics. Patronism is where appointments are assigned by politicians; nepotism is found when jobs are provided by those in power to their friends or relatives; clientism is known as a social order dependent on relations of patronage; and, finally, 'pork barrel' politics is the use of government funds, designed to please voters or legislators to win votes. All of these different forms of corruption are relevant and, according to Kempe, are familiar aspects found in the corruption cases in Nigeria.[585]

Mikkelsen clarifies the meaning of corruption against that of the other forms of particularism and against bribery and extortion,[586] concluding that 'corruption consists in deviations from public duty by breach of impartiality for the purpose of material gain'. This aligns with Treisman's standard definition as 'misuse of public office for private gain'.[587] Mikkelsen's key point is that the concept of corruption has moved on from the Latin word *corrumpere* and forms a subset of the particularistic form of governing, and the novel evolution is the fact that, with corruption, there is material gain where there is not necessarily with the other forms of particularism. The OECD definition of 'corruption' focuses on the role of public officials:

[581] Collins Latin Dictionary (Collins, 2005).
[582] Daniel Treisman, 'The Causes of Corruption: A Cross-National Study' (2000) 76 Journal of Public Economics 399.
[583] Kim Sass Mikkelsen, 'In Murky Waters: A Disentangling of Corruption and Related Concepts' (2013) 60 Crime, Law and Social Change 357.
[584] 'Definition of Illegal in English' (Oxford Dictionaries, 2018) <https://en.oxforddictionaries.com/definition/illegal> accessed 4 December 2018.
[585] Kempe Ronald Hope Sr, 'Corruption in Nigeria' in *Corruption and Governance in Africa* (Palgrave and Macmillan, Cham 2017).
[586] Kim Sass Mikkelsen, 'In Murky Waters: A Disentangling of Corruption and Related Concepts' (2013) 60 Crime, Law and Social Change 357.
[587] Daniel Treisman, 'The Causes of Corruption: A Cross-National Study' (2000) 76 Journal of Public Economics 399.

> Corruption involves behaviour on the part of officials in the public sector, whether politicians or civil servants, in which they improperly and unlawfully enrich themselves, or those close to them, by misuse of the public power entrusted to them.[588]

Whilst this advancement of the meaning of corruption is accepted, corruption is not exclusive to public office and involves private entities also; yet the evolving nature of global economies, banks, companies, shareholders and civil society means that a wider definition is required to fully explain the concept and various forms of corruption.

Transparency International defines corruption as 'the abuse of entrusted power for private gain'.[589] This definition moves past the exclusive public office restriction and allows the communication of the concept at all levels. The World Bank provides a more encompassing definition by stating that corruption 'is not confined to the public sector and, in that sector, to administrative bureaucracies. It is not limited to the payment and receipt of bribes',[590] and it acknowledges that:

> Corruption takes various forms and is practiced under all forms of government, including well-established democracies. It can be found in the legislative, judicial, and executive branches of government, as well as in all forms of private sector activities.[591]

This dispels the view that corruption only occurs in public institutions of developing countries. The private sector is not immune to corruption, and corporations in established democracies can host a variety of corrupt practices. Zhang[592] also follows the World Bank view on corruption

[588] 'Corruption: A Glossary of International Standards in Criminal Law' (OECD 2008), 23.
[589] 'The Anti-Corruption Plain Language Guide' (Transparency International, 2009).
[590] 'Helping Countries Combat Corruption: The Role of the World Bank' (The World Bank Group 1997),19.
[591] Ibid.
[592] Yan Zhang, Liqun Cao and Michael S Vaughn, 'Social Support and Corruption: Structural Determinants of Corruption in the World' (2009) 42 Australian & New Zealand Journal of Criminology 204.

as the use of one's public position for illegitimate private gains, appreciating that these activities often disregard precise categorisation.

Beetham suggests that the World Bank definition is too narrow and proposes that a wider 'conception' of corruption is needed to encapsulate the harmful practices that are outside of that definition.[593] Brooks concludes that there is no conclusive definition of the term 'corruption' and cites problems encountered in attempting to construct a consistent and unambiguous meaning, especially considering international perspectives.[594] The same could be said when attempting to establish a legal definition or construct for corruption. Chauhan states that there is no international legal definition of corruption, which is largely due to the challenges of aligning laws, jurisdictional issues, and cultural and societal norms that treat corruption differently.[595] Many governments and their banks in developed countries take advantage of being the recipient country that handles the proceeds from corruption, and this is a factor that feeds off this disarray.

The United Nations Convention against Corruption 2003 (UNCAC) and the OECD Anti-Bribery Convention[596] do not define corruption, nor does the UK Bribery Act 2010, although it could be argued that it is partially expressed through the various bribery offences. La Palombara suggests that, without expressly stating what acts are prohibited, it would be difficult to ascertain what conduct amounts to corruption.[597] Mikkelsen observes that there are problems with legislation driving the corruption agenda, which is a global challenge, and comparisons across different legal systems are difficult to manage. It is the offence of bribery that is usually codified and prohibited by law, and other corrupt acts could be excluded and thus exploited – for example, transferring stolen money from Nigerian government revenues through professional intermediaries into UK financial institutions to purchase property.[598] Criminals and

[593] David Beetham, 'Moving Beyond a Narrow Definition of Corruption' in Whyte (ed), How Corrupt is Britain (Pluto Press 2015).
[594] Graham Brooks, *Criminology of Corruption: Theoretical Approaches* (Springer 2016) 19.
[595] Viri Chauhan, 'Why Corruption is Not Legally Defined' (2014) Financial Regulation International 6.
[596] OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997.
[597] Joseph Lapalombara, 'Structural and Institutional Aspects of Corruption' (1994) 61 Social Research 325.
[598] UK National Risk Assessment of Money Laundering and Terrorist Financing (HM Treasury and Home Office 2015), 44.

professional enablers are usually a few steps ahead of legislative development when it comes to exploiting avenues for illicit gain,[599] and hence there may need to be more innovative, contemporary and fit-for-purpose anti-corruption regimes and movements to tackle corruption.

Lambsdorff, who was responsible for creating Transparency International's CPI,[600] recognised corruption as the 'misuse of public power for private benefit' and pragmatically warns that theorising about the absolute definition is futile, as that effort could be used more constructively.[601] Whilst this is true, it is important to arrive at an internationally accepted legal definition of corruption, so that it is clear what is prohibited by the law and what the sanctions are. It makes the awareness and communication of corruption easier through anti-corruption campaigns and it can be more easily understood and addressed by society so that there is at least a common understanding of what corruption is. The collective understanding and codification of the origins and meanings of corruption, as well as the environments in which they occur, are important in practice, because some institutions and actors not only operate in the public and private sectors (for example, joint ventures between the state and private companies) but also serve the public as private actors. Clarifying and harmonising the meaning allows a more effective examination of whether corruption exists and, if so, to what level.

Bribery is one of the instruments of corruption and is often the mechanism and catalyst that allows the facilitation of corrupt acts. Bribery is the payment for an act or service that a public official or private service provider allows or facilitates that they are not authorised to do. It is enabling the performance of an act through an illegal payment (a bribe) that would allow services or contracts to be won or facilitated unduly. Lawler defines bribery as:

> The receiving of or offering/giving of any benefit (in cash or in kind) by or to any public servant or office holder or to a director or employee of a private company in order to induce that person to give improper assistance in breach

[599] Kim Sass Mikkelsen, 'In Murky Waters: A Disentangling of Corruption and Related Concepts' (2013) 60 Crime, Law and Social Change 357.
[600] Multinationals and Transfer Pricing (Routledge 2017).
[601] Johann Graf Lambsdorff, *The Institutional Economics of Corruption and Reform* (Cambridge University Press 2007) 15.

> of their duty to the government or company which has employed or appointed them.[602]

Bribery is normally classified as 'direct' or 'indirect'.[603] Indirect bribery is using a third party to make the payment that constitutes a bribe and is the more common form, where an agent or third party acts for an organisation to secure a contract and/or competitive advantage, and the agent would receive a commission on successful signing of the contract.[604] The reason for clarifying the difference is to do with ensuring that companies or individuals who use third parties cannot plead ignorance of the fact that a bribe has been paid within or through their organisation. The OECD defines a 'bribe' as:

> An offer, promise, or giving of any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.[605]

The UN and OECD Conventions, and the related legislation in the UK and Nigeria, are generally focused on defining bribery offences, as these are more clearly identifiable. Focusing on the bribe-payers suggests that this is the start of the lifecycle of a corrupt act that could include improper facilitation of a legal transfer price operation. This thesis asserts that there are links between IFFs (in particular, transfer price abuse) and bribery and corruption. Transparency International's Bribe Payers Index (BPI) advocates that corruption and bribery are problems for both the developed and the developing world, and it provides evidence of bribery between private companies and dismisses the view that bribery only exists between private individuals/companies and public officials.[606] It was produced by surveying company executives

[602] David Lawler, *Frequently Asked Questions in Anti-Bribery and Corruption* (Wiley 2012) 102.
[603] Kenneth D. Beale and Paolo Esposito, 'Emergent International Attitudes Towards Bribery, Corruption and Money Laundering' (2009) 75 Arbitration 360.
[604] Ibid.
[605] OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997.
[606] Deborah Hardoon and Finn Heinrich, 'Bribe Payers Index 2011' (Transparency International 2011).

from 28 of the largest economies that assessed their perceived likelihood to pay bribes outside of their home country.[607]

Between the 2008 BPI and the 2011 BPI, there has not been any reduction in the perception of frequency of bribery.[608] The BPI has not been updated since the 2011 publication at the time of writing this thesis. Chinese and Russian companies were seen as most likely to pay bribes,[609] which concurs with the 'Where the Bribes are' map,[610] which presents a pictorial analysis of the US Foreign Corrupt Practices Act (FCPA) 1977 cases.

Corruption Perceptions Index anomalies

Transparency International is a non-government organisation (NGO) that focuses on raising awareness of corruption, and it works with governments, businesses and society to stop the abuse of power, bribery and secret deals.[611] The Transparency International CPI ranks countries according to their perceived levels of public sector corruption, determined by experts and business people, assessments and opinion surveys.[612] According to the 2020 CPI, Denmark and New Zealand are the least corrupt countries and Somalia is the most corrupt country. Western Europe was best performing and regions of Sub-Saharan Africa were identified as worst performing. The UK is the 11th least corrupt country, whereas Nigeria is ranked as the 149th out of 180 countries. Looking at the wide disparity in the CPI ranking between the UK and Nigeria, Xypolia is critical of the CPI, especially following the revelations of the Panama Papers and the UK's participation in IFFs:

> It is astonishingly hypocritical if we accept these indexes [CPI] as the standard way of grasping corruption and democracy, objectivity will have been

[607] Ibid.
[608] Juanita Riaño and Robin Hodess, *Bribe Payers Index 2008* (Transparency International 2008).
[609] Ibid.
[610] 'Where the Bribes Are: Penalties in U.S. Government FCPA Cases Since 1977' (*Mintz Group,* 2018) <http://fcpamap.com> accessed 28 November 2019.
[611] 'What is Transparency International' (*Transparency International,* 2020) <https://www.transparency.org/about> accessed 5 March 2020.
[612] 'Corruption Perceptions Index 2020' (Transparency International, 2021) <https://www.transparency.org/cpi2020> accessed 11 August 2021.

> replaced by an unmistakable political agenda. It is high time we stopped pointing fingers and looked closer to home.[613]

This is confirmed when comparing the CPI ranking against the FSI ranking, where a remarkable finding is revealed. Some countries which have a low CPI ranking also seem to be listed as most secretive, with a high FSI score. For example, Switzerland is ranked as the 3rd least corrupt country in the world, while at the same time it is one of the most financially secretive in the world. Other countries with a high secrecy score are also compared, including the UK. Nigeria is shown as one of the most corrupt countries in the world and appear on the 34th on the FSI.

Country	Transparency International Corruption Perceptions Index ranking 2020[614]	Tax Justice Network Financial Secrecy Index ranking 2020[615]
Switzerland	3	3
Singapore	3	5
Luxembourg	9	6
UK	11	1 (includes UK Overseas Territories)
Nigeria	149	34

Should the UK have a higher CPI if it allows the flow of illicit finance? The CPI provides a tool to bring the subject of bribery and corruption into the consciousness of society and provides an easy-to-understand benchmark that measures aspects of corruption by country. The CPI also puts pressure on countries to tackle corruption, as there are consequences of being ranked at the lower end of the table. However, in Nigeria, the CPI ranking will not do anything to impact corruption. Thomson and Shah provide a simple analysis:

[613] Ilia Xypolia, 'Corruption Rankings are one of the Great Deceptions of our Era' (The Conversation 2016) <https://www.researchgate.net/profile/Ilia_Xypolia/publication/303326024_Corruption_rankings_are_one_of_the_great_deceptions_of_our_era/links/573cd6eb08ae9ace840fe599/Corruption-rankings-are-one-of-the-great-deceptions-of-our-era.pdf> accessed 8 August 2020.

[614] 'Corruption Perceptions Index 2020' (Transparency International, 2021) <https://www.transparency.org/cpi2020> accessed 8 August 2021.

[615] 'Financial Secrecy Index 2020' (Tax Justice Network, 2020) <https://fsi.taxjustice.net/en/introduction/fsi-results> accessed 22 August 2021.

> Organizations such as Transparency International say that corruption indices like the CPI are a wake-up call to political leaders and to the public at large to confront the abundant corruption that pervades so many countries. The truth is that governments and citizens are fully aware of the corruption which pervades their country. The problem is that the people are powerless to stop corruption.[616]

The purpose of comparing the CPI and FSI is to bring to the forefront a contradiction: the combined secrecy score of the UK would render it the highest-ranked country when its Overseas Territories are included. This view helps to clarify the apparent inconsistency that countries such as the UK are regularly ranked among the 'cleanest' and least corrupt in international corruption rankings – while also sheltering oceans of dirty money.[617]

The law and soft law analysis of corruption

This thesis contends that the current anti-corruption legislation and soft law are not having a remarkable impact in the UK and/or a significant impact in Nigeria. To examine this hypothesis, the chapter now explores the main legislative and soft law provisions. The huge scale and volume of corruption and bribery across the globe are evidenced also by the institutions that aim to counter it. Some of the biggest (in terms of their membership) and most influential (in terms of their economic and political powers) international organisations have recognised the serious consequences of corruption for the international community and endeavoured to create legal and political drivers to prevent and punish it. Some of these are considered below.

United Nations

Nigeria and the UK are signatories to UNCAC, and both countries have ratified the Convention. As dualist countries, they must incorporate the Convention into their respective national legal systems. The Nigerian Constitution reads:

[616] Theresa Thompson and Anwar Shah, 'Transparency International's Corruption Perceptions Index: Whose Perceptions Are They Anyway?' (University of Maryland and the World Bank 2005) <http://siteresources.worldbank.org/PSGLP/Resources/ShahThompsonTransparencyinternationalCPI.pdf> accessed 17 February 2020.

[617] 'What is a Secrecy Jurisdiction' (*Tax Justice Network,* 2020) <https://www.financialsecrecyindex.com/faq/what-is-a-secrecy-jurisdiction> accessed 15 April 2020.

> No treaty between the Federation and any other country shall have the force of law (except) to the extent to which any such treaty has been enacted into law by the National Assembly.[618]

The ratification of a treaty by the executive is not enough; the treaty must be enacted into domestic law, as in other dualist states, such as the UK. But Nigeria is notorious for signing or ratifying international agreements and doing virtually nothing to implement them.[619]

The United Nations General Assembly Resolution 55/61, 2000, recognised that an effective anti-corruption legal instrument independent of the United Nations Convention against Transnational Organised Crime (Resolution 55/25) was necessary, hence UNCAC[620] came into force on 14 December 2005 in accordance with Article 68(1) of Resolution 58/4. The United Nations has 186 State Party affiliations for the Convention against Corruption.[621] The UK and Nigeria signed UNCAC on 9 December 2003, and the UK ratified it on 9 February 2006 and Nigeria on 14 December 2004.

Article 1 of UNCAC, which sets out the general aims of the Convention, seeks to prevent corruption and to put into place measures to fight corruption more effectively. This includes international co-operation, recovery, advocating integrity, accountability and appropriate management of public affairs and property.

Article 5 stipulates that each UN Member State shall invoke legal instruments to prevent and fight corruption, and collaborate internationally with other UN members and organisations aimed at preventing corruption. Carr suggests that UNCAC could be one of the tools that allows curtailing and management of corruption globally, but warns that:

[618] Constitution of the Federal Republic of Nigeria 1999.

[619] Olu Fasan, 'Monist or Dualist: Nigeria Must Respect International Rule of Law' *Business Day* (16 October 2017) <https://businessday.ng/columnist/article/monist-dualist-nigeria-must-respect-international-rule-law/#:~:text=A%20monist%20state%20regards%20international,automatically%20become%20part%20of%20domestic%E2%80%A6> accessed 22 February 2020.

[620] United Nations Convention against Corruption 2003.

[621] 'United Nations Convention against Corruption Signature and Ratification Status' (*United Nations,* 2017) <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html> accessed 29 November 2019.

> Regulation in the absence of enforcement is meaningless and, at best, is a political exercise that does not serve the citizens of a state well.[622]

Whilst Carr[623] may see UNCAC as a pivotal piece of international regulation, Daniel and Maton are critical, although they do acknowledge that the raising of international awareness of countering corruption and raising it on political agendas is obviously a step in the right direction, but argue that the fundamental weakness of UNCAC is that there is a reliance on the Member State to act if the citizens of that Member State are victims of corruption. This is obviously a problem when corrupt leaders pursue grand corruption.[624] Most international law relies on enforcement at national level, and the lack of enforcement by an international institution does not necessarily mean that the law is meaningless. At the same time, ratification and implementation of international law do not necessarily lead to effective enforcement either. In the context of corruption and bribery, an important point to consider is that the international flow of illicit money does necessitate an international response and enforcement, and therefore Carr's point is valid.

Article 6 of UNCAC is focused around setting up or assigning a body to manage the corruption and to implement policies referred to in Article 5 to increasing and disseminating knowledge about the prevention of corruption. This already exists in Nigeria, where the anti-corruption legislation, the Corrupt Practices and other Related Offences Act 2000,[625] and organisations such as the Economic and Financial Crimes Commission,[626] have been in place for a while, yet the difficulty has always been the lack of effective enforcement, especially with respect to the political elite.

[622] Indira Carr, 'Corruption, Legal Solutions and Limits of Law' (2007) 3 International Journal of Law in Context 227.
[623] Indira Carr, 'Corruption in Africa: is the African Union Convention on Combating Corruption the Answer?' (2007) Journal of Business Law 111.
[624] Tim Daniel and James Maton, 'Is the UNCAC an Effective Deterrent to Grand Corruption?' in Jeremy Horder and Peter Alldridge (eds), *Modern Bribery Law: Comparative Perspectives* (Cambridge University Press 2013).
[625] The Corrupt Practices and other Related Offences Act 2000 (Nigeria).
[626] 'Economic and Financial Crimes Commission' (*EFCC,* 2020) <https://efccnigeria.org/efcc/> accessed 22 February 2020.

Article 15 of UNCAC addresses the bribery of national public officials and covers both the offering and receiving of bribes, unlike the OECD Anti-Bribery Convention[627] (examined below) that focuses purely on the bribe giver. Article 16 of UNCAC covers foreign and public officials and includes officials of public international organisations. Effective enforcement requires the will of the country to put into place measures that reflect UNCAC and implement domestic legislation, and the political will to follow through with enforcement of breaches. This task would be a challenge for Nigeria, given the socio-legal and political tensions that manifest themselves in its culture. Furthermore, the challenge of reconciling IFFs and money laundering alongside corruption leaves a problem that is invariably complex, which enables corrupt individuals and corporations to continue perverting the efforts of anti-financial crime implementation from taking hold in the country.[628]

Article 20 of UNCAC introduced the recommendation to criminalise illicit enrichment, which is defined as a 'significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income'.[629] Nigerian officials have managed to transfer large sums of illicit money with relative ease into UK banks,[630] which calls into question the adequacy of the range of international instruments designed to manage this situation. UNCAC could be an instrumental weapon against global corruption by the fact that it is one of the very few Conventions that covers most countries and has signatories that have ratified to implement local anti-corruption legislation. However, since the UNCAC objectives rest on the State Parties to act, it may not have the required stimulus to enact change.

Where a strong rule of law[631] exists, for example in the UK, the signature and ratification of UNCAC could have considerable consequences for corrupt practices that were once accepted but must be adapted, since ratification obliges the country to introduce the legal provisions. However, there is a disregard for the rule of law in Nigeria, where the enforcement institutions

[627] OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997.
[628] 'Nigeria's Missing Billions Turn up in Familiar Places' *Financial Times* (London 2 August 2017) <https://www.ft.com/content/d2acb4b0-7774-11e7-90c0-90a9d1bc9691> accessed 7 February 2020.
[629] United Nations Convention against Corruption 2003.
[630] 'British Banks Complicit in Nigerian Corruption, Court Documents Reveal' (Global Witness, 2010) <http://www.globalwitness.org/library/british-banks-complicit-nigerian-corruption-court-documents-reveal> accessed 15 November 2019.
[631] Tom Bingham, *The Rule of Law* (Allen Lane, 2010).

are not independent of the government and the signing and ratifying of UNCAC and implementing local law will have little impact on the problem of corruption in that country. There has not been significant enforcement action in Nigeria against perpetrators – quite the opposite, where they have been treated as heroes returning from battle, even though they may have been in a UK prison following a conviction for corrupt practices.[632] UNCAC has provisions for prosecution, investigation and anti-corruption commissions, namely Article 36, which requires specialised law enforcement authorities to be set up in Member States. These types of agencies existed in Nigeria prior to UNCAC and some were set up after ratification of UNCAC. However, the key problem and Achilles' heel in the prosecutor's armour in Nigeria is section 308 of the Nigerian Constitution, which grants civil and criminal immunity to the President, Vice President and State Governors whilst in office.[633] This, combined with the lack of political will to combat corruption and self-interest of the political elite, is another serious blow for the millions of people in Nigeria.

In cases of corruption, there is no recourse for an affected country's society or anti-corruption bodies when Heads of State embezzle the country's revenues, as highlighted in the Abacha case,[634] thwarting the efforts of the international community.[635] When a country such as Nigeria can be a signatory to UNCAC and ratify it, but it is not held accountable to the Convention for flagrant breaches, this undermines the effectiveness of UNCAC and also reveals UNCAC's greatest weakness in the lack of enforcement or sanction powers, despite the status of UNCAC as a legally binding instrument. Davis suggests that 'although there are other international treaties dealing with corruption, none are as comprehensive as UNCAC'.[636] However, Daniel and Maton are critical of the success of UNCAC, citing the corruption case of Ibori who was convicted on several counts of money laundering in the UK and sentenced to 13

[632] 'Delta State Governor, Speaker Celebrate Ex-Convict James Ibori on Birthday' (Sahara Reporters, 2017) <http://saharareporters.com/2017/08/04/delta-state-governor-speaker-celebrate-ex-convict-james-ibori-birthday> accessed 20 December 2019.
[633] 'Combating illicit Financial Flows: The role of the International Community' (*U4 Anti-Corruption Resource Centre,* 2014) <http://www.u4.no/publications/combating-illicit-financial-flows-the-role-of-the-international-community/> accessed 2 June 2020.
[634] James Maton and Tim Daniel, 'The Kleptocrat's Portfolio Decisions' in Reuter (ed), *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (World Bank 2012).
[635] Maggie Fick and David Piling, 'Nigeria Struggles to Recover Looted Billions' Financial Times (6 June 2016) <https://www.ft.com/content/34b4e508-2bfc-11e6-bf8d-26294ad519fc> accessed 3 January 2020.
[636] Kevin E. Davis, 'The Prospects for Anti-Corruption Law: Optimists Versus Skeptics' (2012) Hague Journal on the Rule of Law 319.

years' imprisonment.[637] Their suggestion was that external factors outside of UNCAC led to the conviction, and it was the UK chapter of Transparency International and pressure (and criticism) from the OECD Working Group on Bribery that had more to do with this successful conviction in the UK than UNCAC.[638] The simplicity and potential of UNCAC as a global policy maker for anti-corruption is compelling. UNCAC clearly defines provisions that member countries need to adopt in the fight against corruption, although the major weakness ironically is the lack of the ability for UNCAC to issue enforcement actions, compared to the soft law measures of the OECD. For example, the OECD Secretary-General Angel Gurría has remarked as follows:

> At the OECD, we set out international rules. OECD members can choose whether or not they want to turn them into binding agreements. But as there is no single authority to set the rules in international law, many technically non-binding OECD standards or norms are adhered to as if they were binding. This is what many refer to as the power of soft law.[639]

Organization for Economic Cooperation and Development

The focus of the OECD historically has been bribery of foreign public officials, but it could be pivotal in changing the current approach to bribery and corruption within the context of IFFs. This is because the OECD countries have the enablers that facilitate IFFs. For example, the UK and its Overseas Territories offer offshore financial products, secrecy jurisdictions and tax havens. The OECD has considerable influence over its member countries and it has a number of tools that it uses to ensure their obligations through a staged country review visit system. The OECD is assessed in detail to understand whether it can pioneer effective change, that Global Financial Integrity, Global Witness and the Tax Justice Network advocate, to address weaknesses in developed countries (such as the UK and Switzerland) with respect to IFFs.

[637] Mark Tran, 'Former Nigeria State Governor James Ibori Receives 13-Year Sentence' *The Guardian* (17 April 2012) <http://www.guardian.co.uk/global-development/2012/apr/17/nigeria-governor-james-ibori-sentenced> accessed 8 December 2019.
[638] Tim Daniel and James Maton, 'Is the UNCAC an Effective Deterrent to Grand Corruption?' in Jeremy Horder and Peter Alldridge (eds), *Modern Bribery Law: Comparative Perspectives* (Cambridge University Press 2013).
[639] 'Harmony and Dissonance in International Law' (105th Annual Meeting of the American Society of International Law, Washington DC, 25 March 2011) - Remarks by Angel Gurría, OECD Secretary-General.

The OECD Anti-Bribery Convention[640] was one of the first international measures that addressed the issues of bribery and corruption. The OECD Anti-Bribery Convention[641] stipulates that all participating countries shall criminalise the act of bribing a foreign official and draw up suitable sanctions for violations and agreement for extradition arrangements for those charged with bribery offences. Horder and Aldridge suggest that internationally the OECD Anti-Bribery Convention[642] 'is currently the most important'[643] in terms of efficacy, and this is supported by Lawler, who states:

> The OECD Convention is the most effective international Convention to date, with widespread support by governments and business organizations.[644]

The OECD Anti-Bribery Convention[645] has a monitoring system in place that other Conventions do not, which makes it stand out in terms of enforcement and influence over the OECD countries.[646] Only the developed countries are signatories and, whilst classed as soft law, it has more impact than UNCAC. It was the OECD Working Group that put pressure on the UK that led to the implementation of the Bribery Act 2010. It is also the OECD that is taking the lead on IFFs through various initiatives such as the Base Erosion and Profit Shifting (BEPS) project,[647] which proposes a standardisation of companies reporting tax internationally. For any significant change to be made on corruption, it cannot be isolated from IFFs, financial secrecy and money laundering. Whilst the problem of IFFs and associated issues is a myriad of financial crimes, tackling IFFs including bribery and corruption will require a distinct and unified approach.

[640] OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997.
[641] Ibid.
[642] Ibid.
[643] Jeremy Horder and Peter Aldridge, *Modern Bribery Law: Comparative Perspectives* (Cambridge University Press 2013) 17.
[644] David Lawler, *Frequently Asked Questions in Anti-Bribery and Corruption* (Wiley 2012) 11.
[645] OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997.
[646] 'Our Global Reach' (OECD, 2020) <https://www.oecd.org/about/members-and-partners/> accessed 8 August 2020.
[647] 'OECD/G20 Base Erosion and Profit Shifting Project, Action 13 - Country by Country Reporting Implementation Package' (OECD 2015).

The OECD could have the most substantial impact in developed countries, such as the UK and its Overseas Territories, in eliminating the demand (in particular, corrupt criminals and individuals and corporations who evade/avoid tax from developing countries) for IFFs created by its offshore financial centres, most recently exposed by the Panama[648] and Paradise[649] Papers.

The OECD Anti-Bribery Convention[650] instructs any party to the Convention to make it a criminal offence to bribe a foreign public official,[651] under its national laws, and to invoke sanctions and criminal penalties for the offence, and the proceeds of bribery should be subject to confiscation orders.[652] Article 7 of the OECD Anti-Bribery Convention[653] requires countries to make bribery of both its own public officials and foreign public officials a predicate offence, which would enable proceeds of bribery and corruption to be classed as money laundering offences. For both Nigeria and the UK, any criminal offence that generates proceeds from crime will be classed as a predicate offence.

As with UNCAC, there is encouragement for co-operation between countries in cases of bribery of a public official and jurisdictional responsibilities.[654] One of the strengths of the OECD Anti-Bribery Convention[655] is the ability to enforce and challenge policy in countries that are party to the Convention. Article 5 relates to enforcement and states that a country 'shall not be influenced by considerations of national economic interest'.[656] Article 5 was scrutinised in the BAe (Al Yamamah) bribery case,[657] where it was debated at length whether the UK government was putting its economic interests above the requirements of Article 5 not to investigate and

[648] Geoff Dyer, Max Seddon and Richard Milne, 'Panama Papers Leak Highlights Global Elite's Use of Tax Havens' Financial Times (4 April 2016) <https://www.ft.com/content/549c1e96-f9e7-11e5-8f41-df5bda8beb40> accessed 21 September 2019.
[649] 'The 'Paradise Papers' and the Long Twilight Struggle Against Offshore Secrecy' (International Consortium of Investigative Journalists, 2017) <https://www.icij.org/investigations/paradise-papers/paradise-papers-long-twilight-struggle-offshore-secrecy/> accessed 15 February 2020.
[650] OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997.
[651] Ibid, Article 1.
[652] Ibid, Article 3.
[653] Ibid, Article 7.
[654] Ibid, Article 4.
[655] Ibid.
[656] Ibid, Article 5.
[657] R (on the application of Corner House Research and others v Director of the Serious Fraud Office Criminal Appeal from Her Majesty's High Court of Justice) [2008] UKHL 60; [2009] 1 AC 756.

prosecute the bribery of a public foreign official. Tony Blair, the then Prime Minister, and Lord Goldsmith, the Attorney General, placed considerable pressure on the Serious Fraud Office (SFO) to drop the case on grounds of national security.[658] The Director of the SFO dropped the case, but there was a legal challenge by Corner House and the Campaign Against Arms Trade (CAAT) to the High Court, where the decision was found to be unlawful.[659] The CAAT argued that the decision to drop the investigation by the SFO was illegal under the OECD Anti-Bribery Convention. However, the SFO appealed and it was later concluded in the House of Lords, confirming that the Director of the SFO was legally entitled to drop the case, and the impact of national security overrode the implications of Article 5 of the OECD Convention, if in fact it had any bearing on sovereign law.[660] This case establishes the hypothesis that some MNCs in the UK involved in high-profile corruption cases are afforded a degree of protection against criminal prosecution. It is pertinent because the CPI places the UK as the 11th least corrupt country globally.[661]

Another alleged BAe bribery[662] case that came to light, which saw the company avoid serious criminal charges, concerned contracts that were awarded by the government of Tanzania. There was a breach of Article 8 (Accounting) of the OECD Convention, and the corresponding UK legislation was invoked:

> The SFO has today reached an agreement with BAe Systems that the company will plead guilty in the Crown Court to an offence under section 221 of the Companies Act 1985 of failing to keep reasonably accurate accounting records in relation to its activities in Tanzania.[663]

[658] 'Documents reveal that Blair urged end to BAE-Saudi corruption investigation' (*The Corner House*, 21 December 2007) < http://www.thecornerhouse.org.uk/resource/documents-reveal-blair-urged-end-bae-saudi-corruption-investigation> accessed 22 August 2021.
[659] 'UK Wrong to Halt Saudi Arms Probe' (*BBC News,* 2008) <http://news.bbc.co.uk/1/hi/business/7339231.stm> accessed 18 Jan 2020.
[660] R (on the application of Corner House Research and others v Director of the Serious Fraud Office Criminal Appeal from Her Majesty's High Court of Justice) [2008] UKHL 60; [2009] 1 AC 756.
[661] 'Corruption Perceptions Index 2020' (Transparency International, 2021) <https://www.transparency.org/cpi/2020> accessed 11 August 2021.
[662] Jonathan Russell, 'BAE pays Fine to Settle Tanzania Corruption Probe' *The Telegraph* (21 Dec 2010) <http://www.telegraph.co.uk/finance/newsbysector/industry/defence/8216551/BAE-pays-fine-to-settle-Tanzania-corruption-probe.html> accessed 14 March 2020.
[663] 'BAE Systems PLC, 5 February 2010' (*Serious Fraud Office,* 2010) <https://www.sfo.gov.uk/news/> accessed 17 June 2020.

However, this was yet another case involving ethical standards that should be questioned. Bribes were paid by BAe, who chose to remain wilfully blind to that fact. BAe had set up and facilitated agreements and companies, in offshore financial centres such as the British Virgin Islands and Panama, that would enable third parties to pay bribes to secure contracts for BAe. The judge stated that BAe were hiding payments made via offshore companies through a third party in order to secure contracts, but BAe did not want to know the details.[664] These bribery payments had occurred before the implementation of the Bribery Act 2010, and would now be caught by section 7 of the Bribery Act 2010 which provides the offence of commercial organisations failing to put in place adequate procedures; and, because the section 7 offence is a vicarious offence, the organisation does not need to be aware of the bribery that has taken place.

The purpose of assessing the two BAe cases is to show that corruption is as prevalent in the UK as it is in Nigeria, but in a different manner. The end result is the same, as the judge in the BAe case stated: the people of Tanzania were the real victims.[665] The two UK BAe cases show that organisations, largely backed by the UK government, can escape criminal corruption charges by a justification which appears to be the protection of British interests, whether that is economic, national or defence security. In the same year, the Bae pleaded guilty in the US District Court of Columbia to conspiring to defraud the United States by impairing and impeding its lawful functions, to make false statements about its Foreign Corrupt Practices Act 1977 compliance program, and to violate the Arms Export Control Act 1976.[666]

While multinational companies may exploit countries with a weak rule of law and high levels of corruption, it is also clear that they may pull out of major contracts in developing countries where bribery is rife.[667] In turn, this could have a positive impact on the developing country. At

[664] 'BAE Systems / Tanzania Radar Defence System Case' (*The World Bank - UNODC,* 2010) <https://star.worldbank.org/corruption-cases/node/18470> accessed 10 February 2020.
[665] Ibid.
[666] 'BAE Systems PLC Pleads Guilty and Ordered to Pay $400 Million Criminal Fine' (*The United States Department of Justice*, 1 March 2010) < https://www.justice.gov/opa/pr/bae-systems-plc-pleads-guilty-and-ordered-pay-400-million-criminal-fine> accessed 22 August 2021.
[667] Andrew Spalding, 'The Irony of International Business Law: US Progressivism, China's New Laissez Faire, and Their Impact in the Developing World' (2011) 59 UCLA Law Review.

the same time, countries often sign the OECD Anti-Bribery Convention to look attractive to foreign investors.[668] So it could be argued that the international legal instruments are having a degree of positive effect.

The OECD criticised the UK several times,[669] which was a catalyst for the enactment of the UK Bribery Act 2010. Non-OECD countries could step in to take the place of the UK, which has decided that certain geographies are too risky to operate in, from a corruption point of view, where local companies and officials demand bribes to do business – for example, China, which is not currently subject to the OECD Anti-Bribery Convention,[670] could accept the custom of making bribes in these countries where the UK does not operate, but the net effect is that the country in question suffers where bribery and corruption are seen as a part of life, and foreign investment perpetuates the notion that bribery is an acceptable part of business.

Nadipuram suggests that influential economies such as Russia, India and China are unlikely to engage with the OECD Anti-Bribery Convention, owing to the poor record of enforcement of their anti-bribery laws.[671] It remains to be seen whether this will be case in the future, as Russia signed, and became the 39th party to, the OECD Anti-Bribery Convention on 17 April 2012, and India and China were in discussions with the OECD Working Group on Bribery, detailed in their last report published in 2014.[672] Subsequent updates suggest similar observations for India[673] and China,[674] but both parties remain absent as signatories to the OECD Anti-Bribery Convention.[675]

Another criticism of the OECD Anti-Bribery Convention is that it only focuses on the party that pays the bribe. This is presumably because, historically, it was made up of the developed

[668] Abhay M Nadipuram, 'Is the OECD the Answer? It's Only Part of the Solution' (2013) 38 The Journal of Corporation Law 635.
[669] David Lawler, *Frequently Asked Questions in Anti-Bribery and Corruption* (Wiley 2012).
[670] Curtailing Capital Flight from Africa (Friedrich-Ebert-Stiftung Global Policy Development 2017).
[671] Abhay M Nadipuram, 'Is the OECD the Answer? It's Only Part of the Solution' (2013) 38 The Journal of Corporation Law 635.
[672] 'OECD Working Group on Bribery Annual Report 2014' (OECD 2014), 28.
[673] 'Active with India' (OECD, 2018), 48.
[674] 'Active with the People's Republic of China' (OECD, 2018), 38.
[675] 'OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions - Ratification Status as of May 2018' (*OECD,* 2019) <http://www.oecd.org/daf/anti-bribery/WGBRatificationStatus.pdf> accessed 2 December 2019.

countries that were more likely to be the bribe payers. However, global shifts in the economy do mean that the likes of India, China and Brazil, whilst they may be classed as developing, are economic giants and perhaps the traditional approach of only addressing the supply side of bribery needs to be evaluated in the OECD Convention. For example, the UK Bribery Act 2010 addresses both the bribe giver and receiver, and it also has a special section on the bribing of foreign officials.

