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Advisory on Kleptocracy and Public Corruption in Nigeria

The Nigerian Financial Intelligence Unit (NFIU) In fulfilment of its obligations on the timely provision of guidance to Reporting Entities and Competent Authorities (CA) publishes Indicators and advisory on crimes of money laundering and terrorist financing in an effort to guide Reporting Entities and Competent Authorities on observable trends and patterns to mitigate AML/CFT/CPF threats.

JULY 2022

BACKGROUND

Kleptocrats enrich themselves and their families at the expense of the general population.¹ Often associated with oligarchies, or similar forms of autocratic and totalitarian governments, kleptocracies tend to develop in poorer countries in which the people lack the resources to prevent it. Kleptocrats typically drain the economies of the countries they rule by raising taxes on production and then using the tax revenue, rents from natural resources, and foreign aid contributions to enrich themselves.

In anticipation of losing their power, kleptocrats typically devise intricate illegal international money laundering networks to protect their stolen assets by hiding them in secret foreign bank accounts. Increasingly, the processes of globalization are blamed for helping kleptocrats protect their finances and polish their reputations². Both illegal schemes like fake foreign “shell corporations” and legal international investments, such as luxury real-estate purchases, help kleptocrats launder their ill-gotten gains while extricating them from their country of origin.

Kleptocracy has been an age-long politico-financial crime in the world. Public corruption harms the most vulnerable people in societies, often depriving these populations of critical public services, the proceeds of public corruption can distort our markets, taint our financial system, and can erode public trust in government institutions.

These practices harm the competitive landscape of financial markets and often have long-term corrosive effects on good governance, democratic institutions, and human rights standards. Moreover, advanced countries have begun taking legal steps to stop the flow of dirty money laundered. For example, the United States Kleptocracy Asset Recovery Initiative empowers the Justice Department to seize³ the ill-gotten funds of corrupt foreign leaders and return them to their country of origin. On a multi-lateral

¹ <https://www.thoughtco.com/kleptocracy-definition-and-examples-5092538>

² <https://www.thoughtco.com/kleptocracy-definition-and-examples-5092538>

³ <https://www.justice.gov/usao-cdca/pr/united-states-seeks-recover-approximately-540-million-obtained-corruption-involving>

level, Article 57 of the United Nations Convention Against Corruption (UNCAC) provides for State Parties to confiscate and return embezzled public funds or proceeds thereof laundered based on the request from legitimate owners.

Nigeria's anti-corruption agencies, the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and other Related Offences Commission (ICPC), have been actively carrying out investigations into former and present high-ranking public officials in current and previous administrations, in particular former cabinet officials, state governors, and senior civil servants.

The validated profiles from the National Inherent Risk Assessment (NIRA) of Nigeria rated corruption to be the highest predicate crime threat. The assessment revealed the most abused sectors to be financial institutions, bureau de change (BDCs), real estate, car dealership, precious stones & metals⁴. Case studies in this advisory demonstrate specific distinction of the reputation of kleptocrats.

TYPOLOGIES OF KLEPTOCRACY AND PUBLIC CORRUPTION IN NIGERIA

Public corruption occurs in various forms, i.e., bribery, abuse of trust, embezzlement, fraud or misappropriation of public funds and assets. They manifest at every level of government. Government officials have allowed state resources to be siphoned by oligarchs and elites, who amassed their fortunes through their personal connections to the people in power and the abuse of state-owned entities and assets. This activity is not unique to Nigeria alone. Kleptocratic activities throughout the world are often associated with other criminal behaviour, such as illicit financial flows (IFFs). The Pandora Papers had a massive trove of nearly 12 million confidential documents that were leaked to the International Consortium of Investigative Journalists (ICIJ) involving African leaders using offshore financial structures and trusts in tax havens to hide assets⁵. This phenomenon was highlighted by Yury Fedotov and Ngozi N. Okonjo-Iweala; a former Executive Director of UNODC and a former Managing

⁴Money Laundering Threat and Vulnerability Profiles from the NIRA 2022

⁵ <https://www.dw.com/en/pandora-papers-expose-african-leaders-offshore-secrets/a-59399552>

Director of the World Bank who were quoted in the preface to the Stolen Assets Recovery Initiative (StAR) Asset Recovery Handbook as follows:

"Developing countries lose between US\$20 to US\$40 billion each year through bribery, misappropriation of funds, and other corrupt practices. Much of the proceeds of corruption find "safe haven" in the world's financial centers. These criminal flows are a drain on social services and economic development programs, contributing to the further impoverishment of the world's poorest countries. The victims include children in need of education, patients in need of treatment, and all members of society who contribute their fair share and deserve assurance that public funds are being used to improve their lives⁶."

