



UNODC

United Nations Office on Drugs and Crime

Country Review Report of the Federal Republic of Nigeria

Review by Lesotho and Montenegro of the implementation by Nigeria of articles 15 – 42 of Chapter III. “Criminalization and law enforcement” and articles 44 – 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2010 - 2015

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption (hereinafter referred to as UNCAC or the Convention) was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by the Federal Republic of Nigeria (hereinafter referred to as Nigeria) of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Nigeria, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Lesotho, Montenegro and Nigeria, by means of telephone conferences and e-mail exchanges and involving Mr. Emmanuel Akomaye and Ms. Lilian Ekeanyanwu from Nigeria, Mr. Sefako Seema and Mr. Litelu Joseph Ramokhorro from Lesotho and Ms. Nina Krgovic, Ms. Mirela Bakalbasic, Ms. Ana Boskovic, Ms. Milica Andjelic, Mr. Dusan Drakic, Ms. Vesna Ratkovic and Mrs. Sonja Boskovic from Montenegro. The staff members of the Secretariat were Ms. Tanja Santucci and Mr. Samuel de Jaegere.
6. A country visit, agreed to by Nigeria, was conducted in Abuja from 7 to 9 April 2014. During the on-site visit, meetings were held with the Attorney-General of the Federation; the Solicitor-General of the Federation and Permanent Secretary of the Federal Ministry of Justice; the Chairman and members of the Independent Corrupt Practices Commission (ICPC); the Chairman and members of the Economic and Financial Crimes Commission (EFCC); the Chairman and members of the Code of Conduct Bureau; the office of the Director of Public Prosecution; the Federal Ministry of Justice; the Nigerian police force; the Nigerian Financial Intelligence Unit (NFIU), the Special Control Unit Against Money Laundering (SCUML), the Central Authority in the Federal Ministry of Justice, as well as a judge, civil lawyers and a representative from civil society.

III. Executive summary

1. Introduction

1.1 Overview of the legal and institutional framework of Nigeria in the context of UNCAC implementation

7. *Nigeria signed the Convention on 9 December 2003 and ratified it on 24 October 2004. Nigeria deposited its instrument of ratification with the Secretary-General of the United Nations on 14 December 2004.*
8. *According to Section 12(3) of the Constitution, Acts of the National Assembly passed in the implementation of treaties rank equally with other Acts and form an integral part of domestic law. The Convention is yet to be domesticated in Nigeria.*
9. *The implementing legislation includes the Corrupt Practices and Other Related Offences (ICPC) Act 2000, Economic and Financial Crimes Commission (Establishment) (EFCC) Act 2004, Money Laundering (Prohibition) Act 2011 (as amended) (MLPA), Code of Conduct Bureau and Tribunal Act 1991 (CCBTA), Criminal Code and Criminal Procedure Law (CPL) (applicable in Southern Nigeria), Penal Code and Criminal Procedure Code (applicable in Northern Nigeria), Evidence Act 2011, Extradition Act 1990 and Mutual Assistance in Criminal Matters within the Commonwealth (Enactment and Enforcement) Act 1998 (MLA Act).*
10. *At both the Federal and State levels, there are three distinct arms of government – the Executive, the Legislature and the Judiciary. The Supreme Court is the highest court of the land and directly below it is the Court of Appeal followed by the Federal and State High Courts. These are followed by Magistrate Courts, the Sharia and Customary Courts.*
11. *Nigeria is party to the African Union Convention for Preventing and Combatting Corruption and the ECOWAS Protocol against Corruption, as well as the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA).*
12. *Dedicated authorities to fight corruption include the ICPC, EFCC, Code of Conduct Bureau (CCB) and police, as well as the Director of Public Prosecution (DPP), the Attorney-General, the Financial Intelligence Unit (NFIU), the courts and other specialized law enforcement agencies.*
13. *The adoption of a national strategy against corruption is pending, and the reviewers welcome its adoption to further anti-corruption measures.*

2. Chapter III: Criminalization and Law Enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

14. *Nigeria has criminalized active and passive bribery principally in Sections 8 to 10 of the ICPC Act and in the Criminal Code. Section 9, ICPC Act covers active bribery of public officers and any other persons, whilst Sections 8 and 10 cover passive bribery by any*

persons; third party beneficiaries, including legal persons, are covered (Section 2). Section 53 creates a presumption of guilty mind.

15. The definition of public officer in the ICPC Act includes persons employed or engaged in any capacity in the public service of the Federation, State or Local Government, public corporations, private companies floated by any government or agency, as well as judicial officers, appointed or elected officials and members of parliament. Judges and magistrates are considered public officers under both the ICPC Act and Criminal Code.
16. Sections 8 to 10, 17(1) and 404(1) of the Criminal Code could partially be applied to cover bribery involving foreign public officials and other persons, with some limitations. One case was cited which resulted in acquittal on the grounds of diplomatic immunity.
17. Nigeria has not comprehensively criminalized trading in influence but adopted relevant measures in Sections 17, 19, 21 and 22, ICPC Act.
18. Nigeria has partially criminalized bribery in the private sector through the application of Sections 8 and to some extent 9 and 17, ICPC Act. There have been no prosecutions of private sector bribery.
19. Statistics on prosecutions and investigations, including forfeited or confiscated assets, are not centrally coordinated. There is lack of comprehensive statistics and disaggregated data on corruption-related and money laundering investigations, prosecutions and convictions due to a lack of effective coordination mechanisms. It is therefore difficult to determine how many corruption and money laundering cases have been investigated and prosecuted.

Money-laundering, concealment (arts. 23 and 24)

20. Nigeria has criminalized money laundering under Sections 17 and 18, EFCC Act, Sections 15 and 16, MLPA Act, and Section 24, ICPC Act in a manner largely consistent with the Convention. Measures are also found in the Advance Fee Fraud and Other Fraud Related Offences Act 2006. Money laundering applies to both natural and legal persons, and proof of knowledge can be derived from objective factual circumstances. Nigeria has adopted an all-crimes approach to predicate offences that covers money laundering by any person or body corporate within or outside Nigeria (Section 15, MLPA). There are no obstacles to pursuing self-laundering. 17 money laundering convictions were reported from 2010 to 2013. Money laundering linked to corruption and involving public officials underlies most reported cases. Concealment is addressed in Section 17, MLPA Act and Section 24, ICPC Act.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

21. Provisions on embezzlement and misappropriation of public funds covering theft, dishonest misappropriation and criminal breach of trust are found mainly in the Criminal Code and Penal Code.
22. The abuse of functions is addressed mainly in Section 19, ICPC Act and in Sections 104 and 404, Criminal Code, although not all third party interests are covered. 353 cases of abuse of office were investigated by CCB from 2007 to 2013.

23. *Section 44(2) ICPC Act establishes a rebuttable presumption of illicit enrichment under powers to obtain information by the ICPC Chairman. The failure to declare assets is also an offence under CCBTA. 89 cases of illicit enrichment and breach of code of conduct were investigated by CCB from 2007 to 2013, some of which resulted in prosecutions.*
24. *Measures in the Criminal Code (Section 390 and Chapter 40) address theft and frauds by trustees and officers of companies and corporations, which cover the majority of cases of embezzlement in the private sector.*

Obstruction of justice (art. 25)

25. *Sections 126 and 133, Criminal Code cover wrongful interference with or influencing witnesses in judicial proceedings. Various provisions address the obstruction of official duties by justice or law enforcement officials, notably in the Criminal Code, MLPA, ICPC Act and EFCC Act. There continue to be physical attacks, threats and intimidation of investigators, prosecutors, heads of agencies and judges, as well as reported acts of bribery.*

Liability of legal persons (art. 26)

26. *Nigeria has established the criminal liability of legal persons (e.g., MLPA, ICPC Act, Criminal Code, Interpretation Act) and relevant cases were cited, including cases where both natural and legal persons were charged. Sentences have included the winding up of corporate entities (Section 19(2) MLPA) and forfeiture of assets. General penalties under the ICPC Act (Section 68), namely fines up to ten thousand naira or imprisonment up to two years or both, are considered to be low. A legislative amendment to enhance penalties against legal persons had previously been introduced but failed.*

Participation and attempt (art. 27)

27. *All relevant forms of participation are covered in the Criminal Code, ICPC Act and EFCC Act, although no case examples were cited.*
28. *Criminal attempts are punishable under Section 26, ICPC Act, Section 18(b), MLPA and Section 4, Criminal Code. Preparatory acts in furtherance of offences under the ICPC Act are covered (Section 26(1)(b)).*

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

29. *Nigeria has adopted penalties that generally take into account the gravity of offences. Some offences carry the possibility of a fine instead of, or in addition to, imprisonment (e.g., Section 16, EFCC Act and Section 17, MLPA, both on retention of criminal proceeds). Some obstruction of justice-related measures under the ICPC Act are punishable by one year's imprisonment or less. While fixed-term sentences for offences generally exist under the ICPC Act, some offences under the EFCC Act do not carry minimum sentences. The Nigerian courts have discretion to impose penalties within the prescribed maximum and minimum limits, and there are no sentencing guidelines. Within the legislative framework, the courts lay down sentencing principles by case law,*

considering the circumstances and gravity of the offence, its prevalence, the offender and his conduct, and the interests of society and victims.

- 30. Section 308, Constitution provides near absolute immunity for certain categories of public officials, which effectively prevents their prosecution, arrest and imprisonment while in office, notably the President, Vice President, state Governors and Deputy Governors. Section 52, ICPC Act provides for the appointment of independent counsel to conduct investigations of corruption in respect of those categories of public officers, although the provision is rarely applied. Public officials covered by immunity can be investigated while in office (Gani Fawehinmi v. IGP). However the consent of the Attorney-General is required to institute proceedings for official corruption against judicial officers (Section 98C, Criminal Code). Functional immunities of ICPC, EFCC and police officers are provided for in their respective laws. The legal framework has presented impediments in the case of sitting governors due to the need for impeachment or removal from office.*
- 31. Sections 174 and 211 (for states' Attorneys General) of the Constitution give the Attorney-General powers to prosecute, take over or discontinue criminal proceedings and enjoin him to exercise this discretion judiciously, with due regard to the public interest, the interest of justice and the need to prevent abuse of legal process (State v. Ilori). He is not subject to control in the exercise of his Constitutional powers, except for the possibility of removal and public opinion. ICPC and EFCC prosecute cases without reference to the Attorney-General under their establishment statutes. Plea bargains are negotiated directly by the agencies subject to varying levels of judicial scrutiny. Section 14(2), EFCC Act allows the EFCC to settle charges without entering a conviction based on the payment of compensation by a defendant, considering factors like restitution of assets, the level of participation in the crime, public interest, magnitude of the offence and cooperation. The Bill on the Administration of Justice would provide greater oversight of plea bargains and out-of-court settlements.*
- 32. Nigeria has established conditions on release pending trial designed to ensure the presence of defendants (Sections 118-143, CPL; Bamaiyi v State).*
- 33. Parole is not part of the Nigerian criminal jurisprudence. However, the Constitution establishes a prerogative of mercy by the President (Section 175(1)(a)).*
- 34. Interdiction, suspension, reassignment and removal of accused public officers is possible in 'serious cases', including bribery, corruption, embezzlement and misappropriation, under the Public Service Rules. Relevant cases were cited.*
- 35. The Constitution provides for the disqualification of convicted persons and those found to have contravened the Code of Conduct from the offices of President, Vice President, Governors and the National Assembly. Contraventions of CCBTA provide for disqualification from holding public office for up to ten years.*
- 36. Nigerian Prison Service Standing Orders provide a general rehabilitation policy (Section 103). The reintegration of prisoners is more comprehensively addressed in the Administration of Criminal Justice Bill.*

37. *Limited provisions protect informants and information. Prosecutorial discretion can be exercised to take into account the cooperation of accused persons, including through plea bargaining, and cooperation could serve as a mitigating factor at sentencing.*

Protection of witnesses and reporting persons (arts. 32 and 33)

38. *Nigeria has not adopted measures for the protection of witnesses, experts and victims, including their physical protection and related evidentiary rules, or relocation agreements with other States. A Witness Protection Bill, 2012 is pending before the National Assembly that would address these matters.*

39. *Nigeria has not established whistleblower protection measures, although some relevant provisions are contained in the Witness Protection Bill.*

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

40. *Nigerian law provides for the confiscation of properties which represent proceeds and instrumentalities of illegal acts and property of corresponding value. A conviction is not required under the ICPC Act (Sections 47 and 48). The law also extends to assets or properties held in foreign countries, acquired through criminal activity. Instrumentalities intended for use in offences are covered under the EFCC Act (Section 25), but not the ICPC Act. Provisions exist for the identification, tracing, freezing and seizure of criminal proceeds and instrumentalities (Sections 36-41, 44, 46 and 49-50, ICPC Act and Sections 6(d), 26 and 34, EFCC Act). Nigeria has adopted measures providing that an offender demonstrate the lawful origin of alleged proceeds.*

41. *The ICPC Act gives broad discretion to an ICPC officer to place seized property under the custody of “such person or authority and at such place” as he may determine, whilst the EFCC Act deals with the disposal but not management of seized property. The pending Proceeds of Crime Bill would more comprehensively regulate the administration of assets. While the Nigerian legislation on forfeiture takes into account third party interests, it does not set out modalities relating to freezing having regard to the rights of third persons who may have grievances. Case examples and statistics on confiscated assets were provided.*