The OECD Anti-Bribery Convention[676] focuses exclusively on bribery of foreign officials in international business. This restriction may eventually be its downfall, as the world of bribery and corruption is more complex and extends beyond the corrupt public official. Although it has been recognised by the OECD in its 2009 recommendation, the Working Group had a mandate to work more closely with the private sector. The OECD Working Group was established in 1994, with responsibility for monitoring the implementation and enforcement of the OECD Anti-Bribery Convention[677] and the recommendations, and it has a mandate to work closely with the private sector in the fight against bribery.[678] Nigeria is cited within the Initiative to Support Business Integrity and Anti-Bribery Efforts in Africa.[679] There is a review process in phases that the Working Group is responsible for in implementing the Convention. A country's domestic laws are examined in Phase 1, to test whether they implement the requirements of the Convention. Phase 2 looks at the efficacy of those laws and the country's progress and work towards fighting bribery. The UK had a Phase 3 Review in 2012 which addressed the effectiveness of enforcement of the law and weaknesses in UK policy.[680] The report highlighted that some UK Overseas Territories were seen as offshore financial centres that could be used to facilitate corrupt transactions.

[676] OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997.
[677] Ibid.
[678] OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, 26 November 2009 (With amendments adopted by Council 18 February 2010 to reflect the inclusion of Annex II, Good Practice Guidance on Internal Controls, Ethics and Compliance).
[679] 'OECD Working Group on Bribery Annual Report 2013' (OECD 2013).
[680] 'Phase 3 Report on Implementing the OECD Anti-Bribery Convention in the United Kingdom' (OECD 2012).

The Phase 4 Report,[681] published in 2017, focused on the UK's positive achievements, challenges and topics that included detection, enforcement, corporate liability and international co-operation. The Working Group made several recommendations, in particular the need to strengthen engagement with the Overseas Territories regarding the detection and enforcement of foreign bribery. The report highlighted the lack of comprehensive transparency from the UK Overseas Territories, where the lack of clarity pertaining to beneficial owners was a significant money laundering and corruption risk. The report suggested that there was a missed opportunity for the Overseas Territories as they 'represent a great potential for detection, including money laundering predicated on foreign bribery'.[682] However, this has not been adequately exploited by the UK, and the Working Group would continue to monitor the situation.

The two-year follow-up report suggested progress on enhancing detection of foreign bribery, including engagement with the Overseas Territories.[683] It was reported that Jersey, the Isle of Man and Gibraltar had conducted investigations into money laundering cases predicated on foreign bribery, but other Crown Dependencies and Overseas Territories did not report any investigation into foreign bribery-related offences. This is telling, as the Crown Dependencies and Overseas Territories are primarily secrecy jurisdictions, for example Cayman Islands is ranked as one of the most secretive in the FSI [684] and it confirms and compounds the issue of IFFs. The Panama and Paradise Papers provide ample evidence to this effect. If dirty money entering these jurisdictions is not identified and/or the predicate crimes of bribery and corruption are not adequately identified and reported, the flow of money into the UK from these territories has already been 'cleaned'. This confirms the thesis position that the UK government is largely silent on the issue of financial secrecy. However, the Working Group voiced its disappointment with the lack of progress on its recommendations to ensure the independence of foreign bribery investigations and prosecutions, or to enhance detection through AML reporting mechanisms.

[681] 'Implementing the OECD Anti-Bribery Convention Phase 4 - Two-Year Follow-Up Report: United Kingdom' (OECD 2019).
[682] 'Implementing the OECD Anti-Bribery Convention - Phase 4 Report - United Kingdom' (OECD 2017), 24.
[683] 'Implementing the OECD Anti-Bribery Convention Phase 4 - Two-Year Follow-Up Report: United Kingdom' (OECD 2019), 4.
[684] 'Financial Secrecy Index 2020' (*Tax Justice Network*, 2020) <https://fsi.taxjustice.net/en/> accessed 24 February 2020.

The OECD could have a considerable influence on its member countries associated with IFFs, particularly the UK because of its Overseas Territories. The Isle of Man, Guernsey, Jersey, Cayman Islands, Gibraltar and the British Virgin Islands have ratified the OECD Anti-Bribery Convention.[685] Bermuda, Anguilla and Montserrat, Turks and Caicos and others have not yet implemented it.[686] This thesis suggests that there is a mutual but gloomy co-dependency between corrupt public officials in Nigeria and the UK Overseas Territories. If controls and policies improve in these Overseas Territories, the proceeds from corruption or illicit capital will not be allowed to flow out of a developing country such as Nigeria.

European Union and the Council of Europe

The European Union (EU) has a mandate to develop a policy to fight corruption and to measure efforts to ensure that all Member States have effective anti-corruption policies.[687] According to Mitsilegas, the EU policy is based on a number of objectives that include: defending the EU budget; protecting the internal market; facilitating judicial co-operation in criminal matters; and safeguarding the rule of law.[688] The first protocol[689] to the EU Fraud Convention 1995[690] criminalises corruption for both the briber and the bribe recipient, sometimes referred to as 'active' and 'passive' bribery respectively. The second protocol to the Fraud Convention criminalises the laundering of the proceeds of corruption.[691] However, the EU Convention on the Fight Against Corruption 1997[692] was introduced, as the Fraud Convention did not go far enough to improve judicial co-operation for corruption-related crimes. Mitsilegas contends that 'The 1997 EU Convention on Corruption thus introduced a broad criminalisation of public

[685] Implementing the OECD Anti-Bribery Convention - Phase 4 Report - United Kingdom (OECD, 2017), 26.
[686] Ibid, 26.
[687] The Treaty on the Functioning of the European Union 2012.
[688] Valsamis Mitsilegas, 'Aims and limits of European Union Anti-Corruption Law' in Jeremy Horder and Peter Alldridge (eds), *Modern Bribery Law - Comparative Perspectives* (Cambridge University Press 2013).
[689] Protocol Drawn up on the Basis of Article K.3 of the Treaty on European Union to the Convention on the Protection of the European Communities' Financial Interests - Statements Made by Member States on the Adoption of the Act drawing up the Protocol 1996.
[690] Convention Drawn up on the Basis of Article K.3 of the Treaty on European Union, on the Protection of the European Communities' Financial Interests 1995.
[691] Second Protocol, Drawn up on the Basis of Article K.3 of the Treaty on European Union, to the Convention on the Protection of the European Communities' Financial Interests - Joint Declaration on Article 13 (2) - Commission Declaration on Article 7.
[692] Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the Fight Against Corruption involving Officials of the European Union Communities or Officials of Member States of the European Union 1997.

sector corruption'.[693] The objective of protecting the internal market by criminalising corruption in the private sector was enabled by the post-Maastricht Joint Action implemented in 1998,[694] which was superseded by the Framework Decision in 2003.[695]

The Council of Europe, whilst associated with the EU, is a much older (established in 1949) and separate institution that has 47 Member States. The Council of Europe acts more like a UN-type body supporting the EU and other Member States in the areas of human rights, democracy and the rule of law.[696] The Council of Europe assists its Members to fight international crimes such as corruption and terrorism, and to undertake necessary judicial and legislative reforms.[697] It has its own anti-corruption Conventions, which the EU recommends Member States to adopt.[698] These are the Council of Europe Civil Law Convention on Corruption,[699] the Council of Europe Criminal Law Convention on Corruption 1999[700] and the Council of Europe Additional Protocol to the Criminal Law Convention on Corruption 2003.[701] However, it could be argued that the Council of Europe forms an element of EU regulation, and the EU's own corruption Convention only covers the EU institutions[702] and not Member States. The EU is liaising with the Council of Europe Group of States against Corruption (GRECO),[703] and has become more actively involved in co-ordination with UNCAC and the OECD Anti-Bribery Convention, focusing more on the soft law instruments and exchanging best practices rather than advancing and evolving corruption laws. This approach is also put forward by the European Council Stockholm Programme 2010, which places importance on law enforcement co-operation.[704]

[693] Valsamis Mitsilegas, 'Aims and limits of European Union Anti-Corruption Law' in Jeremy Horder and Peter Alldridge (eds), Modern Bribery Law - Comparative Perspectives (Cambridge University Press 2013).
[694] Joint Action 98/742 of 22 December 1998 Adopted by the Council on the Basis of Article K.3 of the Treaty on European Union, on Corruption in the Private Sector.
[695] Council Framework Decision 2003/568/JHA of 22 July 2003 on Combating Corruption in the Private Sector.
[696] 'Council of Europe in Brief' (*Council of Europe,* <https://www.coe.int/en/web/about-us/structure> accessed 12 February 2020.
[697] Ibid.
[698] 'Report from The Commission to The Council on the modalities of European Union Participation in the Council of Europe Group of States against Corruption' (GRECO 2011).
[699] Council of Europe Civil Law Convention on Corruption 1999.
[700] Council of Europe Criminal Law Convention on Corruption 1999.
[701] Council of Europe Additional Protocol to the Criminal Law Convention on Corruption 2003.
[702] 'Institutions and bodies' (European Union, 7 January 2021) < https://europa.eu/european-union/about-eu/institutions-bodies_en> accessed 22 August 2021.
[703] 'Group of States against corruption (GRECO) - What is GRECO' (*Council of Europe,* 2012) <https://www.coe.int/en/web/greco/about-greco/what-is-greco> accessed 12 February 2018.
[704] European Council - The Stockholm Programme — An Open and Secure Europe Serving and Protecting Citizens, (2010/C 115/01).

The EU is in a state of evolution on the issue of developing a comprehensive, cohesive and effective anti-corruption policy and strategy. This is mainly due to the disparity of its own instruments and the wide-scale adoption of soft laws such as the Financial Action Task Force (FATF) and OECD Anti-Bribery Convention. The EU could learn from the successful implementation of its Fourth AML Directive[705] and work towards developing its greatest weapon on the approach to corruption – the disbarment from tendering and award of public contracts in the EU for companies that have been found guilty of corruption. These are set out in the EU procurement rules and codified in several Directives.[706] Conversely, this is very unlikely, as the ethos of the EU is harmonisation of trade and economy, and this course of action has not yet been taken.

The EU has recognised that corruption is a problem and, in its communication to the European Parliament in 2011, it expressed concern that the overall rating for EU Member States in the Transparency International CPI had not improved considerably:

> This is certainly not a new problem to the EU, and we will not be able to totally eradicate corruption from our societies, but it is telling that the average score of the EU27 in Transparency International's Corruption Perception Index has improved only modestly over the last ten years.[707]

Since this statement, there has not been a follow-up or a target set by the EU to improve the CPI score. In 2014 the EU published a corruption report that outlined its corruption policy.[708] A second EU corruption report due to be published in 2016 was abandoned.[709] The reasons

[705] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the Prevention of the use of the Financial System for the Purposes of Money Laundering or Terrorist Financing.
[706] Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the Coordination of Procedures for the Award of Public Works Contracts, Public Supply Contracts and Public Service Contracts Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 Coordinating the Procurement Procedures of Entities Operating in the Water, Energy, Transport and Postal Services Sectors.
[707] Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee - Fighting Corruption in the EU, COM/2011/0308 final.
[708] 'Report from the Commission to the Council and the European Parliament - EU Anti-Corruption Report' (European Commission 2014).
[709] Chris Harris, 'Why Won't Brussels Release Report on EU-Wide Corruption' (*Euro News,* 2017) <http://www.euronews.com/2017/06/28/why-won-t-brussels-release-report-on-eu-wide-corruption> accessed 29 January 2020.

behind this non-disclosure stem from the European Commission attempting to safeguard confidentiality of the interviewees' statements that could have a detrimental impact on its Member States and individuals, potentially because of the findings that may have revealed that corruption in the EU was on the rise.[710] In its initial report, the subject of IFFs was not mentioned, nor were secrecy jurisdictions, although the report acknowledges that there is a link between corruption cases, tax evasion through offshore companies, and tax havens. The EU debated 'the role of banks in facilitating or allowing money laundering',[711] yet it missed an opportunity, as other IFF and money laundering enablers (such as accountants, lawyers and estate agents)[712] could have been explored further for subsequent reports. The European Parliament, which is the only directly elected EU institution, did release a study on corruption in the EU,[713] which took the CPI as a baseline for its analysis. Compared to the OECD country reviews, the assessment and direction is lacking in this report and fails to address significant issues that facilitate corruption in the EU, namely secrecy jurisdictions. This is a weakness in the EU's approach on anti-corruption, especially when other financial crimes, such as money laundering and terrorist financing, are addressed in various EU Directives which shall be implemented by Member States into their respective national legal regimes. There has not been such a directly effective legal instrument for bribery and corruption in the EU.[714]

If EU anti-corruption legislation was introduced, this could link and connect with the AML Directives which, in turn, would have a profound impact and enable a more holistic strategy against IFFs. This position in the EU validates the thesis proposition that there is considerable disparity between the EU's corruption policy and its AML approach. This chapter now turns to the position in the UK and its approach to corruption.

United Kingdom

[710] Ibid.
[711] 'Report from the Commission to the Council and the European Parliament - EU Anti-Corruption Report' (European Commission 2014).
[712] Rhian Dow and Umut Turksen, 'Independence and Protection of Accountants and Auditors in the EU AML Framework' in Nicholas Ryder, Umut Turksen and John Tucker (eds), *The Financial Crisis and White Collar Crime – Legislative and Policy Responses: A Critical Assessment* (Routledge 2017).
[713] Piotr Bąkowski and Sofija Voronova, 'Corruption in the European Union - Prevalence of Corruption and Anti-Corruption Efforts in Selected EU Member States' (European Parliament 2017).
[714] Nicholas Ryder, *Financial Crime in the 21st Century* (Edward Elgar 2011), 98.

In this section the UK's legal provisions for bribery are assessed. In addition, the DPAs which are afforded to MNCs are reviewed by focusing on the Rolls-Royce DPA, to see if in fact there has been any impact on corruption and IFFs from developing countries such as Nigeria. The Bribery Act 2010 governs the law relating to bribery in the UK. Under this statute, there are four specific offences:

1. Bribing another person under section 1;[715]
2. Being bribed under section 2;[716]
3. Bribery of foreign public officials under section 6;[717] and
4. A failure of commercial organisations to prevent bribery under section 7,[718] which is a strict liability offence.

An organisation can be convicted of a section 7 offence if a person associated with the company is convicted of bribing or being bribed in accordance with section 1, 2 or 6. There is, however, a defence for companies if they can show that they had adequate procedures in place to prevent bribery.[719] The Bribery Act 2010 repealed the common law offences of bribery[720] and the array of corruption statutes.[721] Sections 108 to 110 of the Anti-terrorism, Crime and Security Act 2001[722] were also repealed, which was an interim measure to satisfy Article 1 of the OECD Anti-Bribery Convention,[723] by extending the jurisdiction of the existing law to cover allegations of corruption against persons outside of the UK.

The Bribery Act 2010 has been described as one of the toughest[724] bribery laws in the world,[725] which could be due to the section 7 offence which has a strict liability provision for commercial

[715] Bribery Act 2010, s1.
[716] Ibid, s2.
[717] Ibid, s6.
[718] Ibid, s7.
[719] Ibid, s7(2).
[720] Ibid, s17(1).
[721] The Public Bodies Corrupt Practices Act 1889; Prevention of Corruption Act 1906; Prevention of Corruption Act 1916.
[722] Anti-terrorism Crime and Security Act 2001, ss108-110.
[723] OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997, Article 1.
[724] Michael Connor, 'New UK Bribery Law Could Have International Impact' (*Business Ethics,* 2011) <http://business-ethics.com/2011/01/06/1525-new-uk-bribery-law-could-have-international-impact/> accessed 12 February 2018.
[725] Sharifa G Hunter, 'Comparative Analysis of the Foreign Corrupt Practices Act and the UK Bribery Act, and the Practical Implications of Both on International Business' (2011) 18 ILSA Journal of International & Comparative Law 89.

organisations, and also because facilitation payments are prohibited.[726] However, the OECD Chair of the Working Group on Bribery, Mark Pieth, indicated that the Bribery Act 'is by no means stricter than the laws of other OECD Member States'.[727]

The Bribery Act 2010 clearly provides what the offences are, takes away the public official exclusivity (as found in some of the other international Conventions), and introduces the commercial organisation offence of failing to prevent a bribe. According to Sullivan, if a person pays a bribe on behalf of a UK company, the defendant could be liable under Section 1 of the Bribery Act 2010, regardless of where the offence takes place (in the UK or anywhere else), provided that the briber has a close connection to the UK. If the demands of the 'identification doctrine' can be met, the organisation would be directly liable under Section 1 and cannot use the 'adequate procedures' defence.[728] What this means in practice is that, if the senior management were aware of the bribe or authorised it, then the company would be criminally liable. The criticism of the Bribery Act 2010 is that the section 7 defence – of having adequate procedures in place for commercial organisations – could provide a 'get out of jail card' for organisations. DPAs could, in theory, allow companies to bribe if they can show strong anti-corruption controls and procedures in their organisations and be willing to pay a fine if they get caught. It could be argued that the case of Rolls-Royce DPA firmly fits into this category, and Davidson suggests that it is the cost of doing business:

> There is a certain irony that a company accused of bribery and corruption can pay a fine to make the charges disappear. The penalty may be deemed not punitive enough, and can be seen as giving a green light to companies to

[726] Although facilitation payments have always been prohibited under previous UK corruption laws, and a large majority of the OECD countries that are party to the OECD Convention ban facilitation payments.
[727] David Leigh, 'British Firms Face Bribery Blacklist, Warns Corruption Watchdog' *The Guardian* (31 January 2011) <http://www.theguardian.com/business/2011/jan/31/british-firms-face-bribery-blacklist> accessed 12 February 2020.
[728] Bob Sullivan, 'Reformulating Bribery: A Legal Critique of the Bribery Act 2010' in Jeremy Horder and Peter Alldridge (eds), *Modern Bribery Law - Comparative Perspectives* (University Press, 2013); also see Tesco Supermarkets Ltd v Nattrass [1972] AC 153 HL.

> continue with business as usual and buy their way out of prosecution if necessary.[729]

The SFO's investigation into Rolls-Royce, and the subsequent DPA, included offences of conspiracy to corrupt, false accounting and failure to prevent bribery over the course of 30 years and in seven jurisdictions including Nigeria.[730] This thesis asserts that while DPAs have forced companies to become more transparent about corruption infringements,[731] its exercise by the UK authorities has given UK companies a safeguard which protects them from criminal prosecution.[732]

Other UK DPAs include Standard Bank Plc, which was ordered to pay $25.2m as a financial penalty and $7m compensation to the government of Tanzania. This was the SFO's first DPA in the UK for a commercial organisation failing to prevent bribery.[733] The second DPA was against XYZ Ltd,[734] which agreed to pay £6.2m disgorgement of gross profits and a financial penalty of £352,000. The third DPA was entered into with Rolls-Royce (discussed above), and the fourth was with Tesco, which had overstated its profits and was ordered to pay a fine of £129m.[735] Interestingly, in all four cases no individuals or agents were prosecuted, as Ryder points out, the main reason being that DPAs are cost-effective as they rule out drawn-out trials.[736]

[729] Jeffrey Davidson, 'The Implications of the Rolls-Royce DPA' (*Commercial Dispute Resolution*, 2017) <https://www.cdr-news.com/categories/expert-views/7535-the-implications-of-the-rolls-royce-dpa> accessed 13 February 2020.
[730] 'SFO Statement - Rolls Royce 23 December 2013' (Serious Fraud Office, 2013) <https://www.sfo.gov.uk/2013/12/23/statement-rolls-royce-2/> accessed 8 August 2020.
[731] Jeffrey Davidson, 'The Implications of the Rolls-Royce DPA' (*Commercial Dispute Resolution*, 2017) <https://www.cdr-news.com/categories/expert-views/7535-the-implications-of-the-rolls-royce-dpa> accessed 13 February 2020.
[732] Also see Nicholas Ryder, 'Too Scared to Prosecute and too Scared to Jail?' A Critical and Comparative Analysis of Enforcement of Financial Crime Legislation Against Corporations in the United States of America and the United Kingdom' (2018) 82 Journal of Criminal Law 245.
[733] 'SFO Agrees first UK DPA with Standard Bank' (*Serious Fraud Office,* 2015) <https://www.sfo.gov.uk/2015/11/30/sfo-agrees-first-uk-dpa-with-standard-bank/> accessed 26 February 2020.
[734] 'SFO Secures Second DPA' (*Serious Fraud Office,* 2016) <https://www.sfo.gov.uk/2016/07/08/sfo-secures-second-dpa/> accessed 8 April 2020.
[735] 'SFO Confirms End of Deferred Prosecution Agreement with Tesco Stores Ltd' (*Serious Fraud Office,* 2020) <https://www.sfo.gov.uk/2020/04/10/sfo-confirms-end-of-deferred-prosecution-agreement-with-tesco-stores-ltd/> accessed 7 June 2020.
[736] Nicholas Ryder, 'Too Scared to Prosecute and too Scared to Jail?' A Critical and Comparative Analysis of Enforcement of Financial Crime Legislation Against Corporations in the United States of America and the United Kingdom' (2018) 82 Journal of Criminal Law 245.

A recent case where this is further demonstrated[737] can be found in the SFO's investigation[738] into Airbus, where its subsidiary, GPT Special Project Management, paid bribes to Saudi officials who had Cayman Island-based bank accounts. GPT who were acting as sub-contractors on a contract between the UK Ministry of Defence and Saudi Arabia's National Guard. Airbus agreed to settle a bribery and corruption investigation with regulators in the UK, France and the US. The SFO's investigation was launched in 2016 after Airbus revealed that it had uncovered discrepancies in disclosures about third-party consultants used on certain aircraft deals. The UK portion of the fine was $1.09bn as part of a DPA with the Serious Fraud Office (SFO) related to bribery allegations involving Ghana, Indonesia, Malaysia, Sri Lanka and Taiwan.[739]

The comparison between corruption cases in Nigeria and the UK cases highlighted in this chapter is conducted to underline the differences in perception. The British Aerospace, Rolls-Royce and Airbus cases show elements of special treatment by the UK, justified in the interest of national or economic security; even though bribery and corruption took place, no individuals were charged and convicted. This can be contrasted with the Nigerian Case Studies[740] which show a lack of political will to prosecute corrupt public officials; whilst differences subsist between the illustrations, individuals are not being effectively prosecuted for corruption offences in neither country.

When these UK cases are compared to the corruption cases in Nigeria, the perception could be that that Nigeria is corrupt. However, given the number of bribes involved and the great degree of immunity from criminal prosecution conferred to MNCs by the UK authorities, the perception that the UK is the 11th least corrupt country in the world is difficult to accept. Davidson suggests that the UK legitimises corrupt activity through formal vehicles such as DPAs

[737] Susan Hawley, 'State Sponsored Bribery' (Corruption Watch, 2017) <https://68e905eb-0313-410f-90fe-26992c5f37d6.filesusr.com/ugd/54261c_38511e7837d341f7b4fd46fc7cbc15ef.pdf> accessed 28 January 2020.
[738] 'SFO Enters into €991m Deferred Prosecution Agreement with Airbus as part of a €3.6bn Global Resolution' (Serious Fraud Office, 2020) <https://www.sfo.gov.uk/2020/01/31/sfo-enters-into-e991m-deferred-prosecution-agreement-with-airbus-as-part-of-a-e3-6bn-global-resolution/> accessed 25 February 2020.
[739] Neil Hodge, 'Airbus Resolves Global Bribery Scandal for Record $4B' (Compliance Week, 2020) <https://www.complianceweek.com/anti-bribery/airbus-resolves-global-bribery-scandal-for-record-4b/28387.article> accessed 24 February 2020.
[740] See n 18.

and the section 7 'adequate procedures' defence, particularly when it faces companies that are 'politically too powerful to prosecute'.[741]

Former UK Prime Minister David Cameron accused Nigeria of being fantastically corrupt, but at the same time the UK accepts a vast amount of illicit financial capital, sometimes through its own offshore financial centres that have a combined secrecy score higher than that of Switzerland.[742] London has, on many occasions, been described as the 'money laundering capital of the world'.[743] The current state of affairs indicates that it is all interlinked, and the Panama and Paradise Papers show that corruption on its own cannot be dealt with without looking at wider IFFs and money laundering.

Nigeria

The laws and institutions relating to corruption in Nigeria are assessed, to understand if they hinder or help the challenge of corruption, especially in the context of IFFs. It is difficult to contest that, in David Cameron's own words, Nigeria is 'fantastically corrupt', to the extent that Buhari also agreed with this comment.[744] Nigeria suffers from a myriad of impossible afflictions that run through its entire society, yet it is a democracy with anti-corruption institutions and laws, and the political rhetoric advocates that there is reform in the country. Unfortunately, this is a misnomer and the complexity of the economic, political and tribal challenges is possibly too big to overcome its single most quoted issue – corruption.

This thesis asserts there is a strong legal framework in Nigeria, but the anti-corruption enforcement is lacking, and corruption and bribery are unfortunately the norm. However, Nigeria is not the only party to blame. The UK (amongst other Western countries, such as the US and Switzerland) also contributes to the continuing demise in perception and reality that

[741] Jeffrey Davidson, 'The Implications of the Rolls-Royce DPA' (*Commercial Dispute Resolution*, 2017) <https://www.cdr-news.com/categories/expert-views/7535-the-implications-of-the-rolls-royce-dpa> accessed 13 February 2020.
[742] 'Financial Secrecy Index 2020' (Tax Justice Network, 2020) <https://fsi.taxjustice.net/en/> accessed 24 February 2020.
[743] Tom Burgis, 'Dark Money - London's Dirty Secret' *Financial Times* (London 11 May 2016) <https://www.ft.com/content/1d805534-1185-11e6-839f-2922947098f0> accessed 18 February 2020.
[744] Patrick Wintour and Ruth Maclean, 'Nigeria not seeking a Cameron apology, but 'wants its assets back'' The Guardian (11 May 2016) <https://www.theguardian.com/politics/2016/may/11/nigeria-not-seeking-cameron-apology-wants-assets-back> accessed 15 December 2019.

corruption in Nigeria endures. The UK banking system and its associated plethora of offshore financial centres and secrecy jurisdictions – and complementary services that hide the ultimate beneficial owners of assets. The combination of these enabling environments create a huge demand for services from corrupt individuals including Nigerian officials, as well as an impossible maze to navigate and enforce counter-corruption measures by the Nigerian law enforcement authorities, which is a key premise of this thesis. The lucrative oil pacts provide a setting for bribes and backhanders to secure contracts for large multinationals which are often based in the UK and the US.[745] The opportunity then arises to avoid and/or evade tax, through transfer price abuse and manipulation, that should be paid in Nigeria to support the Nigerian infrastructure.[746]

The institutions that manage corruption, including the Independent Corrupt Practice Commission and the EFCC, have not yielded any significant results, mainly due to issues with respect to leadership, funding, capacity and political support.[747] Most notably, Ribadu was heralded as an anti-corruption Tsar, but was soon side-lined when successive governments felt that he was too much of a threat to their wellbeing.[748]

The Nigerian government has introduced several anti-corruption reforms since civilian rule in 1999. The Code of Conduct in the Nigerian Constitution provides an ethical guide for public officers, specifies requirements for disclosing assets, and governs the receiving and offering of gifts for members of the executive, parliament and legislature.[749] The Corrupt Practices and other Related Offences Act 2000 provides for the prohibition, punishment and prevention of corruption,[750] with 18 offences and penalties[751] that include the offences of accepting

[745] Costantino Grasso, 'The Dark Side of Power: Corruption and Bribery within the Energy Sector' in Rafael Leal-Arcas and Jan Wouters (eds), *Research Handbook on EU Energy Law and Policy* (Edward Elgar 2017).
[746] Taiwo Oyedele and others, 'The Impact of Nigeria's New Transfer Pricing Rules on Multinational Enterprises' (*LexisNexis,* 2013) <http://pwcnigeria.typepad.com/files/nigeria-tp-article_lexisnexis.pdf> accessed 26 February 2020.
[747] Akume T Albert and FC Okoli, 'EFCC and the Politics of Combating Corruption in Nigeria (2003-2012)' (2016) 23 Journal of Financial Crime 725.
[748] Matthew Green, 'Nigeria Side-lines Zealous Anti-Graft Chief' *The Financial Times* (London 28 December 2017) <https://www.ft.com/content/8afef176-b566-11dc-896e-0000779fd2ac> accessed 7 December 2019.
[749] 'Combating illicit Financial Flows: The role of the International Community' (U4 Anti-Corruption Resource Centre, 2014) <http://www.u4.no/publications/combating-illicit-financial-flows-the-role-of-the-international-community/> accessed 2 June 2020, Fifth Schedule, Part 1- Code of Conduct for Public Officers.
[750] The Corrupt Practices and other Related Offences Act 2000 (Nigeria).
[751] Ibid, ss8-25.

gratification,[752] fraudulent acquisition of property,[753] and bribery of a public officer.[754] Penalties apply both to individuals and companies and include fines and/or imprisonment for up to 7 years. However, since its commencement, there has not been any conviction of high-profile or senior public officials, although there have been several investigations and prosecutions.[755]

Corruption and abuse of office are criminalised in Nigeria by the Criminal Code Act 2004[756] which applies to the southern states in Nigeria. According to Osaretin and Lawrence, the Penal Code Act 2004 has provision for corruption applicable to Northern Nigeria,[757] although validating this legislation has not been possible owing to domestic politics.[758] The Public Procurement Act 2007[759] introduced transparency requirements and forbids nepotism, contract inflation and other acts of corruption in the awarding of government contracts. In addition, the Nigerian Extractive Industries Transparency Initiative Act 2007[760] introduced mandatory transparency requirements and disclosure. The legislative challenge in Nigeria with respect to corruption is not the absence of legal instruments or the adoption of international Conventions. Nigeria is a signatory to both UNCAC[761] and the African Union Convention Against Corruption (AUCC) 2003,[762] although there are some gaps, the most pertinent being the absence of the offence of illicit enrichment.[763]

Section 308 immunity clause

The section 308 immunity clause in the Constitution of Nigeria provides the President, Vice President and Governors with an immunity from prosecution whilst in office. This has provided

[752] Ibid, s8.
[753] Ibid, s13.
[754] Ibid, s18.
[755] Osaretin Aigbovo and Lawrence Atsegbua, 'Nigerian Anti-Corruption Statutes: An Impact Assessment' (2013) 16 Journal of Money Laundering Control 62.
[756] Criminal Code Act 2004 (Nigeria) 2005, ss98-99, 404.
[757] Penal Code (Northern States) Provisions Act 2004 (Nigeria).
[758] Osaretin Aigbovo and Lawrence Atsegbua, 'Nigerian Anti-Corruption Statutes: An Impact Assessment' (2013) 16 Journal of Money Laundering Control 62.
[759] Public Procurement Act 2007 (Nigeria).
[760] Nigerian Extractive Industries Transparency Initiative (NEITI) Act 2007.
[761] 'United Nations Convention against Corruption Signature and Ratification Status' (United Nations, 2017) <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html> accessed 29 November 2019.
[762] African Union Convention on Preventing and Combating Corruption 2003.
[763] Akeem Olajide Bello, 'United Nations and African Union Conventions on Corruption and Anti-corruption Legislations in Nigeria: A Comparative Analysis' (2014) 22 African Journal of International and Comparative Law 308.

the opportunity for some political figures to embezzle oil revenues directly from the Central Nigerian Bank,[764] although some were impeached[765] whilst in office to get around this, to enable a prosecution. The declaration of assets clause in the Constitution of Nigeria[766] for all public officers should be widened to make this declaration public. Currently the asset declaration is regarded as secret, and civil servants cannot divulge this information; as a result, there is no check or balance on that from a public point of view. The prohibition on public officers holding a bank account[767] could have the biggest impact for corrupt public officials if this was enforced aggressively – for example, in the UK. If the demand for UK financial services is minimised for corrupt officials, the ability for them to use the services to launder illicit capital reduces.

The fundamental issue is that, in Nigeria, the risk of being corrupt and facing subsequent sanctions are not greater than the benefits of corruption;[768] especially for those who are classed as the political elite. As the case studies evidence, such holders of public office are able to subvert investigations for their own causes. For example, Hatchard points out that the Federal Attorney General of Nigeria, Michael Aondoakaa, used his powers to protect Ibori from ongoing international investigations into corruption and money laundering and blocked mutual legal assistance requests from the UK.[769] Only after the death of Yar'Adua and the appointment of a new President, Goodluck Jonathan, and a new Federal Attorney General was co-operation recommenced. Yussuf reaffirms that progress against corruption in Nigeria itself will not be improved by further international or domestic legal instruments until the establishment of uncorrupted political and judicial institutions is realised in the first place.[770] The thesis concurs

[764] David Blair, '£220bn Stolen by Nigeria's Corrupt Rulers' *Telegraph* (Abuja 25 June 2005) <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/nigeria/1492781/220bn-stolen-by-Nigerias-corrupt-rulers.html> accessed 14 November 2019.
[765] 'Nigeria Arrests Runaway Governor' (*BBC,* 2005) <http://news.bbc.co.uk/1/hi/world/africa/4513172.stm> accessed 3 December 2019.
[766]Constitution of the Federal Republic of Nigeria 1999, Fifth Schedule, Part 1 – Code of Conduct for Public Officers, s11.
[767] Constitution of the Federal Republic of Nigeria 1999, Fifth Schedule, Part 1 – Code of Conduct for Public Officers, s3.
[768] Akume T Albert and FC Okoli, 'EFCC and the Politics of Combating Corruption in Nigeria (2003-2012)' (2016) 23 Journal of Financial Crime 725.
[769] John Hatchard, *Combating Corruption: Legal Approaches to Supporting Good Governance and Integrity in Africa* (Edward Elgar Publishing 2014) 281.
[770] Rahmon Olalekan Yussuf, 'Anti-Money Laundering Framework in Nigeria: An Umbrella with Wide Leakage' (2017) 66 Journal of Law, Policy and Globalization 172.

with this position, but provides a unique secondary layer, in that corruption in Nigeria is also facilitated by the UK and its Overseas Territories, which include secrecy jurisdictions and banking services. This, in combination with the demand for these services from corrupt Nigerian public officials, enables IFFs from Nigeria to the UK.

Case study to demonstrate corruption stemming from Nigeria with illicit financial flows into the UK

Lamido Sanusi and Diezani Alison-Madueke

Lamido Sanusi, who was the governor of Nigeria's central bank, raised an accounting issue in 2014 regarding $20bn of oil revenue that was unaccounted for during the period between January 2012 and July 2013.[771] Sanusi provided evidence to support his allegations, in the form of contracts data and expert and legal opinion, in a memorandum to a senate committee.[772] Following the revelation, Sanusi was suspended by the Nigerian President, Goodluck Jonathan, for 'various acts of financial recklessness and misconduct'.[773] Sanusi rebutted[774] the grounds for suspension and issued a 27-page document denying the charges of gross misconduct.[775] Jonathan ordered an audit to be carried out by PricewaterhouseCoopers (PwC) following Sanusi's allegations, which was published in April 2015. PwC confirmed Sanusi's doubts that the state oil company Nigerian National Petroleum Corporation (NNPC) was siphoning off oil revenues before they reached the treasury, and questioned the legality of several multibillion-dollar transactions.[776] The audit was published publicly[777] and Sanusi, writing in the Financial

[771] William Wallis, 'Nigeria's Central Bank and State Clash over 'Missing Billions'.' *Financial Times* (London 4 May 2014) <https://www.ft.com/content/57d43418-bb14-11e3-948c-00144feabdc0> accessed 8 November 2019.
[772] William Wallis, 'Nigeria Bank Governor Alleges Oil Subsidy Racket' *Financial Times* (London 12 February 2014) <https://www.ft.com/content/6c4aea72-93cd-11e3-a0e1-00144feab7de> accessed 8 November 2019.
[773] Rob Minto, 'Nigeria - Central Bank Governor Suspended for "Recklessness"' *Financial Times* (London 20 February 2014) <https://www.ft.com/content/33a5f920-b9a7-3b98-95e7-59b68325050a> accessed 20 December 2019.
[774] William Wallis, 'Nigeria Central Bank Governor Vows to Challenge his Suspension' *Financial Times* (14 February 2014) <http://www.ft.com/cms/s/0/ccf90728-9afd-11e3-946b-00144feab7de.html#axzz2vfVepDxj> accessed 12 March 2020.
[775] William Wallis, 'Suspended Nigeria Banker Issues Rebuttal of Misconduct Claims' *Financial Times* (London 17 March 2014) <http://www.ft.com/cms/s/0/c8222694-adf4-11e3-bc07-00144feab7de.html#axzz2wJ9u2iWO> accessed 8 November 2019.
[776] 'Nigeria Audit State Oil Company Siphoning Oil Revenues' *Financial Times* (London 28 April 2015) <https://www.ft.com/content/5ebb5f3c-edb2-11e4-987e-00144feab7de> accessed 20 December 2019.
[777] 'Auditor- General for the Federation Investigative Forensic Audit into the Allegations of Unremitted Funds into the Federation Accounts by the NNPC' (PricewaterhouseCoopers Limited 2015).

