

THE CORRELATION BETWEEN ILLICIT FINANCIAL FLOWS AND RULE OF LAW IN NIGERIA*

ABSTRACT

Despite its oil wealth and large economy, Nigeria's population is amongst Africa's poorest, and the distribution of wealth is highly unequal. The twin evils of illicit money, that is, corruption and insecurity, have led to multi-consequential and catastrophic effects in the form of economic recession, political and administrative mismanagement of the nation's economy, kidnapping, banditry, ethno-religious conflict, and militancy-the Emancipation of the Niger Delta and Boko-Haram. This article analyses the correlation between illicit money and the rule of law in Nigeria. It finds that effectively stopping illicit financial flows that continue to thrive on the continent will greatly reduce corruption and insecurity. The article proffers that the Nigerian government will be most effective in combating the ills of illicit money: corruption and insecurity, when it submits itself to the rule of law.

Key words: Rule of Law- Illicit money- Corruption- Insecurity.

I) INTRODUCTION

Today's reality is one in which we live in a world where there is no region, no country and no community who remain untouched by the destabilizing effects and corruptive influence of transnational organized crime. Their impact is truly global and their real threat centres in some cases in their convergence. The trans-regional illicit trafficking of drugs, arms, humans, and other illicit trade goods and services, are fuelling greater insecurity and instability across Africa¹. These imperil not only the rule of law, economic development efforts, the promotion

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¹ David M. Luna, 'Trans-Africa Security: Combating Illicit Trafficking and Organized Crime in Africa'. Available at US Department of State Website: <https://www.state.gov/j/inl/rls/rm/2017/270858.htm>. Accessed 22 May 2017.

of trade and investment, but also fuel greater corruption, instability and insecurity. As such, parts of Africa remain a battleground between ideologies, interests, and values, where prosperity and peace are often pitted against extremism, oppression, and conflict. The strategic environment includes instability that allows violent extremist organizations to grow and recruit disenfranchised populations².

The result of all these are illicit markets growing across Africa to meet global demand for arms, counterfeits, cigarettes, natural resources, diamonds and other precious minerals, wildlife, illegally-harvested timber, illegal fishing, stolen luxury cars, and other illicit commodities. They employ the latest technological advances and use commercial jets, fishing vessels, and container ships to move drugs, people, small arms, crude oil, cigarettes, counterfeit and pirated goods, and toxic waste through the region, generating massive profits. Perhaps no criminal organizations, however, are as ubiquitous as Nigerians, who operate in countries as diverse as China, Thailand, Paraguay, Holland, and Germany, and are involved in a mix of criminal activities ranging from drug trafficking and women trafficking to various forms of financial fraud³.

II) THE NEXUS BETWEEN ILLICIT FINANCIAL FLOWS AND CRIMES.

The Mbeki report⁴ refers to illicit money as funds that are ‘illegally earned, transferred or used’ and moved across borders. The report, like many others on the subject, argues that if illicit financial flows (IFFs) are reduced or halted, and the money used within the borders of a developing region instead, the magnitude of the flows involved will have significant positive

² *Ibid*, quoting General Thomas D. Waldhauser, U.S. Marine Corps, AFRICOM Commander

³ The United States International Crime Threat Assessment. Available at: <https://clintonwhitehouse4.archives.gov/WH/EOP/NSC/html/documents/pub45270/45270BookWG.pdf>. Accessed 22 May 2017.

⁴ The Mbeki Report, ‘*Report of the High Level Panel on Illicit Financial Flows from Africa*’. Available at the United Nations Economic Commission for Africa Website: https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf. Accessed 22 May 2017.

outcomes on development, and reduce countries' reliance on foreign aid. The illegal markets in Africa, and globally, are booming with staggering levels of illicit wealth in the global economy. Hundreds of millions of USD every year enable criminals and other threat networks to corrupt the regional economies and the global financial system. Illicit money is usually generated by one of three kinds of activities: bribery and theft; organized crime; and corporate dealings such as tax evasion and false commercial transactions. Flows of illicit money across borders are difficult to measure because they are largely invisible. The World Bank estimates that they range from \$1 trillion to \$1.6 trillion annually, of which about half—\$500 billion to \$800 billion⁵—comes out of developing countries ranging from Nigeria to Kazakhstan to Peru. With approximately \$1 trillion flowing out of developing economies alone, these flows not only help to fund illegal activities and criminal organizations but also hinder much-needed economic growth and help to perpetuate conflicts around the world.