42. *The ICPC and EFCC obtain bank and financial records by issuing orders pursuant to their enabling laws. There appear to be no legal limitations related to bank secrecy.*

Statute of limitations; criminal record (arts. 29 and 41)

43. *Criminal and corruption-related cases are not statute barred in Nigeria.*

44. *Evidence of previous foreign convictions is admissible (Sections 248 and 249, Evidence Act).*

Jurisdiction (art. 42)

45. *Jurisdiction is based on the territoriality principle, as regulated in Section 12(2) of the Criminal Code, Sections 66(1) and 61(3), ICPC Act; Section 19, EFCC Act; Sections 15(2) and 20, MLPA, and under general principles of common law.*

46. *The ICPC Act applies in relation to citizens of Nigeria and permanent residents, has effect outside and within Nigeria, and when an offence is committed outside Nigeria by any citizen or permanent resident (Section 66).*

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

47. *The cancellation or rescission of contracts based on corruption is possible under common law principles.*

48. *Nigeria has not established measures to address the compensation of persons or entities who have suffered damages, although related provisions are contained in the Administration of Criminal Justice Bill.*

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

49. *Section 3, ICPC Act provides for the independence of the ICPC and security of tenure to the Chairman and its members (e.g., Section 3(10) and (14)). Appointment of the Chairman and members is by the President, upon confirmation by the Senate (Section 3(6)), and removal for misconduct or inability to discharge the functions of office is by the President supported by two-thirds majority of the Senate (Section 3(8)). The ICPC is accountable to the Executive and Legislature in fiscal matters but independent in the discharge of its duties.*

50. *Section 153 of the Constitution establishes the CCB, which is vested with law enforcement powers that are exercised through the Code of Conduct Tribunal, a special court established to enforce the CCBTA. The Chairman and commissioners of CCB enjoy security of tenure under Section 157(2) of the Constitution.*

51. *The enabling laws of other anti-corruption agencies, i.e. EFCC and Bureau of Public Procurement, do not provide for such independence and security of tenure. There have been proposals to amend the EFCC Act to ensure a more secured tenure for the Chairman.*

52. *The legal provisions relating to the NFIU, an administrative FIU in the EFCC, are contained in Section 1 (2) of the EFCC Act and EFCC Board Resolution of 2 June, 2004. Independence is not fully established.*

53. *The ICPC, EFCC, CCB and other anti-corruption agencies get regular budgetary appropriations from the National Assembly that allow them to provide specialized training for staff.*

54. *The police have the traditional role of investigating all forms of crimes, including corruption and money laundering, under the Police Act. While in practice the investigation of these offences is left to specialized agencies like ICPC and EFCC, no law prevents the police from investigating corruption and economic crimes, and Section 69, ICPC Act specifically makes provision therefor.*

55. *The EFCC is the central coordinating agency to investigate money laundering. However, the Nigerian Police Force and National Drug Law Enforcement Agency have powers to*

investigate money laundering to a lesser extent. Nigeria has established a Special Control Unit Against Money Laundering (SCUML) charged with supervising designated non-financial institutions under MLPA.

- 56. The above institutional framework creates a very real risk of overlap and duplication of efforts in the absence of coordinated cooperation mechanisms.*
- 57. Human and material resources across the enforcement agencies and training opportunities need to be enhanced in particular for large and complex cases.*
- 58. Nigeria has taken measures to strengthen inter-agency coordination, including the establishment of the Inter-Agency Task Team (IATT) and through Heads of agencies' meetings, inter-agency training and operational synergies.*
- 59. Public officials and members of the public are required to report corruption-related incidents to ICPC and the police. Limited provisions in relation to the EFCC also exist.*
- 60. Cooperation with the private sector is mainly through oversight and sensitization by the NFIU, EFCC, SCUML and other regulating agencies. Audits and corruption risk assessments in targeted sectors have been conducted.*

2.2. Successes and good practices

- 61. The absence of a prescription period for corruption cases.*
- 62. The introduction of a practice direction for judges in February 2014 by the Chief Judge of the High Court of Abuja designed to establish a system of case management that would contribute to eliminating delays in the adjudication of corruption cases.*

2.3. Challenges in implementation

- Nigeria is encouraged to take measures to enhance its data collection systems and to coordinate the aggregation and availability of data across institutions.*
- Adopt a clear provision addressing the bribery of foreign public officials and officials of public international organizations, and consider establishing the passive version of the offence.*
- Consider comprehensively criminalizing trading in influence.*
- Consider adopting a provision on abuse of functions in the Penal Code, and ensure coverage of all third-party benefits.*
- Consider comprehensively criminalizing bribery between private sector actors.*
- Take measures to strengthen the implementation of obstruction of justice provisions.*
- Ensure that legal persons are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions.*

- *Review the scope of persons covered by criminal immunities to ensure an appropriate balance between such immunities and the possibility of effectively investigating and prosecuting such persons.*
- *Take measures to strengthen procedures for lifting immunities, in appropriate cases (including addressing the requirement for consent of the Attorney-General to prosecute judicial officers under the Criminal Code), to ensure that such persons are held to account for corruption-related offences.*
- *Given the extensive powers of the Attorney-General over criminal prosecutions, ensure that those powers are exercised in accordance with the spirit of para. 3 of article 30.*
- *Ensure adequate transparency, predictability and proportionality in entering into plea bargains and out-of-court settlements, especially at the agency level, in accordance with existing guidelines. The Bill on the Administration of Criminal Justice would provide greater oversight of plea bargains.*
- *Nigeria is encouraged to continue efforts to address the rehabilitation of prisoners.*
- *Take measures to ensure that instrumentalities destined for use in the commission of offences under the ICPC Act are equally liable to criminal confiscation, tracing, freezing and seizure.*
- *Strengthen the administration of frozen, seized or confiscated property, including considering the establishment of a centralized office or department to manage such assets. The reviewers encourage the swift adoption of the Proceeds of Crime Bill.*
- *Clarify modalities relating to freezing (as opposed to forfeiture) of assets, having regard to the rights and interests of third persons.*
- *Establish, as a matter of priority, necessary measures for the protection of witnesses, experts and victims (as well as law enforcement officials), including their physical protection and related evidentiary rules, in line with art. 32, and consider entering into relocation agreements with other States. The reviewers welcome the swift adoption of the Witness Protection Bill, 2012.*
- *Consider establishing relevant protections for reporting persons in line with art. 33, including by clarifying protections in the pending legislation, and dedicate necessary resources for implementation.*
- *Strengthen measures to address consequences of corruption, including through amendment of the enabling laws of key anti-corruption agencies and incorporating anti-corruption clauses in contractual and concession documents.*
- *Take measures to address the compensation of persons or entities who have suffered damages.*

- *Strengthen available resources, within existing means, for specialized anti-corruption institutions to carry out their functions effectively in line with art. 36, including human and material resources and the development of specialized skills. The reviewers welcome a comprehensive needs assessment of all anti-corruption agencies.*
- *Strengthen independence of EFCC, by amending the EFCC Act to ensure a more secured tenure for the Chairman.*
- *Strengthen independence of the FIU and its operations, including regular collection and availability of statistics regarding STRs or CTRs collected and analyzed, and cases referred for further investigation or prosecution.*
- *More specifically regulate the cooperation and immunity of participating offenders, including the possibility of mitigated punishment, within existing sentencing principles, in line with art. 37.*
- *Continue to enhance inter-institutional cooperation at all levels and to strengthen coordinated cooperation mechanisms to mitigate overlap and duplication of efforts.*
- *Nigeria is encouraged to continue its cooperation with the private sector, including awareness raising and strengthening corruption prevention.*
- *Consider adopting measures to more clearly address the jurisdictional provisions of art. 42(2) and 42(4).*

2.4. Technical assistance needs identified to improve implementation of the Convention

63. *Nigeria indicated that it would require a range of technical assistance. On criminalization and law enforcement, such assistance predominantly includes summaries of good practices, legal advice, on-site assistance and the development of implementation action plans.*
64. *The reviewers took note of a request by Nigeria to undertake a technical assistance needs assessment of all anti-corruption institutions, building on the review recommendations, and encourage integration with ongoing efforts by national authorities and development partners to identify priority areas for technical cooperation in the implementation of the chapters under review.*

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition (art. 44)

65. *The Central Authority Unit for international cooperation (both extradition and mutual legal assistance) in Nigeria is the Attorney-General and Minister of Justice.*

66. Extradition is governed by the Extradition Act, which applies to all Commonwealth countries. In all other cases, extradition is subject to the existence of treaties. Nigeria is party to three bilateral extradition treaties (UK, USA, South Africa) and can apply multilateral treaties like UNCAC and the ECOWAS Convention on Extradition, even if these have not been fully incorporated in the domestic legislation. Nigeria also subscribes to the Commonwealth (London) Scheme on Extradition. Nigeria is currently negotiating treaties with three countries with which no extradition arrangements are in place. Requests on the basis of multilateral treaties, including the Convention, were under consideration at the time of review.
67. Extradition is subject to dual criminality and is limited to the extent that not all offences under the Convention have been criminalized.
68. The minimum imprisonment term of two years for an offence to be extraditable covers most but not all UNCAC offences and is subject to the terms of existing treaties. These establish a one-year threshold or take a list approach, and thus exclude certain offences under the Convention.
69. Nigeria could consider the Convention as the legal basis for extradition, although there has been no experience in its application.
70. From 1 January 2012 to 17 June 2013, 19 requests for extradition were received (of which 6 related to corruption and money laundering) and 7 of the requests have been concluded. Only one request has reportedly been refused by Nigeria to date, which did not relate to corruption. It was explained that extradition cases generally take six months to one year to complete.
71. Political offences are exempted from extradition under the Extradition Act (Section 3) and treaties with the USA and South Africa. The nationality of the requested person is a permissive ground for refusal unless an extradition agreement provides otherwise (Section 6(c), Extradition Act). The *aut dedere aut judicare* obligation is not addressed. Nigeria has previously refused the extradition of a national.
72. The issues of fair treatment or discriminatory purpose have not been invoked to date.
73. A duty to consult with requesting States before refusing extradition is not specified in the Extradition Act or Nigeria's Guidelines on Extradition (1 October 2003).

Transfer of sentenced persons; transfer of criminal proceedings (arts. 45, 47)

74. Nigeria reported that it has concluded one agreement on the transfer of prisoners (9 January 2014). Two case examples of prisoner transfer were referred to.
75. There is no law or practice on the transfer of criminal proceedings.

Mutual legal assistance (art. 46)

76. Nigeria does not have comprehensive legislation on international cooperation. The MLA Act provides the legal basis for mutual legal assistance (MLA) with Commonwealth States. For non-Commonwealth States and States outside the ECOWAS region (to which

the ECOWAS Protocol on MLA is applicable, which Nigeria is party to), there is a treaty requirement. In addition, Nigeria grants MLA requests on the basis of reciprocity, even in circumstances where there are no treaties, although most requests originate from treaty countries. Nigeria has adopted three bilateral MLA treaties (UK, USA, South Africa) and subscribes to the Commonwealth (Harare) Scheme on MLA. A Mutual Legal Assistance Bill, 2013 is being developed.

- 77. MLA is subject to dual criminality, including non-coercive measures (except under conditions of reciprocity), and is limited to the extent that not all offences established under the Convention have been criminalized. Dual criminality may be dispensed with on grounds of reciprocity, in the discretion of the Attorney-General, although no case examples were provided.*
- 78. Nigeria has received 30 MLA requests from 1 January to December 2012, of which 12 related to corruption and money laundering. No data was available for 2013. 4 of the requests received since 2012 were concluded as at 30 May 2013. Nigeria has reportedly not formally refused any MLA requests to date, and has executed requests on the basis of multilateral treaties.*
- 79. Nigeria recognizes grounds for refusal in line with the Convention.*
- 80. According to Nigeria's MLA Guidelines (1 October 2003), direct communication between central authorities is possible without recourse to diplomatic channels. The Central Authority Unit analyzes and transmits requests to competent Nigerian authorities for execution. Procedures exist for information to be authenticated and returned.*
- 81. No specific timeframes are specified in the MLA Guidelines, nor is there any specified procedure for periodic follow up.*
- 82. Nigeria relies on its cooperation through INTERPOL and FIU channels (see below) for administrative assistance. Confidentiality provisions are in place and are adhered to except as provided under domestic law. Bank secrecy is not a ground for refusal and banking records have been provided on request. A limitation on use of information received through MLA is provided for.*

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49, 50)
- 83. Nigerian law enforcement authorities cooperate through regional and international networks and in specific matters on a case-by-case basis. The exchange of case-related information is done under general powers to detect and investigate corruption, economic and financial crimes, provided such exchange is not prohibited by law and does not violate the right of the defendant.*
- 84. Nigeria has signed agreements and MOUs with other law enforcement organizations, including through the NFIU, although this is not a prerequisite for law enforcement cooperation. Cooperation is done by sharing of intelligence through formal and informal channels using the principle of reciprocity in the absence of a treaty. Nigeria can consider UNCAC as the basis for law enforcement cooperation, and a case example was provided.*

85. *Nigeria has cooperated with foreign competent authorities in investigations and prosecutions of corruption cases, including through INTERPOL and the Egmont Group. Nigeria is a member of GIABA.*