Times, rejected claims that the audit report exonerated the NNPC, as clearly there were serious holes in the revenues that were not accounted for.[778]

One such example of where part of that missing $20bn of oil revenue could have ended up is demonstrated in a US Department of Justice civil forfeiture case heard in a court in Houston in October 2017.[779] Illicit capital from Nigeria was allegedly laundered thorough UK and US property via Western banks. The lawsuit in the US indicates that the former oil minister Diezani Alison-Madueke, and two Nigerian traders named as accomplices, managed the IFFs of capital from an alleged international bribery scheme through the UK and US without difficulty. Kolawole Akanni Aluko, one of the accomplices whose assets have been targeted by the US authorities, acquired a Galactica Star super yacht for $74m, using proceeds from a trade with Glencore, through Standard Chartered Bank. The other co-conspirator, Olajide Omokore, bought properties worth millions in London, New York and Los Angeles, allegedly for the oil minister.[780] Alison-Madueke was arrested in London in October 2015[781] on suspicion of bribery and money laundering,[782] but was quickly released on bail;[783] she has denied any wrongdoing.[784]

In July 2017, US authorities seized $144m in assets that included the super yacht and property in Manhattan that were proceeds of corruption that involved Alison-Madueke.[785] According to the civil forfeiture complaint,[786] between 2011 and 2015, Aluko and Omokore purportedly

[778] Lamido Sanusi, 'Unanswered Questions on Nigeria's Missing Oil Revenue Billions' *Financial Times* (London 13 May 2015) <https://www.ft.com/content/e337c7a4-f4a2-11e4-8a42-00144feab7de> accessed 19 January 2020.
[779] 'Department of Justice Seeks to Recover Over $100 Million Obtained from Corruption in the Nigerian Oil Industry' (*Department of Justice - Office of Public Affairs,* 2017) <https://www.justice.gov/opa/pr/department-justice-seeks-recover-over-100-million-obtained-corruption-nigerian-oil-industry> accessed 13 November 2019.
[780] 'Nigeria's Missing Billions Turn up in Familiar Places' Financial Times (London 2 August 2017) <https://www.ft.com/content/d2acb4b0-7774-11e7-90c0-90a9d1bc9691> accessed 7 February 2020.
[781] Maggie Fick and Anjli Raval, 'Former Nigerian Oil Minister Arrested in UK' *Financial Times* (3 October 2015) <https://www.ft.com/content/4b89b728-6946-11e5-97d0-1456a776a4f5> accessed 9 November 2019.
[782] Maggie Fick, 'Trial of Former Nigerian Official Adjourned' *Financial Times* (22 January 2016) <https://www.ft.com/content/8af973ae-c101-11e5-846f-79b0e3d20eaf> accessed 9 November 2019.
[783] Ibid.
[784] William Wallis, 'Investigators Begin Hunt for Nigeria's Stolen Petrodollars' *Financial Times* (25 November 2015) <https://www.ft.com/content/ffcd21ca-78b4-11e5-933d-efcdc3c11c89> accessed 9 November 2019.
[785] David J Lynch, 'Nigeria's Former Oil Minister Named in US Bribery Complaint' Financial Times (15 July 2017) <https://www.ft.com/content/88a4b26a-68d7-11e7-8526-7b38dcaef614> accessed 9 November 2019.
[786] 'Department of Justice Seeks to Recover Over $100 Million Obtained from Corruption in the Nigerian Oil Industry' (Department of Justice - Office of Public Affairs, 2017) <https://www.justice.gov/opa/pr/department-justice-seeks-recover-over-100-million-obtained-corruption-nigerian-oil-industry> accessed 13 November 2019.

conspired with others to bribe Alison-Madueke to win oil production contracts worth $1.5bn. The US Department of Justice stated that, following the awarding of the contracts, Alison-Madueke pursued a 'lavish lifestyle'.[787] Aluko and Omokore allegedly purchased and furnished million-pound homes in London for Alison-Madueke and her family. The Department of Justice initiated this case as part of their Kleptocracy Asset Recovery Initiative.[788] Two shell companies were created by Aluko and Omokore in the British Virgin Islands – Atlantic Energy Drilling Concepts Nigeria and Atlantic Energy Brass Development – to manage their oil contracts. US prosecutors alleged that the original amount of the oil contracts was exceeded and that the companies were used to launder the excess proceeds through the US.

The case of the missing $20bn remains a mystery, although parts of it could be connected to Alison-Madueke. Such corrupt practices continue to blight Nigeria but, as seen in the example above, it takes more than the corrupt parties in Nigeria. The Financial Times pinpoints the issue which also concurs with the findings in this thesis: 'on both counts, Western efforts look Janus-faced – giving the appearance of propriety while in reality encouraging the opposite'.[789] The attempts to hide the ultimate beneficial owner include the involvement of a corporate services provider in the British Virgin Islands, intermediaries in the UK and US, lawyers, accountants, bankers, and law enforcement agencies. The problem has many dimensions. The first is the lack of governance and accountability in Nigeria, where it is difficult to establish criminality in the top ranks of government, as the will from peers and successive politicians lacks teeth in condemning and punishing wrongdoers.

Conclusion

Corruption, bribery and IFFs are inherently global problems, and thus need a globally accepted (or, at least, harmonised and pragmatic) policy to deal with the harms that they bring to the poorest and most vulnerable in our societies. Transparency International and Global Witness do very well in highlighting the multitude of corruption offences by countries, companies and

[787] David J Lynch, 'Nigeria's Former Oil Minister Named in US Bribery Complaint' Financial Times (15 July 2017) <https://www.ft.com/content/88a4b26a-68d7-11e7-8526-7b38dcaef614> accessed 9 November 2019.
[788] 'Money Laundering and Asset Recovery Section' (*US Department of Justice,* 2017) <https://www.justice.gov/criminal-mlars> accessed 13 November 2019.
[789] 'Nigeria's Missing Billions Turn up in Familiar Places' Financial Times (London 2 August 2017) <https://www.ft.com/content/d2acb4b0-7774-11e7-90c0-90a9d1bc9691> accessed 7 February 2020.

individuals. The UN, whose membership now includes nearly all the countries in the world, could be chosen to take on the challenge to prescribe a global strategy and policy for every country to mandate into its laws, perhaps increasing the powers that it currently has to make it into more of an anti-corruption global regulator, although this would need to include IFFs and money laundering for it to be effective.

There are various organisations tasked with the role of fighting corruption. Whilst this is not necessarily a bad thing, it has created fragmented approaches and a patchwork of legislative responses. The OECD seems to be making progress and has been able to influence a number of its members so as to bring about more focused and purposeful legal provisions for countering corruption and bribery (as has been the case in the UK, which added the Bribery Act 2010 to its statute books). If a similar stance is taken by the OECD in highlighting the detrimental role that financial secrecy has on society then the OECD members may be pressured to address these issues and develop Conventions to address IFFs which could subsequently have a marked impact.

In the UK, the Bribery Act 2010 does simplify the law, although the section 7 defence and the DPAs are both troublesome and progressive. On the one hand, it may provide a 'get out of jail card' for companies if they can show that they had adequate procedures in place and/or they are willing to enter into a DPA to avoid criminal charges for bribery. On the other hand, it may force companies into compliance so as to avoid reputational and economic damage. Organisations such as the SFO, which is tasked with fighting economic crimes, ultimately have their hands tied, as the government can and does block investigations and prosecutions that could have been brought successfully, often with the tenuous rationale that such actions would threaten the UK's national security or economic interests, as highlighted in the BAe (Al Yamamah) bribery case.[790]

The EU requires an overhaul and simplification of its institutions and bodies, and laws and Conventions, so that there is a clear, unambiguous anti-corruption law and policy. The role of

[790] R (on the application of Corner House Research and others v Director of the Serious Fraud Office Criminal Appeal from Her Majesty's High Court of Justice) [2008] UKHL 60; [2009] 1 AC 756.

the FATF and the AML Directives are taken seriously by countries and financial institutions globally. Accordingly, the EU and the FATF need to explore how anti-bribery and anti-corruption provisions within the context of IFFs can evolve and feature within the FATF Recommendations and, subsequently, in the EU's AML legal regime. The UK has achieved some clarity with the Bribery Act 2010, providing a clear and concise approach to bribery offences and introducing the requirement for commercial organisations to have adequate procedures in place. The US was the first country to invoke an anti-corruption law in 1977, and the OECD followed suit for its member countries. So, it is not surprising that these three instruments are currently most effective, in so much as companies who comply with them will almost always comply with any other global anti-corruption instrument. However, what is unclear is whether governments will address IFFs where corruption and money laundering are inherently manifested within IFFs.

The OECD Working Group on Bribery does take the lead in supporting both its members and other important jurisdictions (i.e. China and India) to overcome some of the many hurdles when dealing with international bribery and corruption cases. The Typology on Mutual Legal Assistance in Foreign Bribery Cases draws on the experience and expertise used by the OECD Working Group on Bribery in implementing the OECD Anti-Bribery Convention.[791]

It has been argued that UNCAC is the only legal international anti-bribery instrument that allows for unification of the approach to tackle corruption.[792] There are numerous international bodies, organisations, Conventions and soft law instruments which do not aid an integrated approach towards fighting corruption. However, it could be argued that it is better to have a range of different agile bodies to tackle corruption, such as Transparency International and Global Witness, than a large unmanageable international agency that would struggle to respond quickly enough to tackle corruption effectively. Many of these organisations are now working together – for example, the World Bank's Stolen Asset Recovery (StAR) Initiative and the United Nations Office on Drugs and Crime (UNODC).[793]

[791] 'Typology on Mutual Legal Assistance in Foreign Bribery Cases' (OECD 2012).
[792] Indira Carr, 'Corruption, Legal Solutions and Limits of Law' (2007) 3 International Journal of Law in Context 227.
[793] 'STAR Stolen Asset Recovery Initiative - About Us' (*World Bank and UNODC,* 2020) <https://star.worldbank.org/about-us/our-work> accessed 18th September 2019.

The legislation and soft law provisions were analysed to appreciate whether this has an impact on corruption; it was concluded that, in Nigeria, it would not be the case, because of the lack of political will and the existence of tribal alliances that influence anti-corruption enforcement. In the UK, on the surface, the implementation of the Bribery Act 2010 and the CPI ranking of 11th position suggest that the anti-corruption agenda is working satisfactorily. However, this is contested by this thesis, suggesting that there is a duplicity in the UK, with its secrecy destinations contributing to IFFs and facilitating corruption. This chapter has demonstrated that there is not a comprehensive or universally agreed definition of corruption. This needs to be addressed urgently. At the same time and more importantly, the link of what? corruption with IFFs and to money laundering should be prioritised by standard setters such as the FATF and inevitably the EU, where currently money laundering is comprehensively covered both in terms of EU's AML standards and national legislation respectively.

The final aspect of this thesis looks at the eventual destination of IFFs and corruption, which is that of laundered money, free of any illegal or illicit trace, that sits in banks around the world. The subject of money laundering is addressed in the context of IFFs.

CHAPTER 7 – MONEY LAUNDERING BEYOND TRADITIONAL DEFINITIONS AND THE VULNERABILITY OF BANKS TO ILLICIT FINANCIAL FLOWS

Introduction

The purpose of this chapter is to demonstrate the challenges that make the prevention or countering of money laundering very difficult to achieve. Accordingly, the chapter identifies vulnerabilities that are found within UK banks owing to IFFs. Having examined the vast amount legal instruments, AML standards, soft law and commitments by governments, international bodies and think tanks, it is not clear if AML regimes are working.

The hypotheses examined in this chapter in detail are:

- Hypothesis 6: There is a lack of clear policy on anti-money laundering and financial secrecy by banking institutions which leaves banks vulnerable to illicit financial flows; and
- Hypothesis 7: A symbiotic relationship exists between the UK (including its Overseas Territories) and Nigeria, which provides the necessary constituents for illicit financial flows.

This thesis suggests that the main cause that constrains AML efforts are IFFs which, as discussed, encapsulate financial secrecy that enables illicit capital to flow through to the banking sector that facilitates and contributes to money laundering. The silence of AML law and policy, especially with respect to financial secrecy and banking institutions internationally, regionally and within the UK, are explored to show that this is an anomaly and should be addressed. Finally, the demand for financial services, in the secrecy jurisdictions that are closely associated with the UK, from corrupt public officials in Nigeria makes the flow of illicit capital alluring for UK banks. This illicit capital sometimes is not subjected to the required due diligence measures, and/or it might have already been laundered so that it appears legitimate when it is transferred to UK banks. This symbiotic relationship between Nigeria and the UK is revealed so as to show the significant impact it has on the fight against money laundering.

This chapter defines and charts the evolution of money laundering and determines if banks in the UK can do more to prevent laundered money from entering the banking system and, if so, to what extent. Even with the vast array of AML provisions, money laundering is still prolific, and abuses continue in many forms. The distinction between IFFs and money laundering is blurred, and this thesis suggests that banks are vulnerable and prone to abuse in this grey and ambiguous area, where money laundering breaches have occurred through poor AML practices despite a rhetoric that promotes a strong compliance culture to money laundering.[794]

The applicability and the changing nature of a predicate offences are scrutinised to evaluate if this is advantageous or a hindrance to AML efforts. The concept of money laundering is explored from a traditional perspective up to its modern form, and how that relates to corruption and IFFs. The evolution of the three stages of money laundering (namely placement, layering and integration) is challenged, to question if this *modus operandi* of money laundering is still relevant with the advancement of technology and IFFs. The extent and magnitude of money laundering is assessed in detail and, similar to IFFs and corruption, if it is difficult to quantify accurately. The international AML legislation, legal standards and soft law,[795] regionally and in the UK and Nigeria, are critically reviewed, to assess if they help the fight against money laundering or whether that fight is a losing battle within the context of IFFs.

The vulnerability of banks is uncovered when all of these factors are combined to show and confirm that many components of IFFs impact financial institutions, and that treating individual elements of IFFs in isolation will not help to improve this weakness. The cases of James Ibori and Diepreye Alamieyeseigha are analysed and discussed in detail, in order to show failures of AML practices both in Nigeria and the UK and how IFFs have enabled money laundering.

[794] 'Undue Diligence How Banks do Business with Corrupt Regimes - How Banks do Business with Corrupt Regimes' (Global Witness, 2010).
[795] Kenneth W. Abbott and Duncan Snidal, 'Hard and Soft Law in International Governance' (2000) 54 International Organization 421.

Definitions

There are many definitions of money laundering.[796] In tandem with advancements in technology the sophistication and complexity of methods which criminals use also evolve and develop. Consequently, the typology and understanding of money laundering and how they are defined in law need to keep apace for authorities to deal with it effectively. Money laundering is generally understood as the re-integration of 'dirty' money obtained through criminal means into the legal economy.[797] Ryder defines money laundering as 'the illegal process or act by which criminals attempt to disguise, hide or distance themselves from their illegal activities'.[798] The Proceeds of Crime Act 2002[799] is the principal legislation that covers the offence of money laundering in the UK, and the explanatory notes provide a useful definition:

> Money laundering is the process by which the proceeds of crime are converted into assets which appear to have a legitimate origin, so that they can be retained permanently or recycled into further criminal enterprises.[800]

The Financial Action Task Force (FATF), an inter-governmental organisation established by the G7 in 1989, provides the standards for policy and guidance internationally for money laundering.[801] The FATF defines money laundering as the processing of criminal proceeds to disguise their illegal origin,[802] and the relationship between corruption and IFFs is also recognised.[803]

This thesis asserts that the nature of IFFs makes money laundering policies largely ineffectual because of the impact of financial secrecy, transfer price abuse and aggressive tax avoidance,

[796] Brigitte Unger and others, 'The Amounts and the Effects of Money Laundering' (Report for the Dutch Ministry of Finance, Utrecht School of Economics 2006), 30.
[797] Jan van Koningsveld, 'Money Laundering - You Don't See It Until you understand It: Rethinking the Stages of Money Laundering Process to Make Enforcement More Effective' in Brigitte Unger and Daan van der Linde (eds), *Research Handbook on Money Laundering* (Edward Elgar 2014).
[798] Nicholas Ryder, *Money Laundering, an Endless Cycle? A Comparative Analysis of the Anti-Money Laundering Policies in the United States of America, the United Kingdom, Australia and Canada* (Routledge 2012) 1.
[799] Proceeds of Crime Act 2002.
[800] Proceeds of Crime Act 2002 - Explanatory Notes - 6 - Money Laundering.
[801] 'Frequently Asked Questions: Money Laundering' (European Commission Memo 2013).
[802] Abdullahi Y. Shehu, 'Combating corruption in Nigeria - Bliss or Bluster?' (2005) 12 Journal of Financial Crime 69.
[803] 'Specific Risk Factors in the Laundering of Proceeds of Corruption' (Financial Action Task Force 2012).

which are not illegal, and add a variable that increases the potential range of undertakings that could be covered by an anti-money laundering policy. The G20 governments are attempting to bring these activities onto political agendas, to address what is seen to be detrimental to developing countries and wider society.[804] In Nigeria, money laundering is not defined in the Money Laundering (Prohibition) Act as Amended 2011, nor in the Central Bank of Nigeria (Anti-Money Laundering and Combating the Financing of Terrorism in Banks and other Financial Institutions in Nigeria) Regulations, 2013. The definitions rest in the offences described in the Nigerian legislation and international Conventions and soft law.

The applicability of a predicate offence

For the offence of money laundering to be established, there is a prerequisite that a criminal offence has occurred in order to generate the proceeds of crime that are being laundered. This is known as a predicate offence, which is an underlying crime that enables money laundering or terrorist financing activity. Since money laundering is usually multi-jurisdictional, there are challenges in harmonising what a predicate offence is. Initially, predicate offences were categorised under drug-related offences.[805] However, at both the international and regional levels, the definition of predicate offences has broadened to include any serious crime. The United Nations Convention against Transnational Organized Crime 2000 (known as the 'Palermo Convention')[806] stipulates that a predicate crime must be a serious crime that is punishable by at least four years' imprisonment,[807] which in many respects emasculates the money laundering provisions available to prosecutors and allows money launderers to take advantage of the different levels of legal standards afforded to money laundering.

[804] Alvin Mosioma, Subrat Das and Oriana Suarez, 'G20- Time to Halt the Flow of Illicit Money' Sidney Morning Herald (18th September 2014) <http://www.smh.com.au/comment/g20-time-to-halt-the-flow-of-illicit-money-20140917-10hzw3.html#ixzz3DgfGxKUN> accessed 19 September 2019; 'Joint Statement on the Fight against Illicit Financial Flows, by OECD Secretary-General Angel Gurría and Thabo Mbeki, Chair of the High Level Panel on Illicit Financial Flows from Africa' (OECD, 2017) <https://www.oecd.org/g20/topics/taxation/joint-statement-on-the-fight-against-illicit-financial-flows-by-angel-gurria-and-thabo-mbeki.htm> accessed 10 January 2020.
[805] United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988.
[806] Ibid.
[807] United Nations Convention against Transnational Organized Crime 2000, Articles 6(b) and 2(b).

UNCAC[808] widened the scope of predicate offences to include bribery, corruption[809] and illicit enrichment.[810] UNCAC recommends that all Member States include the widest range of predicate offences that enable the prosecution of money laundering offences.[811] Article 23 of UNCAC stipulates what an offence is, which essentially is any crime that results in generating cash or other property intentionally and criminally. A weakness in UNCAC is that a subjective test (that is, knowledge that the property was from proceeds of crime) is required for the defendant, and this would make offences harder to prosecute.

In the UK, a predicate offence is established when a criminal act has occurred that enabled the proceeds of crime to be realised.[812] A conviction is not required for a predicate offence to be used to prosecute for a money laundering offence, only an inference is required whether cash or other property has been acquired from a criminal activity. Part 7 of the Proceeds of Crime Act 2002[813] consolidates previous provisions for money laundering (except for terrorism), and predicate offences have been extended to include all crimes.[814] There is no minimum limit as to what the crime attracts in the form of a sanction (be it fiscal penalty or a prison sentence) and it does not matter where the offence has taken place, as long as it would be considered an offence in the UK.[815] To establish an offence for money laundering in the UK, the offender must benefit from the criminal property, and have a subjective knowledge that the property in question is the proceeds of crime,[816] which does impede this provision. Without this subjective test being satisfied, money laundering offences in the UK cannot be established, as shown in the case *of R v Geary*,[817] where the definition of criminal property was not met according to the Proceeds of Crime Act 2002;[818] namely, that the alleged offender knows or suspects that it constitutes or represents such benefit. The consequence of this is that prosecutors could be

[808] United Nations Convention against Corruption 2003.
[809] Ibid, Articles 15, 16 and 23.
[810] Ibid, Article 20.
[811] Ibid, Article 23(2)a.
[812] Proceeds of Crime Act 2002, s340(3).
[813] Ibid.
[814] Ibid, s413(1).
[815] Ibid, s340(2).
[816] Ibid, s340(3).
[817] *R v Geary* [2010] EWCA Crim 1925.
[818] Proceeds of Crime Act 2002, s340(3)b.

reluctant to follow the criminal course of action against money laundering and might potentially use the civil remedies from the Proceeds of Crime Act 2002 instead.[819]

New civil powers in the UK include UWOs and supporting interim freezing orders, which came into power in January 2018 under the Criminal Finances Act 2017. The case law in this area is developing and could prove a powerful weapon for enforcement authorities.[820] The UWO requires a person to justify the nature of their wealth if they are suspected, involved or associated with serious crime. Confiscation orders, which some argue are draconian legal measures, are nevertheless quite powerful in isolating potential proceeds of crime, where the burden of proof required is on the balance of probabilities and the onus is on the suspect to prove the legitimate origin of the property in question. Prosecutors can use evidence of a criminal lifestyle and the accused living beyond their means as a basis to initiate a civil confiscation order.

McClusky argues that money laundering is becoming an offence in its own right, as the requirement for a predicate offence to be established is diminishing in the UK;[821] this is because, under the law before the Proceeds of Crime Act 2002 was enacted, money laundering cases needed to prove that predicate conduct had generated the laundered money.[822] Cases decided under Proceeds of Crime Act 2002 have slowly weakened the significance of the actual source of the funds.[823] The case of Anwoir in the Court of Appeal identified two requirements in order to prove the property is criminal, firstly by showing the property was derived from unlawful conduct or there is evidence from the circumstances by the way the property was handled which gives the strong interpretation that the property could only be derived from crime. In other words the Crown is not required to establish criminality, it must present enough evidence so that a jury can draw an inference that the property concerned is criminal property. Murray advocates that the requirement to establish the existence of a predicate crime deters

[819] Ibid, Part 5.
[820] 'NCA to Appeal Discharge of Unexplained Wealth Orders' (*National Crime Agency,* 2020) <https://www.nationalcrimeagency.gov.uk/news/nca-to-appeal-discharge-of-unexplained-wealth-orders> accessed 15 June 2020.
[821] David McCluskey, 'Money laundering: The Disappearing Predicate' (2009) 10 Crim Law Review 719.
[822] Montila [2004] UKHL 50; [2005] 1 Cr. App. R. 26; Harmer [2005] EWCA Crim 1; [2005] 2 Cr. App. R. 2; Saik [2006] UKHL 18; [2007] 1 A.C. 18.
[823] Anwoir [2008] EWCA Crim 1354; [2009] 1 W.L.R. 980.

money laundering offences from being prosecuted in the UK.[824] He addresses the issues of establishing predicate offences as a pre-requisite to forming a money laundering offence and indicates that predicate offences are not within the ethos of the Proceeds of Crime Act 2002 in itself. He concludes that predicate offences should not be a pre-requisite and that this will bridge the gap between the potential political agendas to maintain loopholes in the law,[825] raising the public perception and awareness of how money laundering offences should be prosecuted. Unger asserts that predicate offences are the 'Achilles heel' in defining money laundering, as there is no uniformity in establishing effective global prosecution guidelines that will contribute to the securing of convictions.[826] For example, as is the case in the UK, whilst any criminal act can be a predicate offence for money laundering, there needs to be knowledge by the offender that the property or money was in fact the proceeds of crime. The FATF has over 20 'designated categories of offences';[827] and the Palermo Convention stipulates that it has to be a serious crime punishable with four years in prison.

The requirement of predicate crimes in international legislation and soft law inhibits the pursuing of money laundering offences. Conversely, if the predicate crime has been established, then money laundering offences should be easier to determine. Both in the UK and Nigeria, any crime that generates proceeds from crime is categorised as a predicate offence.

Evolution of the traditional stages of money laundering

There are generally three stages[828] of money laundering. The first is 'placement', which is the introduction of the proceeds of crime into the financial system. The second stage is known as 'layering', which is the distancing of the illegal money from the original source through disparate and many financial transactions. The final stage is known as 'integration', which is the re-entry of the money into the economy. However, this classic description and process has been challenged with the advancement of electronic money flows and the evolution of banking

[824] Kenneth Murray, 'A Suitable Case for Treatment: Money Laundering and Knowledge' (2012) 15 Journal of Money Laundering Control 188.
[825] Ibid.
[826] B. Unger and Daan van der Linde, *Research Handbook on Money Laundering* (Edward Elgar 2013) 23.
[827] 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, the FATF Recommendations 2012' (Financial Action Task Force 2012).
[828] Nicholas Ryder, *Money Laundering, an Endless Cycle? A Comparative Analysis of the Anti-Money Laundering Policies in the United States of America, the United Kingdom, Australia and Canada* (Routledge, 2012) 1.

systems. For example, Hopton points out that, for many scenarios, the traditional three-tier process is no longer applicable.[829] His definition is much wider, suggesting that any proceeds from crime would constitute money laundering:

> Occurring every time any transaction takes place or relationship is formed which involves any form of property or benefit, whether tangible or intangible, which is derived from criminal activity.[830]

Koningsveld also disputes the traditional three-stage process as deficient, and replaces 'integration' with two stages: 'justification' and 'investment'. He argues that this four-stage model is more in line with what is actually happening when money is laundered, and this would make tackling money laundering more effective.[831]

Extent of money laundering

Financial crime statistics provide a confusing array of figures attributed to dirty money or proceeds of crime,[832] although there have been some attempts to measure the extent of money laundering.[833] Unger and Hertog demonstrated that 'it was impossible from all empirical studies done so far to even conclude on the direction of travel of money laundering trends'.[834] The United Nations Office on Drugs and Crime (UNODC) estimated that proceeds of crime amounted to 3.6% of global GDP, with 2.7% or $1.6tn being laundered in 2009.[835] Walker estimated in 1995 that $2.85tn was laundered worldwide.[836] The figure of 2–5% of global GDP is often quoted and its basis stems from a statement made by the International Monetary Fund

[829] Doug Hopton, *Money laundering: A Concise Guide for All Business* (Gower Publishing 2009) 3.
[830] Ibid, 2.
[831] Jan van Koningsveld, 'Money Laundering - You Don't See It Until You Understand It: Rethinking the Stages of Money Laundering Process to Make Enforcement More Effective' in Unger and Linde (eds), *Research Handbook on Money Laundering* (Edward Elgar 2014).
[832] Brigitte Unger and Elena Madalina Busuioc, *The Scale and Impacts of Money Laundering* (Edward Elgar Publishing 2007) 12.
[833] John Walker and Brigitte Unger, 'Measuring Global Money Laundering:" The Walker Gravity Model"' (2009) 5 Review of Law & Economics 821.
[834] Brigitte Unger and Johan den Hertog, 'Water Always Finds its Way: Identifying New Forms of Money Laundering' (2012) 57 Crime, Law and Social Change 287.
[835] 'Illicit Money How Much is Out There?' (*United Nations on Drugs and Crime,* 2011) <http://www.unodc.org/unodc/en/frontpage/2011/October/illicit-money_-how-much-is-out-there.html> accessed 13 November 2014.
[836] John Walker, 'How Big is Global Money Laundering?' (1999) 3 Journal of Money Laundering Control 25.

(IMF) Managing Director, Michel Camdessus, in 1998, and would have been in the region of $1.5tn at that time,[837] although there was never any qualification of this figure. Reuter discards the Camdessus' estimate, as it was based on expert opinion rather than an IMF study; and he also contests the Walker model, suggesting that the methodology is flawed.[838] Reuter intimates that focusing on the value of how much money is laundered is diverting the attention away from dealing with the problem. However, without the visibility of the problem, it would be difficult to allocate appropriate resources and priority to the issue of money laundering, and efforts should continue to make the extent of money laundering more qualified and accepted.

Statistics on the extent of money laundering in the UK are difficult to isolate and there are large variations. For example, the Financial Services Authority (FSA) estimated the figure to be between £23bn and £57bn[839] (based on the IMF assessment method as described above),[840] which is consistent with the amount that Harvey suggests, of between £19bn and £48bn.[841] However, HM Treasury used a more conservative figure of £10bn in 2007 (whilst recognising that its estimate is much less than the IMF figure of 2–5% of GDP),[842] which was referred to by the House of Lords debate on financial crime in 2011.[843]

Baker takes the view that banks and governments have an inherent interest to allow money laundering to occur for economic and political stability.[844] Indeed, money laundering could be good for the economy through greater availability of credit and increased profits for the financial sector. Ferweda states that 'the literature is still uncertain whether money laundering

[837] 'Money Laundering: The Importance of International Countermeasures - Address by Michel Camdessus' (*International Monetary Fund,* 1998) <http://www.imf.org/external/np/speeches/1998/021098.HTM> accessed 1 October 2019.
[838] Peter Reuter, 'Are Estimates of the Volume of Money Laundering either Feasible or Useful?' in Brigitte Unger and Daan van der Linde (eds), *Research Handbook on Money Laundering* (Edward Elgar 2014).
[839] This figure is quoted in Nicholas Ryder, *Money Laundering, an Endless Cycle? A Comparative Analysis of the Anti-Money Laundering Policies in the United States of America, the United Kingdom, Australia and Canada* (Routledge 2012) 74, quoting the Financial Services Authority, 'What is Financial Crime'.
[840] 'Money Laundering: The Importance of International Countermeasures - Address by Michel Camdessus' (International Monetary Fund, 1998) <http://www.imf.org/external/np/speeches/1998/021098.HTM> accessed 1 October 2019.
[841] Jackie Harvey, 'An Evaluation of Money Laundering Policies' (2005) 8 Journal of Money Laundering Control 339.
[842] 'The Financial Challenge to Crime and Terrorism' (HM Treasury 2007).
[843] Deborah Hardoon and Finn Heinrich, 'Bribe Payers Index 2011' (Transparency International 2011).
[844] Raymond Baker, *Capitalism's Achilles Heel: Dirty Money and How to Renew the Free-Market System* (John Wiley & Sons 2005) 343.

would have a net positive or negative effect on the economy in the long run'.[845] Even if this is the case, the link between corruption and money laundering[846] means that the option of not doing anything is untenable, as the extent and impact of corruption is widespread and detrimental to society, especially in developing countries such as Nigeria. Although rich in oil reserves with a GDP of well over $448bn,[847] the majority of people in Nigeria are living in poverty.[848] Unger confirms Baker's evaluation to a degree, by introducing an idea that 'giants wash more',[849] where large corporations and developed countries that have established financial and legal centres are inherently involved in money laundering and share a symbiotic relationship with their offshore tax havens, which is a strong assertion of this thesis. For example, the UK and Guernsey both need each other to stay competitive, which applies to both proceeds of crime and legitimate money. An example of a large corporation that 'washes more' is HSBC that forfeited $1.9bn in a deferred prosecution agreement (DPA) to the US Department of Justice for AML violations that involved Mexican drug cartels and sanctions abuse.[850] Subsequently, the Financial Conduct Authority (FCA) also imposed oversight on HSBC's operations.[851] This example shows the scale of the problem, and many more examples of poor practice continue to emerge. More recently, Deutsche Bank paid $630m to resolve US and UK investigations into alleged 'mirror trades' used to launder $10bn out of Russia.[852] Banking misconduct is not new, and Quirk suggests that money laundering can undermine the

[845] Joras Ferweda, 'The Effects of Money Laundering' in Brigitte Unger and Daan van der Linde (eds), *Research Handbook on Money Laundering* (Edward Elgar, 2014).
[846] David Chaikin and J. C. Sharman, *Corruption and Money Laundering: A Symbiotic Relationship* (Palgrave Macmillan, 2009).
[847] 'Gross Domestic Product 2019' (*World Bank,* 2019) <https://databank.worldbank.org/data/download/GDP.pdf> accessed 10 March 2020.
[848] Ayodeji Aluko and Mahmood Bagheri, 'The Impact of Money Laundering on Economic and Financial Stability and on Political Development in Developing Countries: The Case of Nigeria' (2012) 15 Journal of Money Laundering Control 442.
[849] Brigitte Unger and Elena Madalina Busuioc, *The Scale and Impacts of Money Laundering* (Edward Elgar Publishing, 2007) 12.
[850] 'HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit $1.256 Billion in Deferred Prosecution Agreement' (*US Department of Justice,* 2012) <http://www.justice.gov/opa/pr/2012/December/12-crm-1478.html> accessed 13 March 2020. The total amount that HSBC agreed to pay was $1.9bn, which includes $1.2bn for the DPA, $665m in civil penalties; $500m to the office of the Comptroller; and $165m to the Federal Reserve.
[851] 'FSA Requires Action of the HSBC Group' (*Financial Conduct Authority,* 2013) <http://www.fca.org.uk/news/fsa-requires-action-of-the-hsbc-group> accessed 8th October 2019.
[852] 'New York State Department of Financial Services in the Matter of Deutsche Bank AG and Deutsche Bank AG New York Branch' (*New York State Department of Financial Services,* 2017) <http://www.dfs.ny.gov/about/ea/ea170130.pdf> accessed 18 March 2020.

governance of banks and corrupt aspects of the financial system.[853] Whistle-blower Herve Falciani revealed, through the ICIJ,[854] a range of poor practices that suggested HSBC had been 'complicit with rather than lax'[855] in noticing and detecting financial crime in their bank.[856] Naheem advocates that, rather than relying on regulation alone to manage money laundering offences, AML compliance needs to be entrenched into the corporate social responsibility agenda.[857] Baker draws attention to the vulnerability of banks in the money laundering process in the US:

> When it comes to large deposits from overseas, far too many American banks assume a 'don't ask, don't tell philosophy' … In fact, the Treasury Department estimates that 99.9% of the criminal money presented for deposit in the United States is accepted into secure amounts. It's a sad fact, but American banks, under the umbrella of conflicting American laws and policies will accept money from overseas even if they suspect that it has been illegally obtained.[858]

In the UK, there has been both independent and regulatory criticism of banks accepting and being used as financial centres where there have been IFFs.[859] Similarly, an inquiry into money laundering in 2001 by the French Parliamentary Committee criticised the UK regulatory, judicial and banking sectors for not doing enough to tackle money laundering. This has resulted in London and the City being 'highly attractive for money launderers … not only a tax, banking and

[853] Peter J Quirk, 'Macroeconomic Implications of Money Laundering' (IMF Working Paper 96/66, 1996); Peter J Quirk, 'Money Laundering: Muddying the Macroeconomy' (1997) 2 Trends in Organised Crime 10.
[854] 'About the ICIJ' (*International Consortium of Investigative Journalists,* 2020) <http://www.icij.org/about> accessed 1 August 2020.
[855] Tim Bowler, 'Global Views on the HSBC Tax Scandal' (*BBC News,* 2015) <http://www.bbc.co.uk/news/business-31300712> accessed 30 July 2020.
[856] David Leigh and others, 'HSBC Files Show How Swiss Bank Helped Clients Dodge Taxes and Hide Millions' *The Guardian* (London 9 February 2015) <http://www.theguardian.com/business/2015/feb/08/hsbc-files-expose-swiss-bank-clients-dodge-taxes-hide-millions?CMP=EMCNEWEML6619I2> accessed 25 January 2020.
[857] Mohammed Ahmad Naheem, 'HSBC Swiss Bank Accounts -AML Compliance and Money Laundering Implications' (2015) 23 Journal of Financial Regulation and Compliance 285.
[858] Garry Emmons, 'Q & A Dirty Money- Raymond Baker Explores the Free Market's Demimonde' (*Harvard Business School,* 2001) <https://www.alumni.hbs.edu/stories/Pages/story-bulletin.aspx?num=3105> accessed 11 June 2020; also see Loretta Napoleoni, 'The New Economy of Terror: How Terrorism Is Financed' (2004) 4 Forum on Crime & Society 31, 40-41.
[859] FSA/PN/029/2001 - FSA Publishes Results of Money Laundering Investigation (Financial Services Authority, 2001).

financial haven, but also, unfortunately, a judicial haven in many respects'.[860] More recently, London has been labelled with the tag of the 'money laundering capital of the world'.[861] The reasoning is that the UK is a strong financial centre that supports banking and tax management, by virtue of it also being a judicial haven, where international businesses choose the legal system to conduct business due to the level of expertise available and lack of bureaucracy when compared to other jurisdictions.[862] Each one of these activities supports each other and, in the end, all of these sectors (where tax affairs can be both planned and executed in a robust legal way) perversely support IFFs and money laundering. One example is how shell companies are used to hide the true beneficial owner of companies that enable and facilitate both the flow of proceeds of crime and tax evasion and avoidance.[863] Baker contends that 'Much of the world's money passes through systems and sites designed to handle illicit proceeds',[864] with strong assertions that also corroborate Unger's 'giants wash more' analogy:[865]

> The richest countries are the biggest promoters of lawlessness in international trade and finance. In a process that parades as agreeable enterprise, illegal money in the trillions of dollars flows effortlessly. Furthermore, North American and European countries as well as other states, maintain legal loopholes that encourage illegal inflows.[866]

These factors contribute strongly to the hypothesis of this study that, whilst there is strong AML legislation and regulation in the UK, there are numerous examples of serious AML breaches by banks that go back many years and continue to occur today, and that suggest that regulation

[860] E Inciyan, M Roche and B Stern, 'London is Lax on Money Laundering' (2001) 29 Guardian Weekly 18.
[861] Avinash D Persaud, 'London The Money Laundering Capital of the World' (*Prospect,* 2017) <https://www.prospectmagazine.co.uk/economics-and-finance/london-the-money-laundering-capital-of-the-world> accessed 10 June 2020.
[862] Alan Yarrow, 'Why Now is the Time for London to be Proud of its World-Leading Legal Sector' (*City A.M.,* 9 February 2015) <http://www.cityam.com/208946/city-matters-why-now-time-london-be-proud-its-world-leading-legal-sector> accessed 19 December 2019.
[863] Raymond Baker, 'The Scale of the Global Financial Structure Facilitating Money Laundering' in Brigitte Unger and Daan van der Linde (eds), *Research Handbook on Money Laundering* (Edward Elgar 2013).
[864] Raymond Baker, *Capitalism's Achilles Heel: Dirty Money and How to Renew the Free-Market System* (John Wiley & Sons 2005), 339.
[865] Brigitte Unger and Elena Madalina Busuioc, *The Scale and Impacts of Money Laundering* (Edward Elgar Publishing 2007) 12.
[866] Raymond Baker, *Capitalism's Achilles Heel: Dirty Money and How to Renew the Free-Market System* (John Wiley & Sons 2005), 338.

and legislation are not having the intended outcomes. The thesis also contends that there is a synergetic relationship between the UK and its Overseas Territories that is a primary contributor to IFFs, corruption and money laundering. This chapter now turns to the legal instruments and soft law provisions for anti-money laundering, to assess their effectiveness in the UK and Nigeria.