In particular, West Africa has become a major transit point for illicit drugs. Cocaine trafficking remains among the most lucrative illicit activities. In April 2017, the UN Office on Drugs and Crime (UNODC) reported that developing markets are fuelling a resurgence of cocaine trafficking through West Africa⁶. UNODC further added that seizures on the Atlantic Island of Cape Verde, in the Gambia, Ghana and Nigeria had contributed to a 78% increase in cocaine seizures from 2009-2014 compared to the previous reporting period. Smugglers and traffickers who intake the cocaine from the Americas will typically transport drugs and other contraband overland across the Sahel and North Africa, before crossing into destination markets in Europe and these new developing markets in the Middle East and Southeast Asia⁷. The UNODC, the

⁵ Nils Gilman, Jesse Goldhammer, Steven Weber, '*Deviant Globalization: Black Market Economy in the 21st Century*' Continuum, (2011), pp 235.

⁶ United Nations Office for Drugs and Crime Website. 'Cocaine Trafficking in Western Africa: Situation Report', Available at: <https://www.unodc.org/documents/data-and-analysis/Cocaine-trafficking-Africa-en.pdf>. Accessed 22 May 2017.

⁷ *Ibid.*

World Economic Forum (WEF), Global Financial Integrity (GFI), and other international organizations, generally estimate that the illicit trade in arms, drugs, and people, and other forms of ‘convergence crime’ generate approximately between 8–15 percent of GDP, or several USD trillions to include corrupt proceeds and illicit financial flows. The UN estimates that the total value of the illicit drug trade is approximately 0.9% of gross world product (\$83.12 trillion in 2012), which is about \$748 billion, and the resulting cost to world society for drug treatment is \$200-250 billion. In effect, the total cost of illegal drugs to society is \$1 trillion⁸.

III) ILLS OF ILLICIT FINANCIAL FLOWS IN NIGERIA: CORRUPTION AND INSECURITY

Nigerian citizens are generally well aware of the extent of corruption in their country. They encounter it on a daily basis through many small and large interactions and expect bureaucrats to ask for a bribe before providing a government service. They see their government officials riding in fancy cars and living in grand houses though promises of aid and development are nowhere to be seen. While the public works within corrupt systems in order to make ends meet, their grievances and a sense of injustice builds. All this can be attributed to undermining the rule of law by corruption in the country.

Corruption undermines security and also enables rule of law spoilers because in addition to creating security threats by undermining governance and building grievances, corruption also compromises the security sector ability to address threats. The military, police and border

⁸David M. Luna, ‘*Trans-Africa Security: Combating Illicit Trafficking and Organized Crime in Africa*’. Available at US Department of State Website: <https://www.state.gov/j/inl/rls/rm/2017/270858.htm>.

guards all face corruption risks such as patronage, the sale of positions, and plundering salary and procurement funds⁹.

a- CORRUPTION

Corruption acts as an enabler for transnational criminals, spreading deep within societies, preventing the rule of law from ensuring the safety and well being of the citizens of countries where it is endemic. Although challenging in developed countries such as the United States and Germany, it is an existential threat in less developed countries that are struggling to defeat this menace. Where the government writ does not go, criminal networks fill the vacuum and provide alternative governance. Where the police and judiciary are corrupt, criminals prey on the population and do not pay for their misdeeds¹⁰. As no one will invest in these areas, the people will not have access to the jobs and educational opportunities that would empower them to improve their situations. Corruption is like an autoimmune disease, shutting down the immune system so the body can be overwhelmed by any challenge.

Nigeria probably has the highest percentage of its gross domestic product stolen— largely by corrupt officials—and deposited externally. Since the 1960s, up to \$400 billion has been lost because of corruption, with \$100 billion shifted out of the country¹¹. Of the population of about 150 million, some 100 million live on \$1 to \$2 a day¹². Widespread corruption in Nigeria further facilitates criminal activity, and, combined with Nigeria’s central location along major trafficking routes, enables criminal groups to flourish and make Nigeria an important

⁹ Richard Bistrong, ‘*Corruption’s Impact on the Rule of Law & Security: Moving from the Vicious to the Virtuous*’. Available at <https://richardbistrong.com/corruptions-impact/>. Accessed 01 June 2017.

¹⁰ Miklaucic M. and Brewer J., ‘*Convergence: Illicit Networks and National Security in the Age of Globalization*’ National Defense University Press Washington, DC, (2013) Pg VIII.

¹¹ Baker R., ‘Illicit Money: Can It Be Stopped’. Available at: <http://www.gfintegritty.org/press-release/illicit-money-can-it-be-stopped/>. Accessed 01 June 2017.

¹² Africa Development Bank Group Website: *Nigeria Economic Outlook*. Available at: <https://www.afdb.org/en/countries/west-africa/nigeria/nigeria-economic-outlook/>. Accessed 01 June 2017.

trafficking hub¹³. Unrest in the poverty-ridden North East and Niger Delta is so severe that oil production is hardly stable¹⁴.