86. *The exchange of personnel is done on the basis of MOUs or direct bilateral arrangements. Joint training programmes are held with INTERPOL and other international organizations.*

87. *Nigeria participates in joint investigations and conducts special investigative techniques on a case by case basis based on existing agreements and reciprocity. Examples were provided.*

3.2. Successes and good practices

88. *Nigeria has not refused any MLA requests, including in corruption-related matters.*

- *The establishment and operation of the EFCC training academy as a center of learning for other agencies in the West Africa region.*

3.3. Challenges in implementation

89. *The following steps could further strengthen existing anti-corruption measures:*

- *Closely monitor the legal framework for extradition and MLA, in particular the number and application of treaties, to ensure there continues to be an adequate legal basis for extradition and MLA, also with countries outside the Commonwealth. The reviewers welcome the swift adoption of the MLA Bill.*
- *Review the Extradition Act and treaties to ensure all offences under the Convention are extraditable, including by reason their period of imprisonment.*
- *Provide the notification under paragraph 6 of art. 44.*
- *Nigeria is encouraged to expedite extradition procedures and simplify evidentiary requirements in line with paragraph 9 of art. 44.*
- *Address the aut dedere aut judicare obligation.*
- *Provide that consultations be held before extradition is refused, and before MLA is postponed or refused.*
- *In the interest of greater legal certainty, specify that MLA may be granted in the absence of dual criminality on the grounds of reciprocity.*
- *Ensure that the element of non-coercive MLA is addressed.*
- *Notify the United Nations of its central authority and required language for MLA.*
- *Adopt measures in accordance with paragraph 17 of art. 46 to provide for greater legal certainty.*

- *Consider adopting measures to allow for the possibility of video conferencing or hearings in the presence of a foreign judicial authority.*
- *Monitor the application of confidentiality provisions to ensure that confidentiality continues to be assured as a matter of law and practice.*
- *Consider addressing the postponement of MLA on the ground of ongoing criminal matters.*
- *Consider more clearly specifying matters incidental to the temporary transfer of persons (art. 46(27)).*
- *A more detailed procedural manual could be advisable for the Central Authority, which would establish specific timeframes for executing MLA and a specified procedure for periodic follow up.*
- *Nigeria is encouraged to ensure that its Guidelines on MLA and Extradition are available online.*
- *Consider establishing measures on the transfer of criminal proceedings.*
- *Consider clarifying the legal basis for admissibility of evidence derived from special investigative techniques.*

3.4. Technical assistance needs identified to improve implementation of the Convention

90. *Nigeria indicated that it would require technical assistance, including good practice examples and capacity-building, on MLA, the transfer of prisoners and criminal proceedings, joint investigations, special investigative techniques and to enhance law enforcement cooperation.*

IV. Implementation of the Convention

A. Ratification of the Convention

91. Nigeria signed the Convention on 9 December 2003 (C.N.1423.2003.TREATIES-35), and it was ratified by the President of Nigeria on 24 October 2004. Nigeria deposited its instrument of ratification with the Secretary-General of the United Nations on 14 December 2004 (C.N.1259.2004.TREATIES-30). No depositary notifications were made.
92. The implementing legislation includes the Corrupt Practices and Other Related Offences (ICPC) Act 2000, Economic and Financial Crimes Commission (Establishment) (EFCC) Act 2004, Money Laundering (Prohibition) Act 2011 (as amended) (MLPA), Code of Conduct Bureau and Tribunal Act 1991 (CCBTA), Criminal Code and Criminal Procedure Law (CPL) (applicable in Southern Nigeria), Penal Code and Criminal

Procedure Code (applicable in Northern Nigeria), Evidence Act 2011, Extradition Act 1990 and Mutual Assistance in Criminal Matters within the Commonwealth (Enactment and Enforcement) Act 1998 (MLA Act).

93. With respect to the distinction between the Criminal Code, the Penal Code and the Criminal Procedure Law, Nigeria indicated that the Criminal Code is applicable to Southern Nigeria while the Penal Code is applicable to Northern Nigeria. The two statutes are substantially similar, though some discrepancies are noted under the articles below. The Criminal Procedure Act deals with general processes of justice administration. The Criminal Procedure Act (adopted in the States in Southern Nigeria as the Criminal Procedure Law) regulates procedure in criminal justice administration in the Southern States of Nigeria and the Federal High court, while the Criminal Procedure Code regulates procedure in criminal justice administration in the Northern States of Nigeria.

B. Legal system of Nigeria

94. Section 12(1) of the Constitution of the Federal Republic of Nigeria 1999 states that "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." Section 12(2) of the Constitution goes further to state that "The National Assembly may make laws for the federation or any part hereof with respect to matters not included in the exclusive Legislative List for the purpose of implementing a treaty."
95. Section 12(3) of the Constitution states that "A bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the President for assent and shall not be enacted unless it is ratified by a majority of all the Houses of Assembly in the Federation". Accordingly, Acts of the National Assembly, duly passed in implementation of a treaty, rank equally with other Acts of the National Assembly and form an integral part of Nigeria's domestic law.
96. The UNCAC is yet to be domesticated in Nigeria in accordance with the above provisions of the Constitution. However, several legislations complying with different provisions of the UNCAC have been enacted into law by both the National Assembly and State Houses of Assembly and implementation structures have been set up pursuant to such legislations.
97. Nigeria operates a Presidential system of government with the President as both the Head of State and Head of Government within the context of a multi-party system. The country operates a federalist system of government with thirty six federating units called States and a Federal Capital Territory. At both the Federal and State levels, there are three distinct arms of government – the Executive, the Legislature and the Judiciary. The executive arm of government at the federal level consists of the President, the Vice president and other members of the Executive Council of the Federation, while at the State level it is made up of the Governor, Deputy Governor and other members of the State Executive Council. The President, Vice President, the Governors and their deputies are elected for a four year term renewable only once. There is no limit to the number of times Federal and State Legislators can be re-elected. The Legislature is present both at the Federal and State levels. The Federal Legislature is bi-cameral and consists of the Senate and House of Representatives which make up the National Assembly. The State Legislatures have only one chamber. The Judiciary is the third arm of government and carries out its functions through various established courts. The Supreme Court is the

highest court of the land and directly below it is the Court of Appeal followed by the Federal and State High Courts. These are followed by Magistrate Courts after which you have the Sharia and Customary Courts.

98. The Constitution divides legislative functions into three – the Exclusive List reserved only for the National Assembly, the Concurrent list which both the National Assembly and State Legislatures can legislate on and the Residual list reserved only for State Houses of Assembly. Often issues related to Treaties and Conventions fall within the Concurrent list. In that situation, the National Assembly may only legislate on such issues with the ratification of a majority of the State Houses of Assembly.
99. Regarding previous assessments of the effectiveness of anti-corruption measures, Nigeria indicated that it has conducted a gap analysis of anti-corruption measures benchmarked against the UNCAC, the African Union Convention for Preventing and Combatting Corruption and the ECOWAS Protocol against Corruption. This study published in 2011 was conducted by the Technical Unit on Governance and Anti-Corruption Reforms-TUGAR and can be accessed at www.tugar.org.ng.
100. Nigeria is also a member of the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA). GIABA became an Associate Member of the Financial Action Task Force (FATF) in June 2010. For more information, please see UNCAC article 48 below.
101. Nigeria is a member of the Extractive Industry Transparency Initiative and in 2007 enacted the Nigeria Extractive Industry Transparency Initiative (NEITI) Act.

C. Implementation of selected articles

Chapter III. Criminalization and law enforcement

102. Regarding statistics on the investigation and prosecution of corruption and economic crime cases, Nigeria provided the following information. Nigeria indicated that disaggregated data by type of corruption offence (e.g., bribery, embezzlement) was not available and that the process of disaggregation was ongoing. It is noted that the statistics provided are not limited to UNCAC offences and include e.g. fraud and other economic crime cases (further detail is provided under UNCAC article 23 below).

Independent Corrupt Practices Commission (ICPC) <i>Data from Inception (May 2000) to May 2013</i> <i>Corruption and Other Related offences</i>	Economic and Financial Crimes Commission (EFCC) <i>Data from 2010 to 2013</i> <i>All Economic Offences</i>
Petitions: 9,817	Petitions: 24,278
Investigations: 3,675	Investigations: 9,737
Prosecutions: 339	Prosecutions: 1,658
Convictions: 51	Convictions: 338

103. Statistics on prosecution and investigation, including assets forfeited or confiscated are not centrally coordinated. The reviewers note that there is lack of comprehensive

statistics on corruption-related and money laundering investigations, prosecutions and convictions due to a lack of effective coordination mechanisms and the absence of disaggregated data by type of offence as well as the different time periods presented. It is therefore difficult to determine how many corruption and money laundering cases have been investigated and prosecuted. Overall, it was not possible for the reviewers to reach an assessment of whether the legislation is effectively implemented. Nigeria is encouraged to take measures to enhance its data collection systems and to coordinate the aggregation and availability of data across institutions.

104. As a general matter in respect of the implementation of the various provisions, it was explained during the country visit that the side notes in the Nigerian legislation (i.e., the headings of specific offences) are included in the legislation only for guidance and that judges and prosecutors consider the text of the legal provision when determining its scope and application.

Technical assistance needs of Nigeria

DATA RELATED ISSUES

105. DATA STORAGE AND MANAGEMENT. All the Nigerian anti-corruption agencies (ACAs) indicated the need for support on data related issues. These range from processes of collecting data, to data storage and retrieval. Closely linked to this is data storage infrastructure and capacity building for personnel to operate the infrastructure. All the ACAs have indicated interest in training and infrastructure to manage internal data needs.
106. DATA COORDINATION. The need has been identified to centrally coordinate the individually generated and stored data. Flowing from this, it is necessary to harmonize the templates of the individual agencies as a basis for coordinated analysis.

EVIDENCE-BASED ANALYSIS AND INTELLIGENCE GATHERING

107. Several ACAs indicated the need for capacity building to develop skills for intelligence gathering, verification and analysis, both for criminal investigation and preventive activities. The need for these specialized skills was also identified in a draft needs assessment report developed on conjunction with the UNODC country office.

ASSET TRACING, RECOVERY AND MANAGEMENT OF PROCEEDS OF CRIME

108. Nigeria is in the process of enacting Proceeds of Crime legislation. The ACAs have indicated interest in accessing international good practices both in terms of legislations and implementation structures in managing recovered assets.

SUPPORT IN THE ACQUISITION AND UPGRADE OF INFRASTRUCTURE:

109. This includes capacity building for personnel to man relevant equipment.

Article 15 Bribery of national public officials

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(a) Summary of information relevant to reviewing the implementation of the article

110. Nigeria cited the following measures.

Section 9 of the Corrupt Practices and Other Related Offences Act 2000 (hereinafter also referred to as the “ICPC Act”)

Corrupt offers to Public Officers.

(1) Any person who corruptly-

(a) gives, confers or procures any property or benefit of any kind to, on or for a public officer or to, on or for any other person; or

(b) promises or offers to give, confers, procure or attempt to procure any property or benefit of any kind to, on or for a public officer or any other person, on account of any such act, omission, favour or disfavour to be done or shown by the public officer is guilty of an offence of official corruption and shall on conviction be liable to imprisonment for seven (7) years.

(2) If in any proceedings for an offence under this section it is proved that any Property or benefit of any kind, or any promise thereof, was given to a public officer or some other person at the instance of a public officer, by a person-

(a) holding or seeking to obtain a contract, licence, permit, employment or anything whatsoever from a Government department, public body or other organisation or institution in which that public officer is serving as such, or

(b) concerned or likely to be concerned in any proceeding or business transacted, pending or likely to be transacted before or by that public officer or a government department, public body or other organisation or institution in which that public officer is serving as such, or

(c) acting on behalf of or relative to such a person, the property, benefit or promise shall, unless the contrary is proved, be deemed to have been given corruptly on account of such a past or future act, omission, favour or disfavour as is mentioned in section 9(1) and (2).

Section 98A (1) of the Criminal Code Act Cap 77 LFN

Official Corruption: Person Giving Bribes etc On Account of Actions of Public Official

Any person who:

a. Corruptly gives, confers or procures any property or benefit of kind to, on or for a public official (as defined in section 98D) or to, or for any other person;

b. Corruptly promises or offers to give or confer or to procure or attempt to procure any property or benefit of any kind to, on or for a public official or to, on or for any other person, on account of any such act, omission or favour or disfavour on the part of the public official as is mentioned in section 98 (1)(i) or (ii) is guilty of the felony of official corruption and is liable to imprisonment for 7 years.

111. The following definitions are also referred to.

Section 2 of the Corrupt Practices and Other Related Offences Act 2000

2. In this Act, unless the context otherwise requires- ...

"Public Officer" means a person employed or engaged in any capacity in the public service of the Federation, State or Local Government, public corporations or private company wholly or jointly floated by any government or its agency including the subsidiary of any such company whether located within or outside Nigeria and includes Judicial officers serving in Magistrate, Area or Customary courts or Tribunals;

Section 98D of the Criminal Code

In sections 98 to 98B, "public official" means any person employed in the public service (within the meaning of that expression as defined in section 1(1)) or any judicial officer within the meaning of section 98C.