The law and soft law analysis of money laundering internationally, in Europe, the UK and Nigeria

United Nations

At the international level, the UN provides the foundations of an AML approach. The UN Conventions deal with both money laundering and corruption. The UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (also known as the 'Vienna Convention') provides that UN Member States should put in place appropriate legislation to make such activity illegal, with appropriate sanctions and penalties. The UN Convention against Transnational Organized Crime 2000 (also known as the 'Palermo Convention') widened the scope to all serious crime,[867] which includes money laundering[868] and corruption.[869] These aspects are important with respect to the Nigerian corruption cases, but in particular UNCAC addresses the aspects of IFFs highlighted in this thesis that should be applicable to Nigeria. For example, Nigeria ratified UNCAC in 2004, but the Convention has had little impact or effect in Nigeria; this shows the limitations of such an international Convention where the rule of law is compromised. UNCAC extended the scope of the Palermo Convention further, with Article 14 specifying measures to prevent money laundering,[870] and Article 52 concerning the prevention and detection of transfers of proceeds of crime.[871] Article 14(3) includes electronic transfer of funds, which is especially relevant in today's digital banking age and is of relevance in determining the true source of financial flows that are transferred from Nigeria to the UK. Article 20 introduced the recommendation to criminalise illicit enrichment, with respect to grand corruption;[872] and it suggests that public officials should be able to account for their assets, which is of relevance to the Nigerian examples of corruption. It is surprising that the

[867] United Nations Convention against Transnational Organized Crime 2000, Article 2(b).
[868] Ibid, Articles 6, 7.
[869] Ibid, Articles 8, 9.
[870] United Nations Convention against Corruption 2003, Article 14.
[871] Ibid, Article 52.
[872] Ibid, Article 20.

UNODC commended Nigeria's anti-corruption war in May 2017,[873] even though a joint UNODC report in the same year described corruption in Nigeria as prolific,[874] and the Transparency International CPI showed Nigeria dropping several places to 148th in 2017[875] and to 149th in 2020.[876]

The Financial Action Task Force

The FATF, established in 1989 as a result of the G7 Summit in Paris, was set up initially to look at ways to tackle money laundering.[877] There are 39 Member States of the FATF and two regional organisations,[878] namely the European Commission and the Gulf Co-operation Council. There are also Associate Members and Observers, made up from international and regional organisations, that all have representation at this inter-governmental body, which has its main aim of protecting the international financial system from misuse.[879] The 40 FATF Recommendations were first introduced in 1990 and are still seen as the benchmark for AML provision for governments and companies. The FATF Recommendations are regarded as soft law,[880] and thus are not binding within any national or international law courts.

However, for non-compliance there is the imposition of sanctions and blacklisting through the High Risk and other Monitored Jurisdictions Public Statement.[881] The initial 40 FATF Recommendations[882] were seen to have limited scope and, following the 2001 terrorist attacks in the US, a further nine 'special recommendations' were issued that extended the remit to

[873] 'UNODC Commends Nigeria's Anti-Corruption War' *Punch* (10 May 2017) <http://punchng.com/unodc-commends-nigerias-anti-corruption-war/> accessed 18 March 2020.
[874] 'Corruption in Nigeria - Bribery - Public Experience and Response' (United Nations Office on Drugs and Crime 2017).
[875] 'Corruption Perceptions Index 2017' (*Transparency International,* 2017) <https://www.transparency.org/news/feature/corruption_perceptions_index_2017> accessed 22 February 2018.
[876] 'Corruption Perceptions Index 2020' (Transparency International, 2021) <https://www.transparency.org/cpi/2020> accessed 11 August 2021.
[877] 'Frequently Asked Questions: Money Laundering' (European Commission Memo 2013).
[878] 'FATF Members and Observers' (*Financial Action Task Force,* 2019) <http://www.fatf-gafi.org/about/membersandobservers/> accessed 11 December 2019.
[879] Ibid.
[880] Kenneth W. Abbott and Duncan Snidal, 'Hard and Soft Law in International Governance' (2000) 54 International Organization 421.
[881] 'High Risk and Other Monitored Jurisdictions - Public Statement 2019' (*Financial Action Task Force,* 2019) <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/public-statement-october-2019.html> accessed 15 Deember 2019.
[882] 'The Forty Recommendations of the Financial Action Task Force on Money Laundering' (Financial Action Task Force 1990).

include the financing of terrorism.[883] In 2012, the FATF amended its recommendations to include measures to combat the financing of weapons of mass destruction (WMD) proliferation and, most significantly, improving the fight against laundering of proceeds of corruption and tax crimes. Parlour acknowledges some improvements within this update, but also suggests that there are still fundamental limitations:

> There thus appears to be some strengthening of the legal architectural environment for money laundering and terrorist financing, but there is still no serious movement on financial crime metrics, and no proper use of the compliance spectrum to interdict the scourge of money laundering and its underlying predicate crimes.[884]

In July 2012, the FATF published its updated guide, Specific Risk Factors in the Laundering of Proceeds of Corruption, which addresses the direct link between grand corruption and money laundering, a vital evolution and widening of the FATF strategic goals since its inception in 1989.[885] The FATF represents an important aspect in the international approach to bribery, corruption, illicit flows and money laundering, and is updated regularly. In 2018 there was a revision to Recommendation 2 to ensure compatibility of AML/CFT requirements and data protection and privacy rules and a revision of Recommendation 15 regarding new technologies clarifying how the FATF standards apply to virtual technologies.[886] Recommendation 15 had an insertion of an Interpretive Note that sets out the application of the FATF Standards to virtual asset activities and service providers in June 2019.[887] An update, in October 2020, amended Recommendation 1 regarding risks of potential breaches, non-implementation or evasion of the targeted financial sanctions related to proliferation financing and Recommendation 2 that inserted a reference to counter-proliferation financing in the context of national co-operation

[883] 'The FATF 9 Special Recommendations' (Financial Action Task Force 2001).
[884] Richard Parlour, 'The New FATF Forty Recommendations' (2012) Financial Regulation International 7.
[885] 'Specific Risk Factors in the Laundering of Proceeds of Corruption' (Financial Action Task Force 2012); also see 'FATF Laundering the Proceeds of Corruption' (Financial Action Task Force 2011); these reports cover the corruption cases in Nigeria that involved State Governors Ibori, Alamieyeseigha, and former President Abacha.
[886] 'Information on updates made to the FATF Recommendations' (Financial Action Task Force, 15 October 2020) < https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html > accessed 24 August 2021.
[887] Ibid.

and co-ordination.[888] In June 2021 there was a revision to recommendation 15 to clarify the applicability of proliferation financing risk assessment and mitigation requirements to virtual asset activities and service providers.[889]

The FATF Recommendations, with the inclusion of further corruption guidelines,[890] make it a useful resource in this complex and often contradictory topic. The FATF Recommendations are the benchmark for AML best practice, and are also adopted by the European Union and translated into the Fourth AML Directive.[891] This thesis asserts that, if the FATF were to consider corruption and IFFs as part of the remit against the fight against money laundering, this would harmonise the approach that governments and banks take to tackle the wide and less well-known area of IFFs. The FATF Recommendations, whilst not legally binding, are by far the most important AML standard.

Council of Europe and the European Union

In Europe, there are two main legislative bodies that deal with money laundering. The first is the Council of Europe,[892] which currently has 47 country members and was formed to promote democracy, human rights and the rule of law in Europe. The other law-making and supranational body is the European Union (EU), which - after the recent withdrawal of the UK from the EU - has 27 Member States, all of which are also members of the Council of Europe. The Council of Europe Conventions are only legally binding if countries sign the Convention and ratify them in their national law.[893] The EU does recommend that the Council of Europe Conventions are adopted by their member countries.[894] The first in 1990 is the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 1990 (known as the

[888] Ibid.
[889] Ibid.
[890] 'Best Practices Paper - Use of FATF Recommendations to Combat Corruption' (Financial Action Task Force 2013).
[891] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the Prevention of the use of the Financial System for the Purposes of Money Laundering or Terrorist Financing.
[892] 'Council of Europe in Brief' (Council of Europe, 2018) <https://www.coe.int/en/web/about-us/structure> accessed 12 February 2020.
[893] Statute of Council of Europe 1949.
[894] 'Report from The Commission to The Council on the modalities of European Union Participation in the Council of Europe Group of States against Corruption' (GRECO 2011).

'Strasbourg Convention'),[895] aimed to facilitate international co-operation and mutual assistance in investigating money laundering offences. The Convention was envisioned to help States achieve a comparable level of efficiency in dealing with money laundering where the proceeds of crime and its mechanisms are criminalised. The Strasbourg Convention was updated by the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism 2005 (known as the 'Warsaw Convention'),[896] which includes in its remit the financing of terrorism and 'reverse money laundering', as it was recognised that both laundered money and legitimate money can contribute to the financing of terrorism. Since numerous EU legal instruments have supremacy in Member States, and the UK was a member of the EU until recently, it is necessary to analyse the relevant EU legal framework in detail.

The EU has been prolific in its anti-money laundering regime, compared to corruption[897] and fraud policies. The First AML Directive, came into force in 1991, addressed laundering of drugs proceeds and applied specifically to the financial sector.[898] The Second AML Directive, introduced in 2001, extended the money laundering focus to all serious offences,[899] in line with the Palermo Convention, broadening the scope of suspicious activity reports and the requirement to include professionals that could be involved in the process of money laundering into Member State policy, including lawyers, auditors, tax advisors, estate agents, etc.[900] The Third AML Directive[901] encompassed the prevention of financing of terrorism as a requirement

[895] Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 1990.
[896] Council of Europe Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism 2005. The UK ratified the Warsaw Convention in 2015, see 'Chart of Signatures and Ratifications of Treaty 198, Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism' (*Council of Europe,* 2018) <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/198/signatures?p_auth=5kHIyXGW> accessed 9 August 2020.
[897] The EC began to address this gap by introducing the EU anti-corruption report in 2014, see 'Report from the Commission to the Council and the European Parliament - EU Anti-Corruption Report' (European Commission 2014).
[898] Council Directive of 10 June 1991 on Prevention of the Use of the Financial System for the Purpose of Money Laundering (91/308/EEC).
[899] Directive 2001/97/EC of the European Parliament and of the Council Of 4 December 2001 amending Council Directive 91/308/EEC on Prevention of the use of the Financial System for the Purpose of Money Laundering.
[900] United Nations Convention against Transnational Organized Crime 2000, Article 31 (2)b.
[901] Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the Prevention of the use of the Financial System for the Purpose of Money Laundering and Terrorist Financing.

for Member States to adopt in their AML regimes, and also to follow the then 40 FATF Recommendations 2003.[902] The European Commission appears to match the standards that are set by the FATF. For example, the Fourth AML Directive[903] places into effect the FATF Recommendations 2012 and, in some areas, the EU has gone further. Whilst the FATF Recommendations are the international standards, at the EU level the AML Directives will improve the efficacy of deterring money laundering as a result of the co-operation and harmonising approach in Europe, as money laundering offences tend to be multi-jurisdictional. The Fourth AML Directive has several themes. It addresses the issue of lack of transparency of anonymous shell companies to hide true beneficial owners of corporate schemes designed to avoid tax. One of its aims is to bring about the end to corporate secrecy and to enable the identification of beneficial owners of some organisations that are used either for tax evasion or for the concealment of illicit financial capital.[904] Tax evasion[905] as a predicate crime is included, as it already is in the UK. Other measures include simplifying the customer due diligence procedures, and enabling a greater understanding of customers and their businesses.[906] The Fourth AML Directive also widens the scope of who is considered a politically exposed person (PEP).[907] The thesis proposition is that money laundering is still prolific, despite the numerous laws and standards that exist and that are being implemented, especially with the use of secrecy jurisdictions and complex corporate structures to obscure the ultimate beneficial owner. However, the measures of the Fourth AML Directive, as described above, can be seen as strong AML provisions where the measures could contribute to the fight against IFFs,

[902] The most current FATF AML guidelines are now housed in the FATF recommendations, which include the extra 9 recommendations added in 2009, and the updated 2012 recommendations that included aspects of corruption; see 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, the FATF Recommendations 2012' (Financial Action Task Force 2012).

[903] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the Prevention of the use of the Financial System for the Purposes of Money Laundering or Terrorist Financing.

[904] 'Anti-Money Laundering - Stronger Rules to Respond to New Threats' (European Commission - Europa Press Releases Database, 2013) <http://europa.eu/rapid/press-release_IP-13-87_en.htm?locale=en> accessed 28 July 2020.

[905] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the Prevention of the use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, preamble s11, s56, Article 3 s4f.

[906] 'Anti-Money Laundering - Stronger Rules to Respond to New Threats' (European Commission - Europa Press Releases Database, 2013) <http://europa.eu/rapid/press-release_IP-13-87_en.htm?locale=en> accessed 28 July 2020.

[907] This is reflected in the UK Money Laundering Regulations 2017 which have blended the due diligence requirements for a local PEP to the same standard as a foreign PEP, which in practice means an enhanced due diligence for a wider range of individuals. See, The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

corruption and money laundering. The Fifth AML Directive includes the amendments to the Fourth AML Directive agreed in December 2017 between the European Parliament and the Council. The amendments contain provisions regarding the implementation and make-up of Ultimate Beneficial Ownership Registers in the EU, strengthening the fight against terrorism and, most pertinent to this thesis, introducing stricter controls for financial flows from high-risk countries.[908] The sixth AML Directive came into force in December 2020 and should have been implemented by Member States by 03 June 2021.[909] It focuses on harmonising the definition of money laundering, broadens scope of existing legislation and provides a list of 22 predicate offences. The legislation extends criminal liability to enablers, for example those helping money launderers, or anyone inciting others to commit money laundering offences.

United Kingdom

The UK's approach to financial crime and money laundering, where both the UN and EU legal instruments have been implemented, is comprehensive.[910] For example, the Fourth AML Directive was adopted through the Money Laundering Regulations 2017.[911] However, the disparate nature of many agencies tasked to lead the policy and strategy for money laundering leaves a risk of IFFs. The primary agency charged with dealing with money laundering is HM Treasury.[912] The Crime and Courts Act 2013 established the National Crime Agency (NCA) and abolished the Serious Organised Crime Agency (SOCA). The NCA is also the financial intelligence unit (FIU) for the UK, which addresses white-collar crime. The FCA's objective is to ensure the integrity of the UK financial markets and for authorised firms to have systems and controls in place to mitigate the risk that they might be used to commit financial crime.[913] The Serious Fraud Office (SFO) gets involved in high-value money laundering cases where there is a link with

[908] Directive (EU) 2018 of the European Parliament and of the Council of 30 May 2018 Amending Directive (EU) 2015_849 on the Prevention of the use of the Financial System for the Purposes of Money Laundering or Terrorist Financing.
[909] Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on Combating Money Laundering by Criminal Law.
[910] 'Economic Crime Plan 2019-22' (HM Government - UK Finance 2019).
[911] The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.
[912] 'Policy Paper - Preventing Money Laundering' (HM Treasury 2013).
[913] 'Financial Crime Compliance' (*Financial Conduct Authority,* 2020) <https://www.fca.org.uk/firms/financial-crime> accessed 16 March 2020.

corruption and fraud.[914] The UK is also a member of the FATF[915] and complies satisfactorily with core and key recommendations, and the recent FATF Mutual Evaluation for the UK assessed the extent to which the FATF Recommendations have been implemented.[916] The NCA is an active member of the Egmont group,[917] where FIUs co-ordinate and share information and training with respect to dealing with money laundering.

Part 7 of the Proceeds of Crime Act 2002 is the principal money laundering legislation in the UK. A person commits an offence if he conceals, disguises, converts or transfers criminal property; and there is a jurisdictional element where a person would commit an offence if he removes criminal property from the UK.[918] An offence is also committed if a person is involved in an arrangement where he knows or suspects that he is involved in the facilitation and movement of criminal property on behalf of another person.[919] This would catch a banker who knowingly transfers laundered money through his bank to other jurisdictions or offshore facilities on the instruction of his client. Section 329 of the Proceeds of Crime Act 2002 states that a person commits an offence if he acquires, uses or has possession of criminal property. Sections 330–332 cover a failure to disclose money laundering activity, and section 333 covers tipping off. The penalties for section 327–329 offences range from six months in prison or a fine, for summary conviction, up to 14 years in prison and/or a fine for conviction on indictment.[920] Section 330–332 offences would entail six months in prison or a fine, for summary conviction, up to five years in prison and/or an unlimited fine on conviction on indictment.[921] For a section 333 tipping-off offence, the penalty would be a fine and/or two years' imprisonment.[922]

[914] 'About us - Serious Fraud Office' (*Serious Fraud Office,* 2020) <https://www.sfo.gov.uk/about-us/> accessed 8 August 2020.
[915] 'FATF Members and Observers' (*Financial Action Task Force*, 2019) <http://www.fatf-gafi.org/about/membersandobservers/> accessed 11 December 2019.
[916] 'Anti-Money Laundering and Counter-Terrorist Financing Measures - United Kingdom - Mutual Evaluation Report - December 2018' (*Financial Action Task Force,* 2018) <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf> accessed 17 April 2020.
[917] 'List of Members' (*Egmont Group,* 2020) <https://www.egmontgroup.org/en/membership/list> accessed 8 August 2020.
[918] Proceeds of Crime Act 2002, s327.
[919] Ibid, s328.
[920] Ibid, s334(1).
[921] Ibid, s334(b).
[922] Ibid, s333A(4).

The UK is seen as a leader in the field of AML practice, both from a legislation point of view and from an operational and strategic perspective. A risk-based approach[923] was adopted by the UK in 2003, well before the FATF global introduction in 2007,[924] and this was contained in the Money Laundering Regulations 2007[925] and the Joint Money Laundering Steering Group guidance.[926] The UK is compliant with most international and regional legislation and soft law AML stipulations. Harvey states, 'Indeed, the UK is particularly assiduous in the application of its anti-money laundering systems and procedures',[927] and quotes Levi suggesting the UK as 'the greatest devotee of anti-money laundering provisions within the European Union'.[928]

Whilst the UK appears to have strong AML practices in place, there is confusion with respect to the overall UK strategic approach. The creation of the NCA and its remit as an FIU under the Crime and Courts Act 2013,[929] and the SFO also having the ability to prosecute cases,[930] makes the UK's approach to money laundering and financial crime overly complicated. Amongst this complexity is that the UK Overseas Territories are seen as key money laundering and IFF facilitators that put the UK in a contradictory position. On the one hand, all international AML

[923] The EU strongly advocate a risk-based approach in the Fourth AML Directive at every level, see Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the Prevention of the use of the Financial System for the Purposes of Money Laundering or Terrorist Financing.

[924] 'FATF Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing - High Level Principles and Procedures' (*Financial Action Task Force,* 2007) <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatfguidanceontherisk-basedapproachtocombatingmoneylaunderingandterroristfinancing-highlevelprinciplesandprocedures.html> accessed 10 November 2019.

[925] The Money Laundering Regulations 2007 have been superseded by the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017; and further amended by the Money Laundering and Terrorist Financing (Amendment) Regulations 2019.

[926] 'Prevention of Money Laundering/ Combating Terrorist Financing - Guidance for the Financial Sector Part 1' (The Joint Money Laundering Steering Group 2007). This has been superseded by 'The Joint Money Laundering Steering Group (JMLSG) Prevention of Money Laundering / Combating Terrorist Financing 2017', and further amended in 2020; see 'JMLSG Publishes New Guidance' (Joint Money Laundering Steering Group 2020) <https://jmlsg.org.uk/latest-news/jmlsg-publishes-new-guidance/> accessed 8 August 2020.

[927] Jackie Harvey, 'An Evaluation of Money Laundering Policies' (2005) 8 Journal of Money Laundering Control 339.

[928] Michael Levi, 'Following the Criminal and Terrorist Money Trails' in Duyne P, Lampe K and Newell J (eds) in *Criminal Finances and Organising Crime in Europe* (Nijmegen, Wolf Legal Publishers 2003).

[929] Jill Treanor, 'Banking Commission: Bankers Should be Jailed for 'Reckless Misconduct'' *The Guardian* (19 June 2013) <http://www.guardian.co.uk/business/2013/jun/19/tyrie-report-banking-reform-jail-sentences> accessed 1 July 2020.

[930] The SFO is a specialist authority that investigates and prosecutes serious cases of complex fraud, bribery and corruption.

Directives and Conventions are adopted, ratified and sometimes 'gold plated'.[931] On the other hand, a number of secrecy British Overseas jurisdictions that enable IFFs are at odds with the UK's strong policy on AML, especially when the services provided by those territories (secrecy jurisdictions) are used by developing countries, such as Nigeria, for IFFs. This juxtaposition is identified in this thesis and forms a key basis of the argument that, whilst the AML legislation may exist in theory, the practice is somewhat different. This assertion is confirmed by the Royal United Services Institute (RUSI) critiquing the FATF Mutual Evaluation of the UK:[932]

> The UK has achieved top-of-the-class marks from the FATF – government officials will be both surprised and relieved. However, the fact that the UK remains central to global money laundering schemes brings into question the relevance of this evaluation.[933]

However, this has been recognised by the UK Home Office, which asked the Law Commission to review aspects of the UK's money laundering policy to focus on the SARs regime,[934] on the basis that this regime was not working as well as it should be, since the low quality and the high number of SARs could mean that criminal are 'slipping through the net'.[935]

Nigeria

Nigeria appears to have a wide range of legal instruments to effectively counter money laundering, but the political will is not there to ensure successful enforcement against money laundering offences,[936] a key factor that many high-ranking officials and politicians are involved in corrupt practices in Nigeria. The National Drug Law Enforcement Agency (NDLEA) Act 1989

[931] Powles Edward, 'All That Glisters Is Not Gold: Laundering the UK Money Laundering Regime' (2006) 65 The Cambridge Law Journal 40.
[932] 'Anti-Money Laundering and Counter-Terrorist Financing Measures - United Kingdom - Mutual Evaluation Report - December 2018' (Financial Action Task Force, 2018) <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf> accessed 17 April 2020.
[933] Tom Keatinge, 'RUSI Experts React to UK's Financial Action Task Force Mutual Evaluation Report' (*RUSI,* 2018) <https://rusi.org/rusi-news/rusi-experts-react-uk-financial-action-task-force-mutual-evaluation-report> accessed 14 June 2020.
[934] 'Anti-Money Laundering: The SARs Regime' (Law Commission, 2019).
[935] David Ormerod, 'Anti-money laundering - Current Project Status' (*The Law Commission,* 2019) <https://www.lawcom.gov.uk/project/anti-money-laundering/> accessed 14 June 2020.
[936] This is certainly the case for anti-corruption legislation in Nigeria, see Osaretin Aigbovo and Lawrence Atsegbua, 'Nigerian Anti-Corruption Statutes: An Impact Assessment' (2013) 16 Journal of Money Laundering Control 62.

brought Nigeria in line with the Vienna Convention; and the Money Laundering Decree was enacted in 1995 under military rule, with the aim of ensuring that a documentary trail was left for money laundering transactions and to create a closer link between the NDLEA and banks. Nigeria was placed on the FATF Non-Cooperative Countries and Territories (NCCT) list in 2001, due to ineffective implementation of money laundering regulation and/or a lack of political will to tackle money laundering.[937] The democratic government elected in 1999 enacted the Money Laundering Act (Amendment) 2002, which widened the scope of the 1995 decree by expanding predicate offences from drugs offences to that of any criminal act,[938] as is the case in the UK. The Economic Financial Crimes Commission (Establishment) Act 2002,[939] later revised in 2004,[940] created and empowered the EFCC to investigate money laundering cases and enforce the money laundering legislation, but its efficacy has been questioned.[941] For example, in the case of James Ibori (described below in detail), despite 170 charges against him, the EFCC failed to make a successful case in Nigeria at the time in 2007,[942] whilst in the UK, Ibori was successfully convicted for money laundering offences in 2012 and jailed for 13 years.[943] The Economic Financial Crimes Commission (Establishment) Act 2004[944] and the Money Laundering (Prohibition) Act 2004 provided the means to establish Nigeria's FIU, the EFCC, in compliance with FATF,[945] the Palermo Convention[946] and the UN Convention against Corruption.[947] The Money Laundering (Prohibition) Act 2011[948] repealed the Money Laundering (Prohibition) Act 2004,[949] and makes provisions to prohibit the financing of terrorism and laundering the proceeds of crime, and addresses the penalties. It was further revised to extend the scope of

[937] 'Financial Action Task Force on Money Laundering - Review to Identify Non-Cooperative Countries or Territories' (FATF Secretariat 2001).
[938] The list of predicate offences has generally widened over successive iterations of the Money Laundering Acts, and they are currently listed in the Money Laundering (Prohibition) (Amended) Act, 2012, s15(6).
[939] Economic and Financial Crimes Commission (Establishment) Act 2002 (Nigeria).
[940] Economic and Financial Crimes Commission (Establishment) Act 2004 (Nigeria).
[941] Tayo Oke, 'Financial Crime Prosecution, Legal Certainty and Exigency of Policy: Case of Nigeria's EFCC' (2014) Journal of Financial Crime 56.
[942] Ibid. However, note that the EFCC stated in 15 May 2014 that there is a case to answer, see 'StAR - Stolen Asset Recovery Initiative - Corruption Cases - James Ibori (United States)' (World Bank - UNODC, 2014) <http://star.worldbank.org/corruption-cases/node/19584> accessed 29 December 2019.
[943] R v James Onanefe Ibori [2013] EWCA Crim 815.
[944] The 2004 Act was repealed by the 2011 Act.
[945] 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, the FATF Recommendations 2012' (Financial Action Task Force 2012), Article 26.
[946] United Nations Convention against Transnational Organized Crime 2000, Article 7(1)b.
[947] United Nations Convention against Corruption 2003, Article 58.
[948] Money Laundering (Prohibition) Act 2011 (Nigeria).
[949] Money Laundering (Prohibition) Act 2004 (Nigeria).

money laundering offences and enhance customer due diligence, and is now known as the Money Laundering (Prohibition) Act as Amended 2011. Any person or corporation in or outside of Nigeria commits an offence if they directly or indirectly conceal or disguise the origin of,[950] convert or transfer,[951] remove from the jurisdiction,[952] or acquire, use, retain or take possession or control of any fund or property,[953] knowingly or where they reasonably ought to have known that such property is derived from the proceeds of crime.[954] A person also commits an offence of money laundering if s/he conspires with another person to commit the offence of money laundering,[955] attempts to commit or is an accessory to an act or offence of money laundering,[956] or incites, procures or induces any other person by any means whatsoever to commit the offence of money laundering.[957] A person who is convicted for money laundering offences is liable to a prison sentence of between seven and 14 years,[958] which mirrors the UK legislation for the maximum sentence on indictment and goes beyond the six-month sentence prescribed for summary conviction. A corporate body that commits money laundering offences is liable to a minimum fine of 100% of the funds and property acquired as a result of the offence and withdrawal of a licence.[959]

The Central Bank of Nigeria (CBN) (Anti-Money Laundering and Combating the Financing of Terrorism in Banks and other Financial Institutions in Nigeria) Regulations 2013[960] provide exactly what the title suggests and, together with the Money Laundering (Prohibition) (Amendment) Act, 2012 [961] which amends the Money Laundering (Prohibition) Act as Amended 2011, extends the scope of money laundering offences and enhance customer due diligence measures. On the face of it, the combination of these legal instruments provide a robust AML regime in Nigeria and satisfy all the international obligations required for AML procedures.

[950] Money Laundering (Prohibition) (Amended) Act, 2012, s15(2)a (Nigeria).
[951] Ibid, s15(2)b.
[952] Ibid, s15(2)c.
[953] Ibid, s15(2)d.
[954] Ibid, s15(2).
[955] Ibid, s18(a).
[956] Ibid, s18(b).
[957] Ibid, s18(c).
[958] Ibid, s15(3).
[959] Ibid, s15(4).
[960] Central Bank of Nigeria (Anti-Money Laundering and Combating the Financing of Terrorism in Banks and other Financial Institutions in Nigeria) Regulations, 2013.
[961] Money Laundering (Prohibition) (Amended) Act, 2012.

The management of public officials, in theory, appears straightforward, with section 25 of the Money Laundering (Prohibition) Act as Amended 2011 listing all potential people who would be caught under this category. This is particularly relevant in Nigeria due to the scandals and high-profile cases that have been reported. For example, Governor Diepreye Alamieyeseigha was charged with money laundering offences in 2005 in the UK. He managed to jump bail and flee to Nigeria, where he was subsequently prosecuted for corruption and served two years in prison. In 2013, President Goodluck Jonathan pardoned him. This move was probably driven by the close ties and history the two men share, as Goodluck formerly served under Alamieyeseigha. Whilst political will to curb money laundering and its impact may not exist in Nigeria, the political will for self-interest remains strong. This self-interest from corrupt officials spurns the need to divest their ill-gotten gains. The next section looks at how banks are vulnerable to IFFs.

The vulnerability of banks to illicit financial flows

Banks are especially vulnerable to IFFs, even though they have considerable compliance obligations, especially with respect to AML measures, know your customer (KYC) and customer due diligence (CDD) requirements under international, regional and national legal regimes. However, there is very little published about banking policy on financial secrecy and direction from the banking bodies that provide governance and guidance to banks.

There are many examples where proceeds of crime have entered the UK economy via banks and their international subsidiaries,[962] and there is mounting evidence that major banks have been vulnerable to facilitating IFFs from developing countries, bringing into question their obligations with respect to this issue.[963] The use of banks for transferring and holding illicit capital is likely to continue, especially where banking secrecy is enforced and the money acquired through bribery and corruption is legitimised through movement of the capital

[962] 'British Banks Complicit in Nigerian Corruption, Court Documents Reveal' (Global Witness, 2010) <http://www.globalwitness.org/library/british-banks-complicit-nigerian-corruption-court-documents-reveal> accessed 15 November 2019.

[963] Odd-Helge Fjeldstad and Kari Heggstad, 'Capital Flight from Africa-with a Little Help from the Banks' in Alves da Rocha, Regina Santos and Vibeke Skauerud (eds), *Capital Flight and Pro-Poor Development Policy in Angola* (International Centre for Tax and Development (ICTD) and Chr. Michelsen Institute, Norwegian Tax Administration 2014).

through complex legal structures and secrecy jurisdictions.[964] The link between IFFs and the role that banks play is becoming more prevalent, whereby Gooch highlighted the significant weaknesses in government and banking policies that do not address corporate secrecy.[965] Lawson also describes how the City of London fuels corruption,[966] referring to Dan Etete, a former Nigerian oil minister, who diverted $1.1bn illicitly to a shell company, called Malabu Oil and Gas Ltd, and it transpired later that Etete was the beneficial owner of this company.[967] The case involved a $1.3bn deal for an oil block paid to the Nigerian government by Royal Dutch Shell and Eni in 2011[968] which came under scrutiny. It shows the initial illegal transfer of money from the Nigerian government to Malabu Oil and Gas Ltd, a company registered in Nigeria set up by Etete, to enable the IFFs.[969] Etete was previously convicted of money laundering in France in 2007, and is currently at large and being pursued by the Nigerian authorities and the UK authorities who have frozen £85m (whilst Switzerland has frozen $170m) in an attempt to bring Etete to justice.[970] This case demonstrates the link between bribery and corruption and widespread IFFs, and the role that banks play in this. The Nigerian government is suing JP Morgan for failing to conduct enhanced due diligence when it transferred $801.5m to Malabu's accounts in Nigeria;[971] and separately Shell and Eni are being prosecuted on corruption charges in Italy relating to the deal.[972]

[964] 'Undue Diligence How Banks do Business with Corrupt Regimes - How Banks do Business with Corrupt Regimes' (Global Witness, 2010).
[965] 'TED Prize Winner Charmian Gooch Announces Global Campaign to Abolish Anonymous Companies' (Global Witness, 2014) <http://www.globalwitness.org/library/ted-prize-winner-charmian-gooch-announces-global-campaign-abolish-anonymous-companies> accessed 17 February 2020.
[966] 'How London Fuels Corruption' (*TEDx Houses of Parliament,* 2014) <https://www.youtube.com/watch?v=O9CQZmN1Mhs> accessed 31 July 2020.
[967] 'How Ex-Nigerian Petroleum Minister, Dan Etete, Laundered Millions of Dollars' (*Sahara Reporters,* 2014) <http://saharareporters.com/2013/06/16/how-ex-nigerian-petroleum-minister-dan-etete-laundered-millions-dollars> accessed 12 December 2019. Also see Andrew Ward, 'Eni and Shell Face Trial in Italy over Alleged Nigeria Corruption' The Financial Times (20 December 2017) <https://www.ft.com/content/20cba7e2-e574-11e7-97e2-916d4fbac0da> accessed 29 December 2019.
[968] 'Italian authorities raid ENI in fresh investigation into billion-dollar Nigerian oil scandal' (*Global Witness,* 2014) <http://www.globalwitness.org/library/italian-authorities-raid-eni-fresh-investigation-billion-dollar-nigerian-oil-scandal> accessed 31 July 2020.
[969] 'How Ex-Nigerian Petroleum Minister, Dan Etete, Laundered Millions of Dollars' (Sahara Reporters, 2014) <http://saharareporters.com/2013/06/16/how-ex-nigerian-petroleum-minister-dan-etete-laundered-millions-dollars> accessed 12 December 2019.
[970] 'Malabu Oil Scam - EFCC Launches Manhunt for Dan Etete' (*Sweet Crude Reports,* 2017) <http://sweetcrudereports.com/2017/01/02/malabu-oil-scam-efcc-launches-manhunt-for-dan-etete/> accessed 18 February 2020.
[971] Federal Republic of Nigeria v JP Morgan Chase Bank, NA [2021] EWHC 1192 (Comm).
[972] Andrew Ward, 'Eni and Shell Face Trial in Italy over Alleged Nigeria Corruption' The Financial Times (20 December 2017) <https://www.ft.com/content/20cba7e2-e574-11e7-97e2-916d4fbac0da> accessed 29 December 2019.

Entwined with the illicit flow of money from a developing country are the banking systems of the developed countries and how corrupt money can enter via these banks. The vulnerability of banks with respect to receiving illicit financial capital is frequent and inevitable, as illustrated by the cases of HSBC[973] and BNP Paribas.[974] In the case of HSBC, money from Mexican drug cartels was allowed to bypass the bank's money laundering controls.[975] The KYC and CDD procedures have improved significantly following those failings, and banks do take the subject of AML compliance standards very seriously, especially since the regulators are making use of their powers much more comprehensively and in a targeted manner. This is clearly evidenced in the HSBC DPA with the US Department of Justice in 2012, where HSBC spent $1bn on compliance and remediation programmes, and thus the US lifted the threat of a prosecution.[976] HSBC in their 2015 annual report stated that 'we have no appetite for deliberately or knowingly facilitating business that gives rise to illicit activity',[977] advocating that the bank will work towards comprehensive controls and standards to manage financial crime, especially after their 2012 DPA enforcement action. And many other banks will have similar policy statements that concur with this approach. However, the word 'illicit' has been used by HSBC and, although not explicit, in this case it refers to all activities that are illegal only. The definition of the term 'illicit' adopted by this thesis include transfer price abuse and aggressive tax avoidance. This aspect has been explained in detail in Chapter 2; and divergent thinking on this term will continue which, in itself, will also contribute to disparate approaches and hence opportunities for misuse of the terminology where it suits criminal and/or unethical activity.

[973] 'HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit $1.256 Billion in Deferred Prosecution Agreement' (US Department of Justice, 2012) <http://www.justice.gov/opa/pr/2012/December/12-crm-1478.html> accessed 13 March 2020.
[974] United States v BNP Paribas SA, 2014 (U.S. Department of Justice).
[975] Mohammed Ahmad Naheem, 'HSBC Swiss Bank Accounts -AML Compliance and Money Laundering Implications' (2015) 23 Journal of Financial Regulation and Compliance 285.
[976] Jill Treanor, 'US Authorities Lift Threat to Prosecute HSBC' *The Guardian* (11 December 2017) <https://www.theguardian.com/business/2017/dec/11/hsbc-prosecution-threat-us-money-laundering> accessed 13 March 2020.
[977] 'Value of the Network - Connecting Customers to Opportunities, Annual Report and Accounts' (HSBC Holdings PLC 2015), 195.

The FSA was critical of how UK banks managed high-risk[978] customers and PEPs;[979] furthermore, it identified many control weaknesses in AML systems that have seen little improvement since 2001.[980] This is clearly evident in the case known as the 'Barclays Elephant' deal,[981] where senior managers circumvented their own CDD processes in order to on-board high-value clients. The FCA[982] imposed a fine of £72m for breaches of due skill, care and diligence,[983] even though it was established that there were no identified breaches of money laundering. In the FCA's 2016–17 Money Laundering Report, the regulator identified continued and significant weaknesses in banks' application of enhanced due diligence on high-risk customers, most notably PEPs.[984] Further, in the 2018–19 report, Standard Chartered Bank was highlighted as having serious breaches in customer due diligence for AML controls.[985] These findings contribute to the hypothesis that banks are vulnerable to IFFs in allowing illicit capital into UK banks.