Corruption in the legislative arm of government in Nigeria is particularly disturbing. Starting with the civilian-civilian transition program in 2003, money became decisive in politics and governance of Nigeria by playing a dominant role in canvassing for votes¹⁵. After the elections, the National Assembly allegedly became an arena of trading illicit monies for screening of ministerial and other executive appointees, influencing state policies, getting budgetary approval and supporting or not supporting tenure elongations of the former president. Some illustrative cases of alleged legislative corruption are:

- 1- The El Rufai fallout with the leadership of the Senate over the alleged N150 million request by Ibrahim Mantu, former Deputy Senate President, to settle his colleagues before ratifying El Rufais ministerial appointment¹⁶. It is difficult to pass legislative screening without bribing the members of the National Assembly either at the point of nomination for political appointment or defending budget;
- 2- The bribery saga that strained the relationship between the Chairman House Committee on Security and Exchange Commission and the Director General of the Commission, Ms

¹³ United States Bureau of International Narcotics and Law Enforcement Affairs- Work by Country, '*Bureau of International Narcotics and Law Enforcement Affairs: Nigeria*', Available at US Department of State Website: <https://www.state.gov/bureau-of-international-narcotics-and-law-enforcement-affairs-work-by-country/nigeria-summary/>. Accessed 01 June 2017.

¹⁴ The World Bank Organisation Website: *Nigeria Faces Prospects of fragile Economic Recovery in 2017*. Available at: <https://www.worldbank.org/en/news/press-release/2017/05/19/nigeria-faces-prospects-of-fragile-economic-recovery-in-2017>. Accessed 01 June 2017.

¹⁵ Matenga, G., '*Cash for Votes: Political Legitimacy in Nigeria*', Available at <https://www.opendemocracy.net/en/cash-for-votes-political-legitimacy-in-nigeria/>. Accessed 03 June 2017

¹⁶ All Africa Website, '*Nigeria: El-Rufai Vs Senate the Complete Story of a Bribe Scandal*'. Available at: <https://allafrica.com/stories/200310160905.html>. Accessed 03 June 2017.

Aruna Oteh who had accused Hembe (the House Committee Chairman) of a N5million bribe and a N44million ‘donation’ to the committee¹⁷; and

3- The drama between Farouk Lawan, former Chairman adhoc Committee on fuel subsidy, and Femi Otedola, Chairman Zenon oil limited over N620 million bribe demanded by the former from the latter¹⁸.

Flagrant display of corruption by the executive are best observed from 2011, some of which include:

1- The fuel subsidy scandal: the Nigerian National Petroleum Corporation (NNPC) diverted \$49.8 billion, meant for the Nigerian treasury Between 2012-13¹⁹.

2- The international news media agency quoted part of the Central Bank of Nigeria (CBN) governor submission to President Jonathan as follows, ‘our analysis of the value of crude oil export proceeds based on the documentation received from pre-shipment inspectors show that between January 2012 and July 2013, NNPC lifted 594,024,107 barrels of crude valued at \$65,332,350,514.57... out of this amount, NNPC repatriated only \$15,528,410,098.77 representing 24% of the value’. This means the NNPC is yet to account for, and repatriate to the Federation Account, an amount in excess of \$49.804 billion of the value of oil lifted in the same period.²⁰

Thereafter government agencies (Ministry of Finance, CBN and NNPC) conveyed to ‘reconcile’ their figures on the issue. In the process the agencies ‘agreed symbolically’ that there was at least a little above \$10 billion not remitted to the

¹⁷ Euro Money Website: ‘Nigerian SEC Head Suspended After Corruption Row’, Available at: <https://www.euromoney.com/article/b12kjjprvm4snp/nigerian-sec-head-suspended-after-corruption-row>. Accessed 02 June 2017.

¹⁸Premium Times, ‘\$620,000 Bribe: Trial of ‘cap banker’, Farouk Lawan Continues’, Available at: <https://www.premiumtimesng.com/news/top-news/197795-620000-bribe-trial-cap-banker-farouk-lawan-continues.html>. Accessed 04 June 2017.

¹⁹BBC, ‘Nigeria Fuel Subsidy Report Reveals \$6billion Fraud’, <https://www.bbc.co.uk/news/world-africa-17823959>. Accessed 04 June 2017.

²⁰ *Ibid.*

federation account or 'missing'. The sums involved are mind-bulging in accounting and auditing parlance with respect to state fiscal and financial responsibility in any nation.

3- Arms deal scandal²¹: the arms-deal scandal the media tagged Dasuki-gate mirrored serious case of executive corruption. The office of the NSA and his person were implicated in arms contracts for the military in their efforts to continue the prosecution of the Boko-Haram war in the northeast, whereby the monies for buying arms were diverted to the campaign fund for the reelection bid of President Goodluck Jonathan.

4- The Minister for Aviation Stella Oduah was relieved of her post under the Goodluck Presidency for misappropriation of funds to purchase bullet-proof cars for personal protection.²² The funds in question are N255 million.