Section 1(1) of the Criminal Code

"person employed in the public service" means any person holding any of the following offices, or performing the duties thereof, whether as deputy or otherwise-

- (1) any civil office, the power of appointing a person to which or removing a person from which is vested in the Civil Service Commission, or any Board; or
 - (2) any office to which a person is appointed by or under the Constitution of the Federal Republic of Nigeria as amended or any enactment; or
 - (3) any civil office, the power of appointing to which or of removing from which is vested in any person or persons holding an office of any kind included in either of the two last preceding subheads of this section; or
 - (4) any office of arbitrator or umpire in any proceeding or matter submitted to arbitration by order or with the sanction of any court, or in pursuance of any enactment; or
 - (5) a member of a commission of inquiry appointed under any Act or Law;
- and the said term further includes-
- (1) any justice of the peace;
 - (2) any person employed to execute any process of a court;
 - (3) all persons belonging to the military or police forces of Nigeria;
 - (4) all persons in the employ of any Government department;
 - (5) a person acting as a minister of religion of whatsoever denomination in so far as he performs functions in respect of the notification of intended marriage, or in respect of the solemnisation of marriage or in respect of the making and keeping of any register or certificate of marriage, birth, baptism, death or burial, but not in any other respect;
 - (6) a person employed by a head chief in connection with any powers or duties exercised or performed by such chief under any Act or Law or with the consent of the President or a Governor;
 - (7) a person in the employ of a local authority;
 - (8) a person in the employ of a Local Government Council in connection with any powers or duties exercised or performed by such Local Government Council and in respect of the duties for which the employment actually exists;

Penal Code, Section 118. Offering or giving gratification to public servant

118. Whoever offers or gives or agrees to give any gratification whatever whether pecuniary or otherwise in the circumstances and for any of the purposes mentioned in section 115 and 116 shall be punished with imprisonment which may extend to three years or with fine or with both.

112. Nigeria provided the following case example.

FRN V Shugaba Umar Gana, Charge No. M/27C/2007.

(b) Observations on the implementation of the article

113. Section 9 of the Corrupt Practices and Related Offences Act refers to "property or benefit of any kind". There is no reference to the advantage being "undue" or illegitimate, although the required mental element is that the advantage must be given "corruptly".

114. Nigeria further referred to **Section 60 of the Corrupt Practices and Other Related Offences Act, 2000**, which prohibits a public officer from receiving any benefit, like a gift, in the discharge of his official duty and precludes the defence of a gift. The said section provides thus:

“In any proceedings under this Act, evidence shall not be admissible to show that any such gratification mentioned in this Act is customary in any profession, trade, vocation or calling or on social occasion”

In addition, Section 53 of the same Act creates a presumption of guilty mind. The section provides that where property or benefit is given or received, it is presumed that it is given or received corruptly.

115. Section 9 of the Corrupt Practices and Other Related Offences Act, 2000 covers bribery involving third parties. Section 9 refers to bribes given “on or for a public officer or any other person”. Legal persons are included in the term “any other person”. **Section 2 of the Corrupt Practices and Other Related Offences Act, 2000** defines a person thus: “‘Person’ includes a natural person, a juristic person or any body of persons corporate or incorporate;”

116. Indirect bribery appears to be adequately covered through the application of the covered acts (promise, offer and giving) of undue advantages “on or for” public officers and other persons. Acts, omissions, favours and disfavours are equally covered.

117. The definition of public officer in the ICPC Act includes persons employed or engaged in any capacity in the public service of the Federation, State or Local Government, public corporations, private companies floated by any government or agency, as well as judicial officers. It was explained during the country visit that the definition also includes appointed or elected officials and members of parliament. Any discrepancies to UNCAC art. 2 are irrelevant for bribery offences under the ICPC Act, which apply not just to public officers but to any other persons (Sections 8 to 10). It was further explained that judges and magistrates are considered public officers and fall under the definition of “person employed in the public service” both under the ICPC Act and the Criminal Code, which applies to “...any office to which a person is appointed by or under the Constitution” (Section 1(1)), thus including judges and magistrates.

Article 15 Bribery of national public officials

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

118. Nigeria cited the following measures.

Section 8 of the Corrupt Practices and Other Related Offences Act 2000

Gratification by an official.

(1) Any person who corruptly -

(a) asks for, receives or obtains any property or benefit of any kind for himself or for any other person; or

(b) agrees or attempts to receive or obtain any property or

(c) benefit of any kind for himself or for any other person, on account of-

(i) anything already done or omitted to be done, or for any favour or disfavor already shown to any person by himself in the discharge of his official duties or in relation to any matter connected with the functions, affairs or business of a Government department, or corporate body or other organisation or institution in which he is serving as an official; or

(ii) anything to be afterwards done or omitted to be done or favour or disfavour to be afterwards shown to any person, by himself in the discharge of his official duties or in relation to any such matter as aforesaid, is guilty of an offence of Official corruption and is liable to imprisonment for seven (7) years.

(2) If in any proceedings for an offence under this section it is proved that any property or benefit of any kind, or any promise thereof, was received by a public officer, or by some other person at the instance of a public officer from a person-

(a) holding or seeking to obtain a contract, license, permit, employment or anything whatsoever from a Government department, public body or other organisation or institution in which that public officer is serving as such;

(b) concerned, or likely to be concerned, in any proceeding or business transacted, pending or likely to be transacted before or by that public officer or a government department, public body or other organisation or institution in which that public officer is serving as such; and

(c) acting on behalf of or related to such a person; the property, benefit or promise shall, unless the contrary is proved, be presumed to have been received corruptly on account of such a past or future act, omission, favour or disfavour as is mentioned in subsection (1)(a) or (b).

(3) In any proceedings for an offence to which subsection (1)(b) is relevant, it shall not be a defence to show that the accused-

(a) did not subsequently do, make or show the act, omission, favour or disfavour in question; or

(b) never intend to do, make or show the act, omission, favour or disfavour.

(4) Without prejudice to subsection (3), where a Police Officer or other public officer whose duties include the prosecution, detection or punishment of offenders is charged with an offence under this section arising from-

(a) the arrest, detention or prosecution of any person for an alleged offence; or

(b) an omission to arrest, detain or prosecute any person for an alleged offence; or

(c) the investigation of an alleged offence,

it shall not be necessary to prove that the accused believed that the offence mentioned in paragraph (a) (b) or (c), or any other offence had been committed.

Section 10 of the Corrupt Practices and Other Related Offences Act 2000

Corrupt demand by persons

Any person who -

(a) asks for, receives or obtains property or benefits of any kind for himself or any other person; or agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person;

on account of-

(i) anything already done or omitted to be done, or any favour or disfavour already shown to any person, by a public officer in the discharge of his official duties or in relation to any matter connected with the functions, affairs or business of a Government department, public body or other organisation or institution in which the public officer is serving as such; or

(ii) anything to be afterwards done or omitted, or any favour or disfavour to be afterwards shown to any person, by a public officer in the discharge of his official duties or in relation to any such matter as aforesaid,
is guilty of an offence of official corruption and shall on conviction be liable to imprisonment for seven (7) years.

Section 21(2) of the Corrupt Practices and Other Related Offences Act 2000

Bribery in relation to auctions.

21(2) Any person, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, shall be guilty of an offence.

Section 22(2) of the Corrupt Practices and Other Related Offences Act 2000

Bribery for giving assistance, etc., in regard to contracts.

22(2) Any public servant who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in-

- (a) the promotion, execution or procuring, or
- (b) the payment of the price, consideration, or
- (c) other moneys stipulated or otherwise provided for in, any contract, or sub-contract as is referred to in sub-section (1) shall be guilty of an offence.

Section 98 of the Criminal Code

98. (1) Any public official (as defined in section 98D) who-

- (a) corruptly asks for, receives or obtains any property or benefit of any kind for himself or any other person; or bribes, etc.,
- (b) corruptly agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person, on account of-
 - (i) anything already, done or omitted, or any favour or disfavour already shown to any person, by himself in the discharge of his official duties or in relation to any matter connected with the functions, affairs or business of a Government department, public body or other organisation or institution in which he is serving as a public official, or
 - (ii) anything to be afterwards done or omitted, or any favour or disfavour to be afterwards shown to any person, by himself in the discharge of his official duties or in relation to any such matter as aforesaid, is guilty of the felony of official corruption and is liable to imprisonment for seven years.

(2) If in any proceedings for an offence under this section it is proved that any property or benefit of any kind, or any promise thereof, was received by a public official, or by some other person at the instance of a public official, from a person-

- (i) holding, or seeking to obtain, a contract, licence or permit from a Government department, public body or other organisation or institution in which that public official is serving as such, or
- (ii) concerned, or likely to be concerned, in any proceeding or business transacted, pending or likely to be transacted before or by that public official or a government department, public body or other organisation or institution in which that public official is serving as such, or by or from any person acting on behalf of or related to such a person, the property, benefit or promise shall, unless the contrary is proved, be deemed to have been received corruptly on account of such a past or future act, omission, favour or disfavour as is mentioned in subsection (1)(i) or (ii).

(3) In any proceedings for an offence under this section to which subsection (1)(ii) is relevant it shall not be a defence to show that the accused-

- (a) did not subsequently do, make or show the act, omission, favour or disfavour in question; or
- (b) never intended to do, make or show it.

(4) Without prejudice to subsection (3), where a police officer or other public official whose official duties include the prosecution, detention or punishment of offenders is charged with an offence under this section in connection with-

- (a) the arrest, detention or prosecution of any person for an alleged offence; or
- (b) an omission to arrest, detain or prosecute any person for an alleged offence; or
- (c) the investigation of an alleged offence,

it shall not be necessary to prove that the accused believed that the offence mentioned in paragraph (a), (b), or (c), or any other offence, had been committed.

Penal Code, Section 115. Public servants taking gratification in respect of official.

11. Whoever being or expecting to be a public servant accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification whatever whether pecuniary or otherwise, other than lawful remuneration, as a motive or reward –

(a) for doing or forbearing to do any official act; or

(b) for showing or forbearing to show in the exercise of his official functions favour or disfavor to any person; or

(c) for rendering or attempting to render any service or disservice to any person with any department of the public service or with any public servant as such, shall be punished –

(i) with imprisonment for a term which may extend to seven years or with fine or with both;

(ii) if such public servant is a public servant in the service of the Government of Northern Nigeria or of the Government of the Federation acting in a judicial capacity or carrying out the duties of a police officer, with imprisonment for a term which may extend to fourteen years or with fine or with both.

(b) Observations on the implementation of the article

119. Sections 8 and 10 of the ICPC Act, like Section 9, are applicable to any person, including public officials. The observations under paragraph (a) of the article are referred to.

(c) Challenges related to article 15

120. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Competing priorities;
2. Inter-agency coordination;
3. Limited capacity (e.g. human/technological/institution/other);
4. Limited resources for implementation (e.g. human/financial/other);

121. Nigeria provided more detail on the reported challenges.

Limited resources which is closely linked to limited capacities is an on-going issue. The country is a developing country with limited resources to meet the Millennium Development Goals, etc. Allocation to anti-corruption authorities has to compete with these other priorities. Moreover, the population and land space are so huge and effective coverage is challenging. It is being addressed both with technical assistance from development partners and with national resources.

On the issue of inter-agency coordination, the location of the anti-corruption mandate in several operationally diverse agencies is also a challenge and impacts on synergy. This is being addressed through the Inter-Agency Task Team (IATT) and other coordinating platforms.

(d) Technical assistance needs related to article 15

122. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:
1. Development of an action plan for implementation;
 2. Summary of good practices/lessons learned;

Nigeria has received the previous forms of technical assistance from:

1. United Kingdom Department for International Development (DfID).
2. United Nations Development Programme (UNDP) (CPAP Public Accountability Programme)
3. United States Embassy in Nigeria
4. UNODC/European Union (NGAX60-10TH EDF).

Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

(a) Summary of information relevant to reviewing the implementation of the article

123. Nigeria cited the following measures.

Section 17 (1)(b) of the Corrupt Practices and Other Related Offences Act 2000

Gratification by and through Agents and Definition of Agent.

“(1) Any person who corruptly- ...

(b) gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having done, or forborne to do, any act or thing in relation to his principal’s affairs or business”.

"Agent" - means any person employed by or acting for another and includes an officer of a public body or an officer serving in or under any public body, or a corporate body or any political party or institution, a trustee, an administrator or executor of the estate of a deceased person, a sub-contractor, any person employed by or acting for such trustee, administrator, executor, or sub-contractor;

124. A case example (involving the passive version of the offence) is cited under paragraph 2 of the article below.

(b) Observations on the implementation of the article

125. It is noted that Section 17(1)(b) (“Gratification by and through Agents”) is limited to relations between an agent and a principal. Moreover, the reviewers considered that

Section 9 (Corrupt offers to Public Officers), applicable to bribery of public officers and “any other persons”, could also be partially applied (cited under article 15(a) above), although it is limited in respect of promises and offers under Section 9(1)(b) to conduct on account of acts or omissions by public officers (as defined in the Act). In the interest of greater legal certainty it is recommended that Nigeria adopt a clear provision addressing the bribery of foreign public officials and officials of public international organizations.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 2

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

126. Nigeria cited the following measures.

Section 12A(1), Criminal Code

"12A. (1) Where by the provisions of any law of a State the doing of any act or the making of any omission is constituted an offence, those provisions shall apply to every person who is in the State at the time of his doing the act or making the omission."