UK banks must comply with the Money Laundering and Terrorist Financing (Amendment) Regulations 2019,[986] and this is re-iterated by the FCA,[987] which confirms the obligations and requirements under the Proceeds of Crime Act 2002[988] and the anti-money laundering provisions of the Terrorism Act 2000.[989] The FCA Handbook also stipulates responsibilities for

[978] The FCA suggests high-risk customers are those who may be linked to high-risk money laundering countries or business sectors, and who have complex or opaque beneficial structures unnecessarily. See 'High risk customers, including Politically Exposed Persons' (*Financial Conduct Authority,* 2018) <https://www.fca.org.uk/firms/money-laundering-terrorist-financing/high-risk-customers-politically-exposed-persons> accessed 19 June 2020.
[979] 'Banks' Management of High Money-Laundering Risk Situations' (Financial Services Authority, 2011).
[980] FSA/PN/029/2001 - FSA Publishes Results of Money Laundering Investigation (Financial Services Authority, 2001).
[981] Caroline Binham and Emma Dunkley, 'Attempted 'Elephant Deal' Costs Barclays £72m' *Financial Times* (26 November 2015) <https://www.ft.com/content/9d77d27c-9461-11e5-bd82-c1fb87bef7af> accessed 8 August 2020.
[982] The FSA was abolished in 2013 through the Financial Services Act 2012 and a new regulatory agency was formed – the FCA. See 'FSA-Journey-to-the-FCA' (Financial Conduct Authority 2012).
[983] 'Final Notice Barclays Bank PLC - Firm Reference Number 122702' (*Financial Conduct Authority,* 2015) <https://www.fca.org.uk/publication/final-notices/barclays-bank-nov-2015.pdf> accessed 8 August 2020.
[984] 'Anti-Money Laundering - Annual Report 2016/17' (Financial Conduct Authority, 2017).
[985] 'Anti-Money Laundering Annual Report 2018-19' (Financial Conduct Authority, 2019),14.
[986] Money Laundering and Terrorist Financing (Amendment) Regulations 2019.
[987] 'Anti-money Laundering Compliance' (*Financial Conduct Authority,* 2020) <https://www.fca.org.uk/firms/financial-crime/money-laundering-terrorist-financing> accessed 16 June 2020.
[988] Proceeds of Crime Act 2002, Part 7, s330, places a duty on employees to report anyone they know or suspect who is engaged in money laundering.
[989] Terrorism Act 2000, ss15-20.

banks to manage financial crime,[990] and its Senior Management and Certification Regime (SMCR) clearly establishes accountability for individuals for their conduct and competence.[991] This combination confirms the view that financial firms should act as financial policemen or gate keepers.[992] However, despite all these requirements, breaches of AML controls regularly occur[993] and it is quite revealing that clear transparent policies are lacking at the very top of the banking industry. The absence of an AML policy, in particular with respect to financial secrecy, that is readily available and provides a statement and principles at the IBFed, the EBF and the BBA, leaves questions as to whether the banks' vulnerability can be overcome to make an impact on eradicating or at least minimising IFFs.

Banks that want to protect their brand will conform to global financial transparency reforms[994] that may address the transfer price abuse and aggressive tax avoidance aspect of IFFs. The conundrum that entails will be differentiating between sharp practice/unethical practice and illegal conduct. This is where the smaller actors, such as corporate service agents and offshore service providers, can enable global financial crimes; according to Cockfield, 'because the blatant scam seems illegal, the settlor is likely counting on offshore bank secrecy to protect him from outside scrutiny by tax authorities and others'.[995] Carr contends that banking secrecy and the pursuit of profits allow the disregard of AML legislation, regulations and soft law by banks; the AML provisions are only as good as the banks' ability and desire to enforce them.[996] However, Lawlor-Forsyth and Gallant suggest that money laundering does not necessarily harm

[990] Gjeneza Budima, 'Can Corruption and Economic Crime be Controlled in Developing Economies, and if so, is the Cost Worth it?' (2006) 13 Journal of Financial Crime 408.
[991] 'Senior Managers and Certification Regime' (*Financial Conduct Authority,* 2019) <https://www.fca.org.uk/firms/senior-managers-certification-regime> accessed 2 March 2019.
[992] Joan Wadsley, 'Money Laundering: Professionals as Policemen' (1994) Conveyancer and Property Lawyer 275.
[993] 'Anti-Money Laundering Annual Report 2018-19' (Financial Conduct Authority, 2019), 14.
[994] 'Country by Country Reporting' (Financial Transparency Coalition, 2020) <https://financialtransparency.org/issues/country-by-country-reporting/> accessed 7 August 2020; also see 'OECD/G20 Base Erosion and Profit Shifting Project, Action 13 - Country by Country Reporting Implementation Package' (OECD 2015).
[995] Arthur J Cockfield, 'Breaking Bad: What Does the First Major Tax Haven Leak Tell Us?' (2016) 22 Tax Notes International 691.
[996] Indira M Carr and Robert Jago, 'Corruption, Money Laundering, Secrecy and Societal Responsibility of Banks' *Social Science Research Network*, 17 June 2014) <https://dx.doi.org/10.2139/ssrn.2454934> accessed 20 August 2021.

banks, having identified an 'ambivalent' relationship, and they recommend that the focus should be on individual liability.[997]

Palan *et al* suggest that 'offshore subsidiaries of the world's premier banks are heavily implicated in embezzlement and money laundering',[998] and Sani Abacha's case is used to illustrate how banks were used to enable IFFs. During Abacha's time as President between 1993 and 1998, it has been estimated that he stole at least $2.5bn for himself and his family, from $5bn that disappeared from state funds.[999] The Swiss Federal Banking Commission released the names of well-known banks that were involved in the Abacha embezzlement, which included Credit Suisse, Credit Agricole Indosuez, BNP and Baring Brothers.[1000] The Nigerian authorities sought to reclaim the illicit financial capital, and the World Bank reported that, in 2006, Switzerland had repatriated $505.5m to Nigeria.[1001] The UK still has not managed to repatriate any Abacha loot, citing the continued efforts of the Abacha family launching appeals and claims on the stolen money.[1002] By contrast, and arguably because of pressure from the US authorities, Jersey returned some these funds to Nigeria.[1003] However, following statements made by Nigeria's anti-corruption chief, Ibraham Mahu, at the UK's anti-corruption summit, it was clear that Nigeria are looking at repatriating a potential $37bn of stolen money which had been routed through London.[1004] This is a staggering amount indeed and the actual figure may be even higher given the fact that in 2014, Sanusi suggested that there was a $20bn hole in the balance sheet in that year alone.[1005] The UK and Nigeria signed a memorandum of

[997] Erin Lawlor-Forsyth and M. Michelle Gallant, 'Financial Institutions and Money Laundering: A Threatening Relationship?' (2017) 19 Journal of Banking Regulation 131.
[998] Ronen Palan, Richard Murphy and Christian Chavagneux, *Tax Havens - How Globalization Really Works* (Cornell University Press 2013) 75.
[999] Robin Hodess, *Global Corruption Report 2004 - Transparency International* (Pluto Press 2004) 11.
[1000] Ronen Palan, Richard Murphy and Christian Chavagneux, *Tax Havens - How Globalization Really Works* (Cornell University Press 2013) 75.
[1001] 'Utilization of Repatriated Abacha Loot' (World Bank and the Nigerian Federal Ministry of Finance 2006).
[1002] Maggie Fick and David Piling, 'Nigeria Struggles to Recover Looted Billions' *Financial Times* (6 June 2016) <https://www.ft.com/content/34b4e508-2bfc-11e6-bf8d-26294ad519fc> accessed 3 January 2020.
[1003] Bonnie Malkin, 'US freezes $458m hidden by former Nigerian leader Sani Abacha' *The Telegraph* (London, 5 March 2014) <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/nigeria/10679487/US-freezes-458m-hidden-by-former-Nigerian-leader-Sani-Abacha.html> accessed 13 January 2020.
[1004] Patrick Wintour and Ruth Maclean, 'Nigeria not seeking a Cameron apology, but 'wants its assets back'' The Guardian (11 May 2016) <https://www.theguardian.com/politics/2016/may/11/nigeria-not-seeking-cameron-apology-wants-assets-back> accessed 15 December 2019.
[1005] 'Finding Nigeria's Missing Billions' *Financial Times* (10 March 2014) <http://www.ft.com/cms/s/0/1a1b4252-a853-11e3-8ce1-00144feab7de.html?siteedition=uk#axzz2vfVepDxj> accessed 29 December 2019.

understanding in 2016 on how the UK should return Nigerian stolen assets.[1006] On 6 December 2017, Switzerland announced that it would be returning $321m of Abacha's stolen money following a deal signed by the World Bank.[1007] Recently, another $300m repatriation from the United States government is at an advanced stage – monies that were traced to Jersey and US bank accounts,[1008] again confirming the thesis' premise that the UK Overseas Territories are implicated in the illicit financial flow of capital from corrupt Nigerian public officials. It seems likely that, whether it is proceeds from crime, money from bribery and corruption or illicit finance from commercial activities such as transfer price abuse, tax avoidance and evasion, illicit capital will eventually use the UK banking system to either house or channel this money.

The UK has one of the most comprehensive financial crime laws and regulations, such as the Bribery Act 2010 and its anti-money laundering regime,[1009] which companies and banks take very seriously and tend to abide by its requirements. However, there also seems to be a shadow acceptance of certain practices that by-pass the same companies and banks, namely the role of the secrecy jurisdictions and its connotations that are linked with the UK.

Banks are seen as the foundation of a developed country's economy,[1010] as they facilitate growth, provide financial stability and enable free markets. At the same time, banks are the primary places where the proceeds of crime are placed, transferred and laundered. The most convincing argument that establishes the link between IFFs and the exposure of a bank to money laundering is the combination of secrecy jurisdictions, banking secrecy and corporate secrecy (financial secrecy) that enables the lack of transparency of beneficial ownership of

[1006] 'Immigration Minister Signs Agreement with Nigeria on Returning Stolen Criminal Assets' (*UK Home Office,* 2016) <https://www.gov.uk/government/news/immigration-minister-signs-agreement-with-nigeria-on-returning-stolen-criminal-assets#:~:text=Criminal%20assets%20stolen%20in%20Nigeria,new%20agreement%20signed%20this%20week.&text=The%20deal%20was%20signed%20by,Nigerian%20Attorney%20General%20Abubakar%20Malami.> accessed 6 March 2020.

[1007] Ludovica Iaccino, 'Switzerland Is Returning Stolen Nigerian Assets—Will the UK Follow Suit?' (*Newsweek,* 2017) <https://www.newsweek.co.uk/switzerland-returning-stolen-nigerian-assetswill-u-k-follow-suit-534828> accessed 6 March 2020.

[1008] Samuel Ogundipe, 'Nigeria to Repatriate N108 Billion Abacha Loot from U.S. - Buhari' Premium Times (Abuja) (1 October 2019) <https://allafrica.com/stories/201910010114.html> accessed 17 December 2019.

[1009] Powles Edward, 'All That Glisters Is Not Gold: Laundering the UK Money Laundering Regime' (2006) 65 The Cambridge Law Journal 40.

[1010] Imola Drigă and Codruţa Dura, 'The Financial Sector and the Role of Banks in Economic Development' (6th International Multidisciplinary Symposium Universitaria SIMPRO 2014).

corporate schemes, leading to the concealment of proceeds of crime, tax avoidance and evasion through complicated shell companies and offshore financial services.

It seems quite remarkable that there is no global standard, set by either the Basel Committee of the Bank of International Settlements or the IBFed, on financial secrecy and money laundering. The IBFed complies with the FATF, and the EBF does not have a policy document on financial secrecy and AML preventative measures. The BBA in the UK also does not have a specific financial secrecy and AML preventative policy document.

The lack of an extensive financial secrecy and AML policy at these institutions, combined with the silence about secrecy jurisdictions, leaves banks in a juxtaposition between enforcing strict AML measures set down by regulators and standard setters and turning a blind eye to proceeds that appear to have been legitimised by secrecy jurisdictions. Hatchard observes that:

> A simple conclusion is that how could the theft of billions of dollars by senior public officials and their families not be facilitated by banks and other corporate services? How else could the likes of Abacha, steal enormous amounts of state funds and move them abroad and launder them through secrecy jurisdictions?[1011]

The cases of James Ibori and Diepreye Alamieyeseigha are analysed in detail in the next section, which clearly evidence all aspects of IFFs described in the chapters above and illustrate distinctly the symbiotic relationship between Nigeria and the UK.

Diepreye Alamieyeseigha – A case study to show the vulnerability of banks in the United Kingdom and the lack of a strong enforcement regime in Nigeria

At the core of most anti-money laundering standards are two cardinal principles: know your customer (KYC), and customer due diligence (CDD).[1012] These are meant to be enhanced when

[1011] John Hatchard, *Combating Corruption: Legal Approaches to Supporting Good Governance and Integrity in Africa* (Edward Elgar Publishing 2014) 3.
[1012] The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Part 3, Chapter 1.

banks are dealing with PEPs.[1013] The FSA found several failings in the control systems of the banks involved in the facilitation of the Abacha monies in 2001.[1014] However, the UK was marginally more successful with another corrupt Nigerian politician who followed Abacha. Alamieyeseigha was the Governor of Bayelsa State, between 1999 and 2005, when he was impeached for corruption in Nigeria. During his time in office, Alamieyeseigha accumulated assets outside of Nigeria that included cash, property and corporate structures that facilitated flow of illicit capital. However, Alamieyeseigha was not allowed to hold any overseas bank accounts, according to the Constitution of the Federal Republic of Nigeria.[1015] Additionally, the FATF Recommendations make it clear that this would be a red flag for financial institutions in relation to a PEP from a country that does not allow certain individuals to hold accounts in a foreign country.[1016] Hence, in the UK this should have been considered a red flag and, before opening an account for a foreign PEP, financial institutions should check whether this is allowed in the PEP's country of origin.[1017] It was alleged that Alamieyeseigha stole $55m during his period as governor,[1018] and the UK authorities were threatening to extradite him to face money laundering charges.[1019] Despite this, Alamieyeseigha controlled several accounts in London and deposited substantial funds into Barclays, HSBC and the Royal Bank of Scotland without any questions being asked.[1020] With the deposited money, Alamieyeseigha bought expensive properties in desirable locations in London, again without any difficulty.[1021] This scenario affirms the thesis hypothesis that both Nigeria and the UK have a dependence on each other for IFFs, since the illicit outflow from Nigeria was allowed to occur and the UK banks allowed

[1013] Nicholas Ryder*, Money Laundering, an Endless Cycle? A Comparative Analysis of the Anti-Money Laundering Policies in the United States of America, the United Kingdom, Australia and Canada* (Routledge 2012) 13.
[1014] FSA/PN/029/2001 - FSA Publishes Results of Money Laundering Investigation (Financial Services Authority, 2001).
[1015] 'Combating illicit Financial Flows: The role of the International Community' (U4 Anti-Corruption Resource Centre, 2014) <http://www.u4.no/publications/combating-illicit-financial-flows-the-role-of-the-international-community/> accessed 2 June 2020, Fifth Schedule Part I Code of Conduct for Public Officers, section 3.
[1016] 'FATF Guidance - Politically Exposed Persons' (Recommendations 12 and 22, FATF 2013) 28.
[1017] 'Finalised Guidance 17/6: The Treatment of Politically Exposed Persons for Anti-Money Laundering Purposes' (Financial Conduct Authority, 2017) 11.
[1018] Sam Roberts, 'Diepreye Alamieyeseigha, Nigerian Notorious for Corruption, Dies at 62 - The New York Times' *The New York Times* (14 October 2015) <https://www.nytimes.com/2015/10/15/world/diepreye-alamieyeseigha-nigerian-ex-governor-dies-at-62.html?_r=055> accessed 5 December 2019.
[1019] 'United Kingdom Demands Alamieyeseigha's Extradition' (*Nigerian Bulletin,* 2015) <https://www.nigerianbulletin.com/threads/money-laundering-united-kingdom-demands-alamieyeseigha%E2%80%99s-extradition.126234/> accessed 5 December 2019.
[1020] Abimbola Adesoji and Olukemi Rotimi, 'Nigeria and its Anti-Corruption War: The Cases of Dariye and Alamieyeseigha' (2008) 38 Africa Insight 159.
[1021] Michael Peel, *Nigeria Related Financial Crime and its Links with Britain* (Chatham House 2006).

the corrupt money to enter into their banking system and then operate in the economy with ease.

When Alamieyeseigha was travelling to London in 2005, a suspicious transaction report filed by a UK bank alerted the Metropolitan Police of London, and he was arrested as he came through Heathrow Airport.[1022] £1m in cash was also found at his flat and his wife was found with £200,000 in cash in her shopping bags.[1023] Alamieyeseigha stated that he was not involved in corruption and claimed the cash was his 'strategic reserve'.[1024] However, on scrutiny of his bank accounts, there was evidence that the stated purpose of the accounts was not true, as the deposits were so large.[1025] Similarly, Alamieyeseigha instructed a London corporate service provider to register a company in the Seychelles, a known secrecy jurisdiction, which then opened a UK bank account.[1026] The predicted revenue was £250,000 per year, but the actual deposits received in the first 14 months totalled £2.7m, with one deposit from a bank in Nigeria from a contractor in Bayelsa State. All of these transactions should have alerted some form of enhanced due diligence[1027] but, as the value of the transactions increased, the levels of CDD were either ignored or not adhered to appropriately by the UK financial institutions.[1028]

Alamieyeseigha was charged with three counts of money laundering offences under the Criminal Justice Act 1998 and the Proceeds of Crime Act 2002.[1029] Alamieyeseigha attempted to persuade the court that he needed to return to Nigeria to attend to the business of Bayelsa State, but this was denied.[1030] Alamieyeseigha was granted bail for £1.3m, which was paid by a close Nigerian associate. He also challenged his arrest and prosecution on the basis that, as a government diplomatic official in post, he had immunity from prosecution in the UK as would

[1022] Abimbola Adesoji and Olukemi Rotimi, 'Nigeria and its Anti-Corruption War: The Cases of Dariye and Alamieyeseigha' (2008) 38 Africa Insight 159.
[1023] Jeremy Horder and Peter Alldridge, *Modern Bribery Law: Comparative Perspectives* (Cambridge University Press 2013) 313.
[1024] The Federal Republic of Nigeria and Santolina Investment Corporation [2007] EWHC 437 (Ch).
[1025] Ibid.
[1026] 'International Thief Thief - How British Banks are Complicit in Nigerian Corruption' (Global Witness 2010), 19.
[1027] The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Part 3, Chapter 2.
[1028] The Federal Republic of Nigeria and Santolina Investment Corporation [2007] EWHC 437 (Ch).
[1029] James Maton and Tim Daniel, 'The Kleptocrat's Portfolio Decisions' in Reuter (ed), *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (World Bank 2012).
[1030] The Federal Republic of Nigeria and Santolina Investment Corporation [2007] EWHC 437 (Ch).

be the case in Nigeria, but this was also denied by the UK court.[1031] Despite this, Alamieyeseigha managed to escape to Nigeria, forfeiting his bail. He was prosecuted in Nigeria for corruption by the EFCC, before the Code of Conduct Tribunal, for failure to declare his assets and for operating foreign accounts, contrary to the Code of Conduct for Public Officers.[1032] He was one of the first ex-governors to be charged and convicted of corruption in Nigeria; he served two years in jail and was released in 2007.[1033] Interestingly, jail time is not an inhibitor for corrupt PEPs, and stripping of assets and lifestyle could be more effective;[1034] this is established by the research in this thesis, where the benefits of corruption outweigh the penalties for corruption in Nigeria.

The only way in which the EFCC could overcome the immunity clause in the Nigerian Constitution was to impeach Alamieyeseigha so that he was no longer a serving public official.[1035] The charges against Alamieyeseigha included acquiring shares to the value of 1bn Nigerian Naira (N) in Bond Bank Plc and buying Chelsea Hotel Buja for N2bn,[1036] a refinery worth millions in Ecuador, the purchase of properties in Lagos worth N850m, and the laundering of state money through six different companies. The EFCC impeached Alamieyeseigha through Bayelsa State House Assembly on 9 December 2005.[1037] He was found guilty of six out of 40 charges against him, and sentenced to 12 years' imprisonment, but only served two.[1038] This is a good example of the thesis research finding that legislative reform would be impotent until the enforcement arm of the Nigerian government can fulfil its role better and/or could do so without political interference or corruption.

[1031] *Alamieyeseigha* v CPS [2005] EWHC 2704 (Admin).
[1032] Constitution of the Federal Republic of Nigeria 1999 Fifth Schedule, Part 1- Code of Conduct for Public Officers, s3 prohibits holding a bank account outside Nigeria, s11 stipulates parameters for declaration of interests.
[1033] 'Nigeria Arrests Runaway Governor' (BBC, 2005) <http://news.bbc.co.uk/1/hi/world/africa/4513172.stm> accessed 3 December 2019.
[1034] Tayo Oke, 'Money Laundering Regulation and the African PEP: Case for Tougher Civil Remedy Options' (2016) 19 Journal of Money Laundering Control 32.
[1035] Abimbola Adesoji and Olukemi Rotimi, 'Nigeria and its Anti-Corruption War: The Cases of Dariye and Alamieyeseigha' (2008) 38 Africa Insight 159.
[1036] 1bn Nigerian Naira is equivalent to approximately £1.9m.
[1037] 'Nigeria Arrests Runaway Governor' (BBC, 2005) <http://news.bbc.co.uk/1/hi/world/africa/4513172.stm> accessed 3 December 2019.
[1038] 'Nigeria Pardons Goodluck Jonathan Ally' (*BBC,* 2013) <http://www.bbc.co.uk/news/world-africa-21769047> accessed 7 August 2020.

The other factor in this case is whether the UK government was complicit in aiding Alamieyeseigha's escape to Nigeria, primarily because of economic interests in that area;[1039] and it was suggested that Alamieyeseigha paid €200,000 to facilitate his escape.[1040] Nonetheless, the Alamieyeseigha case shows a shift in pursuing money launderers that have stolen oil revenues and public funds from Nigeria and who have attempted to benefit from the proceeds of their crimes in the UK. This case also illustrates the lack of due diligence by banks and how secrecy jurisdictions are used to disguise the origin of IFFs.[1041] For example, Falcon Flights Incorporated was a company set up in the Bahamas for Alamieyeseigha that held the UBS bank account in London, and was managed by the private banking division of UBS Banking plc. Santolina Investment Corporation was a company set up in the Seychelles that had a bank account in London with the Royal Bank of Scotland plc, which was set up for Alamieyeseigha by a corporate services provider in London. Solomon and Partners Limited was incorporated in London that Alamieyeseigha used to hold assets, which was set up by a Nigerian associate living in London.[1042] The purpose of using complicated company structures and secrecy destinations by criminals is to hide the ultimate beneficial owner to launder money, and confirms the view hold by this thesis that, in order to address corruption cases such as this one, the authorities need to address not only the corruption aspect, but also the IFFs and the use of financial secrecy that eventually lead to money laundering. Alamieyeseigha was granted a pardon on 12 March 2013 by President Goodluck Jonathan.[1043] Goodluck was Alamieyeseigha's deputy when he was governor of Bayelsa State, and the pardon was granted on the grounds that Alamieyeseigha was remorseful. In July 2006, nearly £1m was returned to Nigeria by the UK, where the Nigerian High Commissioner stated 'this gesture of co-operation effectively denies Nigerian treasury looters the opportunity to use the UK financial system to siphon money out of Nigeria'.[1044] Whilst the statement partly affirms illicit outflows from Nigeria to the UK, the sum repatriated

[1039] Abimbola Adesoji and Olukemi Rotimi, 'Nigeria and its Anti-Corruption War: The Cases of Dariye and Alamieyeseigha' (2008) 38 Africa Insight 159.
[1040] 'Alamieyeseigha Disguised as a Woman - We Will Trace Him - Metropolitan Police' (*Online Nigeria - The Punch 22 November 2005,* 2005) <http://nm.onlinenigeria.com/templates/?a=6112&z=17#> accessed 5 December 2017.
[1041] 'International Thief Thief - How British Banks are Complicit in Nigerian Corruption' (Global Witness 2010).
[1042] The Federal Republic of Nigeria and Santolina Investment Corporation [2007] EWHC 437 (Ch).
[1043] 'Nigeria Pardons Goodluck Jonathan Ally' (BBC, 2013) <http://www.bbc.co.uk/news/world-africa-21769047> accessed 7 August 2020.
[1044] John Hatchard, 'Combating Transnational Crime in Africa: Problems and Perspectives' (2006) 50 Journal of African Law 145.

is symbolic and insignificant compared to the potential amount claimed to be held within the UK banks.[1045]

The next case study involves James Ibori, another leading politician in Nigeria. This analysis of this case evidences considerable progress in the UK, whereby there were successful ML prosecutions and convictions of a corrupt Nigerian public official. The examination of the case also shows considerable failings by the Nigerian authorities to enforce adequate measures to curb Ibori's wrongdoings.

James Ibori – A case study to show the challenges of managing illicit financial flows despite successful criminal prosecutions

James Ibori was a Governor of Delta State which is renowned for its rich oil reserves and production.[1046] Ibori had come to the UK in the 1980s and worked at a DIY hardware store in London, where he was convicted of theft offences in 1991.[1047] He then returned to Nigeria to work in politics, after falsifying his date of birth to hide his criminal offences in the UK.[1048] He secured the position of Governor of Delta State for two terms from 1999 to 2007; and it was in this period that he looted oil revenues and other public funds which found their way into the UK financial system.

In 2005 the Nigerian authorities, in conjunction with the London Metropolitan Police, began investigations into theft and corruption offences whilst Ibori was in office.[1049] Ibori utilised at least nine companies in order to fraudulently transfer money from Nigeria and open various bank accounts globally and purchase several properties.[1050] The Nigerian Constitution requires that all overseas assets are disclosed, and the opening and holding of foreign bank accounts

[1045] 'Nigeria Says It Has Recovered $9.1 Billion in Stolen Money and Assets' *Reuters* (4 June 2016) <https://uk.reuters.com/article/uk-nigeria-corruption/nigeria-says-it-has-recovered-9-1-billion-in-stolen-money-and-assets-idUKKCN0YQ0GI> accessed 17 December 2019.
[1046] Mark Tran, 'Former Nigeria State Governor James Ibori Receives 13-Year Sentence' The Guardian (17 April 2012) <http://www.guardian.co.uk/global-development/2012/apr/17/nigeria-governor-james-ibori-sentenced> accessed 8 December 2019.
[1047]Andrew Walker, 'James Ibori- How a Thief Almost Became Nigeria's President' (*BBC,* 2012) <http://www.bbc.co.uk/news/world-africa-17184075> accessed 12 December 2019.
[1048]'Former Nigeria Governor James Ibori Jailed for 13 years' (*BBC,* 2012) <http://www.bbc.co.uk/news/world-africa-17739388> accessed 12 December 2017.
[1049] *R v James Onanefe Ibori* [2013] EWCA Crim 815 at 8.
[1050] 'StAR - Stolen Asset Recovery Initiative - Corruption Cases - James Ibori (United States)' (World Bank - UNODC, 2014) <http://star.worldbank.org/corruption-cases/node/19584> accessed 29 December 2019.

are forbidden.[1051] As in the case of Alamieyeseigha, this simple fact should have been known by banks and the legal profession, but Ibori's stream of spending was allowed to continue without any questions. The reports of the value of the illicit capital laundered by Ibori varied between the courts and the press. Initially, when the indictments were filed at Southwark Crown Court on 16 April 2011,[1052] the value of the theft was thought to have been in the region of $50m, although the court later suggested that it was higher.[1053] According to police, the amount of laundered money was $250m when Ibori pleaded guilty on 27 February 2012, the day before his trial.[1054] However, the value estimated by the EFCC was $290m, and a Wikileaks cable disclosed the sum as being up to $3.4bn.[1055] The vast differences reported in the amount of stolen assets demonstrates that either governments are downplaying the true amount of oil revenues that were stolen and illicitly transferred out of Nigeria, and/or the notion of IFFs is still novel and the respective governments are still developing their understanding of the term and its extent. This latter view affirms the thesis position that more policy and research needs to be addressed to IFFs. In court, it was revealed that Ibori had properties outside of Nigeria worth £6.9m when his Nigerian salary as a state governor was £4,000 per year. He also spent £920,000 on his American Express Centurion card, available only to wealthy individuals, buying several luxury cars.[1056]

Bhadresh Gohil, a London-based solicitor who was complicit in Ibori's crimes, was convicted for money laundering offences and was given a 10-year prison sentence for using his firm's client

[1051] 'Combating illicit Financial Flows: The role of the International Community' (U4 Anti-Corruption Resource Centre, 2014) <http://www.u4.no/publications/combating-illicit-financial-flows-the-role-of-the-international-community/> accessed 2 June 2020: Fifth Schedule, Part 1- Code of Conduct for Public Officers - s3 prohibits holding a bank account outside Nigeria; s11 provides all interests should be declared.

[1052] 'London Money Laundering Trial: James Ibori, Victor Attah, Love Ojakovo, Henry Imashekka and David Edevbie Facing 25-Count Indictment' (*Sahara Reporters,* 2011) <http://star.worldbank.org/corruption-cases/sites/corruption-cases/files/documents/arw/Ibori_UK_Charges_Saharareporters_Apr_19_2011.pdf> accessed 12 December 2019.

[1053] *R v James Onanefe Ibori* [2013] EWCA Crim 815 at 30.

[1054] Caroline Binham and Tom Burgis, 'Ibori Pleads Guilty to Laundering Public Funds' *The Financial Times* (27 February 2012) <https://www.ft.com/content/88bb8bbe-6169-11e1-8a8e-00144feabdc0> accessed 7 December 2019.

[1055] 'London Money Laundering Trial: James Ibori, Victor Attah, Love Ojakovo, Henry Imashekka and David Edevbie Facing 25-Count Indictment' (*Sahara Reporters*, 2011) <http://star.worldbank.org/corruption-cases/sites/corruption-cases/files/documents/arw/Ibori_UK_Charges_Saharareporters_Apr_19_2011.pdf> accessed 12 December 2019.

[1056] Jane Croft, 'Ibori Lived Like Royalty at Expense of the Poor' *The Financial Times* (London 16 April 2012) <https://www.ft.com/content/ba1087c8-87e3-11e1-b1ea-00144feab49a> accessed 13 December 2019.

account as a private bank account for Ibori.[1057] Gohil was instructed by Ibori to purchase a private jet ($20m) without Ibori's identity being revealed as the beneficial owner, using a number of bank accounts in secrecy jurisdictions and ensuring that it would be very difficult to identify Ibori as the owner.[1058] Ibori did not disclose any assets outside of Nigeria, as he was required to do under the Nigerian Constitution, and he also held bank accounts outside of Nigeria, which was prohibited.[1059] He had six accounts at Barclays, in addition to Swiss accounts to transfer money to spend.[1060] A detective from the UK's anti-corruption unit was arrested on suspicion of receiving money for information, and three former officers were arrested on suspicion of bribery associated with Ibori.[1061] A subsequent investigation that followed resulted in no charges of misconduct for these officers. However, Elias Preko, a former Goldman Sachs banker, was convicted on two counts of money laundering on behalf of Ibori and was sentenced to four and half years' imprisonment.[1062] In addition to the professionals who were enablers of Ibori's corruption and money laundering activities, there were other family members and acquaintances, including his wife, mistress and sister, who were convicted for money laundering offences.[1063]

Ibori could not have achieved this level of IFFs without the aid of professional enablers in the UK. This supports the thesis's narrative regarding the influence and role of UK-based enablers (banks, and financial and legal sector professionals) in facilitating IFFs from developing countries. Palmer confirms the impact of corruption in Nigeria and how it can be facilitated by UK banks:

[1057] Cythia O'Murchu, 'London's Money-Laundering 'Enablers' Face Crackdown' *The Financial Times* (London 17 August 2015) <https://www.ft.com/content/a421beac-3ce7-11e5-8613-07d16aad2152> accessed 12 December 2019.
[1058] *R v James Onanefe Ibori* [2013] EWCA Crim 815 at 14.
[1059] 'Combating illicit Financial Flows: The role of the International Community' (*U4 Anti-Corruption Resource Centre*, 2014) <http://www.u4.no/publications/combating-illicit-financial-flows-the-role-of-the-international-community/> accessed 2 June 2020: Fifth Schedule, Part 1- Code of Conduct for Public Officers - s3 prohibits holding a bank account outside Nigeria, s11 provides all interests should be declared.
[1060] Jane Croft, 'Former Niger Delta Governor Jailed for Fraud' *The Financial Times* (London 17 April 2012) <https://www.ft.com/content/13e1ca04-889e-11e1-a526-00144feab49a> accessed 6 November 2019.
[1061] Helen Warrell, 'Met Officer Arrested in Ibori Bribery Case' *The Financial Times* (23 May 2012) <https://www.ft.com/content/bb26f08e-a502-11e1-b421-00144feabdc0> accessed 7 December 2019.
[1062] Daniel Schafer and Cythia O'Murchu, 'Former Banker Sentenced over Nigerian Money Laundering' *The Financial Times* (London 9 December 2013) <https://www.ft.com/content/3d2fadb2-6101-11e3-b7f1-00144feabdc0> accessed 1 November 2019.
[1063] Jane Croft, 'Ibori Lived Like Royalty at Expense of the Poor' The Financial Times (London 16 April 2012) <https://www.ft.com/content/ba1087c8-87e3-11e1-b1ea-00144feab49a> accessed 13 December 2019.

> By doing business with Ibori and his associates, these banks facilitated his corrupt behaviour and allowed him to spend diverted state assets on a luxury lifestyle, including a private jet and expensive London houses, while many Nigerians continue to live in poverty.[1064]

Nigerian banks were also implicated: Ibori used United Bank for Africa and Guaranty Trust Bank (which was the first Nigerian bank to list in London at the time) to launder his proceeds of illicit capital from Nigeria's oil revenues, and it was reported that Ibori bought shares in Afribank to facilitate further laundering of his corrupt assets.[1065] Ibori was arrested in Nigeria on 12 December 2007 by the EFCC and was accused of looting state funds led by Nuhu Ribadu, chairman of the EFCC.[1066] It later emerged that an unsuccessful bribe attempt of $15m cash was offered to Ribadu by Ibori to drop the investigation into his affairs.[1067] Prior to this, Southwark Crown Court in London ordered the freezing of Ibori's assets to the value of £35m that included laundered money via UK banks, property and cars.[1068] The thesis suggests that secrecy jurisdictions are vital for IFFs and money laundering, whereby ultimate beneficial ownership and proceeds of crime can be hidden. Through such mechanisms of financial secrecy, Ibori managed to transfer $5m to an offshore trust in Guernsey.[1069]

Ibori had immense influence in Nigeria, especially through his political alliances with President Yar'Adua's office. This was particularly pertinent when it was announced in late December 2007 that Ribadu, who was leading the case against Ibori, would be side-lined and removed from his role as chairman of the EFCC.[1070] On 13 December 2009, all 170 charges against Ibori were

[1064] Robert Palmer, Sentencing of Former Nigerian Politician Highlights Role of British and US banks in Money Laundering (Global Witness 2012).
[1065] Matthew Green, 'Nigerian Banks Named in Ibori Charges' *The Financial Times* (Lagos 14 December 2007) <https://www.ft.com/content/8dfa521c-aa6c-11dc-a779-0000779fd2ac> accessed 7 December 2019.
[1066]Murphy Ganagana, 'Ibori Arrested' (*Online Nigeria,* 2007) <http://nm.onlinenigeria.com/templates/?a=11023> accessed 7 December 2017.
[1067] Jane Croft, 'London Trial of Nigerian Politician Told of $15m Cash Bribe' *The Financial Times* (London 19 September 2013) <https://www.ft.com/content/aeb64c80-213b-11e3-a92a-00144feab7de> accessed 7 December 2019.
[1068] Matthew Green, 'Arrest in Nigeria Graft Probe' *The Financial Times* (Lagos 12 December 2007) <https://www.ft.com/content/edaba004-a8cc-11dc-ad9e-0000779fd2ac> accessed 7 December 2019.
[1069] *R v James Onanefe Ibori* [2013] EWCA Crim 815 at 15.
[1070] Matthew Green, 'Nigeria Sidelines Zealous Anti-Graft Chief' The Financial Times (London 28 December 2017) <https://www.ft.com/content/8afef176-b566-11dc-896e-0000779fd2ac> accessed 7 December 2019.

dropped by the Nigerian court.[1071] It was not clear whether this was a result of corruption in the judiciary or lack of political will, or a combination of both. For example, important evidence was disregarded by the judiciary during his trial. Commenting on Ibori, Braithwaite articulated the hurdles that Nigeria faces:

> One cannot trust some of the judges in these [PEPs] cases, I remember not long ago, a young lawyer swore to an affidavit alleging that this same Ibori bribed Supreme Court judges with $50 million. Either that the young lawyer was mad or he had evidence, it was deadly risky for him to swear such an affidavit, but he did. Yet, the ex-governor got away.[1072]

Tribal alliances play an important role in Nigeria, especially with respect to lack of enforcement in corruption cases. Adigan suggests that this trend adds another layer of protection for corrupt individuals in Nigeria.[1073] It is extraordinary that Ibori escaped conviction in Nigeria, and it is an example of the issues that lie at the heart of the corruption problem in Nigeria. Following the decision not to prosecute Ibori in Nigeria, the UK stated that it would continue to progress with charges and a trial would proceed in the UK,[1074] which is detailed below.