Judicial corruption can be seen from the invasion of homes of selected Justices of the Supreme Court of Nigeria in Abuja, Judges of the Federal High Court in Port Harcourt and Abuja and State High Court Judges in Gombe and Kaduna States on the 7th of October 2016, between the hours of 10 pm and the wee hours of the next day, by the Department of State Services (DSS). As the DSS raided and upturned residences on Saturday, Justice Ademola was found to be in possession of \$550,000.00, part of which he reportedly claimed belonged to Justice Auta, the Chief Judge of the Federal High Court. Justice Ademola was also allegedly found with two unlicensed Pump Action Rifles in his Abuja home.²³ Justice Ngwuta had N35,208,000 on him

²¹ BBC, 'Nigerias Dasuki arrested Over \$2bn Arms Fraud', Available at: <https://www.bbc.com/news/world-africa-34973872>. Accessed 04 June 2017.

²² Premium Times, 'N255 million bulletproof car scandal: EFCC to grill Stella Oduah'. Available at: <https://www.premiumtimesng.com/news/more-news/234702-n255-million-bulletproof-car-scandal-efcc-grill-stella-oduah.html>. Accessed 04 June 2017.

²³Sahara Reporters, 'Names of Nigerian Judges Under Investigation Revealed'. Available at: <http://saharareporters.com/2016/10/16/names-nigerian-judges-under-investigation-revealed>. Accessed 04 June 2017.

and Justice Okoro was found with N4,350,000.²⁴ Officials of the Economic and Financial Crimes Commission (EFCC) allegedly found more than N2 billion in Justice Abdul Kafarati bank account.

Yet, many other types of less-noticeable corruption also fuel illicit money with highly detrimental effects on state institutions and public policy. For example, companies can bribe government officials to negotiate favorable tax rates for resource extraction. This creates an illicit flow related to corruption, as well as tax evasion, and can compound the problems within a developing nation given the newly distorted tax rate and regime. Helping tax-avoiding multinationals, criminals and corrupt public officials have been people in the professional services industry²⁵ – lawyers, accountants and consultants – who are able to develop instruments such as tax breaks for clients, often treading a fine line between legality and illegality.

Recent scandals are widening the perception that illegal, hidden dealings are incurring huge costs to the global economy. Enron, WorldCom, and Parmalat; Liechtenstein and UBS involvement in tax evasion; Elf Aquitaine and alleged BAE Systems corruption; the financial forces behind today's severe banking crisis—these and many more cases confirm the destructive role played by a global financial system that permits trillions of dollars from countries such as Nigeria to evade accountability. One notorious example of tax manipulation was that of US multinational Halliburton, and its subsidiaries, in Nigeria. In this case, it was

²⁴ Pulse News, 'Inside the very 'corrupt' world of Nigeria's Judiciary', Available at: <http://www.pulse.ng/local/judges-arrest-inside-the-very-corrupt-world-of-nigerias-judiciary-id5587874.html>. Accessed 04 June 2017.

²⁵ For example, the illicit money scandal that engulfed banks like the HSBC: <https://www.theguardian.com/news/2015/feb/12/hsbc-files-swiss-bank-hid-money-for-suspected-criminals>

found that the company had bribed a tax official with US\$2.4million²⁶ for favorable tax rates. This led to a loss on social spending – as the developing state no longer received an equitable share of tax income. Studies reveal that the common denominator in this type of corruption-fuelled illicit money by political elites is ‘the way in which the illicit proceeds of corruption were channeled to bank accounts in foreign countries, typically jurisdictions with high levels of banking secrecy’²⁷.

b- INSECURITY

A convergence of actors consisting of extremist groups, rebels and a youth bulge that is growing with unfulfilled economic and political frustrations is further paving the corridor of illicit trafficking and crime-terror continuum across Africa as criminal insurgencies are becoming players themselves in illicit markets and using the proceeds to finance their terror campaigns, secure their training camps, establish safe havens, and export violence to other regions²⁸. Violent extremist and terrorist groups draw on public anger towards illicit money as a means to radicalize, recruit new members, and deepen sectarian division²⁹. Thus, illicit money and complicit facilitators enable the illicit space for criminals and terrorist groups alike to thrive, and to exploit weaknesses in our borders and institutions that imperil our security.

As a practical matter, most nation-states acknowledge that they tolerate a certain level of crime and corruption³⁰. When the crime becomes so bad that it corrodes state institutions or

²⁶ The Age, ‘Halliburton Firm Bribed Nigeria’. Available at: <http://www.theage.com.au/articles/2003/05/10/1052280472817.html>. Accessed 02 June 2017.

²⁷ Ethan A. Nadelmann, ‘Unlaundering Dirty Money Abroad: U.S. Foreign Policy and Financial Secrecy Jurisdictions’, *The University of Miami Inter-American Law Review* Vol. 18, No. 1 (Fall, 1986), pp. 33-81.