Section 404(1)(a) of the Criminal Code

"404. (1) Any person who, being employed in the public service of Nigeria, or in that of any other Government, corruptly and under colour of his employment-

(a) demands or takes property from any person;

(b) compels any person to sell any property at other than its fair market value; or

(c) obtains lodging from and against the will of any person without payment or for inadequate payment; or

(d) compels, whether partially or wholly for his own profit, any person to work without payment or for inadequate payment;

is guilty of a felony, and is liable to imprisonment for five years."

Sections 8 and 10 of the Corrupt Practices and Other Related Offences Act 2000 (cited above).

Section 17 (1)(a) of the Corrupt Practices and Other Related Offences Act 2000

Gratification by and through Agents and Definition of Agent.

“(1) Any person who corruptly –

(a) accepts, obtains, or agrees to accept or obtain or attempts to obtain from any person for himself or for any other person, any gift or consideration as an inducement or reward for doing, forbearing to do, or for having done, or forborne to do, any act or thing; ...

is guilty of an offence and shall on conviction be liable to five (5) years imprisonment.”

127. Nigeria provided the following case.

An attempt to prosecute under this UNCAC article was opposed based on the Diplomatic Immunities Act in the case of **FRN V Moniyi Ayoola Ogundeyi**, Charge No. 1/3/ICPC/2006. Judgment was delivered on 10 August 2007.

Engineer Moniyi Ayoola Ogundeyi was at the material time the Deputy Director and Acting Head of the African Regional Centre for Engineering Design and Manufacturing (ARCEDEM), Ibadan, Nigeria established by the UN Economic and Social Council. He was charged with obtaining corrupt advantage under Section 19 of Corrupt Practices and Other Related Offences Act, 2000. When the case was under investigation, the accused caused an action to be filed on behalf of the company against the Commission restraining the Commission from investigating the alleged corruption in the company. Eventually, when he was charged to court, he filed another application seeking to quash the trial on the ground of immunity and abuse of court process. The court granted the application on both grounds.

The Commission did not take steps to seek a waiver of the immunity because the Commission was optimistic that the 1993 ARCEDEM Order made by the then Minister of Foreign Affairs, Mathew Mbu, which provides that Nigerians working in the company do not have immunity from prosecution, would be interpreted in its favour. The court read the whole provisions of the order together and held that even if the accused's immunity was waived, the property and premises of the company were inviolable. It is submitted that although the charges were brought under Section 19 of the Corrupt Practices and Other Related Offences Act, 2000 ("Offence of using office or position for gratification"), the case is relevant to bribery and of course other offences under the Act.

(b) Observations on the implementation of the article

128. Nigeria indicated that Section 404 of the Criminal Code covers passive bribery of foreign public officials, but not of officials of international organizations. The latter would seem to fall under Sections 8 and 10 of the Corrupt Practices and Related Offences Act, which cover passive bribery by any person (in the case of Section 10 in connection with any government matter). Moreover, unlike Section 17(1)(b), the passive offence in Section 17(1)(a) is not limited by its terms to agency relations, although it falls under the heading of "gratification by and through agents". As noted above, in the interest of greater legal certainty to cover all transactions involving foreign public officials and officials of public international organizations, it is recommended that Nigeria consider adopting a clear provision in line with the paragraph under review.

(c) Challenges related to article 16

129. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Specificities in the Nigerian legal system

(d) Technical assistance needs related to article 16

130. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Legal advice

Article 17 Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other 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.

(a) Summary of information relevant to reviewing the implementation of the article

131. Nigeria cited the following measures.

Section 19, Corrupt Practices and Other Related Offences Act 2000

Offence of using office or position for gratification.

19. Any public officer who uses his office or position to gratify or confer any corrupt or unfair advantage upon himself or any relation or associate of the public officer or any other public officer shall be guilty of an offence and shall on conviction be liable to imprisonment for five (5) years without option of fine.

Section 308 of the Penal Code

“Whoever dishonestly misappropriates or converts to his own use any movable property, commits criminal misappropriation”

Section 309 of the Penal Code

“Whoever commits criminal appropriation shall be punished with imprisonment for a term which may extend to two years or with fine or both”

Section 311 of the Penal Code

“Whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust.”

Section 315 of the Penal Code.

“Whoever, being in any manner entrusted with property or with any dominion over property in his capacity as a public servant or in the way of his business as a banker, factor, broker, legal practitioner or agent, commits criminal breach of trust in respect of that property shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.”

Section 390(5) of the Criminal Code

"390. Any person who steals anything capable of being stolen is guilty of a felony, and is liable, if no other punishment is provided, to imprisonment for three years.

...

(5) If the offender is a person employed in the public service and the thing stolen is the property of the State, or came into the possession of the offender by virtue of his employment, he is liable to imprisonment for seven years."

(b) Observations on the implementation of the article

132. Relevant provisions on embezzlement and misappropriation of public funds are found mainly in the ICPC Act, Penal Code and Criminal Code. The Penal Code and Criminal Code are substantially the same, except that the Penal Code is applicable to the Northern part of Nigeria while the Criminal Code is applicable to the Southern part of Nigeria. With respect to UNCAC article 17, the Criminal Code principally covers theft, while the Penal Code includes dishonest misappropriation and criminal breach of trust. The cited provisions of the Criminal Code and Penal Code also cover embezzlement by private persons, as they apply in scope to any persons.

133. It was explained during the country visit that organizationally, the ICPC is also empowered to investigate and prosecute cases under the Criminal Code or Penal Code, under Section 6(a) of the Corrupt Practices and Other Related Offences Act 2000.

Duties of Officers of the Commission

6. It shall be the duty of the Commission -

(a) where reasonable grounds exist for suspecting that any person has conspired to commit or has attempted to commit or has committed an offence under this Act or any other law prohibiting corruption, to receive and investigate any report of the conspiracy to commit, attempt to commit or the commission of such offence and, in appropriate cases, to prosecute the offenders; ...

(c) Challenges related to article 17

134. Nigeria has identified the following challenges and issues in fully implementing the article under review.

1. Inter-agency coordination;
2. Competing priorities;
3. Limited capacity;
4. Limited resources for implementation

(d) Technical assistance needs related to article 17

135. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review.

1. Summary of good practices/lessons learned;
2. Development of an action plan for implementation

136. Nigeria has received the previous forms of technical assistance from:

1. UNODC/European Union.
2. UNDP
3. U.K. DfID
4. United States Embassy in Nigeria.

137. Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Article 18 Trading in influence

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

(a) Summary of information relevant to reviewing the implementation of the article

138. Nigeria cited the following measures:

Section 17, Corrupt Practices and Other Related Offences Act 2000

Gratification by and through Agents and Definition of Agent.

"17. (1) Any person who corruptly –

(a) accepts, obtains or agrees to accept or obtain or attempts to obtain from any person for himself or for any other person, any gift or consideration as an inducement or reward for doing, forbearing to do, or for having done, or forborne to do, any act or thing;

(b) gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having done, or forborne to do, any act or thing in relation to his principal's affairs or business;

(c) knowingly gives to any agent, or being an agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested and which contains any statement which is false or erroneous or defective in any material particular, and which, to his knowledge, is intended to mislead his principal or any other person, is guilty of an offence and shall on conviction be liable to five (5) years imprisonment.

(2) For the purposes of this section, the expression "consideration" includes valuable consideration of any kind; the expression "agent" includes any person employed by or acting for another; and the expression "principal" includes an employer."

Section 19 of the Corrupt Practices And Other Related Offences Act 2000

Offence of using office or position for gratification

"Any public officer who uses his office or position to gratify or confer any corrupt or unfair advantage upon himself or any relation or associate of the public officer or any other public officer shall be guilty of an offence and shall on conviction be liable to imprisonment for five (5) years without option of fine."

Section 22(1) and (2), Corrupt Practices and Other Related Offences Act 2000

Bribery for giving assistance, etc., in regard to contracts.

"(1) Any person who, without lawful authority or reasonable excuse, offers an advantage to a public servant as an inducement to or reward for or otherwise on account of such public servant's giving assistance or using influence in, or having given assistance or used influence in -

(a) the promotion, execution, or procuring of-

(i) any contract with a public body for the performance of any work, the providing of any service, the doing of anything or the supplying of any article, material or substance; or

(ii) any sub-contract to perform any work, provide any article, materials or substance required to be performed, provided, done or supplied under any contract with a public body; or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or sub-contract as aforesaid, shall be guilty of an offence.

(2) Any public servant who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in-

- (a) the promotion, execution or procuring, or
 - (b) the payment of the price, consideration, or
 - (c) other moneys stipulated or otherwise provided for in,
- any contract, or sub-contract as is referred to in sub-section (1) shall be guilty of an offence."

Section 21 of the Corrupt Practices and Other Related Offences Act 2000

Bribery in relation to auctions.

"(1) Any person who, without lawful authority or reasonable excuse, offers any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, shall be guilty of an offence.

(2) Any person, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, shall be guilty of an offence.

(3) Any person guilty of an offence under this section shall on conviction on indictment to a fine of the current price of the property and imprisonment for three (3) years."

Section 12 of the Code of Conduct Bureau and Tribunal Act, 1991 CAP C15 LFN

"No person shall offer a public officer any property, gift or benefit of any kind as an inducement or bribe for the granting of any favour or the discharge in his favour of the public officers duty".

(b) Observations on the implementation of the article

139. Nigeria indicated that Sections 22(1) and (2) of the Corrupt Practices and Other Related Offences Act, 2000 cover some forms of bribery but are applicable to trading in influence. Section 22 covers cases where any person offers to a public servant, or a public servant receives, an advantage "on account of his giving assistance or using influence in, or having given assistance or used influence in" regards to contracts.

140. It is noted that Section 22 ("Bribery for giving assistance etc in regard to contracts") is limited to trading in influence in relation to contracts, while Section 21 ("Bribery in relation to auctions") relates to auctions. Section 17(1)(b) and (c) ("Gratification by and through Agents") is limited to relations between agents and principals. The concept of abuse of real or supposed influence for the benefit of an instigator or other person is not directly addressed in Section 19, which is a broad provision also applicable to acts of embezzlement (see UNCAC article 17 above).

141. Nigeria has not comprehensively criminalized trading in influence, but has considered the criminalization of trading in influence through the adoption of some relevant measures. Nigeria may wish to comprehensively criminalize trading in influence in line with the Convention.

(c) Challenges related to article 18

142. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Competing priorities
2. Limited capacity
3. Limited resources for implementation.

(d) Technical assistance needs related to article 18

143. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:
1. Summary of good practices/lessons learned
 2. Development of an action plan for implementation
144. Nigeria has received the previous forms of technical assistance from:
1. UK DfID
 2. UNDP (CPAP Public Accountability Programme)
 3. United States Embassy in Nigeria
 4. UNODC/EU (NGAX60-10TH EDF).
145. Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Article 19 Abuse of Functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

(a) Summary of information relevant to reviewing the implementation of the article

146. Nigeria cited the following measures.

Section 19 of the Corrupt Practices and Other Related Offences Act 2000

Offence of using office or position for gratification

"Any public officer who uses his office or position to gratify or confer any corrupt or unfair advantage upon himself or any relation or associate of the public officer or any other public officer shall be guilty of an offence and shall on conviction be liable to imprisonment for five (5) years without option of fine."

Section 13, Code of Conduct Bureau and Tribunal Act CAP C15 LFN

"13. Abuse of powers

A public officer shall not do or direct to be done, in abuse of his office, any act prejudicial to the rights of any other person, knowing that such act is unlawful or contrary to any government office"

Section 23, Code of Conduct Bureau and Tribunal Act CAP C15 LFN

"23. Powers of the Tribunal to impose punishment

(1) Where the Tribunal finds a public officer guilty of contravening any of the provisions of this Act, it shall impose upon that officer any of the punishments specified under subsection (2) of this section.

(2) The punishment which the Tribunal may impose shall include any of the following -

- (a) vacation of office or any elective or nominated office, as the case may be;
- (b) disqualification from holding any public office (whether elective or not) for a period not exceeding ten years; and
- (c) seizure and forfeiture to the State of any property acquired in abuse or corruption of office.

(3) The punishments mentioned in subsection (2) of this section shall be without prejudice to the penalties that may be imposed by any law where the breach of conduct is also a criminal offence under the Criminal Code or any other enactment or law."

Section 58(4) of the Public Procurement Act 2007

"(4) The following shall also constitute offences under this Act:

- (a) Entering or attempting to enter into a collusive agreement, whether enforceable or not, with a supplier, contractor or consultant where the prices quoted in their respective tenders, proposals or quotations are or would be higher than would have been the case had there not been collusion between the persons concerned;
- (b) conducting or attempting to conduct procurement fraud by means of fraudulent and corrupt acts, unlawful influence, undue interest, favor, agreement, bribery or corruption;
- (c) directly, indirectly or attempting to influence in any manner the procurement process to obtain an unfair advantage in the award of a procurement contract;
- (d) splitting of tenders to enable the evasion of monetary thresholds set;
- (e) bid-rigging;
- (f) altering any procurement document with intent to influence the outcome of a tender proceeding;
- (g) uttering or using fake documents or encouraging their use; and
- (h) willful refusal to allow the Bureau or its officers to have access to any procurement records."