After the death of President Yar'Adua on 5 May 2010, Ibori's political connections diminished and, even though the 170 charges against him were dropped, the EFCC were still pursing $290m thought to be stolen from state revenues by Ibori.[1075] Ibori fled Nigeria for Dubai where it was believed that he owned property; he was arrested in Dubai on 12 May 2010 on suspicion of money laundering and conspiracy to defraud, and extradited to the UK at the request of the UK

[1071] 'Charges Dropped Against Nigerian Politician' *The Financial Times* (Lagos 17 December 2009) <https://www.ft.com/content/cbe8c71c-eb37-11de-bc99-00144feab49a> accessed 7 December 2019.
[1072] Tayo Oke, 'Financial Crime Prosecution, Legal Certainty and Exigency of Policy: Case of Nigeria's EFCC' (2014) Journal of Financial Crime 56.
[1073] Olalekan Adigun, 'Corruption with Tribal Marks: Explaining the Ethnic Nature of Political Corruption in Nigeria' (University of Lagos 2017).
[1074] Tom Burgis, 'Charges Dropped Against Nigerian Politician' *The Financial Times* (Lagos 17 December 2009) <https://www.ft.com/content/cbe8c71c-eb37-11de-bc99-00144feab49a> accessed 7 December 2019.
[1075] Ibid.

authorities.[1076] The first indictment[1077] listed the following offences: conspiracy to commit money laundering under the Criminal Justice Act 1998,[1078] contrary to Criminal Law Act 1977;[1079] money laundering contrary to the Proceeds of Crime Act 2002;[1080] and obtaining property transfer by deception contrary to the Theft Act 1968.[1081] The second indictment[1082] involved fraudulently charging a fee for consultancy services for the sale of Africa V Mobile through a sham company set up by Gohil, called African Development Finance Ltd, and the diversion of the money from the sale to personal accounts of Ibori and his associates, which enabled Gohil to hide the flow of illicit capital.[1083] On 27 February 2012, in Southwark Crown Court, Ibori pleaded guilty to money laundering and fraud offences and was sentenced to 13 years' imprisonment.[1084]

More recently, Elias Preko, who was a key enabler for Ibori, was ordered by Southwark Crown Court to pay back £7.3m or to stay in prison for a further 10 years.[1085] Preko worked directly with Ibori, setting up corporate vehicles to launder stolen revenues from the Nigerian state. The NCA stated:

> Professional enablers such as Elias Preko, who use their legitimate position within the finance industry to conceal the illicit funds of criminals and corrupt

[1076] Tom Burgis, 'Ibori Arrested in Money-Laundering Probe' *The Financial Times* (Lagos 13 May 2010) <https://www.ft.com/content/74f70a64-5e95-11df-9266-00144feab49a> accessed 7 December 2019.
[1077] 'London Money Laundering Trial: James Ibori, Victor Attah, Love Ojakovo, Henry Imashekka and David Edevbie Facing 25-Count Indictment' (*Sahara Reporters*, 2011) <http://star.worldbank.org/corruption-cases/sites/corruption-cases/files/documents/arw/Ibori_UK_Charges_Saharareporters_Apr_19_2011.pdf> accessed 12 December 2019.
[1078] Criminal Justice Act 1998, s93(C)(1).
[1079] Criminal Law Act 1977, s1(1).
[1080] Proceeds of Crime Act 2002, s327.
[1081] Theft Act 1968, s15A.
[1082] 'London Money Laundering Trial: James Ibori, Victor Attah, Love Ojakovo, Henry Imashekka and David Edevbie Facing 25-Count Indictment' (*Sahara Reporters*, 2011) <http://star.worldbank.org/corruption-cases/sites/corruption-cases/files/documents/arw/Ibori_UK_Charges_Saharareporters_Apr_19_2011.pdf> accessed 12 December 2019.
[1083] Cythia O'Murchu, 'London's Money-Laundering 'Enablers' Face Crackdown' *The Financial Times* (London 17 August 2015) <https://www.ft.com/content/a421beac-3ce7-11e5-8613-07d16aad2152> accessed 12 December 2019.
[1084] *R v James Onanefe Ibori* [2013] EWCA Crim 815.
[1085] Caroline Binham, 'Former Goldman Banker Ordered to Pay £7.3m in Corruption Case' *Financial Times* (6 September 2019) <https://www.ft.com/content/3d7b0ec0-d094-11e9-99a4-b5ded7a7fe3f> accessed 15 February 2019.

> elites, are the linchpin of the billions of dollars laundered through the UK each year.[1086]

The Ibori example establishes the link between bribery, corruption, money laundering and IFFs, with complicity from banks and active collusion from other professionals, such as Gohil, who was also convicted of money laundering offences. Further, the use of corporate service providers and secrecy destinations to attempt to hide the ultimate beneficial owner further obfuscates the origin of money being spent by Ibori and his conspirators. Peel stated, at the time of Ibori's initial arrest in 2007:

> The investigation is a reminder of the dangers facing leading companies – in Mr Ibori's case, Abbey and Barclays – over money-laundering allegations, in spite of internal due diligence and global attempts to crack down on dirty cash.[1087]

Whilst the Ibori case was a success for the UK, in that a prominent money launderer was jailed for a considerable time in the UK, after his release and return to Nigeria, he was treated as a hero.[1088] This compounds the thesis assertions that absence of political will and the importance of tribal alliance in Nigeria prevent progress for the much-lauded anti-corruption agendas by successive Nigerian leaders.

Conclusion

This chapter has provided the definitions, concepts, extent and the legislative approach for money laundering which form the basis of policies and practice for governments, regulators and corporations. However, the nature of IFFs renders the effectiveness of such approaches

[1086] 'Ex-Goldman Sachs Investment Banker Ordered to Pay Back £7.3 Million' (*National Crime Agency,* 2019) <https://public-newsroom-nca-01.azurewebsites.net/news/ex-goldmans-sachs-investment-banker-hit-with-gbp-7-3-million-confiscation-order> accessed 14 March 2020.

[1087] Michael Peel, 'The Dark Side of London's Success' The Financial Times (5 December 2017) <https://www.ft.com/content/cb8e7b32-a358-11dc-b229-0000779fd2ac> accessed 7 December 2019.

[1088] 'Delta State Governor, Speaker Celebrate Ex-Convict James Ibori on Birthday' (Sahara Reporters, 2017) <http://saharareporters.com/2017/08/04/delta-state-governor-speaker-celebrate-ex-convict-james-ibori-birthday> accessed 20 December 2019.

largely unsuccessful, because financial secrecy, transfer price abuse and aggressive tax avoidance add a variable that makes detection and enforcement very difficult.

The vulnerability of banks being exposed to money laundering was introduced and, even with abundant money laundering regulations and standards, it is not clear – when the extent of money laundering is scrutinised – if the legislation is having its intended outcomes. Several examples of banks breaching AML provisions were highlighted, from the HSBC DPA in 2012[1089] to the Danske Bank scandal in 2019.[1090]

This chapter asserts that, whilst the comprehensive approach to money laundering by the UN, FATF, EU and the UK will address the traditional way in which money is laundered, it will not address how the money passes through secrecy jurisdictions and through mechanisms such as transfer pricing where the legalities are blurred, and the aim of this thesis is to extend the current knowledge in this area.

This chapter re-affirms the finding that secrecy jurisdictions, banking secrecy and corporate secrecy are key contributors to money laundering, and the silence on these subjects by the IBFed, EBF and BBA is troubling, as is the prolific use of secrecy services by organisations, individuals and criminals.

The subject of IFFs is becoming more familiar to policy makers and legislative bodies. IFFs as a term was normally associated with grand corruption, but the issue of transfer price abuse has brought this subject to the attention of governments, as it identifies potential abuses by large organisations avoiding/evading tax. The same financial vehicles used by large corporations to minimise their tax liabilities are also used by criminals to launder money. The vulnerability of banks should therefore be considered, as they willingly or unwittingly become facilitators of legitimate financial flows as well as illegitimate financial flows or the proceeds from crime.

[1089] 'HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit $1.256 Billion in Deferred Prosecution Agreement' (US Department of Justice, 2012) <http://www.justice.gov/opa/pr/2012/December/12-crm-1478.html> accessed 13 March 2020.
[1090] Richard Milne and Daniel Winter, 'Danske - Anatomy of a Money Laundering Scandal' *Financial Times* (19 December 2018) <https://www.ft.com/content/519ad6ae-bcd8-11e8-94b2-17176fbf93f5> accessed 12 March 2019.

CHAPTER 8 – CONCLUSIONS AND RECOMMENDATIONS

Introduction

The purpose of this chapter is two-fold: Firtsly, it provides a synthesis of the entire thesis and explains the novel contributions this study has made. Secondly, it provides recommendations; and identifies the limitations of the study and areas for further research. This thesis has explored several hypotheses which, when brought together, reveal distinctive relationships between financial crime disciplines that are not currently addressed. Bringing them together provides a unique and original lens that challenges traditional world views.

This thesis has investigated the subject of IFFs and established that financial secrecy, a component of IFFs, is a driver that enables corruption and money laundering. Case studies from Nigeria have been used to illustrate different aspects of IFFs, to show how financial secrecy is used to transfer billions of looted revenues from Nigeria to personal accounts around the world. The UK, with its Overseas Territories, has an established financial secrecy system that provides wide and comprehensive services for corrupt Nigerian public officials to launder money. The lack of enforcement of anti-corruption measures in Nigeria is highlighted to show that the law, whilst comprehensive, is discarded due to lack of political will, weak rule of law, absence of an independent judiciary and the existence of tribal allegiances that favour corrupt activities for the political elite. At the same time, in the UK the perceived level of corruption is contradicted by reality due to the UK's role in financial secrecy and the approach to prosecuting large MNCs for corruption offences.

This thesis clarifies that the term 'illicit' exposes a range of activities that, whilst legal, facilitate corruption and money laundering. Transfer price abuse by MNCs and aggressive tax avoidance by wealthy individuals use methods of financial secrecy (that is, methods also used by criminals to launder money and that are the channel for transfer of both illegal and legal IFFs that perpetuate and enable the problem of corruption and money laundering). Banking institutions are silent on the policy with respect to financial secrecy which is a double-edged sword. Revenue will be gained from legitimate use of financial secrecy and this is substantial, even if it is morally dubious; but more damaging is the link of financial secrecy with corruption and money laundering, which increases the vulnerability for banks.

It is the combination of these factors that enables an ecosystem that feeds off various components such as secrecy destinations, perceptions of corruption, transfer price abuse, lack of political will to combat corruption in Nigeria – and, in the UK, allowing companies and individuals to escape criminal prosecution. This complex and harmful combination makes it ever more difficult to address the subject of IFFs holistically, and addressing individual components will do little to cope with the larger problem.

This thesis considers financial secrecy as the area that, if addressed, could have a significant impact on reducing IFFs. On the Nigerian side, the obvious target would be to remove the immunity clause from the Nigerian Constitution.[1091] Both of these actions require courageous endeavours from the respective governments, and it will be remarkable if the steps are taken that could have a startling impact on the fight against corruption.

Summary of conclusions and recommendations

Research into IFFs is immature, as is its legislative coverage. This thesis recommends that a body, such as the FATF, should introduce standards for IFFs, to place pressure on governments to address the standards and, in turn, to facilitate further research and consultations for the introduction of new IFF standards.

Financial secrecy (that is, a method to conceal the ultimate beneficial owner of assets) is used for both legal and illegal purposes, and both contribute to corruption and money laundering. For criminal purposes, financial secrecy provides a means for proceeds of crime to be laundered through global financial systems. For commercial purposes, transfer price abuse and aggressive tax avoidance are enablers of corruption and money laundering. The banking institutions are silent on the harms of financial secrecy, and it is suggested that this is because they are implicated in this conundrum. It is recommended that the Organization for Economic Co-operation and Development (OECD) should introduce research projects on developing standards or a Convention to review and address the harm caused by financial secrecy.

[1091] Anna Markovska and Nya Adams, 'Political Corruption and Money Laundering: Lessons from Nigeria' (2015) 18 Journal of Money Laundering Control 169.

Transfer price abuse is confirmed as an enabler of corruption and money laundering. The OECD has made progress with the BEPS project, which addresses the legal activity of profit shifting, but the recommendation proposed in this thesis is that the OECD should extend the scope of BEPS to bring in the enabling impact of transfer price abuse to corruption and money laundering. The thesis also identifies trade mis-pricing, which is a fraudulent practice and constitutes an area for further research which is outside the scope of this thesis.

The perception of corruption is contradicted by the reality in the UK because of the UK's role in provision of financial secrecy services through its Overseas Territories. In addition, a degree of protection is afforded to UK conglomerates with respect to prosecution for bribery and corruption offences. These factors challenge the Transparency International CPI, which places the UK in the top quartile of transparency (in other words, as being least corrupt). Compared to Nigeria (which is inherently corrupt), both in perception and reality, the comparison between the two countries raises a murky symbiotic relationship (discussed further below), where both countries rely on each other for IFFs.

Nigeria has satisfactory anti-corruption and anti-money laundering laws and is signatory to key international instruments such as UNCAC, yet efforts to fight corruption have not and will not have any significant impact as, across government and its ministries, there is not the collective political will to enact change. Tribal allegiances also play a weighty part in enforcement of the law against corrupt public officials. In the Nigerian Case Studies,[1092] it is clear to see the finding of this thesis that the penalties for corruption do not outweigh the benefits of corruption in Nigeria, and jail-time is not a deterrent. It is recommended that the immunity clause in the Nigerian Constitution, which currently provides immunity for the political elite from prosecution, is removed. Furthermore, it is recommended that the declaration of assets of public officials required by the Nigerian Constitution, which is currently secret, should become open for public scrutiny. The final recommendation is the adoption of new legislation that would allow suspected corrupt actors to prove the origins of their wealth, through implementing UWOs in Nigeria, similar to the UK provisions in the Criminal Finances Act 2017.

[1092] See n 18.

The silence of the banking institutions on financial secrecy should be addressed by measures stipulated by governments and regulators, for banking institutions to consider the merits of financial secrecy. This thesis has identified the harms to society that financial secrecy brings, in that it enables corruption and money laundering to flourish.

All of these factors outlined above create an ecosystem for an unhealthy symbiotic relationship to exist between Nigeria and the UK, where corrupt Nigerian officials utilise financial secrecy services offered by the UK and its Overseas Territories. To counter this trend, the thesis recommends that the immunity clause is removed from the Nigerian Constitution and that asset registers are made public that would allow transparency of the wealth held by the political elite in Nigeria. It is also recommended that the UK financial institutions acknowledge and question Nigerian officials who attempt to open bank accounts in the UK, which is forbidden by the Nigerian Constitution. These are simple measures that should not be difficult to administer, yet the reality is that little will change unless the leaders of the respective countries are prepared to do something for the greater good.

In the final section of this chapter, the hypotheses are considered in order to assess whether the findings justify the supposition or whether further research is required. Furthermore, a number of recommendations are provided.

Hypothesis 1: Illicit financial flows are detrimental to society

IFFs is a broad term and Chapter 2 provides a comprehensive explanation and manifestations of it. IFFs include illegal activities, such as bribery, corruption and money laundering; and, for this thesis, the position adopted is that they also include activities which are legal, such as transfer price abuse. It is this very demarcation that makes IFFs a difficult subject to approach and legislate for.

The literature review confirms that there is currently little by way of academic research into IFFs, apart from a few scholars in the field discussed at length in Chapter 3. The investigation into available legislation and soft law that tackles IFFs was conducted in Chapter 5. The critical analysis of these sources indicates that there is no current legislative attempt to tackle IFFs,

although certain OECD projects, such as the Base Erosion and Profit Shifting (BEPS) project, have been initiated to address the impact of IFFs.

The doctrinal examination of the legislation within the scope of this thesis reveals that the law does not appropriately acknowledge or refer to IFFs. Some of the AML and anti-corruption provisions only partially address isolated aspects of IFFs. This is inadequate, as such provisions only covers the illegal IFFs (those from bribery and corruption and the proceeds of crime) and leaves a substantive legislative gap in the area of financial secrecy and transfer price abuse. This thesis recommends that a body such as the Financial Action Task Force (FATF) brings IFFs into its remit, and either integrates a new IFF standard within the existing FATF Recommendations 2012 or initiates a new project solely for IFFs.

Hypothesis 2: Financial secrecy contributes to corruption and money laundering

Financial secrecy, a concept described in detail in Chapter 2, is not illegal, and it involves the use of secrecy jurisdictions to distribute illicit capital through opaque corporate structures and shell companies and, where available, banking secrecy. The literature review confirms that financial secrecy enables and facilitates corruption and money laundering, but financial secrecy is also used by MNCs for transfer price abuse which, in itself, is legal but also an enabler of corruption and money laundering. The analysis of the role of the UK and its Overseas Territories with respect to financial secrecy provides a wider and original contribution to this hypothesis, where the UK and its Overseas Territories appear at the top of the FSI, which contradicts the perception that the UK has low levels of corruption. The case of Sani Abacha is used to show the enduring nature of financial secrecy and IFFs in Chapter 5, a case which still continues to reach headlines where financial secrecy limits the enforcement agencies' efficacy in identifying and repatriating stolen Nigerian oil revenues.

The recommendation, which goes hand in hand with the recommendation for Hypothesis 7, is that financial secrecy needs to be first addressed and acknowledged as an issue by governments from the developed countries and also by the banking institutions. Then, some formal body such as the OECD should introduce research projects and consider developing standards or Conventions that the OECD countries should adopt.

Hypothesis 3: Transfer price abuse is an enabler of corruption and money laundering, especially in developing countries such as Nigeria

The literature review confirms that transfer price abuse enables corruption and money laundering through financial secrecy. The clarification of the terms 'illicit' and 'illegal' has been provided in detail in Chapter 2, and a position adopted for this thesis to include transfer price abuse within the scope of IFFs. It follows that transfer price abuse is in fact detrimental to society and that it does have an enabling factor for corruption and money laundering. This thesis makes the connection between a legal activity – transfer price abuse – that is wrapped up in services that are also legal, financial secrecy, that are used for illegal activities such as corruption and money laundering.

The recommendations arising from these findings is that the OECD BEPS project should bring into its scope further research to investigate/validate the enabling aspect of transfer price abuse for corruption and money laundering. There are already comprehensive initiatives and approaches identified in the literature review, such as from Janský and Pratts and Zucman, that would have more impact if there was an OECD affirmation of the harmful enabling effects of transfer price abuse.

Hypothesis 4: The perception of corruption in the UK is contradicted

The UK is perceived as the 11th least corrupt country out of 180 that were assessed by Transparency International.[1093] However, this thesis has found that this low perception of corruption does not reflect the reality. By employing a novel approach which compares the Corruption Perceptions Index with the Financial Secrecy Index, it was found that the UK appears most financially secretive when assessed together with its Overseas Territories. It has been established by Hypothesis 2 that financial secrecy enables and contributes to corruption and money laundering, and key cases were analysed in detail to show this, in particular using Nigeria as a focus for this study. Whilst the CPI does raise awareness of corruption mainly in the developing countries, it fails to address the impact of financial secrecy as a primary and key enabler that facilitates IFFs out of those developing countries to secrecy jurisdictions such as the UK's Overseas Territories. Another finding related to the incorrect perception of corruption

[1093] 'Corruption Perceptions Index 2020' (Transparency International, 2021) <https://www.transparency.org/cpi/2020> accessed 11 August 2021.

in the UK is how a degree of protection is afforded to large MNCs when there are serious corruption practices. The cases of BAe, Rolls-Royce and Airbus were assessed in Chapter 6, to show how government intervention through the guise of national security provided protection for BAe against criminal prosecution, and how the advent of deferred prosecution agreements has protected both Rolls-Royce and Airbus employees from criminal prosecution.

There are many critics of the CPI, as discussed in Chapter 6, and this thesis recommends that Transparency International include within its assessment financial secrecy that would balance the CPI into the reality of how proceeds of corruption are moved around the world and bring forward the notion that the UK is not as virtuous as the CPI suggests; and, according to Malgwi, the UK is 'probably no less significantly corrupt than Nigeria',[1094] as most of the financial services that lead to money laundering are provided by the UK and its Overseas Territories. The premise which Duthel observes, regarding high-value net individuals or corrupt public officials, needs to be reversed for a modern society where he cites, 'firms are sometimes blinded by those who glide easily through the cigar mist of the gentlemen's clubs'.[1095] While this study has been confined to the examination of the nexus of IFFs between Nigeria and the UK, a similar comparative analysis involving other countries should be conducted. This would reveal further the state of affairs in other jurisdictions and can instigate positive change in curbing financial secrecy and IFFs.

Hypothesis 5: Anti-corruption legislation / efforts do not have any impact in Nigeria

Despite comprehensive financial crime legislation and successive government rhetoric on the fight against anti-corruption, the finding from this thesis is that Nigeria is struggling to make any impact to curb or manage corruption. This thesis attributes this finding to the lack of political will due to tribal allegiances and the simple fact that corrupt public officials see the benefits of corruption outweighing the penalties. This limits any incumbent government which is dependent on past or future high-profile officials who have personal agendas or histories that

[1094] Charles A Malgwi, 'Fraud as Economic Terrorism: The Efficacy of the Nigerian Economic and Financial Crimes Commission' (2005) 12 Journal of Financial Crime 144.

[1095] Heinz Duthel, *The Professionals Politic and Crime International Money Laundering* (Lulu. com 2008) quoted in Selina Keesoony, 'International Anti-Money Laundering Laws: The Problems with Enforcement' (2016) 19 Journal of Money Laundering Control 130.

are not consistent with an anti-corruption agenda. Even those who are prosecuted in Nigeria or elsewhere see the benefits of corruption outweighing penalties (if and when enforced), and more troubling is the adulation given to convicted criminals when returning to Nigeria.

The recommendations arising from these findings are obvious, but will be difficult to implement. The fundamental flaw in Nigeria's fight against corruption is the immunity clause in the Nigerian Constitution which provides the President, Vice President and Governors with an immunity from prosecution whilst in office. Removing this clause from the Nigerian Constitution would not only send a shock wave to those in office, either involved in or considering corrupt acts, but also provide some confidence to the international community that Nigeria is taking anti-corruption seriously. Having said that, while prominent political leaders in Nigeria are continuously embroiled in corruption, it does not seem that such a change will come any time soon.

Currently, the asset declaration by public officials in Nigeria is regarded as secret, and civil servants cannot divulge this information. The widening of the declaration of assets clause in the Constitution of Nigeria is another obvious recommendation which would make this information public, and would have a significant impact for unexplained wealth being open to scrutiny. This should be combined with the introduction of new legislation that mirrors the UK's 'unexplained wealth order', which requires a person to justify the nature of their wealth if they are suspected, involved or associated with serious crime. If they are unable to do so, measures such as confiscation orders can be utilised.

Hypothesis 6: There is a lack of clear policy on anti-money laundering and financial secrecy by banking institutions

It was a surprising finding that the major banking institutions globally did not have a public statement on AML policy, and that they were silent on the subject of financial secrecy. There is abundant AML legislation and standards globally, and the banking institutions defer to these, and compliance requirements by regulators are stringent. However, the literature review revealed that the lack of publicly available guidance on one of the biggest threats for banks, i.e. money laundering, is troubling. A number of money laundering-related scandals continue to occur, despite the heavy regulation and substantial fines. Awareness of the concepts of

financial secrecy is also increasing – for example, through scandals such as the Panama and Paradise Papers. The recommendation from these findings is for governments and regulators to stipulate public policy declarations from banking institutions on AML policy and a strict measure or eradication of financial secrecy. As highlighted in Chapter 1, a potential $36tn is held in secrecy jurisdictions;[1096] the challenge is that, if banking institutions minimised or eliminated the flow of money through these secrecy jurisdictions, the banks could be 'cutting off the hand that feeds them', in that the biggest threat to IFFs and money laundering is eradicating secrecy jurisdictions and associated services. The banks themselves are implicated in this conundrum.

Hypothesis 7: A symbiotic relationship exists between the UK (including its Overseas Territories) and Nigeria

The Nigerian Case Studies[1097] demonstrate an unhealthy relationship between Nigeria and the UK with respect to how corrupt public officials transfer the proceeds of corruption from Nigeria through secrecy jurisdictions and services in the UK and its Overseas Territories. The literature review revealed that $37bn in stolen money from Nigeria was routed through London, and several critics condemn the UK's double standards where transparency is espoused yet criminal assets are allowed to flow freely through the UK and its Overseas Territories. Indeed, as Malgwi suggests, 'it takes two to tango'.[1098]

To break this unhealthy relationship, work is required by both countries. Nigeria has satisfactory money laundering and corruption legislation, as well as being a signatory to international Conventions and standards, but it is the enforcement of the law – free from political interference – that is the issue. Recommendations for Hypothesis 7 suggest changes to the Nigerian Constitution to jolt the establishment into real anti-corruption action that moves away from rhetoric, actions which include removing the immunity clause and widening the requirement to publish personal assets. Combined with this, the UK needs to acknowledge

[1096] Nicholas Shaxson, 'Tackling Tax Havens' (*International Monetary Fund*, 2019) <https://www.imf.org/external/pubs/ft/fandd/2019/09/tackling-global-tax-havens-shaxon.htm#:~:text=Tax%20havens%20collectively%20cost%20governments,not%2Dso%2Dlegal%20means> accessed 7 February 2021.

[1097] See n 18.

[1098] Charles A Malgwi, 'Fraud as Economic Terrorism: The Efficacy of the Nigerian Economic and Financial Crimes Commission' (2005) 12 Journal of Financial Crime 144.

and put into practice the prohibition stipulated in the Nigerian Constitution that forbids the opening and holding of foreign bank accounts for its public officers. This simple fact should be known by banks and the legal profession, and it is recommended that an edict should be provided by the UK government and regulatory agencies to the banks and professional services to this effect.

BIBLIOGRAPHY

Books without an author

Collins Latin Dictionary (Collins 2005)

Corruption: A Glossary of International Standards in Criminal Law (OECD 2008)

The Sustainable Development Goals Report 2017 (United Nations Publications 2017)

Transparency in Corporate Reporting (Transparency International 2014)

UK National Risk Assessment of Money Laundering and Terrorist Financing (HM Treasury and Home Office 2015)

Books

Baker R, *Capitalism's Achilles Heel: Dirty Money and How to Renew the Free-Market System* (John Wiley & Sons 2005)

Bingham TH, *The Rule of Law* (Allen Lane 2010)

Bogdan M, *Comparative law* (Kluwer 1994)

Brooks G, *Criminology of Corruption: Theoretical Approaches* (Springer 2016)

Chaikin D and Sharman JC, *Corruption and Money Laundering: A Symbiotic Relationship* (Palgrave Macmillan 2009)

Cotterrell R, *Law's Community: Legal Theory in Sociological Perspective* (Oxford University Press 1997)

Cownie F, *Legal Academics: Cultures and Identities* (Hart Publishing 2004)

Duthel H, *The Professionals Politic and Crime International Money Laundering* (Lulu. com 2008)

Fink A, *Conducting Research Literature Reviews: from the Internet to Paper* (Sage Publications 2013)

Harrison K and Ryder N, *The Law relating to Financial Crime* (Ashgate Publishing 2013)

Hatchard J, *Combating Corruption: Legal Approaches to Supporting Good Governance and Integrity in Africa* (Edward Elgar Publishing 2014)

Hinterseer K, *Criminal Finance: The Political Economy of Money Laundering in a Comparative Legal Context* (Kluwer Law International 2002)

Hodess R, *Global Corruption Report 2004 - Transparency International* (Pluto Press 2004)

Hogg, A and others, *Death and Taxes: The True Toll of Tax Dodging* (Christian Aid, 2008)

Hopton D, *Money laundering: A Concise Guide for All Business* (Gower Publishing 2009)

Horder J and Alldridge P, *Modern Bribery Law: Comparative Perspectives* (Cambridge University Press 2013)

Isenbergh J, *International Taxation* (Foundation Press 2000)

Riaño J and Hodess R, *Bribe Payers Index 2008* (Transparancy International 2008)

Krishnan C and Barrington R, *Corruption in the UK - Overview, Policy, Recommendations* (Transarency International UK 2011)

Lambsdorff JG, *The Institutional Economics of Corruption and Reform* (Cambridge University Press 2007)

Lawler D, *Frequently Asked Questions in Anti-Bribery and Corruption* (Wiley 2012)

Morris C and Murphy C, *Getting a PhD in Law* (Hart Publishing 2011)

Palan R, Murphy R and Chavagneux C, *Tax Havens - How Globalization Really Works* (Cornell University Press 2013)

Peel M, *Nigeria Related Financial Crime and its Links with Britain* (Chatham House 2006)

Peel M, *A Swamp Full of Dollars: Pipelines and Paramilitaries at Nigeria's Oil Frontier* (I. B. Tauris 2009)

Platt S, *Criminal Capital - How the Finance Industry Facilitates Crime* (Palgrave Macmillan UK 2015)

Rugman A and Eden L, *Multinationals and Transfer Pricing* (Routledge 2017)

Ryder N, *Financial Crime in the 21st Century* (Edward Elgar Publishing 2011)

Ryder N, *Money Laundering, an Endless Cycle? A Comparative Analysis of the Anti-Money Laundering Policies in the United States of America, the United Kingdom, Australia and Canada* (Routledge 2012)

Sharman JC, *Havens in a Storm: The Struggle for Global Tax Regulation* (Cornell University Press 2006)

Unger B and Busuioc EM, *The Scale and Impacts of Money Laundering* (Edward Elgar Publishing 2007)

Unger B and Linde Dvd, *Research Handbook on Money Laundering* (Edward Elgar Publishing 2013)

Young MA, *Banking Secrecy and Offshore Financial Centres: Money Laundering and Offshore Banking* (Routledge 2013)

Zucman G, *The Hidden Wealth of Nations: The Scourge of Tax Havens* (University of Chicago Press 2015)

Contributions to an edited book

Baker R, 'The Scale of the Global Financial Structure Facilitating Money Laundering' in Unger B and Linde Dvd (eds), *Research Handbook on Money Laundering* (Edward Elgar Publishing 2013)

Beetham D, 'Moving Beyond a Narrow Definition of Corruption' in Whyte D (ed) *How Corrupt is Britain* (Pluto Press 2015)

Blackenburg S and Khan M, 'Governance and Illicit Flows' in Reuter P (ed) *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (World Bank 2012)

Christensen J, 'On Her Majesty's Secrecy Service' in Whyte D (ed) *How Corrupt is Britain* (Pluto Press 2015)

Chynoweth P, 'Legal Research' in Knight A and Ruddock L (eds), *Advanced Research Methods in the Built Environment* (Wiley 2008)

Cownie F and Bradney A, 'Socio-Legal Studies: A Challenge to the Doctrinal Approach' in Watkins D and Burton M (eds), *Research Methods in Law* (Routledge 2017)

Daniel T and Maton J, 'Is the UNCAC an Effective Deterrent to Grand Corruption?' in Horder J and Alldridge P (eds), *Modern Bribery Law: Comparative Persp*ectives (Cambridge University Press 2013)

Dow R and Turksen U, 'Independence and Protection of Accountants and Auditors in the EU AML Framework' in Ryder N and others (eds), *The Financial Crisis and White-Collar Crime – Legislative and Policy Responses: A Critical Assessment* (Routledge 2017)

Everest-Phillips M, 'The Political Economy of Controlling Tax Evasion and Illicit Flows' in Reuter P (ed) *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (World Bank 2012)

Ferweda J, 'The Effects of Money Laundering' in Unger B and Linde D (eds), *Research Handbook on Money Laundering* (Edward Elgar Publishing 2014)

Fjeldstad O-H and Heggstad K, 'Capital Flight from Africa-with a Little Help from the Banks' in Alves da Rocha and others (eds), *Capital Flight and Pro-Poor Development Policy in Angola* International Centre for Tax and Development (ICTD) and Chr. Michelsen Institute, Norwegian Tax Administration 2014)

Grasso C, 'The Dark Side of Power: Corruption and Bribery within the Energy Sector' in Leal-Arcas R and Wouters J (eds), *Research Handbook on EU Energy Law and Policy* (Edward Elgar Publishing 2017)

Hope Sr KR, 'Corruption in Nigeria' in *Corruption and Governance in Africa* (Palgrave and Macmillan, Cham 2017)

Huisman W and Vande Walle G, 'The Criminology of Corruption' in Graaf Gd and others (eds), *The Good Cause - Theoretical Perspectives on Corruption* (Barbara Budrich Publishers 2010)

Hutchinson T, 'Doctrinal Research: Researching the Jury' in Watkins D and Burton M (eds), *Research Methods in Law* (Routledge 2018)

Koningsveld Jv, 'Money Laundering - You Don't See It Until you understand It: Rethinking the Stages of Money Laundering Process to Make Enforcement More Effective' in Unger B and Linde Dvd (eds), *Research Handbook on Money Laundering* (Edward Elgar Publishing 2014)

Levi M, 'Following the Criminal and Terrorist Money Trails' in Duyne P, Lampe K and Newell J (eds*) Criminal Finances and Organising Crime in Europe* (Nijmegen, Wolf Legal Publishers 2003)

Maton J and Daniel T, 'The Kleptocrat's Portfolio Decisions' in Reuter P (ed) *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (World Bank 2012)

McConville M and Chui WH, 'Introduction and Overview' in McConville M and Chui WH (eds), *Research Methods for Law* (Edinburgh University Press 2017)

Mitsilegas V, 'Aims and limits of European Union Anti-Corruption Law' in Horder J and Alldridge P (eds), *Modern Bribery Law - Comparative Perspectives* (Cambridge University Press 2013)

Murphy R, 'Accounting for the Missing Billions' in Reuter P (ed) *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (World Bank 2012)

Murphy R, 'Country by Country Reporting' in Pogge T and Mehta K (eds), *Global Tax Fairness* (Oxford University Press 2016)

Nelken D, 'White Collar and Corporate Crime' in Maguire M and others (eds), *The Oxford Handbook of Criminology* (4th edn, Oxford University Press 2007)

Reuter P, 'Are Estimates of the Volume of Money Laundering either Feasible or Useful?' in Unger B and Linde Dvd (eds), *Research Handbook on Money Laundering* (Edward Elgar Publishing 2014)

Sullivan B, 'Reformulating Bribery: A Legal Critique of the Bribery Act 2010' in Horder J and Alldridge P (eds), *Modern Bribery Law - Comparative Perspectives* (Cambridge University Press 2013)

Wheeler S and Thomas P, 'Socio-Legal Studies' in Hayton D (ed), *Law's Future(s)* (Hart Publishing 2000)

Wilson G, 'Comparative Legal Scholarship' in McConville M and Chui WH (eds), *Research Methods for Law* (Edinburgh University Press 2017)

Journal articles

Abbott KW and Snidal D, 'Hard and Soft Law in International Governance' (2000) 54 International Organization 421

Adeniyi SI and Agbaje WH, 'Stemming the Tide of Undecided Fraud Court Cases in Nigeria: Forensic Accountant Roles' (2017) 9 Journal of Academic Research in Economics

Adesoji A and Rotimi O, 'Nigeria and its Anti-Corruption War: The Cases of Dariye and Alamieyeseigha' (2008) 38 Africa Insight 159

Aigbovo O and Atsegbua L, 'Nigerian Anti-Corruption Statutes: An Impact Assessment' (2013) 16 Journal of Money Laundering Control 62

Albert AT, 'Combating Corruption in Nigeria and the Constitutional Issues Arising: Are they Facilitators or Inhibitors?' (2016) 23 Journal of Financial Crime 700

Albert AT and Okoli F, 'EFCC and the Politics of Combating Corruption in Nigeria (2003-2012)' (2016) 23 Journal of Financial Crime 725

Alexander R, 'Corruption as a Financial Crime' (2009) 30 Company Lawyer 98

Aluko A and Bagheri M, 'The Impact of Money Laundering on Economic and Financial Stability and on Political Development in Developing Countries: The Case of Nigeria' (2012) 15 Journal of Money Laundering Control 442

Barrera R and Bustamante J, 'The Rotten Apple: Tax Avoidance in Ireland' (2017) The International Trade Journal

Bayley DH, 'The Effects of Corruption in a Developing Nation' (1966) 19 The Western Political Quarterly 719

Beale KD and Esposito P, 'Emergent International Attitudes Towards Bribery, Corruption and Money Laundering' (2009) 75 Arbitration 360

Bello AO, 'United Nations and African Union Conventions on Corruption and Anti-corruption Legislations in Nigeria: A Comparative Analysis' (2014) 22 African Journal of International and Comparative Law 308

Boote DN and Beile P, 'Scholars Before Researchers: On the Centrality of the Dissertation Literature Review in Research Preparation' (2005) 34 Educational Researcher 3

Budima G, 'Can Corruption and Economic Crime be Controlled in Developing Economies, and if so, is the cost worth it?' (2006) 13 Journal of Financial Crime 408

Budima G, 'Can Corruption and Economic Crime be Controlled in Developing Economies, and if so, is the Cost Worth it?' (2006) 13 Journal of Financial Crime 408

Campos NF and Giovannoni F, 'Lobbying, Corruption and Political Influence' (2007) 131 Public Choice 1

Carr I, 'Corruption in Africa: is the African Union Convention on Combating Corruption the Answer?' (2007) Journal of Business Law 111

Carr I, 'Corruption, Legal Solutions and Limits of Law' (2007) 3 International Journal of Law in Context 227

Chauhan V, 'Why Corruption is Not Legally Defined' (2014) Financial Regulation International 6

Chambers R, 'Corporate Secrecy; the Final Barrier to Corporate Governance' (2006) 2 International Journal of Business Governance and Ethics 43

Christensen J, 'The Hidden Trillions: Secrecy, Corruption, and the Offshore Interface' (2012) 57 Crime, Law and Social Change 325

Cobham A, Janský P and Meinzer M, 'The Financial Secrecy Index: Shedding New Light on the Geography of Secrecy' (2015) 91 Economic Geography 281

Cockfield AJ, 'Breaking Bad: What Does the First Major Tax Haven Leak Tell Us?' (2016) 22 Tax Notes International 691

Collins H, 'Methods and Aims of Comparative Contract Law' (1991) 11 Oxford Journal of Legal Studies 396

Creaton J, 'State Immunity from Prosecution' (2005) 78 Police Journal 351

Davis KE, 'The Prospects for Anti-Corruption Law: Optimists Versus Skeptics' (2012) Hague Journal on the Rule of Law 319

Dimant E and Schulte T, 'The Nature of Corruption: An Interdisciplinary Perspective' (2016) 17 German Law Journal 53

Eberle EJ, 'The Method and Role of Comparative Law' (2009) 8 Washington University Global Studies Law Review 451

Edward P, 'All That Glisters Is Not Gold: Laundering the UK Money Laundering Regime' (2006) 65 The Cambridge Law Journal 40

Emmenegger P, 'The Politics of Financial Intransparency: The Case of Swiss Banking Secrecy' (2014) 20 Swiss Political Science Review 146

Eric EE, 'The Nigerian Money Laundering (Prevention and Prohibition) Bill, 2016: A Critical Appraisal' (2017) 20 Journal of Money Laundering Control 79

Forstater M, 'Illicit Financial Flows, Trade Misinvoicing, and Multinational Tax Avoidance: The Same or Different?' (2018) Center for Global Development 28

Harris DR, 'The Development of Socio-Legal Studies in the United Kingdom' (1983) 3 Legal Studies 315

Harvey J, 'An Evaluation of Money Laundering Policies' (2005) 8 Journal of Money Laundering Control 339

Hatchard J, 'Combating Transnational Crime in Africa: Problems and Perspectives' (2006) 50 Journal of African law 145

Hooker J, 'Corruption from a Cross-Cultural Perspective' (2009) 16 Cross Cultural Management: An International Journal 251

Hunter SG, 'Comparative Analysis of the Foreign Corrupt Practices Act and the UK Bribery Act, and the Practical Implications of Both on International Business' (2011) 18 ILSA Journal of International & Comparative Law 89

Inciyan E, Roche M and Stern B, 'London is Lax on Money Laundering' (2001) 29 Guardian Weekly 18

Janský P, 'Updating the Rich Countries' Commitment to Development Index: How They Help Poorer Ones Through Curbing Illicit Financial Flows' (2015) 124 Social Indicators Research 43

Janský P, Meinzer M and Palanský M, 'Is Panama Really Your Tax Haven? Secrecy Jurisdictions and the Countries They Harm' (2018) IES Working Papers 23/2018 IES FSV Charles University

Janský P and Prats A, 'International Profit-Shifting out of Developing Countries and the Role of Tax Havens' (2015) 33 Development Policy Review 271

Keesoony S, 'International Anti-Money Laundering Laws: The Problems with Enforcement' (2016) 19 Journal of Money Laundering Control 130

Kenny MS and O'Brien E, 'Trusts - True or Bare'?' (2000) 8 Journal of Financial Crime 60

Lacey N, 'Normative Reconstruction in Socio-Legal Theory' (1996) 5 Social & Legal Studies 131

Lapalombara J, 'Structural and Institutional Aspects of Corruption' (1994) 61 Social Research 325

Lawlor-Forsyth E and Gallant MM, 'Financial Institutions and Money Laundering: A Threatening Relationship?' (2018) 19 Journal of Banking Regulation 131

Malgwi CA, 'Fraud as Economic Terrorism: The Efficacy of the Nigerian Economic and Financial Crimes Commission' (2005) 12 Journal of Financial Crime 144

Markovska A and Adams N, 'Political Corruption and Money Laundering: Lessons from Nigeria' (2015) 18 Journal of Money Laundering Control 169

Matsuoka A, 'What Made Base Erosion and Profit Shifting Project Possible? Identifying Factors for Building Momentum for Reform of International Taxation' (2018) 25 Journal of Financial Crime 795.