²⁸ Op.cit, see Note 1.

²⁹ The United States Department of State, ‘Trans-Africa Security: Combating Illicit Trafficking and Organized Crime’, Available at: <https://www.state.gov-inl-rls>. Accessed 03 June 2017.

³⁰ Jewish Policy Center, ‘Illicit Networks and Global Security’, Available at: <https://www.jewishpolicycenter.org/2013/05/31/illicit-networks-global-security/>. Accessed 04 June 2017.

overwhelms the ability of the state to counter the violence for example from Boko Haram and the Movement for the Emancipation of the Niger Delta (MEND) in Nigeria, it becomes a national security issue for the country as well as for neighbouring countries. Criminals suborn rule of law actors within countries and are able to operate across borders. They can often use these resources to train and equip themselves better than those who seek to halt them.

A look at some of the current regional hot spots clearly illustrates how certain crime-terror dynamics continue to contribute to insecurity and instability that have a ripple effect across borders. Globalization has also been as empowering for organized crime as it has for legitimate business³¹. Today's thriving illegal economy is so lucrative that terrorists are increasingly turning to criminal activities to fund their violent campaigns such as those by al-Qaeda in the Islamic Maghreb (AQIM), Boko Haram, al-Shabaab, and others. Nigeria is confronting a terrorist insurgency led by Boko Haram and its offshoot Islamic State Iraq and Syria-West Africa (ISIS-West Africa), which remains the cause of the insecurity in the Lake Chad Basin. Nigerian organized criminal networks remain a major player in moving cocaine and heroin worldwide, and have begun to produce and traffic methamphetamine to and around Southeast Asia³². In addition to drug trafficking, some of these criminal organizations also engage in other forms of trafficking and fraud targeting citizens of the world³³. The indications are many from widespread hunger and poverty, to ethnic and religious violence, Boko Haram, to economic sabotage in oil-bunkering, arms trafficking, militancy, kidnapping, bank robbery, and theft. These threats to lives are troubling as the nation law enforcement agencies and

³¹ Voice of America Editorials, 'Transnational Crime in Africa Fuels Global Terrorism'. Available at: <https://editorials.voa.gov/a/transnational-crime-africa-fuels-global-terrorism/3877328.html>. Accessed 05 June 2017.

³² Pierre-Arnaud Chouvy. *Drug trafficking in and out of the Golden Triangle. An Atlas of Trafficking in Southeast Asia. The Illegal Trade in Arms, Drugs, People, Counterfeit Goods and Natural Resources* Mainland, IB Tauris, p.1-32,2013.

³³ Nigerian Scams also known as 419 scams after the section of the Criminal Code which covers scams. Some involve love scams see for example: BBC, 'I went to Nigeria to meet the man who scammed me' available at <https://www.bbc.com/news/world-africa-37632259>. Accessed 05 June 2017.

personnel specifically the military, police, immigrations, and customs continue to demonstrate inadequacies in addressing the challenges.

Boko Haram in Nigeria morphed further by copying the tactics of other organizations such as al Qaeda that discovered franchising, which enabled them to reach into areas that they previously could not organize in. Criminal networks have the advantage of three primary enablers. First are the huge profits realized by transnational criminal operations. Second is the ability of these organizations to recruit talent and reorganize along lines historically limited to corporations and militaries. Third is their newly developed ability to operate in milieus normally considered the preserve of the state, and often referred to as the diplomatic, informational, military, and economic elements of national power³⁴. In the past, although some corporations or cities wielded some of these elements of power, for the last 200 years or so, it was mainly states that did. Transnational criminal elements have recently been able to generate these state-like capabilities. Through resource development and reorganization, they now rival the capabilities of many states and overwhelm the capabilities of others.

What creates the market opportunities for deviant globalization³⁵? Answer is we do. Every time a community or a nation, acting on the basis of its good faith and clear moral values, decides to ‘just say no’, it creates an opportunity for arbitrage. For example, when we codify and institutionalize our moral outrage at selling sex by making prostitution illegal, a market opportunity is created for those who kidnap women and smuggle them into sexual slavery. When a state classifies methamphetamine as a danger to public health and prohibits it, an opportunity is created for drug dealers who delight in the high profit margins as they fill illicit orders. When we ban the sale of organs in our domestic market, we create incentives for

³⁴ Op.cit, see note 10.

³⁵ Nils G., Jesse G. and Steven W., use this term in their 2011 book, *‘Deviant Globalization: Black Market Economy in the 21st Century’*, Bloomsbury Publishing (2011).

entrepreneurs to act as brokers or facilitators between physically desperate patients and economically desperate donors in poor countries.