Section 104 of the Criminal Code

"Any person who, being employed in the public service, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another is guilty of a misdemeanour, and is liable to imprisonment for two years.

If the act is done or directed to be done for purposes of gain he is guilty of a felony, and is liable to imprisonment for three years."

Section 404 of the Criminal Code

404. (1) Any person who, being employed in the public service of Nigeria, or in that of any other Government, corruptly and under colour of his employment-

- (a) demands or takes property from any person; or
 - (b) compels any person to sell any property at other than its fair market value; or
 - (c) obtains lodging from and against the will of any person without payment or for inadequate payment; or
 - (d) compels, whether partially or wholly for his own profit, any person to work without payment or for inadequate payment;
- is guilty of a felony, and is liable to imprisonment for five years.

(2) Any person who, falsely representing himself by words, conduct, or otherwise, to be a person employed in the public service of Nigeria, or of any other Government, or to an agent of, or acting under the authority of, the Government of Nigeria, or of any other Government, unlawfully and in such assumed character-

- (a) does any of the acts or things specified in (a), (b), (c), and (d) in the last preceding subsection; or
- (b) compels or orders any person to hand any property over to any other person, whether such property does or does not rightly belong, or is or is not rightly due, to the last-named person; is guilty of a felony, and is liable to imprisonment for five years.

(3) Any person attempting, or inciting, soliciting, counselling, procuring, aiding, or abetting any person, to commit any of the Offences enumerated in the last two preceding subsections is guilty of a felony, and is liable to imprisonment for five years.

147. Nigeria also provided the following statistics.

Data from the Code of Conduct Bureau (investigations)

PETITION	YEAR							
	2007	2008	2009	2010	2011	2012	2013	TOTAL
ABUSE OF OFFICE	54	78	63	78	18	42	20	353
ILLICIT ENRICHMENT	14	19	15	19	4	14	4	89

CONFLICT OF INTEREST	8	6	1	14	1	4	-	34
FAILURE TO DECLARE ASSETS	6	3	4	5	2	1	4	25
TOTAL	82	106	83	116	25	61	28	501

(b) Observations on the implementation of the article

148. Nigeria explained that the law requires a benefit for such abuse of office either for the public officer himself or his or her relation, associate or another public official (Section 19 of the ICPC Act). Other third party interests are not covered.

149. The data cited above is available to the public as it is captured in the periodic report of the Code of Conduct Bureau, which is circulated. However details of asset declaration are not publicly available due to statutory constraints.

150. Nigeria indicated that the proceedings and penalties under the Code of Conduct Bureau and Tribunal Act (CCBTA) are quasi criminal. It was explained during the country visit that violations of the CCBTA are charged before the CCB Tribunal in a proceeding that has aspects of a criminal trial, insofar as there is a plea and the offender can be found “guilty of contravening the provisions of the Act” (Section 23(a), CCBTA quoted above). Penalties include forfeiture of assets, dismissal and disqualification from holding public office. It was further explained that a conviction under the CCBTA does not preclude a prosecution or conviction in a subsequent criminal case arising from the same facts, and that the Constitution permits such “semblance” of double jeopardy. Representatives of the CCB explained that the Bureau is considered a law enforcement agency, insofar as it is charged with enforcing the CCBTA through the Tribunal and investigating violations of the Act. Moreover, the Bureau has prosecution powers, overseen by the Attorney-General, for example in cases involving asset confiscation and prosecution for violations of the CCBTA. See articles 30(3) and 36 for more detail of the CCB.

151. It is noted that while there are relevant provisions in the Penal Code, there is no corresponding offence of abuse of office as in Section 104 of the Criminal Code.

152. Nigeria may wish to consider addressing the afore-mentioned issues, in particular to ensure that all third party benefits are covered and to adopt a relevant provision in the Penal Code.

(c) Challenges related to article 19

153. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency coordination;
2. Competing priorities;
3. Limited capacity;
4. Limited resources for implementation.

(d) Technical assistance needs related to article 19

154. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review.

1. Summary of good practices/lessons learned

155. Nigeria has received the previous forms of technical assistance from:

1. DfID
2. UNDP (CPAP Public Accountability Programme)
3. United States Embassy in Nigeria
4. UNODC/EU (NGAX60-10TH EDF).

156. Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Article 20 Illicit Enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, 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.

(a) Summary of information relevant to reviewing the implementation of the article

157. Nigeria cited the following measures.

Section 20(2) of the Money Laundering (Prohibition) Act 2011 (As Amended)

"(2) In any trial for an offence under this Act, the fact that an accused person is in possession of pecuniary resources or property for which he cannot satisfactorily account and which is disproportionate to his known sources of income, or that he had at or about the time of the alleged offence obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken into consideration by the Federal High Court as corroborating the testimony of any witness in such trial."

Section 7(1)(b) of the Economic and Financial Crimes Commission (Establishment) Act 2004 (hereinafter also referred to as the "EFCC Act")

"(1) The Commission has power to –

- (a) cause investigations to be conducted as to whether any person, corporate body or organization has committed any offence under this Act or other law relating to economic and financial crimes
- (b) cause investigations to be conducted into the properties of any person if it appears to the commission that the person's lifestyle and extent of the properties are not justified by his source of income;"

Section 19(5) of the Economic and Financial Crimes Commission (Establishment) Act 2004

"(5) In any trial for an offence under this act, the fact that an accused person is in possession of pecuniary resources or property for which he cannot satisfactorily account and which is disproportionate to his known sources of income, of that he had at or about the time of the alleged offence obtained an accreditation to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and taken into consideration by the Court as corroborating the testimony of any witness in the trial."

158. Nigeria indicated that the above provisions enable the use of evidence of pecuniary resources or property which cannot be accounted for, as corroborative evidence against an accused person under the above laws.

159. Nigeria further cited the following measure.

Section 44(2) of the Corrupt Practices and Other Related Offences Act 2000

Chairman's power to obtain "information".

"Where the Chairman of the Commission has reasonable grounds to believe that any Public Officer who has been served with the written notice referred to in sub-section (1) owns, possesses, controls or holds any interest in any property which is excessive, having regard to his present or past emoluments and all other relevant circumstances, the Chairman may by written direction require him to furnish a statement on oath or affirmation explaining how he was able to own, possess, control or hold such excess and if he fails to explain satisfactorily such excess, he shall be presumed to have used his office to corruptly enrich or gratify himself and charged accordingly."

160. This places the onus of proof of the legitimate source of the assets on the suspect, failing which he shall be assumed to have corruptly used his office to enrich and gratify himself and shall be charged accordingly.

Section 15(3) of the Code of Conduct Bureau and Tribunal Act CAL 15 LFN

"(1) Every public officer shall, within fifteen months after the coming into force of this Act or immediately after taking office and thereafter-

(a) at the end of every four years;

(b) at the end of his term of office; and

(c) in the case of a serving officer, within thirty days of the receipt of the form from the Bureau or at such other intervals as the Bureau may specify,

submit to the Bureau a written declaration in the Form prescribed in the first Schedule to this Act or, in such form as the Bureau may, from time to time, specify, of all his properties, assets and liabilities and those of his spouse or unmarried children under the age of twenty-one years.

(2) Any statement in any declaration that is found to be false by any authority or person authorized in that behalf to verify it shall be deemed to be a breach of this act.

(3) Any property or assets acquired by a public officer after any declaration required by subsection (1) of this section and which is not fairly attributable to income, gifts or loan approved by this Act, shall be deemed to have been acquired in breach of this Act unless the contrary is proved."

161. Nigeria further cited the following measure with respect to the private sector.

Section 7 of the Bank Employees (Declaration of Assets) Act 1986

Offences of unjust enrichment.

"(1) It shall be an offence for an employee of a Bank to own assets in excess of his legitimate, known and provable income and assets.

(2) Any employee guilty of an offence under subsection (1) of this section shall on conviction be liable to imprisonment for ten years and shall, in addition, forfeit the excess assets or its equivalent in money to the Federal Government.

(3) For the purpose of imposing a penalty on conviction under this section, due regard shall be had to the amount or value of assets by which the assets of the convicted employee are in excess of his legitimate, known and provable income and assets.

(4) In determining the assets of an employee, any gift, bequest, donation or fraudulent, fictitious or artificial transaction made by the employee during the relevant period shall be treated as forming part of his assets.

(5) For the purposes of this section, the income and assets of an employee shall include salaries, allowances, returns on investment, gifts, donations and bequests received by him."

162. Nigeria explained that from 2007 to 2013, the Code of Conduct Bureau investigated a total of 89 (eighty nine) cases of illicit enrichment, some of which resulted in prosecutions. Nigeria referred to the statistics on illicit enrichment and failure to declare assets from the Code of Conduct Bureau under UNCAC article 19 above.

(b) Observations on the implementation of the article

163. Nigeria indicated that there is a declaration of assets regime, which requires all public servants to declare all sources of income in a prescribed form. The declarations are analyzed and records are kept for each public officer. Declarations are verified but not publicly disclosed. However, declarations are made available “for inspection by any citizen of Nigeria on such terms and conditions as the National Assembly may prescribe”, according to Part 1 of the Third Schedule to the Constitution. It was explained during the country visit that declarations can be accessed by the public upon payment of the relevant fee to the Code of Conduct Bureau.

164. Nigeria confirmed that the cited measures under the Money Laundering (Prohibition) Act, 2011 (As Amended) and the Economic and Financial Crimes Commission (Establishment) Act allow evidence of disproportionate wealth to “be proved and taken into consideration by the Court as corroborating testimony” in a trial but do not establish a crime of illicit enrichment per se. However, Nigeria explained that illicit enrichment constitutes an offence under the Code of Conduct Bureau and Tribunal Act (CCBTA) for which a public officer can be prosecuted and punished appropriately by the Code of Conduct Tribunal. The reviewers further note that there is no evidentiary presumption in the referenced Section 15 of the CCBTA whereby a defendant may be required to explain any significant increase in assets but that the provision appears rather to be a provision relating to failure to declare assets. However, evidence of disproportionate wealth is used not only as corroboration but also to establish a crime of illicit enrichment under Section 44 (2) the Corrupt Practices and Other Related Offences Act, 2000 and Section 15 (3) of the Code of Conduct Bureau and Tribunal Act, Cap 15 LFN, already cited.

165. With respect to the 89 illicit enrichment cases investigated by the Code of Conduct Bureau, Nigeria indicated that the data does not only relate to cases of illicit enrichment but also includes other breaches of the Code of Conduct for public officers. No information was provided as to whether the investigations resulted in disciplinary measures, criminal referrals or both.

166. Nigeria provided the following additional data.

Number of politically exposed persons investigated and prosecuted

S/N	CASE TITLE	CHARGE NO.	CONTRAVENTION OF THE CODE	REMARKS
1.	FEDERAL REPUBLIC OF NIGERIA VS SAMINU TURAKI – FORMER GOVERNOR JIGAWA STATE	CCT/NC/ABJ/ 2006	CHARGED FOR OPERATION OF FOREIGN ACCOUNT	CASE STRUCK OUT AS A RESULT OF THE DECISION OF THE COURT OF APPEAL
2.	FEDERAL		CHARGED FOR	CASE WITHDRAWN

	REPUBLIC OF NIGERIA VS JOSHUA DARIYE – FORMER GOVERNOR PLATEAU STATE		FALSE DECLARATION OF ASSETS	<i>SINE DIE</i> ON THE INSTRUCTIONS OF THE ATTORNER GENERAL OF THE FEDERATION
3.	FEDERAL REPUBLIC OF NIGERIA VS GEORGE AKUME	CCT/ABJ/4B/ 2006	FALSE DECLARATION OF ASSETS	CASE WITHDRAWN <i>SINE DIE</i> ON THE INSTRUCTIONS OF THE ATTORNER GENERAL OF THE FEDERATION
4.	FEDERAL REPUBLIC OF NIGERIA VS LEMKE INYANG	CCT/ABJ/02/12	CHARGED FOR BELONGING TO SECRET SOCIETY	DISCHARGED AND ACQUITTED
5.	FEDERAL REPUBLIC OF NIGERIA VS DAVID MZENDA FORMER SPEAKER BENUE STATE	CCT/ABJ/5B/ 2006	CHARGED FOR OPERATION OF FOREIGN ACCOUNT	CASE STRUCK OUT
6.	FEDERAL REPUBLIC OF NIGERIA VS AHMED BOLA TINUBU	CCT/ABJ/01/11	CHARGED FOR OPERATION OF FOREIGN ACCOUNTS	ACCUSED DISCHARGED
7.	FEDERAL REPUBLIC OF NIGERIA VS ORJI UZO KALU FORMER GOVERNOR GOVERNOR OF ABIA STATE	CCT/NC/ABJ/KW/3/2005	CHARGED FOR OPERATION OF FOREIGN ACCOUNT	CASE WITHDRAWN <i>SINE DIE</i> ON THE INSTRUCTIONS OF THE ATTORNER GENERAL OF THE FEDERATION
8.	FEDERAL REPUBLIC OF NIGERIA VS OGBONNAYA C. NNAMANI FORMER GOVERNOR OF ENUGU STATE	CCT/ABJ/1E/ 2006	CHARGED FOR FALSE DECLARATION OF ASSETS	CASE WITHDRAWN <i>SINE DIE</i> ON THE INSTRUCTIONS OF THE ATTORNER GENERAL OF THE FEDERATION
9.	FEDERAL REPUBLIC OF NIGERIA VS RASHEED LADOJA FORMER OF GOVERNOR OF OYO STATE	CCT/NC/ABJ/ KW/03/1/05	CHARGED FOR OPERATION OF FOREIGN ACCOUNT	CASE WITHDRAWN <i>SINE DIE</i> ON THE INSTRUCTIONS OF THE ATTORNER GENERAL OF THE FEDERATION
10.	FEDERAL REPUBLIC OF NIGERIA VS MICHEAL NWORIE, CHAIRMAN INYABA LG OF EBONYI STATE	CCT/	CHARGED FOR ABUSE OF OFFICE	ACCUSED DISCHARGED
11.	FEDERAL	CCT/ABJ/01/07	CHARGED FOR	CASE AT THE

	REPUBLIC OF NIGERIA VS PRINCE ABUBAKAR AUDU, FORMER GOVERNOR OF KOGI STATE		FALSE DECLARATION OF ASSETS	SUPREME COURT AND TAKEN OVER BY THE ATTORNER GENERAL OF THE FEDERATION
12.	FEDERAL REPUBLIC OF NIGERIA VS GODWIN IFEANYI ARARUME, FORMER SENATOR, FEDERAL REPUBLIC OF NIGERIA		FALSE DECLARATION OF ASSETS	

167. The article is implemented.

(c) Challenges related to article 20

168. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency coordination;
2. Competing priorities;
3. Limited capacity;
4. Limited resources for implementation.