MISAPPROPRIATION AND EMBEZZLEMENT

Article 17 of UNCAC defines misappropriation or embezzlement as the diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position. Misappropriation constitutes a deliberate act of misuse of money. It is the channeling of money and other assets allocated for a specific official purpose for either personal use or what is meant for public consumption. Such action constitutes unauthorized spending of money or other assets for personal gains. Misappropriation is the highest form of fraud in the public sector as people intentionally divert public funds for personal aggrandizement without fear of negative consequence.

BRIBERY

Bribery is primarily focused on payment of money to Government employee/officials or an entity to obtain or retain business, or for other benefits. Such practices, which generally benefit both parties involved, may be employed to influence political outcomes, secure lucrative contracts with governments or state-owned enterprises, gain access to natural resources, or obtain fraudulent documents such as passports or visas, among other purposes. Extortion however, could occur between parties which use threats and intimidation to control public officials to pay bribes in order to

⁶<https://www.unodc.org/unodc/en/corruption/asset-recovery.html>

gain access to or continue their operations. Bribes and extortion payments are interrelated and can be made through third-party facilitators, as well as through legal entities that are controlled by family members and close associates, to conceal the ultimate beneficiary of the payment. In many cases, the payments are laundered through a network of shell companies, offshore financial centers, or professional service providers. Financial accounts into or from which bribes are deposited or withdrawn are sometimes established outside of a public official's country of residence to evade detection and financial institutions' sanctions screening and anti-money laundering/countering the financing of terrorism (AML/CFT) controls.

CASE 1: LAUNDERING THE PROCEEDS OF CORRUPTION, EMBEZZLEMENT THROUGH FINANCIAL INSTITUTIONS

In March 2014, the US Department of Justice announced that it had summarily frozen more than \$458 million in corruption proceeds stashed in various accounts in the United States and around the world by the late Nigerian dictator Sani Abacha and his conspirators. The seizure was described as the proceeds stashed in or moved through various accounts in the United States.

This recovery was made possible through the department to Kleptocracy Asset Recovery Initiative, which is aimed at seizing/recovering the assets of foreign leaders who steal funds that properly belong to the citizens they are supposed to serve and, where appropriate, return that money to benefit the people harmed by these acts of corruption and abuse of office.

Although it is purported that these illicit funds were laundered through the purchase of bonds using US financial institutions, the department insists that it will not let the US banking system be a tool for dictators to hide their criminal proceeds. The department said it was pursuing additional holdings in the United Kingdom with an expected value of at least \$100 million, but that the exact amount would be determined later.

In an effort to ensure continued transparency and increased information sharing, the Department of Justice also reported in comprehensive detail how the money was stolen from the Central Bank of Nigeria and the role of several Nigerian banks in transferring the stolen funds to accounts operated by General Abacha across the world.

The frozen funds, amounting to more than \$458 million, and the additional assets named in the complaint represent the proceeds of corruption during and after the military regime of General Abacha⁷.

Source: US Department of Justice

⁷https://www.unodc.org/documents/NGO/AU_ECA_Illicit_Financial_Flows_report_EN.pdf

CASE 2: BRIBERY INVOLVING A NATIONAL ASSEMBLY MEMBER

A former house of representative member was prosecuted by the Independent Corrupt Practices and other related offenses Commission (ICPC). The Anti-corruption agency found him guilty of asking for a \$3 million bribe and receiving \$500,000 out of the money. As the chairman of the House Committee that investigated the fuel subsidy scam, the convict had approached XX, a billionaire businessman, to demand the bribe. He had sought to remove XZ Oil and Gas Ltd, which was founded by XX, from the list of companies indicted by lawmakers in the subsidy scam. Although XX maintained that his company was never involved in an oil subsidy scam, he agreed to grant the convict's request but only as part of a grand plan to indict him. Unknown to the former lawmaker, XX had petitioned the Department of State Services (DSS) as a way to get evidence, the DSS gave XX marked wads of cash worth \$500,000 in order to give to the convict to set him up. In April 2012 convict visited XX at his residence twice to collect the said money in two tranches. XX also promised to send the balance of \$2.5 million. After collecting the money, he moved a motion during the house of representative's plenary seeking to remove the name of XZ Oil and Gas from the list. XX would later testify in court that he gave the convict \$500,000 as instructed by the DSS. Federal Capital Territory (FCT) High Court sitting in Abuja, sentenced the former House of Representatives member, to 19-year imprisonment for Bribery.