Deviant globalization is thus an economic concept, but it is also a moral and legal one. Deviant globalization grows at the intersection of ethical deterrence and regulatory and law enforcement inefficiencies. Wherever there is a fundamental disagreement about what is right as well as a connection to the global market, deviant entrepreneurs pop up to meet the unfilled demand³⁶. In meeting our collective desires, they see the deterrence's in notions of public good, morality, and health as bankable market opportunities. MEND and Boko Haram in Nigeria, and narco traffickers such as the Zetas in Mexico are all deviant entrepreneurs who not only have demonstrated they can shut down areas of their host states' basic functional capacity, thereby upsetting global markets half a world away, but are also increasingly providing social services to local constituencies.

IV) ROLE OF RULE OF LAW IN COMBATING THE ILLS OF ILLICIT FINANCIAL FLOWS: CORRUPTION AND INSECURITY

Rule of law refers to a principle of governance in which all persons, institutions and entities, including the State itself, are accountable to laws that are publicly broadcasted, equally enforced and independently adjudicated, and which are consistent with international human rights, norms and standards.

The rule of law is an integral element of the UN's agenda, in its role as the guardian of international legal frameworks. Particularly, advancing the rule of law stands to directly and positively impact global economic development and human rights. In her keynote speech,

³⁶ *Ibid.*

Permanent Representative of Thailand to the UN in Vienna³⁷ highlighted the need to invest in the rule of law, crime prevention and criminal justice for the post-2015 United Nations development agenda.

The rule of law simply means that law rules or reigns. This presupposes a situation where everything is done in accordance with law thereby excluding any form of arbitrariness. The concept as we understand it and adopted in developed societies; where democracy has long been a way of life of the people and where despotism or dictatorship is no longer the order of the day, implies and equally connotes that the citizens in relationship amongst themselves inter se and with the government bodies and their agencies shall be beholden unto the law which shall not be ignored by anyone except at his peril, and if by the government, this will promote anarchy and executive indiscipline capable of wrecking the organic framework of the society³⁸. It is a way of preventing the abuse of discretionary power. It accords with the dictates of reason that the court should use its power to make the government of the day rule by principles recognized in civilized societies and bound by the pronouncements of the courts.

Corruption pervades all levels of government in Nigeria, causing a massive strain on public resources and eroding citizen trust and confidence in the system. Successive governments have devised numerous ways of tackling this threat, particularly since the country's return to civilian rule, passing legislation and setting up anti-corruption agencies with a mandate to independently investigate, prosecute and prevent corruption³⁹.

³⁷ 'HRH Princess Bajrakittiyabha Mahidol, 'Weak rule of law and lack of good governance a major threat to development', Available at: <https://www.unodc.org/southeastasiaandpacific/en/2013/11/bangkok-dialogue/story.html>. Accessed 04 June 2017.

³⁸ Nwabueze B., '*How President Obasanjo Subverted the Rule of Law and Democracy*', Gold Press, (2007). Pgs 3-8

³⁹ Independent Corrupt Practices Commission (ICPC), Economic and Financial Crimes Commission (EFCC).

Nigerian criminal justice and anti-corruption sectors are, however, highly complex. Three branches of government at both federal and state level play central roles in terms of policy-making, legislation, litigation and adjudication. As well as various federal and state institutions and agencies are involved in law enforcement, implementation and service delivery.

The rule of law is widely embraced at the national and international levels without much precision as to what the term means⁴⁰. There are significant differences between the rule of law as it is understood in common law and civil law systems. In a national legal order, the sovereign exists in a vertical hierarchy with other subjects of law. At the national level, the rule of law requires a government of laws, the supremacy of the law, and equality before the law. The first aspect, government of laws, requires non-arbitrariness in the exercise of power. The second aspect, supremacy of the law, distinguishes the rule of law from rule by law. This means that the relevance of the concept of separation of powers is very important⁴¹. The third aspect, equality before the law, raises the question of who the true subject of law is. Equality of individual human beings before the law is a formal constraint on the exercise of public power by State institutions. The individual's relationship to the State is defined by its coerciveness: one does not normally choose the State to the laws of which one is subject. Equality before the law here will mean the amelioration of structural irregularities such as the immunity clause. Social order is enhanced to the extent that it is organized by a clear and coherent set of rules and laws. The domestic rule of law arose as a solution to the dangers of centralized authority; it has been brought into being in diverse ways in various societies in order to manage relations

⁴⁰ Maikudi, A.S, 'The United Nations Security Council and the Need for Strengthening a Rules Based International System' AJPCL Vol. 2, August 2012/2013. ISSN: 2315-5825.