(d) Technical assistance needs related to article 20

169. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;
2. Development of an action plan for implementation.

170. Nigeria has received the previous forms of technical assistance from:

1. Dfid
2. UNDP (CPAP Public Accountability Programme)
3. United States Embassy in Nigeria
4. UNODC/EU (NGAX60-10TH EDF).

Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Article 21 Bribery in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or

herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of the article

171. Nigeria cited the following measures.

Section 433 of the Criminal Code CAP 77 LFN

433. Any person who corruptly receives or obtains, or corruptly agrees to receive or obtain, any property or benefit of any kind upon an agreement or understanding that he will help any person to recover anything which has been obtained by means of any act constituting a felony or misdemeanour, or by any act done at a place not in Nigeria, which if it had been done in Nigeria would have constituted an offence, and which is an offence under the laws in force in the place where it was done, is, unless he has used all due diligence to cause the offender to be brought to trial for the offence,

Section 9 of the Corrupt Practices and Other Related Offences Act 2000

Corrupt offers to Public Officers.

(1) Any person who corruptly-

(a) gives, confers or procures any property or benefit of any kind to, on or for a public officer or to, on or for any other person; or

(b) promises or offers to give, confers, procure or attempt to procure any property or benefit of any kind to, on or for a public officer or any other person, on account of any such act, omission, favour or disfavour to be done or shown by the public officer is guilty of an offence of official corruption and shall on conviction be liable to imprisonment for seven (7) years.

(2) If in any proceedings for an offence under this section it is proved that any Property or benefit of any kind, or any promise thereof, was given to a public officer or some other person at the instance of a public officer, by a person-

(a) holding or seeking to obtain a contract, licence, permit, employment or anything whatsoever from a Government department, public body or other organisation or institution in which that public officer is serving as such, or

(b) concerned or likely to be concerned in any proceeding or business transacted, pending or likely to be transacted before or by that public officer or a government department, public body or other organisation or institution in which that public officer is serving as such, or

(c) acting on behalf of or relative to such a person, the property, benefit or promise shall, unless the contrary is proved, be deemed to have been given corruptly on account of such a past or future act, omission, favour or disfavour as is mentioned in section 9(1) and (2).

Section 8(1) of the Corrupt Practices and Other Related Offences Act 2000

Gratification by an official.

"(1) Any person who corruptly –

(a) asks for, receives or obtains any property or benefit of any kind for himself or for any other person; or

(b) agrees or attempts to receive or obtain any property or

(c) benefit of any kind for himself or for any other person, on account of-

(i) anything already done or omitted to be done, or for any favour or disfavour already shown to any person by himself in the discharge of his official duties or in relation to any matter connected with the functions, affairs or business of a Government department, or corporate body or other organisation or institution in which he is serving as an official; or

(ii) anything to be afterwards done or omitted to be done or favour or disfavour to be afterwards

shown to any person, by himself in the discharge of his official duties or in relation to any such matter as aforesaid, is guilty of an offence of Official corruption and is liable to imprisonment for seven (7) years."

Section 17 of the Corrupt Practices and Other Related Offences Act 2000

Gratification by and through Agents and Definition of Agent.

"(1) Any person who corruptly –

(a) accepts, obtains or agrees to accept or obtain or attempts to obtain from any person for himself or for any other person, any gift or consideration as an inducement or reward for doing, forbearing to do, or for having done, or forborne to do, any act or thing;

(b) gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having done, or forborne to do, any act or thing in relation to his principal's affairs or business;

(c) knowingly gives to any agent, or being an agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested and which contains any statement which is false or erroneous or defective in any material particular, and which, to his knowledge, is intended to mislead his principal or any other person, is guilty of an offence and shall on conviction be liable to five (5) years imprisonment.

(2) For the purposes of this section, the expression "consideration" includes valuable consideration of any kind; the expression "agent" includes any person employed by or acting for another; and the expression "principal" includes an employer."

Section 19(1)(d) and (e), Failed Banks (Recovery of Debts) and Financial Malpractices In Banks Act 2004

"(1) Any director, manager, officer or employee of a bank who:- ...

(d) receives or participates in sharing, for personal gratification, any money, profit, property or pecuniary benefit towards or after the procurement of a loan, an advance, a guarantee or any other credit facility from any person whether or not that person is a customer of the bank; or

(e) recklessly grants or approves a loan or an interest waiver where the borrower is known to have the ability to repay the loan and interest, is guilty of an offence under this Decree."

(b) Observations on the implementation of the article

172. Nigeria indicated that in respect of bribery between persons in the private sector, there were cases of investigation by the ICPC but no cases of prosecution.

173. Nigeria has partially criminalized bribery in the private section. The Nigerian authorities confirmed that Section 8(1) of the Corrupt Practices and Other Related Offences Act 2000 (Gratification by an official) relates to passive bribery by any person, including private individuals, and specifically refers to conduct "in relation to any matter connected with the .. affairs .. of a.. corporate body or other organisation. Regarding active bribery, although Section 9 (Corrupt offers to Public Officers) could be partially applicable (see reference in Section 9(1)(b) to acts or omissions by public officers), Section 17(1) (b) and (c) ("Gratification by and through Agents") can be applied to cover active bribery in the private sector in situations involving relations between an agent and a principal. The observations under UNCAC article 15 above are referred to. It is recommended that Nigeria consider comprehensively criminalizing bribery between private sector actors to cover the full scope of conduct envisaged by article 21 of the Convention.

174. There is no corresponding provision in the Penal Code.

(c) Challenges related to article 21

175. Nigeria has identified the following challenges and issues in fully implementing the article under review.

1. Inter-agency coordination;
2. Inadequacy of existing normative measures (Constitution, laws, regulations, etc.);
3. Competing priorities;
4. Limited resources for implementation.

(d) Technical assistance needs related to article 21

176. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned
2. Development of an action plan for implementation

177. Nigeria has received the previous forms of technical assistance from:

1. DfID;
2. UNDP (CPAP Public Accountability Programme);
3. United States Embassy in Nigeria;
4. UNODC/EU (NGAX60-10TH EDF).

178. Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Article 22 Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position

(a) Summary of information relevant to reviewing the implementation of the article

179. Nigeria cited Chapter 40, Sections 434-439 of the Criminal Code CAP 77 LFN.

Chapter 40

Frauds by Trustees and Officers of Companies and Corporations: False Accounting.

434. Any person who, being a trustee of any property, destroys the property with intent to defraud, or, with intent to defraud, converts the property to any use not authorised by the trust, is guilty of a felony, and is liable to imprisonment for seven years.

The offender cannot be arrested without warrant.

If civil proceedings have been taken against a trustee in respect of any act done by him, which is an offence under the provisions of this section, he cannot be afterwards prosecuted for the same cause, as for an offence, on the complaint of the person by whom the civil proceedings were taken, without the sanction of the court or judge before whom the civil proceedings were had or are pending.

For the purposes of this section, the term "trustee" includes the following persons and no others-

(a) trustees upon express trusts created by a deed, will, or instrument in writing, whether for a public or private or charitable purpose;

- (b) trustees appointed by or under the authority of an Act, Law or Statute for any such purpose;
- (c) persons upon whom the duties of any such trust as aforesaid devolve;
- (d) executors and administrators.

435. Any person who-

(1) being a director or officer of a corporation or company, receives or possesses himself as such of any of the property of the corporation or company otherwise than in payment of a just debt or demand, and, with intent to defraud, omits either to make a full and true entry thereof in the books and accounts of the corporation or company, or to cause or direct such an entry to be made therein; or

(2) being a director, officer, or member of a corporation or company, does any of the following acts with intent to defraud-

(a) destroys, alters, mutilates, or falsifies, any book, document, valuable security, or account, which belongs to the corporation or company, or any entry in any such book, document, or account, or is privy to any such act; or

(b) makes or is privy to making any false entry in any such book, document or account; or

(c) omits or is privy to omitting any material particular from any such book, document or account;

is guilty of a felony, and is liable to imprisonment for seven years. The offender cannot be arrested without warrant.

436. Any person who, being a promoter, director, officer, or auditor, of a corporation or company, either existing or intended to be formed, makes, circulates, or publishes, or concurs in making, circulating, or publishing, any written statement or account which, in any material particular, is to his knowledge false, with intent thereby to effect any of the following purposes-

(a) to deceive or to defraud any member, shareholder, or creditor, of the corporation or company, whether a particular person or not;

(b) to induce any person, whether a particular person or not, to become a member of, or to entrust or advance any property to, the corporation or company, or to enter into any security for the benefit thereof;

is guilty of a felony, and is liable to imprisonment for seven years. The offender cannot be arrested without warrant."

Nigeria also cited Section 390 of the Criminal Code on theft and Sections 308, 309, 311 and 315 of the Penal Code (quoted under UNCAC article 17 above) as well as Sections 312-314 of the Penal Code.

Section 312 of the Penal Code

"Whoever commits criminal breach of trust shall be punished with imprisonment for a term which may extend to seven years or with fine or with both"

Section 313 of the Penal Code

"Whoever, being entrusted with property as a carrier, wharfinger or warehouse keeper, committee criminal breach of trust in respect of such property, shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine"

Section 314 of the Penal Code

"Whoever, being a clerk or servant or employed as a clerk or servant and being in any manner entrusted in such capacity with property or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine"

180. No statistics of cases investigated of embezzlement of property in the private sector were available.

(b) Observations on the implementation of the article

181. The cited measures of the Criminal Code cover theft and frauds by trustees and officers of companies and corporations, which would seem to cover the majority of cases of embezzlement in the private sector. Measures in the Penal Code also address criminal breach of trust and dishonest misappropriation. There have been no cases.

(c) Challenges, where applicable

182. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency coordination;
2. Limited capacity (e.g. human/technological/institution/other);
3. Limited resources for implementation.

(d) Technical assistance needs

183. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned.

184. Nigeria has received the previous forms of technical assistance from:

1. DfID
2. UNDP (CPAP Public Accountability Programme)
3. United States Embassy in Nigeria
4. UNODC/EU (NGAX60-10TH EDF).

185. Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

(a) Summary of information relevant to reviewing the implementation of the article

186. Nigeria cited the following measures.

Sections 17 and 18, Economic and Financial Crimes Commission (Establishment) Act 2004

"17: Retention of Proceeds of a criminal conduct

A person who –

- (a) whether by concealment, removal from jurisdiction, transfer to nominees or otherwise or otherwise retains the control of the proceeds of a criminal conduct or an illegal act on behalf of another person knowing that the proceeds is as a result of criminal conduct by the principal; or
- (b) knowing that any property is in whole or in part directly or indirectly represents another person's proceeds of a criminal conduct, acquires or uses that property or has possession of it, commits an offence and is liable on conviction to imprisonment for a term not less than 5 years or to a fine equivalent to 5 times the value of the proceeds of the criminal conduct or to both such imprisonment and fine.

18: Offences in relation to economic and financial crimes and petitions

(1) A person who, without lawful authority –

(a) engages in the acquisition, possession or use of property knowing at the time of its acquisition, possession or use that such property was derived from any offence under this Act; or

(b) engages in the management, organisation or financing of any of the offences under this Act; or

(c) engages in the conversion or transfer of property knowing that such property is derived from any offence under this Act; or

(d) engages in the concealment or disguise of the true nature, source, location, disposition, movement, rights, with respect to or ownership of property knowing such property is derived from any offence referred under this Act

commits an offence under this Act and is liable on conviction to the penalties provided in Subsection (2) of this section.

(2) The penalties provided for offences under subsection (1) of this section shall be imprisonment for a term not less than two years and not exceeding three years."

Section 24, Corrupt Practices and Other Related Offences Act 2000

Dealing with, using, holding, receiving or concealing gratification

"Any person who, whether within or outside Nigeria, whether directly or indirectly, whether on behalf of himself or on behalf of any other person, enters into, or causes to be entered into, any dealing in relation to any property, or otherwise uses or causes to be used, or holds, receives, or conceals any property or any part thereof which was the subject-matter of an offence under sections 10, 11, 13, 14, 15, 16) 17, 18, 19, and 20 shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding five (5) years."