McCluskey D, 'Money laundering: The Disappearing Predicate' (2009) 10 Crim Law Review 719

McCrudden C, 'Legal Research and the Social Sciences' (2006) Law Quarterly Review 632

Mehafdi M, 'The Ethics of International Transfer Pricing' (2000) 28 Journal of Business Ethics 365

Mikkelsen KS, 'In Murky Waters: A Disentangling of Corruption and Related Concepts' (2013) 60 Crime, Law and Social Change 357

Mugarura N, 'Tax Havens, Offshore Financial Centres and the Current Sanctions Regimes' (2017) 24 Journal of Financial Crime 200

Murray K, 'A Suitable Case for Treatment: Money Laundering and Knowledge' (2012) 15 Journal of Money Laundering Control 188

Nadipuram AM, 'Is the OECD the Answer? It's Only Part of the Solution' (2013) 38 The Journal of Corporation Law 635

Naheem MA, 'HSBC Swiss Bank Accounts -AML Compliance and Money Laundering Implications' (2015) 23 Journal of Financial Regulation and Compliance 285

Napoleoni L, 'The New Economy of Terror: How Terrorism is Financed' (2004) 4 Forum on Crime & Society 31

Nasir MA, 'The Viability of Recent Enforcement Mechanism to Combat Money Laundering and Financial Terrorism (AML/CFT) in Nigeria' (2019) 22 Journal of Money Laundering Control 417

Ojukwu-Ogba NE and Osode PC, 'A Critical Assessment of the Enforcement Regime for Combatting Money Laundering in Nigeria' (2020) African Journal of International and Comparative Law 85

Oke T, 'Financial Crime Prosecution, Legal Certainty and Exigency of Policy: Case of Nigeria's EFCC' (2014) 21 Journal of Financial Crime 56

Oke T, 'Financial Crime Prosecution, Legal Certainty and Exigency of Policy: Case of Nigeria's EFCC' (2014) Journal of Financial Crime 56

Oke T, 'Money Laundering Regulation and the African PEP: Case for Tougher Civil Remedy Options' (2016) 19 Journal of Money Laundering Control 32

Otusanya OJ, 'Corruption as an Obstacle to Development in Developing Countries: A Review of Literature' (2011) 14 Journal of Money Laundering Control 387

Otusanya OJ, 'An Investigation of the Financial Criminal Practices of the Elite in Developing Countries: Evidence from Nigeria' (2012) 19 Journal of Financial Crime 175

Otusanya OJ, Ajibolade SO and Omolehinwa EO, 'The Role of Financial Intermediaries in Elite Money Laundering Practices: Evidence from Nigeria' (2012) 15 Journal of Money Laundering Control 58

Otusanya OJ and Lauwo S, 'The Role of Offshore Financial Centres in Elite Money Laundering Practices: Evidence from Nigeria' (2012) 15 Journal of Money Laundering Control 336

Otusanya OJ, Lauwo S and Ahmad-Khair AH, 'The Culpability of Accounting Practice in Promoting Bribery and Corruption in Developing Countries' (2017) 8 International Journal of Economics and Accounting 106

Otusanya OJ and others, 'Sweeping it Under the Carpet: The Role of Legislators in Corrupt Practice in Nigeria' (2015) 22 Journal of Financial Crime 354

Owens J and Majdanska A, 'How Good Governance Can Curb Illicit Financial Flows out of Africa' (2015) International Tax Review 13

Palmer VV, 'From Lerotholi to Lando: Some Examples of Comparative Law Methodology' (2005) 53 American Journal of Comparative Law 261

Parlour R, 'The New FATF Forty Recommendations' (2012) Financial Regulation International

Picciotto S, ‘Tax Evasion and the Offshore System’ (2017) 4 Kurswechsel 7

Ping H, 'Banking Secrecy and Money laundering' (2004) 7 Journal of Money Laundering Control 376

Pope T and Webb T, 'The Bribery Act 2010' (2010) 25 Journal of International Banking Law and Regulation 480

Quirk PJ, 'Money Laundering: Muddying the Macroeconomy' (1997) 2 Trends in Organized Crime 10

Razak AA, 'Understanding Legal Research' (2009) 4 Integration & Dissemination 19

Ryder N, 'The Financial Services Authority and Money Laundering a Game of Cat and Mouse' (2008) 67 The Cambridge Law Journal 635

Ryder N, 'Too Scared to Prosecute and too Scared to Jail? A Critical and Comparative Analysis of Enforcement of Financial Crime Legislation Against Corporations in the United States of America and the United Kingdom' (2018) 82 Journal of Criminal Law 245

Sekhar GS, ‘Transfer Pricing – A Case Study of Vodafone (2016) 6 International Journal of Engineering Science 6207

Shehu AY, 'Combating corruption in Nigeria - Bliss or Bluster?' (2005) 12 Journal of Financial Crime 69

Sikka P and Willmott H, 'The Dark Side of Transfer Pricing - its Role in Tax Avoidance and Wealth Retentiveness' (2010) 21 Critical Perspectives on Accounting 342

Singhal AK and Malik I, 'Doctrinal and Socio-Legal Methods of Research: Merits and Demerits' (2012) 2 Educational Research Journal 252

Spalding A, 'The Irony of International Business Law: US Progressivism, China's New Laissez Faire, and Their Impact in the Developing World' (2011) 59 UCLA Law Review

Taekema S, 'Theoretical and Normative Frameworks for Legal Research: Putting Theory into Practice' (2018) 02 Law and Method

Thomas P, 'The Case of Disappearing Fleas and Bustards' (1997) Socio Legal Studies

Trautman LJ, 'Following the Money: Lessons from the Panama Papers Part 1: Tip of the Iceberg' (2016) 121 Penn State Law Review 807

Treisman D, 'The Causes of Corruption: A Cross-National Study' (2000) 76 Journal of Public Economics 399

Vick DW, 'Interdisciplinarity and the Discipline of Law' (2004) 31 Journal of Law and Society 163

Wadsley J, 'Money Laundering: Professionals as Policemen' (1994) Conveyancer and Property Lawyer 275

Walker J, 'How Big is Global Money Laundering?' (1999) 3 Journal of Money Laundering Control 25

Walker J and Unger B, 'Measuring Global Money Laundering:" The Walker Gravity Model"' (2009) 5 Review of Law & Economics 821

Young M, 'Western Hypocrisy and the Never Changing Face of Financial Secrecy Jurisdictions: Burying the 1975 UN agenda' (2017) The European Law Review 11

Young MA, 'The Exploitation of Offshore Financial Centres: Banking Confidentiality and Money Laundering' (2013) 16 Journal of Money Laundering Control 198

Yussuf RO, 'Anti-Money Laundering Framework in Nigeria: An Umbrella with Wide Leakage' (2017) 66 Journal of Law, Policy and Globalization 172

Zhang Y, Cao L and Vaughn MS, 'Social Support and Corruption: Structural Determinants of Corruption in the World' (2009) 42 Australian & New Zealand Journal of Criminology 204

Other secondary sources

'Active with India' (OECD 2018)

'Active with the People's Republic of China' (OECD 2018)

'The Anti-Corruption Plain Language Guide' (Transparency International 2009)

'Anti-Money Laundering - Annual Report 2016/17' (Financial Conduct Authority 2017)

'Anti-Money Laundering Annual Report 2018-19' (Financial Conduct Authority 2019)

‘Anti-Money Laundering: The SARs Regime’ (Law Commission 2019)

‘Auditor- General for the Federation Investigative Forensic Audit into the Allegations of Unremitted Funds into the Federation Accounts by the NNPC’ (PricewaterhouseCoopers Limited 2015)

‘Banks’ Management of High Money-Laundering Risk Situations’ (Financial Services Authority 2011)

‘Best Practices Paper - Use of FATF Recommendations to Combat Corruption’ (Financial Action Task Force 2013)

‘Chancing It - How Secret Company Ownership is a Risk to Investors’ (Global Financial Integrity and Global Witness 2016)

‘Conduct Costs Project Report 2017’ (CCP Research Foundation 2017)

‘Corruption in Nigeria - Bribery - Public Experience and Response’ (United Nations Office on Drugs and Crime 2017)

‘Economic Crime Plan 2019-22’ (HM Government - UK Finance 2019)

'Ending Secrecy to End Impunity: Tracing the Beneficial Owner' (Transparency International 2014) <http://www.transparency.org/whatwedo/pub/policy_brief_02_2014_ending_secrecy_to_end_impunity_tracing_the_beneficial> accessed 16 February 2020

‘The FATF 9 Special Recommendations’ (Financial Action Task Force 2001)

‘FATF Guidance - Politically Exposed Persons’ (Recommendations 12 and 22, FATF 2013)

‘FATF Laundering the Proceeds of Corruption’ (Financial Action Task Force 2011)

‘Finalised Guidance 17/6: The Treatment of Politically Exposed Persons for Anti-Money Laundering Purposes’ (Financial Conduct Authority 2017)

‘Financial Action Task Force on Money Laundering - Review to Identify Non-Cooperative Countries or Territories’ (FATF Secretariat 2001)

‘The Financial Challenge to Crime and Terrorism’ (HM Treasury 2007)

‘The Forty Recommendations of the Financial Action Task Force on Money Laundering’ (Financial Action Task Force 1990)

‘Frequently Asked Questions: Money Laundering’ (European Commission Memo 2013)

‘FSA-Journey-to-the-FCA’ (Financial Conduct Authority 2012)

'Global Corruption Barometer' (Transparency International 2020) <https://www.transparency.org/en/gcb#> accessed 20 July 2020

‘Helping Countries Combat Corruption: The Role of the World Bank’ (The World Bank Group 1997)

‘Illicit Financial Flow - Report of the High-Level Panel on Illicit Financial Flows from Africa’ (Commissioned by the AU/ECA Conference of Ministers of Finance, Planning and Economic Development 2015)

‘Illicit Financial Flows to and from 148 Developing Countries: 2006-2015’ (Global Financial Integrity 2019)

‘Impact of Corruption on Nigeria's Economy’ (PWC 2016)

‘Implementing the OECD Anti-Bribery Convention - Phase 4 Report - United Kingdom’ (OECD 2017)

‘Implementing the OECD Anti-Bribery Convention Phase 4 - Two-Year Follow-Up Report: United Kingdom’ (OECD 2019)

‘International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation - The FATF Recommendations - Adopted by the FATF Plenary in February 2012 - Updated June 2019’ (Financial Action Task Force 2019)

‘International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, the FATF Recommendations 2012’ (Financial Action Task Force 2012)

‘International Thief Thief - How British Banks are Complicit in Nigerian Corruption’ (Global Witness 2010)

‘Learning the Lessons from the UKs Public Beneficial Ownership Register’ (Open Ownership and Global Witness 2017)

‘OECD Illicit Financial Flows from Developing Countries: Measuring OECD Responses’ (OECD 2014)

‘OECD Working Group on Bribery Annual Report 2013’ (OECD 2013)

‘OECD Working Group on Bribery Annual Report 2014’ (OECD 2014)

‘OECD/G20 Base Erosion and Profit Shifting Project, Action 13 - Country by Country Reporting Implementation Package’ (OECD 2015)

‘Phase 3 Report on Implementing the OECD Anti-Bribery Convention in the United Kingdom’ (OECD 2012)

‘Policy Paper - Preventing Money Laundering’ (HM Treasury 2013)

‘Prevention of Money Laundering/ Combating Terrorist Financing - Guidance for the Financial Sector Part 1’ (The Joint Money Laundering Steering Group 2007)

‘Progress Update on UK Anti-Corruption Plan’ (HM Government 2016)

‘Report from the Commission to the Council and the European Parliament - EU Anti-Corruption Report’ (European Commission 2014)

‘Report from The Commission to The Council on the modalities of European Union Participation in the Council of Europe Group of States against Corruption’ (GRECO 2011).

‘Sound Management of Risks Related to Money Laundering and Financing of Terrorism’ (Bank for International Settlements, Basel Committee on Banking Supervision 2017)

‘Specific Risk Factors in the Laundering of Proceeds of Corruption’ (Financial Action Task Force 2012)

‘Typology on Mutual Legal Assistance in Foreign Bribery Cases’ (OECD 2012)

‘UK Anti-Corruption Plan’ (HM Government 2014)

‘Undue Diligence How Banks do Business with Corrupt Regimes - How Banks do Business with Corrupt Regimes’ (Global Witness 2010)

‘United Kingdom Anti-Corruption Strategy 2017 – 2022’ (HM Government 2017)

‘United Kingdom Anti-Corruption Strategy 2017-2022 - Year 1 Update’ (HM Government 2018)

‘Utilization of Repatriated Abacha Loot’ (World Bank and the Nigerian Federal Ministry of Finance 2006)

‘Value of the Network - Connecting Customers to Opportunities, Annual Report and Accounts’ (HSBC Holdings plc 2015)

Other secondary sources with named authors

Adigun O, 'Corruption with Tribal Marks: Explaining the Ethnic Nature of Political Corruption in Nigeria' (University of Lagos 2017).

Bąkowski P and Voronova S, ‘Corruption in the European Union - Prevalence of Corruption and Anti-Corruption Efforts in Selected EU Member States’ (European Parliament 2017)

Christensen J, 'Africa’s Bane: Tax Havens, Capital Flight and the Corruption Interface' (Real Instituto Elcano 2009)

Cobham A, ‘The Impacts of Illicit Financial Flows on Peace and Security in Africa’ (TANIA High Level Forum on Security in Africa 2014)

Garside SM, 'Corruption and Money Laundering - International Asset Recovery from Politically Exposed Persons in the UK, Nigeria, Russia and China' (Norwegian University of Life Sciences 2016)

Hardoon D and Heinrich F, ‘Bribe Payers Index 2011’ (Transparency International 2011)

Kar D and Freitas S, 'Illicit Financial Flows from Developing Countries: 2001-2010' (Global Financial Integrity 2012)

Kar D and Spanjers J, 'Illicit Financial Flows from Developing Countries 2003-2012' (Global Financial Integrity 2014)

Kar D and Spanjers J, 'Illicit Financial Flows from Developing Countries 2004-2013' (Global Financial Integrity 2015)

Meinzer M, 'Where to Draw the Line? Identifying Secrecy for Applied Research' (Tax Justice Network 2012)

Ndikumana L, 'Curtailing Capital Flight from Africa' (Friedrich-Ebert-Stiftung Global Policy Development 2017)

Nitsch V, 'Trillion Dollar Estimate: Illicit Financial Flows from Developing Countries' (Darmstadt Discussion Papers in Economics, 227, EconStar 2016)

Quirk PJ, 'Macroeconomic Implications of Money Laundering' (Working Paper 96/66, IMF 1996)

Reed Q and Fontana A, 'Corruption and Illicit Financial Flows: The Limits and Possibilities of Current Approaches' (U4 Anti-Corruption Resource Centre 2011)

Reuter P, 'Illicit Financial Flows and Governance: The Importance of Disaggregation, Background paper for the World Development Report' (School of Public Policy and Department of Criminology, University of Maryland 2017)

Spanjers J and Foss HF, 'Illicit Financial Flows and Development Indices 2008-2012' (Global Financial Integrity, 2015)

Spanjers J and Salomon M, 'Illicit Financial Flows to and from Developing Countries: 2005-2014' (Global Financial Integrity, 2017)

Thompson T and Shah A, 'Transparency International's Corruption Perceptions Index: Whose Perceptions Are They Anyway?' (University of Maryland and the World Bank 2005) <http://siteresources.worldbank.org/PSGLP/Resources/ShahThompsonTransparencyinternationalCPI.pdf> accessed 17 February 2020

Unger B and others, 'The Amounts and the Effects of Money Laundering' (Report for the Dutch Ministry of Finance, Utrecht School of Economics 2006)

van Gestel R and Micklitz HW, 'Revitalizing Doctrinal Legal Research in Europe: What About Methodology?' (European University Institute Working Papers 2011)

Xypolia I, 'Corruption Rankings are one of the Great Deceptions of our Era' (The Conversation, 2016)

Conference papers

'Harmony and Dissonance in International Law' (105th Annual Meeting of the American Society of International Law, Washington DC, 25 March 2011)

Cobham A and Janský P, 'Illicit Financial Flows: An overview' (Intergovernmental Group of Experts on Financing for Development, Paris, 8-10 November 2017)

Drigă I and Dura C, 'The Financial Sector and the Role of Banks in Economic Development' (6th International Multidisciplinary Symposium Universitaria SIMPRO 2014)

Web pages

'About BIS' (*Bank of International Settlements,* 2020) <https://www.bis.org/about/index.htm?l=2> accessed 14 March 2020

'About IBFed' (*International Banking Federation,* 2020) <http://www.ibfed.org.uk/about/> accessed 14 March 2020

'About the ICIJ' (*International Consortium of Investigative Journalists,* 2020) <http://www.icij.org/about> accessed 1 August 2020

'About Us BBA' (*British Banking Association,* 2017) <https://www.bba.org.uk/about-us/> accessed 1 December 2019

'About Us' (*European Banking Federation*, 2021) <https://www.ebf.eu/about-us/> accessed 27 August 2021

'About Us Serious Fraud Office' (*Serious Fraud Office,* 2020) <https://www.sfo.gov.uk/about-us/> accessed 8 August 2020

'Alamieyeseigha Disguised as a Woman - We Will Trace Him - Metropolitan Police' (*Online Nigeria - The Punch 22 November 2005,* 2005) <http://nm.onlinenigeria.com/templates/?a=6112&z=17#> accessed 5 December 2017

'Analytical Methodologies Utilized by Global Financial Integrity' (*Global Financial Integrity,* 2014) <http://www.gfintegrity.org/wp-content/uploads/2014/09/GFI-Analytics.pdf> accessed 8 January 2019

'Anti-Money Laundering - Stronger Rules to Respond to New Threats' (*European Commission - Europa Press Releases Database,* 2013) <http://europa.eu/rapid/press-release_IP-13-87_en.htm?locale=en> accessed 28 July 2020

'Anti-Money Laundering and Counter-Terrorist Financing Measures - United Kingdom - Mutual Evaluation Report - December 2018' (*Financial Action Task Force,* 2018) <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf> accessed 17 April 2020

'Anti-money Laundering Compliance' (*Financial Conduct Authority,* 2020) <https://www.fca.org.uk/firms/financial-crime/money-laundering-terrorist-financing> accessed 16 June 2020

'Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT)' (*International Monetary Fund,* 2020) <https://www.imf.org/external/np/leg/amlcft/eng/aml1.htm#financingterrorism> accessed 28 June 2020

'BAE Systems PLC Pleads Guilty and Ordered to Pay $400 Million Criminal Fine' (*The United States Department of Justice*, 1 March 2010) < https://www.justice.gov/opa/pr/bae-systems-plc-pleads-guilty-and-ordered-pay-400-million-criminal-fine> accessed 22 August 2021

'BAE Systems / Tanzania Radar Defence System Case' (*The World Bank - UNODC,* 2010) <https://star.worldbank.org/corruption-cases/node/18470> accessed 10 February 2020

'BAE Systems PLC, 5 February 2010' (*Serious Fraud Office,* 2010) <https://www.sfo.gov.uk/news/> accessed 17 June 2020

'Base Erosion and Profit Shifting' (*OECD,* 2018) <http://www.oecd.org/tax/beps/> accessed 4 February 2019

'Basel Committee Overview' (*Bank for International Settlements,* 2020) <https://www.bis.org/bcbs/index.htm> accessed 8 August 2020

'British Banks Complicit in Nigerian Corruption, Court Documents Reveal' (*Global Witness,* 2010) <http://www.globalwitness.org/library/british-banks-complicit-nigerian-corruption-court-documents-reveal> accessed 15 November 2019

'Chart of Signatures and Ratifications of Treaty 198, Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism' (*Council of Europe,* 2018) <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/198/signatures?p_auth=5kHIyXGW> accessed 9 August 2020

'Clean Business is Good Business- The Business Case against Corruption' (*United* Nations, 2008) <https://www.unglobalcompact.org/library/158> accessed 18 August 2019

'Combating illicit Financial Flows: The role of the International Community' (*U4 Anti-Corruption Resource Centre,* 2014) <http://www.u4.no/publications/combating-illicit-financial-flows-the-role-of-the-international-community/> accessed 2 June 2020

'Corporate Secrecy in the UKs Tax Havens' (*Global Witness,* 2017) <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/paradise-papers/> accessed 6 March 2020

'Corruption Perceptions Index 2017' (*Transparency International,* 2017) <https://www.transparency.org/news/feature/corruption_perceptions_index_2017> accessed 22 February 2018

'Corruption Perceptions Index 2020' (*Transparency International,* 2021) <https://www.transparency.org/cpi2019> accessed 27 August 2021

'The Costs of Corruption' (*World Bank*, 2004) <https://www.worldbank.org/en/search?q=costs+of+corruption> accessed 20 August 2021

'Council of Europe in Brief' (*Council of Europe,* 2018) <https://www.coe.int/en/web/about-us/structure> accessed 12 February 2020

'Country by Country Reporting' (*Financial Transparency Coalition,* 2020) <https://financialtransparency.org/issues/country-by-country-reporting/> accessed 7 August 2020

'Definition of Illegal in English' (*Oxford Dictionaries,* 2018) <https://en.oxforddictionaries.com/definition/illegal> accessed 4 December 2018

'Delta State Governor, Speaker Celebrate Ex-Convict James Ibori on Birthday' (*Sahara Reporters,* 2017) <http://saharareporters.com/2017/08/04/delta-state-governor-speaker-celebrate-ex-convict-james-ibori-birthday> accessed 20 December 2019

'Department of Justice Seeks to Recover Over $100 Million Obtained from Corruption in the Nigerian Oil Industry' (*Department of Justice - Office of Public Affairs,* 2017) <https://www.justice.gov/opa/pr/department-justice-seeks-recover-over-100-million-obtained-corruption-nigerian-oil-industry> accessed 13 November 2019

'Development Aid at a Glance Statistics by Region 2019 Edition' (*OECD*, 2019) <https://www.oecd.org/dac/financing-sustainable-development/development-finance-data/Africa-Development-Aid-at-a-Glance-2019.pdf> accessed 25 August 2021

'Developing Countries' (*Dictionary of International Trade,* 2020) <https://www.globalnegotiator.com/international-trade/dictionary/developing-countries/> accessed 1 August 2020

'Documents reveal that Blair urged end to BAE-Saudi corruption investigation' (*The Corner House*, 21 December 2007) < http://www.thecornerhouse.org.uk/resource/documents-reveal-blair-urged-end-bae-saudi-corruption-investigation> accessed 22 August 2021

'Economic and Financial Crimes Commission' (*EFCC,* 2020) <https://efccnigeria.org/efcc/> accessed 22 February 2020

'Ex-Goldman Sachs Investment Banker Ordered to Pay Back £7.3 Million' (*National Crime Agency,* 2019) <https://public-newsroom-nca-01.azurewebsites.net/news/ex-goldmans-sachs-investment-banker-hit-with-gbp-7-3-million-confiscation-order> accessed 14 March 2020

'The Facts about Apple's Tax Payments' (*Apple,* 2017) <https://www.apple.com/uk/newsroom/2017/11/the-facts-about-apple-tax-payments/> accessed 8 August 2020

'FAQS on Corruption' (*Transparency International,* 2017) <http://www.transparency.org/whoweare/organisation/faqs_on_corruption/2/> accessed 24 November 2019

'FATF at the G7 in Bari, Italy' (*Financial Action Taskforce,* 2017) <http://www.fatf-gafi.org/publications/fatfgeneral/documents/fatf-at-g7-meeting-in-bari-italy.html> accessed 10 January 2020

'FATF Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing - High Level Principles and Procedures' (*Financial Action Task Force,* 2007) <http://www.fatfgafi.org/publications/fatfrecommendations/documents/fatfguidanceontherisk-basedapproachtocombatingmoneylaunderingandterroristfinancing highlevelprinciplesandprocedures.html> accessed 10 November 2019

'FATF Members and Observers' (*Financial Action Task Force,* 2019) <http://www.fatf-gafi.org/about/membersandobservers/> accessed 11 December 2019

'Final Notice Barclays Bank PLC - Firm Reference Number 122702' (*Financial Conduct Authority,* 2015) <https://www.fca.org.uk/publication/final-notices/barclays-bank-nov-2015.pdf> accessed 8 August 2020

'Financial Crime Compliance' (*Financial Conduct Authority,* 2020) <https://www.fca.org.uk/firms/financial-crime> accessed 16 March 2020

'Financial Crime WG' (*International Banking Federation,* 2018) <http://www.ibfed.org.uk/working-groups/financial-crime-wg/> accessed 28 November 2019

'Financial Secrecy Index 2018 - Narrative Report on Switzerland' (*Tax Justice Network,* 2018) <https://www.financialsecrecyindex.com/PDF/Switzerland.pdf> accessed 5 March 2018

'Financial Secrecy Index 2020' (*Tax Justice Network,* 2020) <https://fsi.taxjustice.net/en/> accessed 24 February 2020

'Financial Secrecy Index 2020 - Narrative Report on the United Kingdom' (*Tax Justice Network,* 2020) <https://www.financialsecrecyindex.com/PDF/UnitedKingdom.pdf> accessed 6 August 2020

'Former Nigeria Governor James Ibori Jailed for 13 years' (*BBC,* 2012) <http://www.bbc.co.uk/news/world-africa-17739388> accessed 12 December 2017

'FSA Requires Action of the HSBC Group' (*Financial Conduct Authority,* 2013) <http://www.fca.org.uk/news/fsa-requires-action-of-the-hsbc-group> accessed 8th October 2019

FSA/PN/029/2001 - FSA Publishes Results of Money Laundering Investigation (Financial Services Authority, 2001)

'G7' (*European Commission,* <https://ec.europa.eu/info/food-farming-fisheries/farming/international-cooperation/international-organisations/g7_en> accessed 9 March 2020

'George Osborne - Tough Action to Clean up Corruption.' (*BBC News,* 2014) <http://www.bbc.co.uk/news/uk-30016262> accessed 17 January 2020

'Global Agenda Council on Anti-Corruption & Transparency 2012-2014' (*World Economic Forum,* 2012) <http://www3.weforum.org/docs/GAC/2013/Connect/WEF_GAC_Anticorruption_Transparency_2012-2014_Connect.pdf> accessed 17 February 2020

'Global Financial Integrity - About' (*Global Financial Integrity,* 2019) <http://www.gfintegrity.org/> accessed 1 November 2019

'Goal 16: Promote Just, Peaceful and Inclusive Societies' (*United Nations,* 2015) <http://www.un.org/sustainabledevelopment/peace-justice/> accessed 10 January 2020

'Gross Domestic Product 2019' (*World Bank,* 2019) <https://databank.worldbank.org/data/download/GDP.pdf> accessed 10 March 2020

'Group of States against corruption (GRECO) - What is GRECO' (*Council of Europe,* 2012) <https://www.coe.int/en/web/greco/about-greco/what-is-greco> accessed 12 February 2018

'High Risk and Other Monitored Jurisdictions - Public Statement 2019' (*Financial Action Task Force,* 2019) <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/public-statement-october-2019.html> accessed 15 December 2019

'High risk customers, including Politically Exposed Persons' (*Financial Conduct Authority,* 2018) <https://www.fca.org.uk/firms/money-laundering-terrorist-financing/high-risk-customers-politically-exposed-persons> accessed 19 June 2020

'How Ex-Nigerian Petroleum Minister, Dan Etete, Laundered Millions of Dollars' (*Sahara Reporters,* 2014) <http://saharareporters.com/2013/06/16/how-ex-nigerian-petroleum-minister-dan-etete-laundered-millions-dollars> accessed 12 December 2019

'How London Fuels Corruption' (*TEDx Houses of Parliament,* 2014) <https://www.youtube.com/watch?v=O9CQZmN1Mhs> accessed 31 July 2020

'HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit $1.256 Billion in Deferred Prosecution Agreement' (*US Department of Justice,* 2012) <http://www.justice.gov/opa/pr/2012/December/12-crm-1478.html> accessed 13 March 2020

'IFF Background' (*United Nations - Economic Commission for Africa,* 2015) <https://www.uneca.org/pages/iff-background> accessed 11 February 2020

'Illicit Financial Flows' (*Global Financial Integrity,* 2017) <http://www.gfintegrity.org/issue/illicit-financial-flows/> accessed 20 February 2020

'Illicit Financial Flows' (*Global Financial Integrity,* 2019) <https://gfintegrity.org/issue/illicit-financial-flows/> accessed 11 November 2019

'Illicit Financial Flows' (*World Bank,* 2017) <http://www.worldbank.org/en/topic/financialsector/brief/illicit-financial-flows-iffs> accessed 11 April 2019

'Illicit Financial Flows' (*Global Financial Integrity,* 2020) <http://www.gfintegrity.org/issue/illicit-financial-flows/> accessed 8 August 2020

'Illicit Money How Much is Out There?' (*United Nations on Drugs and Crime,* 2011) <http://www.unodc.org/unodc/en/frontpage/2011/October/illicit-money_-how-much-is-out-there.html> accessed 13 November 2014

'Immigration Minister Signs Agreement with Nigeria on Returning Stolen Criminal Assets' (*UK Home Office,* 2016) <https://www.gov.uk/government/news/immigration-minister-signs-agreement-with-nigeria-on-returning-stolen-criminal-assets#:~:text=Criminal%20assets%20stolen%20in%20Nigeria,new%20agreement%20signed%20this%20week.&text=The%20deal%20was%20signed%20by,Nigerian%20Attorney%20General%20Abubakar%20Malami.> accessed 6 March 2020

'Inter-company Transactions: How does BEPS Change Transfer Pricing' (*Lexology,* 2017) <https://www.lexology.com/library/detail.aspx?g=92f57906-40a3-4fa4-976f-872ac15223d9> accessed 4 February 2019

'Italian authorities raid ENI in fresh investigation into billion-dollar Nigerian oil scandal' (*Global Witness,* 2014) <http://www.globalwitness.org/library/italian-authorities-raid-eni-fresh-investigation-billion-dollar-nigerian-oil-scandal> accessed 31 July 2020

'JMLSG Publishes New Guidance' (*Joint Money Laundering Steering Group,* 2020) <https://jmlsg.org.uk/latest-news/jmlsg-publishes-new-guidance/> accessed 8 August 2020

'Joint Statement on the Fight against Illicit Financial Flows, by OECD Secretary-General Angel Gurría and Thabo Mbeki, Chair of the High-Level Panel on Illicit Financial Flows from Africa' (*OECD,* 2017) <https://www.oecd.org/g20/topics/taxation/joint-statement-on-the-fight-against-illicit-financial-flows-by-angel-gurria-and-thabo-mbeki.htm> accessed 10 January 2020

'Leading Cases - Abacha Case' (*International Chamber of Commerce Commercial Crime Services - FraudNet,* 2011) <https://icc-ccs.org/index.php/home/resources/118-leading-cases/697-abacha-case> accessed 16 November 2019

'List of Members' (*Egmont Group,* 2020) <https://www.egmontgroup.org/en/membership/list> accessed 8 August 2020

'London Money Laundering Trial: James Ibori, Victor Attah, Love Ojakovo, Henry Imashekka and David Edevbie Facing 25-Count Indictment' (*Sahara Reporters,* 2011) <http://star.worldbank.org/corruption-cases/sites/corruption-

cases/files/documents/arw/Ibori_UK_Charges_Saharareporters_Apr_19_2011.pdf> accessed 12 December 2019

'Malabu Oil Scam - EFCC Launches Manhunt for Dan Etete' (*Sweet Crude Reports,* 2017) <http://sweetcrudereports.com/2017/01/02/malabu-oil-scam-efcc-launches-manhunt-for-dan-etete/> accessed 18 February 2020

'Meaning of illicit in the English Dictionary' (*Cambridge University Press,* 2019) <https://dictionary.cambridge.org/dictionary/english/illicit> accessed 7 January 2019

'Money Laundering and Asset Recovery Section' (*US Department of Justice,* 2017) <https://www.justice.gov/criminal-mlars> accessed 13 November 2019

'Money Laundering: The Importance of International Countermeasures - Address by Michel Camdessus' (*International Monetary Fund,* 1998) <http://www.imf.org/external/np/speeches/1998/021098.HTM> accessed 1 October 2019

'NCA to Appeal Discharge of Unexplained Wealth Orders' (*National Crime Agency,* 2020) <https://www.nationalcrimeagency.gov.uk/news/nca-to-appeal-discharge-of-unexplained-wealth-orders> accessed 15 June 2020

'New York State Department of Financial Services In the Matter of Deutsche Bank AG and Deutsche Bank AG New York Branch' (*New York State Department of Financial Services,* 2017) <http://www.dfs.ny.gov/about/ea/ea170130.pdf> accessed 18 March 2020

'Nigeria Arrests Runaway Governor' (*BBC,* 2005) <http://news.bbc.co.uk/1/hi/world/africa/4513172.stm> accessed 3 December 2019

'Nigeria Pardons Goodluck Jonathan Ally' (*BBC,* 2013) <http://www.bbc.co.uk/news/world-africa-21769047> accessed 7 August 2020

'Nyanga Declaration Transparency International Launches Campaign to Repatriate Africa's Stolen Wealth' (*Pambuzaka News,* 2001) <https://www.transparency.org/en/press/transparency-international-launches-campaign-to-repatriate-africas-stolen-w> accessed 25 July 2020

'OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions - Ratification Status as of May 2018' (*OECD,* 2019) <http://www.oecd.org/daf/anti-bribery/WGBRatificationStatus.pdf> accessed 2 December 2019

'OECD Presents Outputs of OECD G20 BEPS Project for Discussion at G20 Finance Ministers Meeting' (*OECD,* 2015) <http://www.oecd.org/tax/oecd-presents-outputs-of-oecd-g20-beps-project-for-discussion-at-g20-finance-ministers-meeting.htm> accessed 9 September 2019

'Our Global Reach' (*OECD,* 2020) <https://www.oecd.org/about/members-and-partners/> accessed 8 August 2020

'Pan African Lawyers Union: Raymond Baker Keynote Address' (*Global Financial Integrity,* 2017) <http://www.gfintegrity.org/press-release/pan-african-lawyers-union-keynote-address/> accessed 19 February 2019

'The Panama Papers: Exposing the Rogue Offshore Finance Industry' (*The International Consortium of Investigative Journalists,* 29 January 2019) <https://www.icij.org/investigations/panama-papers/> accessed 1 April 2019

'The 'Paradise Papers' and the Long Twilight Struggle Against Offshore Secrecy' (*International Consortium of Investigative Journalists,* 2017) <https://www.icij.org/investigations/paradise-papers/paradise-papers-long-twilight-struggle-offshore-secrecy/> accessed 15 February 2020

'Policy Paper - 2013 Lough Erne G8 Leaders' Communiqué' (*UK Government,* 2013) <https://www.gov.uk/government/publications/2013-lough-erne-g8-leaders-communique> accessed 12 September 2019

'Rolls Royce Deferred Prosecution Agreement' (*Serious Fraud Office* 2017) <https://www.sfo.gov.uk/cases/rolls-royce-plc/> accessed 10 March 2018

'Rolls Royce Deferred Prosecution Agreement' (*Serious Fraud Office,* 2017) <https://www.sfo.gov.uk/cases/rolls-royce-plc/> accessed 8 August 2020

'Sani Abacha - United Kingdom Mutual Legal Assistance Treaty Case' (*StAR - Stolen Asset Recovery Initiative,* 2017) <https://star.worldbank.org/corruption-cases/assetrecovery/sani%20abacha> accessed 4 April 2020

'The Scale of Base Erosion and Profit Shifting (BEPS)' (2019) <https://www.taxjustice.net/scalebeps/> accessed 4 February 2019

'Senior Managers and Certification Regime' (*Financial Conduct Authority,* 2019) <https://www.fca.org.uk/firms/senior-managers-certification-regime> accessed 2 March 2019

'SFO Agrees first UK DPA with Standard Bank' (*Serious Fraud Office,* 2015) <https://www.sfo.gov.uk/2015/11/30/sfo-agrees-first-uk-dpa-with-standard-bank/> accessed 26 February 2020

'SFO Completes £497.25m Deferred Prosecution Agreement with Rolls-Royce PLC' (*Serious Fraud Office,* 2017) <https://www.sfo.gov.uk/2017/01/17/sfo-completes-497-25m-deferred-prosecution-agreement-rolls-royce-plc/> accessed 10 March 2018

'SFO Completes £497.25m Deferred Prosecution Agreement with Rolls-Royce PLC' (*Serious Fraud Office,* 2017) <https://www.sfo.gov.uk/2017/01/17/sfo-completes-497-25m-deferred-prosecution-agreement-rolls-royce-plc/> accessed 29th January 2020

'SFO Confirms End of Deferred Prosecution Agreement with Tesco Stores Ltd' (*Serious Fraud Office,* 2020) <https://www.sfo.gov.uk/2020/04/10/sfo-confirms-end-of-deferred-prosecution-agreement-with-tesco-stores-ltd/> accessed 7 June 2020

'SFO Enters into €991m Deferred Prosecution Agreement with Airbus as part of a €3.6bn Global Resolution' (*Serious Fraud Office,* 2020) <https://www.sfo.gov.uk/2020/01/31/sfo-enters-into-e991m-deferred-prosecution-agreement-with-airbus-as-part-of-a-e3-6bn-global-resolution/> accessed 25 February 2020

'SFO Secures Second DPA' (*Serious Fraud Office,* 2016) <https://www.sfo.gov.uk/2016/07/08/sfo-secures-second-dpa/> accessed 8 April 2020

'SFO Statement - Rolls Royce 23 December 2013' (*Serious Fraud Office,* 2013) <https://www.sfo.gov.uk/2013/12/23/statement-rolls-royce-2/> accessed 8 August 2020

'Standard Country and Area Codes Classifications (M49)' (*United Nations Statistics Division,* 2020) <http://unstats.un.org/unsd/methods/m49/m49regin.htm#developed> accessed 1 August 2020

'StAR - Stolen Asset Recovery Initiative - Corruption Cases - James Ibori (United States)' (*World Bank - UNODC,* 2014) <http://star.worldbank.org/corruption-cases/node/19584> accessed 29 December 2019

'STAR Stolen Asset Recovery Initiative - About Us' (*World Bank and UNODC,* 2020) <https://star.worldbank.org/about-us/our-work> accessed 18th September 2019

'Statement of Principles of Ethical Research Practice' (Socio-Legal Studies Association, 2021) < https://www.slsa.ac.uk/index.php/ethics-statement> accessed 27 August 2021

'Sustainable Development Goals' (*United Nations,* 2015) <http://www.un.org/sustainabledevelopment/sustainable-development-goals/> accessed 10 January 2017

'TED Prize Winner Charmian Gooch Announces Global Campaign to Abolish Anonymous Companies' (*Global Witness,* 2014) <http://www.globalwitness.org/library/ted-prize-winner-charmian-gooch-announces-global-campaign-abolish-anonymous-companies> accessed 17 February 2020

'Trade Misinvoicing' (*Global Financial Integrity,* 2019) <https://www.gfintegrity.org/issue/trade-misinvoicing/> accessed 29 March 2019

'Transfer Pricing' (*Tax Justice Network,* 2019) <http://www.taxjustice.net/topics/corporate-tax/transfer-pricing/> accessed 16 January 2019

'Trouble at The Top - Why High Scoring Countries Aren't Corruption-Free' (*Transparency International,* 2019) <https://www.transparency.org/news/feature/trouble_at_the_top_why_high_scoring_countries_arent_corruption_free> accessed 11 February 2019

'U.S. Enters into Trilateral Agreement with Nigeria and Jersey to Repatriate Over $300 Million to Nigeria in Assets Stolen by Former Nigerian Dictator General Sani Abacha' (*US Department of Justice - Office of Public Affairs,* 2020) <https://www.justice.gov/opa/pr/us-enters-

trilateral-agreement-nigeria-and-jersey-repatriate-over-300-million-nigeria-assets> accessed 5 February 2020

'UK Corruption Statistics' (*Transparency International,* 2011) <https://www.transparency.org.uk/corruption/corruption-statistics/uk-corruption-statistics/> accessed 28 November 2019

'UK Finance - Representing Finance and Banking' (*UK Finance,* 2020) <https://www.ukfinance.org.uk/about-us/> accessed 14 March 2020

'UK Wrong to Halt Saudi Arms Probe' (*BBC News,* 2008) <http://news.bbc.co.uk/1/hi/business/7339231.stm> accessed 18 Jan 2020

'United Kingdom Demands Alamieyeseigha's Extradition' (*Nigerian Bulletin,* 2015) <https://www.nigerianbulletin.com/threads/money-laundering-united-kingdom-demands-alamieyeseigha%E2%80%99s-extradition.126234/> accessed 5 December 2019

'United Nations Convention against Corruption Signature and Ratification Status' (*United Nations,* 2017) <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html> accessed 29 November 2019

'What is profit shifting?' (*Tax Justice Network*, 2021) <https://taxjustice.net/faq/what-is-profit-shifting/> accessed 27 August 2021.