Source: ICPC

CASE 3: LAUNDERING THE PROCEEDS OF BRIBERY&CRIMINAL BREACH OF TRUST THROUGH REAL ESTATE AND COMMODITY EXCHANGE

On 22nd July 2022 the Economic and Financial Crimes Commission (EFCC) arraigned a former Accountant General of the Federation, Mr. XV before a Judge of the Federal Capital Territory High Court. He was arraigned alongside 2 natural persons and 1 legal person: Mr. TT, Mr. XG and RF Commodity Market and Exchange Limited on a 14-count charge of stealing and criminal breach of trust to the tune of N109,485,572,691.9

Between February and December 2021, Mr. XV is alleged to by virtue of his position accepted gratification from Mr. TT aggregated to N15,136,221,921.46 billion which sum was converted to the United States Dollars by Mr. TT for accelerating the payment of 13% derivation to the nine (9) oil producing States in the Federation, through the office of the Accountant General of the Federation; an offence contrary to Section 155 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria 1990⁸.

Mr. XV was also alleged to have committed criminal breach of trust when he received N84,390,000,000 from Mr. XG a violation of section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria 1990.

The EFCC's verified intelligence showed that Mr. XV raked off the funds through bogus consultancies and other illegal activities using proxies, family members and close associates⁹. Open source information reveal that Mr. XV acquired several properties in Kano State including a commodity exchange market valued at N4.5bn. The market was reportedly granted operational license to commence operation in 2021 by the Nigeria Security and Exchange Commission ¹⁰(SEC).

Source: EFCC, DailyTrust

CASE 4: CASE OF CRIMINAL BREACH OF TRUST

Senator DFC, whom was a former governor of a state in Nigeria who was being prosecuted by the Economic and Financial Crimes Commission for a N1.16bn was on June 12, 2018 sentenced to 14 years in prison for criminal breach of trust and two years for misappropriation of public funds.

⁸<https://www.efcc.gov.ng/news/8284-n109bn-fraud-efcc-to-arraign-former-accountant-general-ahmed-idris-others-july-22>

⁹<https://www.efcc.gov.ng/news/8008-efcc-arrests-ahmed-idris-accountant-general-of-the-federation-for-n80billion-fraud>

¹⁰<https://dailytrust.com/inside-multi-billion-naira-property-that-landed-suspended-agf-in-efcc-net>

Senator DFC was accused of diverting N1.16 billion Ecological Fund meant for the state to his personal use, including transferring half a billion Naira to POJ Ventures (an unregistered company managed by him and other monies to LDR Limited.

In delivering the judgement the prosecution Judge was quoted as saying: *"There's a deep sense of irresponsibility; the defendant was in fact richer than his state. This is a trauma of the trial; and there should be no compromise to corruption, by whatever shade or colour, or region, rich or poor; corruption will forever be corruption¹¹".*

The prosecution had argued that Senator DFC exploited his position as a public servant and took government money and misappropriated it.

Dissatisfied with the judgement, Senator DFC applied to the Court of Appeal which affirmed the ruling of the Federal Capital Territory High Court, which convicted him for diverting public funds estimated at N1.162billion while he was the Governor. The appellate court however on November 16, 2018, commuted the 14 years jail term to 10years.

Senator DFC further proceeded to the Apex Court which upheld Senator DFC's concurrent conviction and sentence by the trial court and the Court of Appeal on the offence of criminal breach of trust but however quashed his conviction and sentence in relation to the offence of criminal misappropriation by the Court of Appeal¹².

Senator DFC is reported to have been granted state pardon by the President based on a recommendation by the Presidential Advisory Committee on the Prerogative of Mercy¹³ (PACPM).

Source: EFCC, Vanguard

CASE 5: CORRUPTION, FRAUD AND EMBEZZLEMENT

The Federal High Court in Lagos ordered the temporary forfeiture of some landed properties valued at N6.42bn belonging to RS, an ally of a former Minister of Petroleum Resources XD. This was possible following an application filed by the EFCC. RS allegedly purchased the Abuja properties at N350m and \$18m respectively, while the Lagos property was bought for \$55m.

These properties were alleged to have been acquired from unlawful proceeds diverted from the Federal Government of Nigeria.

The investigation that led to the identification of the properties commenced following receipt of intelligence reports and a petition from TK, the then Executive Chairman of an anti-corruption coalition, alleging fraud, lack of transparency and unethical conduct in the transfer of production rights in the oil mining leases against the former TO and his cronies.