⁴¹ Simon Chesterman Institute for International Law and Justice, 'The UN Security Council and the Rule of Law', Final Report and Recommendations from the Austria Initiative, 2004-2008 (New York University Press) 2008.

between strong governments and their citizens, and to place limits on the overbearing sovereign.⁴²

The effect of the international system of illicit finance on the rule of law in Nigeria can be seen from its long tumultuous history. At the turn of independence, the western part of Nigeria was engrossed in political violence described in the notion of ‘Wild-Wild West’ which partly reinforced the military reasons and argument for the overthrow of the first democratic dispensation⁴³. The prolonged autocratic military regimes in Nigeria sowed the seed for usurping the rule of law by institutionalizing impunity in governance. For almost 40 years, poverty, violation of human rights, cronyism, sycophancy, ethno-religions divide and rule, truncated the democratic process with the outcome sustained by the military leaders and their civilian collaborators through their gripe of the nation’s wealth and economy.

The fourth democratic dispensation was brazen in the display of the influence of illicit money in the control of polity at the expense of the rule of law. In the first instance was the truncation of democratic and peaceful and diligent process of elections. Two phenomena are instructive in this regard, the phenomena of ‘godfatherism’ and monumental corruption in all the arms of government. Godfathers’ dominate Nigeria politics at the states and federal level⁴⁴. Godfathers are people of questionable wealth and influences who robbed political parties of their conventional and legitimate functions of presenting clear and coherent programs on the basis of which the voters choose the candidates presented by them⁴⁵. Godfathers are those who have the security connections, extended local links, and enormous illicit financial weight to plot and determine the success of a power seeker at any level of a supposedly competitive politics. The

⁴² Tom Bingham, *The Rule of Law* (Penguin) 2011; Brian Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge University Press) 2004.

⁴³ Ebiem, O., ‘*Nigeria, Biafra and Boko Haram: Ending the Genocides Through Multi-State Solution*’, Page Publishing Inc., NY, 2014.

⁴⁴ Albert, I., ‘Explaining Godfatherism in Nigerian Politics’, *African Sociological Review*, Vol 9, (No 2), 2005 pp 79-105.

⁴⁵ Ishaku, BL, Jatau, VS, and Badung, JN., ‘Godfatherism in the Politics of Nigeria: An Expose’, *African Journal of Arts and Humanities*, Vol 3, No2, 2014.

desire of political godfathers is to hold political and socio-economic powers both at the center cum the component units as mechanisms to politically influence the activities of political office holders, that is, the Governors and some Legislators in terms of appointing people into various positions, such as Ministers/Commissioners, Chairmen of the boards, Secretaries to the various Institutions, DPM and Treasurers of Local Governments as well as allocation of some developmental projects into various localities within the state or center as well⁴⁶.

Thus, in Nigeria an individual who is not in any way captured in the structure of power via the constitution could assume near omnipotence and wield enormous political powers to arrogate both elective and appointive offices to pleasure, at the detriment of diligence and due process in the democratic life of the people. The effects of godfathers in Nigeria can be seen from the cases of Chris Uba and Governor Ngige; Dr. Olusola Saraki and Governor Muhammed Lawal, and; Baba Lamidi Adedibu and Governor Rashid Ladoja. Enhanced disrespect of the rule of law is best illustrated in an episode in Anambra state in 2003 when, a self-confessed godfather, Uba employed thugs and Nigerian police to abduct his godson, Chris Ngige, who was the elected governor of Anambra State. Ngige's offence was his refusal to allow Uba to nominate all political appointees, take the largest share of state's allocation, and instantly pay him a sum of N2.5 billion; the claimed cost of installing Ngige as governor⁴⁷.

The rule of law thrives in an environment of little or no corruption and peace and security. In Nigeria, the effect of illicit money through corruption and insecurity can be seen most clearly via the widening gap between the poor masses and the political class and their business cronies, ethno-religious tension and crisis, militancy, kidnapping, cattle-rustling and secession threats

⁴⁶ Op.cit see note 44.

⁴⁷ Human Rights Watch: Criminal Politics: Violence, 'Godfathers' and Corruption in Nigeria: Case Study B: Anambra State. Available at: <https://www.hrw.org/reports/2007/nigeria1007/8.htm>. Accessed 01 June 2017.

In addition, the looting of billions of dollars in the nation's foreign reserves and the Excess Crude Accounts contributed to the economic recession that hit the economy hard⁴⁸.

The international system of illicit finance has another serious consequence—its contribution to the shift of taxes away from large businesses, which can evade them, and onto everyday workers. This assures rising incomes for the wealthy and visibly stagnating incomes for the middle class, contributing to the dramatic increase in income disparity in rich and poor nations alike. Political analysts have largely ignored how a capitalist system increasingly operating outside the rule of law affects the ability to spread the rule of law.

However, the most damaging effects of illicit flows related to corruption cannot be captured solely in numerical or financial terms. Corruption related to illicit money can cause political and social damage undermining state institutions such as banks, financial intelligence centers, the police, and the judicial system, thereby creating further impediments to investigate these flows. On the governance front, the proceeds of drug trafficking and other forms of illicit trafficking are fuelling a dramatic increase in corruption among the very institutions responsible for fighting crime.