'What is a Secrecy Jurisdiction' (*Tax Justice Network,* 2020) <https://www.financialsecrecyindex.com/faq/what-is-a-secrecy-jurisdiction> accessed 15 April 2020

'What is Financial Secrecy' (*Tax Justice Network,* 2019) <https://www.financialsecrecyindex.com/faq/what-is-financial-secrecy> accessed 28 January 2019

'What Is the G20' (*New York Times,* 2019) <https://www.nytimes.com/2019/06/27/world/asia/what-is-the-g20.html> accessed 12 March 2020

'What is Transparency International' (*Transparency International,* 2020) <https://www.transparency.org/about> accessed 5 March 2020

'What's an Illicit Financial Flow?' (*Financial Transparency Coalition,* 2019) <https://financialtransparency.org/whats-an-illicit-financial-flow/> accessed 28 January 2019

'Where the Bribes Are: Penalties in U.S. Government FCPA Cases Since 1977' (*Mintz Group,* 2018) <http://fcpamap.com> accessed 28 November 2019

'Who We Are' (*Tax Justice Network,* 2018) <https://www.taxjustice.net/about/who-we-are/> accessed 6 March 2018

'Who we are' (*Transparency International,* 2013) <http://www.transparency.org/whoweare/organisation> accessed 30 July 2013

'World Bank - Illicit Financial Flows' (*World Bank,* 2017) <http://www.worldbank.org/en/topic/financialsector/brief/illicit-financial-flows-iffs> accessed 1 November 2019

Web pages with cited authors

Bowler T, 'Global Views on the HSBC Tax Scandal' (*BBC News,* 2015) <http://www.bbc.co.uk/news/business-31300712> accessed 30 July 2020

Carr M and Jago R, 'Corruption, Money Laundering, Secrecy and Societal Responsibility of Banks' *Social Science Research Network*, 17 June 2014) <https://dx.doi.org/10.2139/ssrn.2454934> accessed 20 August 2021

Christensen R, 'Law and Morality in the Paradise Papers - The Global Responsible Tax Project' (*KPMG,* 2017) <https://responsibletax.kpmg.com/page/law-and-morality-in-the-paradise-papers#comments> accessed 7 March 2020

Connor M, 'New UK Bribery Law Could Have International Impact' (*Business Ethics,* 2011) <http://business-ethics.com/2011/01/06/1525-new-uk-bribery-law-could-have-international-impact/> accessed 12 February 2018

Dalby D and Wilson Chapman A, 'Panama Papers Helps Recover More Than $1.2 Billion Around the World' (*International Consortium of Investigative Journalists,* 2019) <https://www.icij.org/investigations/panama-papers/panama-papers-helps-recover-more-than-1-2-billion-around-the-world/> accessed 11 November 2019

Davidson J, 'The Implications of the Rolls-Royce DPA' (*Commercial Dispute Resolution*, 2017) <https://www.cdr-news.com/categories/expert-views/7535-the-implications-of-the-rolls-royce-dpa> accessed 13 February 2020

Ehlermann-Cache N, 'The impact of the OECD Anti-Bribery Convention' (*OECD,* 2008) <http://www.oecd.org/mena/investment/41054440.pdf> accessed 17 February 2018

Ellis D and Whyte D, 'Redefining Corruption: Public Attitudes to the Relationship Between Government and Business' (*Centre for Crime and Justice Studies*, 2016) <https://www.crimeandjustice.org.uk/publications/redefining-corruption> accessed 7 February 2021

Emmons G, 'Q & A Dirty Money- Raymond Baker Explores the Free Market's Demimonde' (*Harvard Business School,* 2001) <https://www.alumni.hbs.edu/stories/Pages/story-bulletin.aspx?num=3105> accessed 11 June 2020

Fitzgibbon W, 'Panama Papers Law Firm Founders 'Investigated by the FBI'' (*International Consortium of Investigative Journalists,* 2019) <https://www.icij.org/investigations/panama-

papers/panama-papers-law-firm-founders-investigated-by-the-fbi/> accessed 11 November 2019

Fletcher M, 'The Transfer Pricing Labyrinth' (*Global Financial Integrity,* 2014) <https://www.gfintegrity.org/transfer-pricing-labyrinth/> accessed 8 January 2018

Ganagana M, 'Ibori Arrested' (*Online Nigeria,* 2007) <http://nm.onlinenigeria.com/templates/?a=11023> accessed 7 December 2017

Glockman H, 'The Real Story on Apple's Tax Avoidance - How Ordinary It Is' (*Forbes,* 2013) <https://www.forbes.com/sites/beltway/2013/05/21/the-real-story-about-apples-tax-avoidance-how-ordinary-it-is/> accessed 2 September 2019

Gooch C, 'The Difference Between Corporate Privacy and Secrecy' (*Global Witness,* 2014) <https://ideas.ted.com/the-difference-between-corporate-privacy-and-secrecy/> accessed 6 March 2020

Gooch C, 'Ted Blog - Global Issues Ted Talks - Further Reading and Citations on Global Corruption's Hidden Leaders' (*TED Talks,* 2013) <http://blog.ted.com/2013/07/09/further-reading-and-citations-on-global-corruptions-hidden-leaders/> accessed 8 August 2020

Haq I, 'From Panama to Paradise' (*The International News,* 2017) <https://www.thenews.com.pk/print/243652-From-Panama-to-Paradise> accessed 7 March 2019

Harris C, 'Why Won't Brussels Release Report on EU-Wide Corruption' (*Euro News,* 2017) <http://www.euronews.com/2017/06/28/why-won-t-brussels-release-report-on-eu-wide-corruption> accessed 29 January 2020

Hawley S, 'State Sponsored Bribery' (*Corruption Watch,* 2017) <https://68e905eb-0313-410f-90fe-26992c5f37d6.filesusr.com/ugd/54261c_38511e7837d341f7b4fd46fc7cbc15ef.pdf> accessed 28 January 2020

Hodge N, 'Airbus Resolves Global Bribery Scandal for Record $4B' (*Compliance Week,* 2020) <https://www.complianceweek.com/anti-bribery/airbus-resolves-global-bribery-scandal-for-record-4b/28387.article> accessed 24 February 2020

Hollingshead A, 'Understanding the Relationship Between Corruption and Illicit Financial Flows' (*Financial Transparency Coalition,* 2014) <https://financialtransparency.org/understanding-the-relationship-between-corruption-and-illicit-financial-flows/> accessed 17 February 2020

Iaccino L, 'Switzerland Is Returning Stolen Nigerian Assets—Will the UK Follow Suit?' (*Newsweek,* 2017) <https://www.newsweek.co.uk/switzerland-returning-stolen-nigerian-assetswill-u-k-follow-suit-534828> accessed 6 March 2020

Keatinge T, 'RUSI Experts React to UK's Financial Action Task Force Mutual Evaluation Report' (*RUSI,* 2018) <https://rusi.org/rusi-news/rusi-experts-react-uk-financial-action-task-force-mutual-evaluation-report> accessed 14 June 2020

Khokhar T and Serajuddin U, 'Should We Continue to use the Term “Developing World”' (*World Bank,* 2016) <http://blogs.worldbank.org/opendata/should-we-continue-use-term-developing-world> accessed 8 August 2019

Malkin B, ’US freezes $458m hidden by former Nigerian leader Sani Abacha' *The Telegraph* (London, 5 March 2014) <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/nigeria/10679487/US-freezes-458m-hidden-by-former-Nigerian-leader-Sani-Abacha.html> accessed 13 January 2020

Manning J, 'Switzerland Signs Deal to end Banking Secrecy' (*International Banker,* 2013) <https://internationalbanker.com/banking/switzerland-signs-deal-to-end-banking-secrecy/> accessed 5 March 2018

Morais C R, 'Illicit Transfer Pricing Endangers Shareholders' (*Forbes,* 2014) <https://www.forbes.com/2009/08/28/transfer-pricing-illegal-glaxo-dodging-taxes-personal-finance-transferprice.html#1e2fa6b33cd7> accessed 8 January 2019

Murphy R, 'What Do You Do to Oppress People, Turn Their State into a Tax Haven' (*Tax Research UK,* 2013) <http://www.taxresearch.org.uk/Blog/2013/08/12/what-do-you-do-to-oppress-people-turn-their-state-into-a-tax-haven/> accessed 26 September 2019

Oghifo B, 'EFCC Advises against Passage of Money Laundering Bill' (*This Day Live,* 2016) <https://www.thisdaylive.com/index.php/2016/04/16/efcc-advises-against-passage-of-money-laundering-bill-2016/> accessed 12 December 2019

Ormerod D, 'Anti-money laundering - Current Project Status' (*The Law Commission,* 2019) <https://www.lawcom.gov.uk/project/anti-money-laundering/> accessed 14 June 2020

Palan, ‘History of Tax Havens’ (*History and Policy*, 1 October 2009) <http://www.historyandpolicy.org/policy-papers/papers/history-of-tax-havens> accessed 2 April 2021

Persaud AD, 'London The Money Laundering Capital of the World' (*Prospect,* 2017) <https://www.prospectmagazine.co.uk/economics-and-finance/london-the-money-laundering-capital-of-the-world> accessed 10 June 2020

Pressman A, 'How Apple uses the Channel Island of Jersey in Tax Strategy' (*Fortune,* 2017) <http://fortune.com/2017/11/06/apple-tax-avoidance-jersey/> accessed 16 March 2020

Shaxson N, 'Tackling Tax Havens' (*International Monetary Fund*, 2019) <https://www.imf.org/external/pubs/ft/fandd/2019/09/tackling-global-tax-havens-shaxon.htm#:~:text=Tax%20havens%20collectively%20cost%20governments,not%2Dso%2Dlegal%20means> accessed 7 February 2021

Taiwo Oyedele and others, 'The Impact of Nigeria's New Transfer Pricing Rules on Multinational Enterprises' (*LexisNexis,* 2013) <http://pwcnigeria.typepad.com/files/nigeria-tp-article_lexisnexis.pdf> accessed 26 February 2020

Viswanatha A, 'After BNP, U.S. Targets Range of Firms in Crackdown on Illicit Money Flows' (*Reuters,* 2014) <https://www.reuters.com/article/us-bnp-paribas-investigation-targets-ins/after-bnp-u-s-targets-range-of-firms-in-crackdown-on-illicit-money-flows-idUSKBN0F634520140701> accessed 2 July 2020

Walker A, 'James Ibori- How a Thief Almost Became Nigeria's President' (*BBC,* 2012) <http://www.bbc.co.uk/news/world-africa-17184075> accessed 12 December 2019

Yarrow A, 'Why Now is the Time for London to be Proud of its World-Leading Legal Sector' (*City A.M.,* 9 February 2015) <http://www.cityam.com/208946/city-matters-why-now-time-london-be-proud-its-world-leading-legal-sector> accessed 19 December 2019

Yukhananov A, 'World Bank President Calls Corruption 'Public Enemy No. 1'' (*Reuters US Edition,* 2013) <http://www.reuters.com/article/2013/12/19/us-worldbank-corruption-idUSBRE9BI11P20131219> accessed 29 January 2020

Newspaper articles

'David Cameron Writes to Britain's Tax Havens, Calling for Transparency' *The Guardian* (20 May 2013) <http://www.theguardian.com/politics/2013/may/20/cameron-offshore-tax-havens-transparency> accessed 15 February 2020

'Finding Nigeria's Missing Billions' *Financial Times* (10 March 2014) <http://www.ft.com/cms/s/0/1a1b4252-a853-11e3-8ce1-00144feab7de.html?siteedition=uk#axzz2vfVepDxj> accessed 29 December 2019

'Illicit Financial Flows are Hard to Stop - Dirty Money' *The Economist* (31 January 2019) <https://www.economist.com/finance-and-economics/2019/02/02/illicit-financial-flows-are-hard-to-stop> accessed 12 March 2019

'Netflix and eBay Find the Holes in the UK Tax Net' *Financial Times* (London 12 October 2017) <https://www.ft.com/content/b4b481de-af57-11e7-beba-5521c713abf4?myftTopics=b42acd4c-e8a7-3034-8b92-af9126651348#myft:my-news:grid> accessed 16 June 2020

'Nigeria Says It Has Recovered $9.1 Billion in Stolen Money and Assets' *Reuters* (4 June 2016) <https://uk.reuters.com/article/uk-nigeria-corruption/nigeria-says-it-has-recovered-9-1-billion-in-stolen-money-and-assets-idUKKCN0YQ0GI> accessed 17 December 2019

'Nigeria's Missing Billions Turn up in Familiar Places' *Financial Times* (London 2 August 2017) <https://www.ft.com/content/d2acb4b0-7774-11e7-90c0-90a9d1bc9691> accessed 7 February 2020

'UNODC Commends Nigeria's Anti-Corruption War' *Punch* (10 May 2017) <http://punchng.com/unodc-commends-nigerias-anti-corruption-war/> accessed 18 March 2020

’World Bank to Change Classification of Countries' *The Economic Times, India* (31 May 2016) <http://economictimes.indiatimes.com/news/economy/indicators/world-bank-to-change-classification-of-countries-india-will-now-be-called-lower-middle-income/articleshow/52512636.cms?prtpage=1> accessed 8 August 2019

Newspaper articles attributed to named journalist(s)

Abromov N, ’Why States Struggle to Repatriate Looted Assets' *The Financial Times* (11 May 2016) <https://www.ft.com/content/322c1854-dcb9-3e31-a191-6651afd5776b> accessed 21 December 2019

Augar P, ’The Forex Debacle – A Scandal to End all Scandals' *Financial Times* (12 November 2014) <http://www.ft.com/cms/s/0/c32cc892-6a5f-11e4-bfb4-00144feabdc0.html?ftcamp=crm/email/follow/author/Q0ItMDA2NTUxOA==-QXV0aG9ycw==/product&#axzz3IwRJ8t6Q> accessed 12 February 2020

Baker R, ’Illicit Financial Flows: The Scourge of the Developing World' *Huffington Post* (New York 7 January 2013) <http://www.huffingtonpost.com/raymond-baker/illicit-financial-flows_b_2427495.html?utm_hp_ref=tw> accessed 1 April 2019

Binham C, ’Former Goldman Banker Ordered to Pay £7.3m in Corruption Case' *Financial Times* (6 September 2019) <https://www.ft.com/content/3d7b0ec0-d094-11e9-99a4-b5ded7a7fe3f> accessed 15 February 2019

Binham C, ’UK Money Laundering Reports Hit Record Level in 2018' *Financial Times* (10 January 2019) <https://www.ft.com/content/15aebf9e-0548-11e9-99df-6183d3002ee1> accessed 1 April 2019

Binham C and Burgis T, ’Ibori Pleads Guilty to Laundering Public Funds' *The Financial Times* (27 February 2012) <https://www.ft.com/content/88bb8bbe-6169-11e1-8a8e-00144feabdc0> accessed 7 December 2019

Binham C and Dunkley E, ’Attempted ‘Elephant Deal’ Costs Barclays £72m' *Financial Times* (26 November 2015) <https://www.ft.com/content/9d77d27c-9461-11e5-bd82-c1fb87bef7af> accessed 8 August 2020

Blair D,’£220bn Stolen by Nigeria's Corrupt Rulers' *Telegraph* (Abuja 25 June 2005) <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/nigeria/1492781/220bn-stolen-by-Nigerias-corrupt-rulers.html> accessed 14 November 2019

Brennan J, ’Apple Case Turns Spotlight on Ireland’s Tax Affairs' *The Irish Times* (<https://www.irishtimes.com/business/technology/apple-case-turns-spotlight-on-ireland-s-tax-affairs-1.4023945> accessed 6 June 2020

Boyle P, 'Paradise papers: Not Just a Few Corporate ‘Bad Apples'' *Green Left Weekly* (Sydney, 19 November 2019) 3

Burgis T, 'Charges Dropped Against Nigerian Politician' *The Financial Times* (Lagos 17 December 2009) <https://www.ft.com/content/cbe8c71c-eb37-11de-bc99-00144feab49a> accessed 7 December 2019

Burgis T, 'Dark Money - London's Dirty Secret' *Financial Times* (London 11 May 2016) <https://www.ft.com/content/1d805534-1185-11e6-839f-2922947098f0> accessed 18 February 2020

Burgis T, 'Ibori Arrested in Money-Laundering Probe' *The Financial Times* (Lagos 13 May 2010) <https://www.ft.com/content/74f70a64-5e95-11df-9266-00144feab49a> accessed 7 December 2019

Carroll R, 'Nigerian State Governor Dresses up to Escape £1.8m charges in the UK' *The Guardian* (23 November 2005) <https://www.theguardian.com/world/2005/nov/23/hearafrica05.development> accessed 20 December 2019

Croft J, 'Former Niger Delta Governor Jailed for Fraud' *The Financial Times* (London 17 April 2012) <https://www.ft.com/content/13e1ca04-889e-11e1-a526-00144feab49a> accessed 6 November 2019

Croft J, 'Ibori Lived Like Royalty at Expense of the Poor' *The Financial Times* (London 16 April 2012) <https://www.ft.com/content/ba1087c8-87e3-11e1-b1ea-00144feab49a> accessed 13 December 2019

Croft J, 'London Trial of Nigerian Politician Told of $15m Cash Bribe' *The Financial Times* (London 19 September 2013) <https://www.ft.com/content/aeb64c80-213b-11e3-a92a-00144feab7de> accessed 7 December 2019

Dyer G, Seddon M and Milne R, 'Panama Papers Leak Highlights Global Elite's Use of Tax Havens' *Financial Times* (4 April 2016) <https://www.ft.com/content/549c1e96-f9e7-11e5-8f41-df5bda8beb40> accessed 21 September 2019

Espinoza J and Beesley A, 'Brussels to Appeal Against Court Decision Quashing Apple Tax Order' *Financial Times* (25 September 2020) < https://www.ft.com/content/058d380a-a0fa-40b7-95f9-1867378daf99> accessed 28 August 2021.

Espinoza J and others, 'Apple Wins Landmark Court Battle with EU over €14.3bn of Tax Payments' *Financial Times* (15 July 2020) <https://www.ft.com/content/1c38fdc1-c4b3-4835-919d-df51698f18c4> accessed 1 August 2020

Fasan O, 'Monist or Dualist: Nigeria Must Respect International Rule of Law' *Business Day* (16 October 2017) <https://businessday.ng/columnist/article/monist-dualist-nigeria-must-respect-international-rule-law/#:~:text=A%20monist%20state%20regards%20international,automatically%20become%20part%20of%20domestic%E2%80%A6> accessed 22 February 2020

Fick M, 'Trial of Former Nigerian Official Adjourned' *Financial Times* (22 January 2016) <https://www.ft.com/content/8af973ae-c101-11e5-846f-79b0e3d20eaf> accessed 9 November 2019

Fick M and Piling D, 'Nigeria Struggles to Recover Looted Billions' *Financial Times* (6 June 2016) <https://www.ft.com/content/34b4e508-2bfc-11e6-bf8d-26294ad519fc> accessed 3 January 2020

Fick M and Raval A, 'Former Nigerian Oil Minister Arrested in UK' *Financial Times* (3 October 2015) <https://www.ft.com/content/4b89b728-6946-11e5-97d0-1456a776a4f5> accessed 9 November 2019

Fildes N and Findlay S, 'Vodafone wins long running €3bn Indian tax battle' Financial Times (New Delhi, 25 September 2020) <https://www.ft.com/content/be5db92a-4cb4-4b3d-8f23-64faf44e6bd0> accessed 27 March 2021

Fontanella-Khan J, 'Corruption in the EU Costs Business €120bn a Year, Study Finds' *Financial Times* (3 February 2014) <http://www.ft.com/cms/s/0/28f11862-8cf9-11e3-ad57-00144feab7de.html?siteedition=uk#axzz2sLiCCodw> accessed 4 February 2020

Garside J, 'Is Money Laundering Scandal at Danske Bank the Largest in History' *The Guardian* (21 September 2018) <https://www.theguardian.com/business/2018/sep/21/is-money-laundering-scandal-at-danske-bank-the-largest-in-history> accessed 24 February 2020

Green M, 'Arrest in Nigeria Graft Probe' *The Financial Times* (Lagos 12 December 2007) <https://www.ft.com/content/edaba004-a8cc-11dc-ad9e-0000779fd2ac> accessed 7 December 2019

Green M, 'Nigeria Sidelines Zealous Anti-Graft Chief' *The Financial Times* (London 28 December 2017) <https://www.ft.com/content/8afef176-b566-11dc-896e-0000779fd2ac> accessed 7 December 2019

Green M, 'Nigerian Banks Named in Ibori Charges' *The Financial Times* (Lagos 14 December 2007) <https://www.ft.com/content/8dfa521c-aa6c-11dc-a779-0000779fd2ac> accessed 7 December 2019

Holman M, 'Mixed Report Card for Nigeria's President Buhari' *Financial Times* (7 November 2017) accessed 10 January 2020

Hoyos C, 'Rolls-Royce Bribery Claims Date to 2006' *The Financial Times* (London 9th December 2012) <http://www.ft.com/cms/s/0/75aa410e-4229-11e2-979e-00144feabdc0.html#axzz2F80scNa4> accessed 8 August 2020

Ibekwe N and Udo B, 'Nigerian Government Acted Right in Dropping Corruption Charges Against Abacha' *Premium Times* (27 June 2014) <https://www.premiumtimesng.com/news/163976-nigerian-government-acted-right-dropping-corruption-charges-abacha-adoke.html> accessed 4 April 2020

Jolly J, 'The New Voice of British Banking - UK Finance Launches Today with New Board Members Revealed' *City AM* (3 July 2017) <http://www.cityam.com/267671/new-voice-british-banking-uk-finance-launches-today-new> accessed 14 March 2020

Kelly L, 'JP Morgan 'Sent $800m to Nigerian Fraudster Dan Etete'' *The Sunday Times* (17 December 2017) <https://www.thetimes.co.uk/article/jp-morgan-sent-800m-to-nigerian-fraudster-dan-etete-27vjr5t9v> accessed 18 February 2020

Leigh D, 'British Firms Face Bribery Blacklist, Warns Corruption Watchdog' *The Guardian* (31 January 2011) <http://www.theguardian.com/business/2011/jan/31/british-firms-face-bribery-blacklist> accessed 12 February 2020

Leigh D and others, 'HSBC Files Show How Swiss Bank Helped Clients Dodge Taxes and Hide Millions' *The Guardian* (London 9 February 2015) <http://www.theguardian.com/business/2015/feb/08/hsbc-files-expose-swiss-bank-clients-dodge-taxes-hide-millions?CMP=EMCNEWEML6619I2> accessed 25 January 2020

Lynch DJ, 'Nigeria's Former Oil Minister Named in US Bribery Complaint' *Financial Times* (15 July 2017) <https://www.ft.com/content/88a4b26a-68d7-11e7-8526-7b38dcaef614> accessed 9 November 2019

Mailafia O, 'President Buhari and the Anti-Corruption War' *Vanguard* (17 October 2017) <https://www.vanguardngr.com/2017/10/president-buhari-anti-corruption-war/> accessed 21 December 2019

Milne R and Winter D, 'Danske - Anatomy of a Money Laundering Scandal' *Financial Times* (19 December 2018) <https://www.ft.com/content/519ad6ae-bcd8-11e8-94b2-17176fbf93f5> accessed 12 March 2019

Minto R, 'Nigeria - Central Bank Governor Suspended for "Recklessness"' *Financial Times* (London 20 February 2014) <https://www.ft.com/content/33a5f920-b9a7-3b98-95e7-59b68325050a> accessed 20 December 2019

Mosioma A, Das S and Suarez O, 'G20- Time to Halt the Flow of Illicit Money' *Sidney Morning Herald* (18th September 2014) <http://www.smh.com.au/comment/g20-time-to-halt-the-flow-of-illicit-money-20140917-10hzw3.html#ixzz3DgfGxKUN> accessed 19 September 2019

Munshi N, 'Muhammadu Buhari Wins Second Term as President of Nigeria' *Financial Times* (26 February 2019) <https://www.ft.com/content/0ebd29b4-3a18-11e9-b72b-2c7f526ca5d0> accessed 1 February 2020

Munshi N, 'Nigeria Makes Anti-Corruption Moves Amid Criticism over Progress' *Financial Times* (29 January 2020) <https://www.ft.com/content/42ae53b2-411d-11ea-a047-eae9bd51ceba> accessed 29 January 2020

O'Murchu C, 'London's Money-Laundering 'Enablers' Face Crackdown' *The Financial Times* (London 17 August 2015) <https://www.ft.com/content/a421beac-3ce7-11e5-8613-07d16aad2152> accessed 12 December 2019

Ogundipe S, 'Nigeria to Repatriate N108 Billion Abacha Loot From U.S. - Buhari' *Premium Times (Abuja)* (1 October 2019) <https://allafrica.com/stories/201910010114.html> accessed 17 December 2019

Parker G, 'George Osborne Vows Crackdown on Banks that Facilitate Tax Evasion' *Financial Times* (London 23 February 2015) <http://www.ft.com/cms/s/0/95c5c1b4-bb7d-11e4-aa71-00144feab7de.html?siteedition=uk#axzz3SfCAW34N> accessed 25 February 2020

Peel M, 'The Dark Side of London's Success' *The Financial Times* (5 December 2017) <https://www.ft.com/content/cb8e7b32-a358-11dc-b229-0000779fd2ac> accessed 7 December 2019

Piling D, 'Fragile Upturn Belies Nigeria's Need for Structural Reform' *The Financial Times* (<https://www.ft.com/content/30eb9e60-9188-11e7-83ab-f4624cccbabe> accessed 21 December 2019

Raval A, 'Global Hunt for Nigeria's 'Missing Billions' Turns to London' *Financial Times* (7 November 2017) <https://www.ft.com/content/ba9765c4-9a37-11e7-8c5c-c8d8fa6961bb> accessed 9 November 2019

Roberts S, 'Diepreye Alamieyeseigha, Nigerian Notorious for Corruption, Dies at 62 - The New York Times' *The New York Times* (14 October 2015) <https://www.nytimes.com/2015/10/15/world/diepreye-alamieyeseigha-nigerian-ex-governor-dies-at-62.html?_r=055> accessed 5 December 2019

Russell J, 'BAE pays Fine to Settle Tanzania Corruption Probe' *The Telegraph* (21 Dec 2010) <http://www.telegraph.co.uk/finance/newsbysector/industry/defence/8216551/BAE-pays-fine-to-settle-Tanzania-corruption-probe.html> accessed 14 March 2020

Sanusi L, 'Unanswered Questions on Nigeria's Missing Oil Revenue Billions' *Financial Times* (London 13 May 2015) <https://www.ft.com/content/e337c7a4-f4a2-11e4-8a42-00144feab7de> accessed 19 January 2020

Scannell K, 'BNP pleads guilty to sanctions violations and faces $8.9bn fine' *Financial Times* (London 30 June 2014) <http://www.ft.com/cms/s/0/db2daede-009c-11e4-9a62-00144feab7de.html?siteedition=uk#axzz36IZYlqVF> accessed 2 July 2020

Schafer D and O'Murchu C, 'Former Banker Sentenced over Nigerian Money Laundering' *The Financial Times* (London 9 December 2013) <https://www.ft.com/content/3d2fadb2-6101-11e3-b7f1-00144feabdc0> accessed 1 November 2019

Shaxson N, 'Explainer: What is a Tax Haven' *The Guardian* (9 January 2011) <https://www.theguardian.com/business/2011/jan/09/explainer-what-is-tax-haven> accessed 19 February 2020

Smith D, 'Switzerland to Return Sani Abacha 'Loot' Money to Nigeria' *The Guardian* (18 March 2015) <https://www.theguardian.com/world/2015/mar/18/switzerland-to-return-sani-abacha-loot-money-to-nigeria> accessed 20 November 2019

Thompson B, 'SFO Ends Investigations into Rolls-Royce and GSK' *Financial Times* (22 February 2019) <https://www.ft.com/content/4c931be4-3695-11e9-bb0c-42459962a812> accessed 25 February 2019

Toplensky R, 'Amazon and Apple Hit by EU Tax Crackdown' *Financial Times* (Brussels 4 October 2017) <https://www.ft.com/content/69ee1da6-a8ed-11e7-93c5-648314d2c72c> accessed 29 December 2019

Tran M, 'Former Nigeria State Governor James Ibori Receives 13-Year Sentence' *The Guardian* (17 April 2012) <http://www.guardian.co.uk/global-development/2012/apr/17/nigeria-governor-james-ibori-sentenced> accessed 8 December 2019

Treanor J, 'Banking Commission: Bankers Should be Jailed for 'Reckless Misconduct'' *The Guardian* (19 June 2013) <http://www.guardian.co.uk/business/2013/jun/19/tyrie-report-banking-reform-jail-sentences> accessed 1 July 2020

Treanor J, 'US Authorities Lift Threat to Prosecute HSBC' *The Guardian* (11 December 2017) <https://www.theguardian.com/business/2017/dec/11/hsbc-prosecution-threat-us-money-laundering> accessed 13 March 2020

Wallis W, 'Buhari's APC Wins Landslide Victory in Nigeria State Elections' *Financial Times* (Lagos 13 April 2015) <http://www.ft.com/cms/s/0/19ddfe2c-e1fc-11e4-bb7f-00144feab7de.html?siteedition=uk#axzz3epIo8q9f> accessed 20 December 2019

Wallis W, 'Investigators Begin Hunt for Nigeria's Stolen Petrodollars' *Financial Times* (25 November 2015) <https://www.ft.com/content/ffcd21ca-78b4-11e5-933d-efcdc3c11c89> accessed 9 November 2019

Wallis W, 'Liechtenstein Agrees to Return Abacha's stolen €167m to Nigeria' *Financial Times* (London <https://www.ft.com/content/c9d922ee-f6e2-11e3-b271-00144feabdc0> accessed 8 November 2019

Wallis W, 'Nigeria Audit State Oil Company Siphoning Oil Revenues' *Financial Times* (London 28 April 2015) <https://www.ft.com/content/5ebb5f3c-edb2-11e4-987e-00144feab7de> accessed 20 December 2019

Wallis W, 'Nigeria Bank Governor Alleges Oil Subsidy Racket' *Financial Times* (London 12 February 2014) <https://www.ft.com/content/6c4aea72-93cd-11e3-a0e1-00144feab7de> accessed 8 November 2019

Wallis W, 'Nigeria Central Bank Governor Vows to Challenge his Suspension' *Financial Times* (14 February 2014) <http://www.ft.com/cms/s/0/ccf90728-9afd-11e3-946b-00144feab7de.html#axzz2vfVepDxj> accessed 12 March 2020

Wallis W, 'Nigeria's Central Bank and State Clash over 'Missing Billions'.' *Financial Times* (London 4 May 2014) <https://www.ft.com/content/57d43418-bb14-11e3-948c-00144feabdc0> accessed 8 November 2019

Wallis W, 'Suspended Nigeria Banker Issues Rebuttal of Misconduct Claims' *Financial Times* (London 17 March 2014) <http://www.ft.com/cms/s/0/c8222694-adf4-11e3-bc07-00144feab7de.html#axzz2wJ9u2iWO> accessed 8 November 2019

Ward A, 'Eni and Shell Face Trial in Italy over Alleged Nigeria Corruption' *The Financial Times* (20 December 2017) <https://www.ft.com/content/20cba7e2-e574-11e7-97e2-916d4fbac0da> accessed 29 December 2019

Warrell H, 'Met Officer Arrested in Ibori Bribery Case' *The Financial Times* (23 May 2012) <https://www.ft.com/content/bb26f08e-a502-11e1-b421-00144feabdc0> accessed 7 December 2019

Wintour P and Maclean R, 'Nigeria not seeking a Cameron apology, but "wants its assets back"' *The Guardian* (11 May 2016) <https://www.theguardian.com/politics/2016/may/11/nigeria-not-seeking-cameron-apology-wants-assets-back> accessed 15 December 2019

Press releases

'State Aid Ireland Gave illegal Tax Benefits to Apple Worth up to €13 Billion' (*European Commission,* 2016) <http://europa.eu/rapid/press-release_IP-16-2923_en.htm> accessed 17 February 2019

Palmer R, *Sentencing of Former Nigerian Politician Highlights Role of British and US Banks in Money Laundering* (Global Witness 2012)

Turner G, 'TJN Responds to the Paradise Papers' (*Tax Justice Network,* 2017) <https://www.taxjustice.net/2017/11/05/press-release-tjn-responds-paradisepapers/> accessed 10 March 2020