¹¹<https://www.efcc.gov.ng/news/3269-senator-joshua-dariye-bags-14-years-for-n1-16bn-fraud>

¹²<https://www.efcc.gov.ng/news/6605-apex-court-upholds-ex-gov-dariye-s-10-year-sentence>

¹³<https://www.vanguardngr.com/2022/04/presidency-justifies-dariye-nyames-pardon/>

It was further alleged that there were suspicious financial transactions involving RS and AU Holding Limited based in the British Virgin Island. The company, in the course of three years, allegedly received large suspicious transfers from two sister companies, namely: AU Drilling Concept Limited and AU Brass Development Limited, based in Nigeria.

The Judge, in granting the application, directed the EFCC to publish the interim forfeiture order in a national newspaper and adjourned to November 12, 2019 for the respondent or anyone interested in the properties to appear before him to show cause, why the properties should not be permanently forfeited to the Federal Government¹⁴.

It was reported that the properties were finally forfeited to the Federal Government despite an appeal by RS to the appellate court which held that a final forfeiture order granted by a Federal Judge in Abuja in January 2020 was in order¹⁵.

Source: EFCC, Premium Times

CASE 6: CORRUPTION AND FRAUD

Mr. XD of the Joint Admission and Matriculation Board (JAMB) is alleged to be involved in a N5.2 billion fraud, by the Independent Corrupt Practices and Other Related Offences Commission (ICPC). He was arraigned before a Federal High Court, Abuja, in July 2021, by the ICPC for offenses of corruption and fraud, when he was the Registrar of JAMB and National Examinations Council (NECO). The Commission filed an 18-count charge against Mr. XD for allegedly diverting N5.2 billion from the two agencies.

In the course of the trial, a witness Mr. BP was called by the judge to explain his role as a private solicitor to Mr. XD. The witness told the court how he incorporated several companies and bought properties for Mr. XD. Some of the properties were bought in the name of the witness' law firm in Abuja, Lagos, and Ghana, to hide the identity and ownership. He also told the court that Mr. XD used multiple aliases and other fronts including his children to hide buildings, hotels schools, and private shares in companies while in office. Mr. BP said one of Mr. XD's children whom was a front is a serving member of the House of Representatives. He further told the court that 577,500 units of shares in KDU Microfinance Bank at the cost of one naira per ordinary share were acquired for the accused, besides properties bought in the name of his younger brother, Alhaji KER and JUQ Ltd. He put the share capital of the bank at N70 million.

¹⁴<https://www.efcc.gov.ng/news/5003-court-orders-interim-forfeiture-of-kola-aluko-s-n6-42bn-properties>

¹⁵<https://www.premiumtimesng.com/news/headlines/515279-appeal-court-upholds-forfeiture-of-kola-aluko-diezanis-associates-18m-mansion.html>

Mr. BP in his submission said even though Mr. XD didn't appear as a director/shareholder in many of the documents tendered, all the names were supplied by him. Mr. BP said he was paid through several bank drafts issued by one Dr. RT on behalf of Mr. XD.¹⁶

Source: ICPC

VULNERABLE CHANNELS, SECTORS, PROFESSIONS AND PRODUCTS TO PROCEEDS OF CORRUPTION

Corrupt actors often use shell companies to obscure the ownership and origin of illicit funds. Corrupt actors may also leverage their family members and close associates to create shell companies and open business or personal accounts on their behalf while retaining control of the accounts¹⁷. These shell companies can be used to facilitate the payment of bribes as well as the illicit movement of funds stemming from the misuse of state assets and government contracts.

Corrupt officials and others involved in bribery and other forms of corruption often purchase various assets, such as luxury real estate, hotels, and private jets and lands to launder the proceeds of their corruption. An emerging typology is the laundering of proceeds of corruption in a commodity exchange market.

Proceeds of corruption can be laundered with the help of a professional money laundering facilitator. Professional Money Laundering (PML) is a subset of third-party Money Laundering (ML). The main characteristic that makes PML unique is the provision of ML services in exchange for a commission, fee or other type of profit. An individual PML facilitator possesses specialized skills or expertise in placing, moving and laundering funds. They specialize in the provision of ML services, which can also be performed while acting in a legitimate, professional occupation. These

¹⁶<https://icpc.gov.ng/2022/02/11/n5-2bn-fraud-icpc-ojerinde-plea-bargain-collapse/>

¹⁷<https://www.fincen.gov/sites/default/files/advisory/2022-04-14/FinCEN%20Advisory%20Corruption%20FINAL%20508.pdf>

services can include, but are not limited to, the following: accounting services, financial or legal advice, and the formation of companies and legal arrangements¹⁸.