Hence, the very institutions of accountability become corrupt, maintaining the power of corrupt political and economic elites. This type of behavior means that despite a growing Nigerian economy overall, the poor remain poor and inequality increases, given that the state is unable to spend on public resources, such as education and healthcare, and unable to achieve broad based growth. At a time when many are heralding the rise of some of the world's fastest-growing economies in sub-Saharan Africa, these criminal entrepreneurs are undermining that

⁴⁸ Natural Resource Governance Institute, 'Country strategy Note-Nigeria August 2016', Available at: <https://resourcegovernance.org/sites/default/files/documents/country-strategy-note-nigeria.pdf>. Accessed 02 June 2017.

economic development and growth by financing flourishing illicit markets, turning many vulnerable communities into a corridor of insecurity and instability, and siphoning the real potential of the legitimate economy⁴⁹. Corruption is a crosscutting issue that drives and fuels illicit money at every stage. This corruption includes payments made and job opportunities offered to customs officers, judges, police and other civil servants. Corruption also extends to the use of political influence to stop officials from doing their jobs, such as forbidding the vetting of mineral exports, or searching planes or cutting of political deals to frustrate prosecution of crimes relating to illicit money⁵⁰.

When international corporations are not willing to invest in these countries, the countries are less able to compete in the global market and become overwhelmed by “deviant globalization”⁵¹. Then the illicit economy begins to take over. This process can lead to the collapse of the government, for example, when tax revenue declines because the government cannot tax illicit trade. Furthermore, many countries have endemic corruption throughout their bureaucracies that diverts funds from one sector to another to benefit some at the cost of the others⁵². The corruption is not only within the bureaucracy; it disrupts legitimate business and creates an environment where illicit business becomes normal and accepted. This challenge can become a vicious cycle by destroying the justice system as well as the possibility of foreign investment due to the high entry costs and unreliable system and laws concerning the prohibition of participating in corrupt business practices⁵³. This is because, the failure to recognise and appropriately punish those who facilitate illicit outflows will remain a stumbling block until stronger steps are enforced – including criminal prosecutions. Effectively stopping illicit financial flows that continue to thrive on the continent will greatly reduce corruption and

⁴⁹ Op.cit, see note 21.

⁵⁰ Institute of Security Studies, ‘How Corruption Drives Illicit Financial Flows’. Available at: <https://issafrica.org/amp/iss-today/how-corruption-drives-illicit-financial-flows>. Accessed 03 June 2017.

⁵¹ Op.cit, see note 35.

⁵² United Kingdom Government Policy Paper, ‘Against Corruption: A Collection of Essays’. Available at: <https://www.gov.uk/government/publications/against-corruption-a-collection-of-essays/against-corruption-a-collection-of-essays>. Accessed 05 June 2017.

⁵³ Ibid.

insecurity which will in turn certainly increase the developmental prospects for African states⁵⁴.

In its bid to counter corruption, Nigeria on an international level, has ratified and signed the United Nations Convention Against Corruption⁵⁵ and is a signatory to both the African Union Convention on Preventing and Combating Corruption⁵⁶ and the Economic Community of West African States Protocol on the fight against Corruption⁵⁷. However, without significant anti-corruption measures on national, continental and international levels, Nigeria will continually expose itself to the risks of corruption and illicit money. Establishing Financial Intelligence Centres and anti-corruption bodies, and making them effective, are integral to limiting these corrupt outflows. The use of civil asset recovery procedures is also gaining traction in the international community, and Nigeria should develop these initiatives across the country.

V) CONCLUSION

Illicit money remains the lifeblood of the numerous bad actors and networks, creating vulnerabilities for nations. A crackdown on illicit money will cut off the financial capacity of kleptocrats and criminals, to execute their operations and enjoy the fruits of illicit enterprise, as well as, prevent violent extremists from exploiting their grievances to wage jihad. Illicit money in Nigeria can be tackled effectively if Nigerian authorities: Executive, Judiciary and Legislature work together and jointly to synchronize their full spectrum capabilities and capacities by staying connected in order to continue to harness their network of networks at every level – Federal, State, and Local government so as to adhere to rule of law in all aspect of administrative activities in the country so that they can be able to win the fight against convergence crime. Effectively tackling the flow of illicit money through the application of rule of law will stop corruption and insecurity.

⁵⁴ Khalil Goga, 'Addressing corruption may act as a significant step to limit illicit financial flows from Africa'. Available at: <https://issafrica.org/iss-today/how-corruption-drives-illicit-financial-flows>.

⁵⁵ Entry into force: 14 December 2005; Ratified by Nigeria on 14 December 2004.

⁵⁶ Entry into force: 05 August 2006; Yet to be ratified by Nigeria.

⁵⁷ Entry into force: 14 December 2005; Yet to be ratified by Nigeria.