RED FLAG INDICATORS OF KLEPTOCRACY AND PUBLIC CORRUPTION

The NFIU has identified the following financial red flag indicators to assist financial institutions, competent authorities, Bureau of Public Procurement the general public in detecting, preventing, and reporting suspicious transactions associated with kleptocracy and public corruption in Nigeria. Because no single red flag indicator is determinative of illicit or suspicious activity, financial institutions should consider the relevant facts and circumstances of each transaction, in keeping with their risk-based approach to compliance.

- ✚ Transactions involving long-term government contracts are consistently awarded, through an opaque selection process, to the same legal entity or entities that share similar beneficial ownership structures.
- ✚ Transactions involving services provided to state-owned companies or public institutions by companies registered in high-risk jurisdictions.
- ✚ Transactions involving public officials related to high-value assets, such as real estate or other luxury goods, that are not commensurate with the reported source of wealth for the public official or that fall outside that individual's normal pattern of activity or lifestyle.
- ✚ Transactions involving public officials and funds moving to and from countries with which the public officials do not appear to have ties.
- ✚ Use of third parties to shield the identity of public officials seeking to hide the origin or ownership of funds, for example, to hide the purchase or sale of real estate.
- ✚ Documents corroborating transactions involving government contracts (e.g., invoices) that include charges at substantially higher prices than market rates or that include overly simple documentation or lack traditional details (e.g., valuations for goods and services).

¹⁸https://egmontgroup.org/wp-content/uploads/2021/09/2019_Egmont_Group_Bulletin_Professional_Money_Laundering_Facilitators.pdf

- ✦ Transactions involving payments that do not match the total amounts set out in the underlying documentation, or that involve vague payment details or the use of old or fraudulent documentation to justify the transfer of funds.
- ✦ Transactions involving fictitious email addresses and false invoices to justify payments, particularly for international transactions.
- ✦ Assets held in the name of intermediate legal entities whose beneficial owner or owners are tied to a kleptocrat or his or her family member.
- ✦ Financial transactions via different bank accounts are managed from the same set of IP addresses;
- ✦ Individual or single entity opening or managing numerous bank accounts in a coordinated fashion;
- ✦ Transit movement of funds through bank accounts of companies (accounts of companies are used to receive and immediately transfer money, and the account balance by the close of the day is zero).
- ✦ The issuance of unreasonable specifications for the performance of the contract (including restrictive conditions for the location of the contractor, restrictive conditions for the materials needed for the performance of the contract, particularly tight deadlines, etc.) by the procuring authority
- ✦ Deposits in public officials' accounts with checks issued by construction companies, individuals or non-governmental entities that previously benefited from public works contracts.
- ✦ Legal entities with little or limited experience receiving highly complex and technical government contracts/projects (not compatible with the size or experience of the entity) or receiving government contracts/projects that are not related to their field of business.
- ✦ Checks issued in favor of public officials and come from accounts of persons that benefited from public procurements/funds, without an evident justification.
- ✦ Checks issued by a public entity being cashed out and subsequently deposited to accounts of public officials or entities related to public officials.

- ✚ Funds received in accounts of persons, legal entities, or legal arrangements with no visible connection to public officials, but known to be controlled by such, or persons related to them (a front man, a strawman, or legal entity established to conceal the beneficial ownership), where the funds have been sent by a shell company. The additional information provided with regard to the funds refers to “loans”, “investment purposes”, or “purchase of real estate property”, or otherwise reveal an irreconcilable conflict of interest involving commercial business between a private enterprise and a public official.
- ✚ Representative of a public official (i.e. lawyer, secretary, and accountant) opens account and purchases expensive property or luxury goods with the express intent of bypassing Customer Due Diligence (CDD) process screening for public officials.
- ✚ Public officials establish legal entities or legal arrangements, which have purchased land and buildings of significant value (as is evident from their accounting documents), despite the absence of any other commercial activity, or without a justifiable source of funds.
- ✚ Payments in favor of public officials are made to facilitate or expedite a government service.
- ✚ Use of state funds to purchase shares in private companies or private companies belonging to public officials, at prices above market value.
- ✚ Open-source information, which can relate specific financial activity to ongoing investigations into individuals, and concerns about corruption.
- ✚ An entity that receives public contracts and its legal representative/s appear in media reports, which link/s him/her/them to corruption or other financial crimes¹⁹.

¹⁹Refer to page 16 of Egmont Group report for more corruption indicators https://egmontgroup.org/wp-content/uploads/2021/09/2019_Public_Summary_FIU_Tools_and_Practices_for_Investigating_Laundering_of_the_Proceeds_of_Corruption.pdf