Sections 15 and 16, Money Laundering (Prohibition) Act 2011 (As Amended)

"Section 15: Money laundering offences

(1) Money laundering is prohibited in Nigeria.

(2) Any person or body corporate, in or outside Nigeria, who directly or indirectly

(a) conceals or disguises the origin of;

(b) converts or transfers;

(c) removes from the jurisdiction; or

(d) acquires, uses, retains or takes possession or control of;

any fund or property, knowingly or reasonably ought to have known that such fund or property is, or forms part of the proceeds of an unlawful act;

commits an offence of money laundering under this Act.

(3) A person who contravenes the provisions of subsection (2) of this section is liable on conviction to a term of not less than 7 years but not more than 14 years imprisonment.

(4) A body corporate who contravenes the provisions of subsection (2) of this section is liable on conviction to -

(a) a fine of not less than 100% of the funds and properties acquired as a result of the offence committed; and

(b) withdrawal of licence.

(5) Where the body corporate persists in the commission of the offence for which it was convicted in the first instance, the Regulators may withdraw or revoke the certificate or licence of the body corporate.

(6) The unlawful act referred to in subsection (2) of this section includes participation in an organized criminal group, racketeering, terrorism, terrorist financing, trafficking in persons, smuggling of migrants, sexual exploitation, sexual exploitation of children, illicit trafficking in narcotic drugs and psychotropic substances, illicit arms trafficking, illicit trafficking in stolen goods, corruption, bribery, fraud, currency counterfeiting, counterfeiting and piracy of products, environmental crimes, murder, grievous bodily injury, kidnapping, hostage taking, robbery or theft, smuggling (including in relation to customs and excise duties and taxes), tax crimes (related to direct taxes and indirect taxes), taxes crimes (related to direct taxes and indirect taxes) extortion, forgery, piracy, insider trading and market manipulation or any other criminal act specified in this Act or in any other law in Nigeria.

(7) A person who commits an offence under subsection (2) of this section shall be subject to the penalties specified in this section notwithstanding that the various acts constituting the offence were committed in different countries or places.

Section 16: Other Offences.

(1) Without prejudice to the penalties provided under section 15 of this Act, any person who-

(a) being a director or employee of a Financial Institution warns or in any other way intimates the owner of the funds involved in the transaction referred to in section 6 of this Act about the report he is required to make or the action taken on it or who refrains from making the report as required;

(b) destroys or removes a register or record required to be kept under this Act;

(c) carries out or attempts under a false identity to carry out any of the transactions specified in sections 1 to 5 of this Act; or

(d) makes or accepts cash payments exceeding the amount authorized under this Act;

(e) fails to report an international transfer of funds or securities required to be reported under this Act; or

(f) being a director or an employee of a Financial Institution or Designated Non-Financial Institution contravenes the provisions of Section 2, 3, 4, 5, 6, 7, 9, 10, 12, 13 or 14 of this Act, commits an offence.

(2) A person who commits an offence under subsection (1) of this section:

(a) paragraph (a), is liable on conviction to imprisonment for a term of not less than 2 years or a fine of not less than N10,000,000; and

(b) paragraphs (b) - (f), is liable to imprisonment for a term of not less than 3 years or a fine of N10,000,000 or to both, in the case of individual and, N25,000,000, in the case of a body corporate.

(3) A person found guilty of an offence under this section may also be banned indefinitely or for a period of 5 years from practicing the profession, which provided the opportunity for the offence to be committed.

(4) Where as a result of a serious oversight or a flaw in its internal control procedures, a Financial Institution or person designated under subsection (1) (a) of section 9 of this Act, fails to meet any of the obligations imposed by this Act, the disciplinary authority responsible for the Financial Institution or the person's professional body may, in addition to any penalty in this Act take such disciplinary action against the Financial Institution or persons as is in conformity with its professional and administrative regulations."

187. Nigeria provided the following case example:

FRN v Chief Diepreye Solomon Peter Alamiyeseigha & Others, Fhc/1/328c/2005.

188. EFCC provided the following statistical data on investigations, prosecutions, convictions, and case types for economic offences:

1. No of petitions received from 2010-2013 (all economic crimes): 24,278TOTAL

2. No. of cases investigated from 2010-2013 (all economic crimes): 9,737 TOTAL
3. No. of prosecutions from 2010-2013 (all economic crimes): 1,658 TOTAL
4. No. of convictions from 2010-2013 (all economic crimes): 338 TOTAL.

Disaggregation from 2011-2012	
Offences Type	No. of Offences
A. Advance Fee Fraud	2971
B. Bank/Securities Fraud	823
C. Public corruption/money laundering	1572
D. Pipeline Vandalism/Bunkering	98
E. Procurement Fraud	84

189. EFCC provided the following statistical data on investigations, prosecutions and convictions for money laundering:

1. No. of petitions received from 2010-2013 (money laundering): 52 TOTAL
2. No. of investigations from 2010-2013 (money laundering): 52 TOTAL
3. No. of prosecutions from 2010-2013 (money laundering): 26 TOTAL
4. No. of convictions from 2010-2013 (money laundering): 17.

190. ICPC indicated that petitions received are mainly on corruption and other related offences and that only a few cases of money laundering were established and have been charged to court in the course of rendering legal opinions on investigated petitions.

(b) Observations on the implementation of the article

191. Nigeria has criminalized money laundering under the Money Laundering (Prohibitions) Act, 2011 (As Amended) and the Economic and Financial Crimes, Act, 2004. Money laundering offences cover the conversion, transfer, concealment, or disguise, possession and acquisition of property in a manner that is largely consistent with the Convention. Money laundering applies to both natural and legal persons, and proof of knowledge can be derived from objective factual circumstances.

192. There is lack of comprehensive statistics on money laundering investigations, prosecutions and convictions due to lack of effective coordination mechanisms. It is therefore difficult to determine how many money laundering cases have been investigated and prosecuted. Only 17 convictions on money laundering were reported from 2010 to 2013, which is strikingly low compared to the number of petitions and investigations received for money laundering and economic crimes. Overall, it was not possible for the reviewers to reach an assessment of whether the AML legislation is effectively implemented.

193. The risk of money laundering in particular related to corruption offences continues. In this context, the observations in the 2008 Mutual Evaluation Report of the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) are referred to. In particular, the report notes that “pervasive corruption in Nigeria constitutes a major threat and underlies most of the money laundering cases reported in recent time. In the past three years, more than 10 ex-Governors and political leaders, who were alleged to have embezzled public funds estimated at USD\$250 billion have been arrested and charged to court, as revealed by investigations and court records. Most of these funds are

alleged to be hidden in western banks and offshore centers, while a significant amount have been laundered through the acquisition of properties, luxury cars and purchase of high net worth shares in blue chip companies.”

194. It is recommended that Nigeria take measures to strengthen the enforcement and application of anti-money laundering legislation in line with the Convention and ensure that cases are brought to justice. The observations at the beginning of this report on data collection are referred to specifically also in the context of money laundering.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

195. Nigeria cited the following measures.

Section 15 of the Money Laundering (Prohibition) Act 2011 (As Amended) (previously cited).

Sections 17 and 18 of the Economic and Financial Crimes Commission (Establishment) Act 2004 (previously cited).

Section 24 of the Corrupt Practices and Other Related Offences Act 2000 (previously cited).

Section 8(2) of the Bank Employees (Declaration Of Assets) Act 1986.

"(2) Any assets found not to have been disclosed shall, in addition to any or both of the penalties prescribed under subsection (1) of this section or that prescribed in section 7 of this Act, be forfeited to the Federal Government."

Section 7 of the Advance Fee Fraud and Other Fraud Related Offences Act 2006

"7. Laundering of funds obtained through unlawful activity, etc.

(1) A person who conducts or attempts to conduct a financial transaction which in fact involves the proceeds of a specified unlawful activity-

(a) with the intent to promote the carrying on of a specified unlawful activity; or

(b) where the transaction is designed in whole or in part-

(i) to conceal or disguise the nature, the location, the source, the ownership or the control of the proceeds of a specified unlawful activity; or

(ii) to avoid a lawful transaction under Nigerian law, commits an offence under this Act if he knows or ought to know, having regard to the circumstances of the case, that the property involved in the financial transaction represents the proceeds of some form of unlawful activity.

(2) A person who commits an offence under subsection (1) of this section, is liable on conviction-

(a) in the case of a financial institution or corporate body, to a fine of N I million and where the financial institution or corporate body is unable to pay the fine, its assets to the value of the fine

shall be confiscated and forfeited to the Federal Government; or

(b) in the case of director, secretary or other officer of the financial institution or corporate body or any other person, to imprisonment for a term of not more than 10 years and not less than 5 years.

(3) When as a result of negligence, or regulation in the internal control procedures, a financial institution fails to exercise due diligence as specified in the Banks and Other Financial Institutions Act, 1991 as amended or the Money Laundering (Prohibition) Act, 2004 in relation to the conduct of financial transactions which in fact involve the proceeds of unlawful activity-

(a) the financial institution commits an offence and is liable on conviction to refund the total amount involved in the financial transaction and not less than N100,000 sanction by the appropriate financial regulatory authority;

(b) a director, secretary, employee or other staff of the financial institution who facilitates, contributes or otherwise is involved in the failure to exercise due diligence as stipulated under this section, commits an offence and is liable on conviction to imprisonment for a term of not less than three years and may also be liable to be banned indefinitely for a period of three years from exercising the profession which provided the opportunity for the offence to be committed.

(4) A person who transports or attempts to transport a monetary instrument or funds from a place in Nigeria to or through a place outside Nigeria or to a place in Nigeria from or through a place outside Nigeria-

(a) with the intent to promote the carrying on of specified unlawful activity; or

(b) where the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and the transportation is designed in whole or in part-

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of a specified unlawful activity; or

(ii) to avoid a lawful transaction under Nigerian law,

commits an offence under this Act, if he knows or ought to know, having regard to the circumstances of the case, that the monetary instrument or funds involved in the transportation are the proceeds of some form of unlawful activity and the intent of the transaction.

(5) A person who commits an offence under subsection (3) of this section is liable on conviction to a fine of N500,000 or twice the value of the monetary instrument or funds involved in the transportation, whichever is higher, or imprisonment for a term of not less than 10 years or to both such fine and imprisonment.

(6) In this section-

(a) "conducts" includes initiating, being involved, connected with, concluding, or participating in initiating or concluding a transaction;

(b) "financial institution" means banks, body association or group of persons, whether corporate or incorporate which carries on the business of investment and securities, a discount house, insurance institutions, debt factorisation and conversion firms, bureau de change, finance company, money brokerage firm whose principal business includes factoring, project financing, equipment leasing, debt administration, fund management, private ledger services, investment management, local purchase order financing, export finance, project consultancy, financial consultancy, pension funds management and such other businesses as the Central Bank of Nigeria or other appropriate regulatory authorities may from time to time designate;

(c) "financial transaction" means-

(i) a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects foreign monetary instruments; or

(ii) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, foreign commerce in any way or degree;

(d) "knows or ought to know that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means

that the person knew or ought to have known that the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes an offence under this Act;

(e) "monetary instrument" means coin or currency of Nigeria or of any other country, traveller's cheque, personal cheque, bank cheque, money order, investment security in bearer form or

otherwise in such form that title thereto passes upon delivery;

(f) "proceeds" means any property derived or obtained, directly or indirectly through the commission of an offence under this Act;

(g) "property" includes assets, monetary instruments and instrumentalities used in the commission of an offence under this Act;

(h) "specified unlawful activity" means-

(i) any act or activity constituting an offence under this Act;

(ii) with respect to a financial transaction occurring in whole or in part in Nigeria, an offence against the laws of a foreign nation involving obtaining property by fraud by whatever name called;

(i) "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution, includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected."

196. Nigeria cited the following measures:

- Institution of a regimen on currency transaction reports (CTRs); suspicious transaction reports (STRs); know your customer (KYC) and know your customers business (KYCB).

197. Additional initiatives against money laundering include:

1. Sensitization of financial and designated non-financial institutions (DNFIs) on their obligations under Nigeria's anti-money laundering legislation through seminars, workshops, conferences, electronic and print media.
2. Ensuring that financial institutions and DNFIs comply with anti-money laundering guidelines.
3. Sanctioning and prosecuting errant financial institutions and DNFIs for, inter alia, deterrent purposes.
4. Coordinated and enhanced cooperation among all anti-money laundering enforcement and regulatory agencies.
5. Enhanced cooperation between national anti-money laundering regulatory and enforcement agencies, on the one hand, and regional and international anti-money laundering standard setters, on the other.

198. The enactment of the Economic and Financial Crimes Act, 2004 led to the establishment of the Economic and Financial Crimes Commission (EFCC) as the coordinating agency for all money laundering-related cases. The Nigeria Financial Intelligence Unit (NFIU) was also established in 2005 under the EFCC to receive, analyse and disseminate financial intelligence to law enforcement agencies and other relevant institutions.

199. Nigeria indicated that the EFCC has prosecuted 26 cases of money laundering from 2010-2013.

(b) Observations on the implementation of the article

200. Relevant provisions are found in the cited legislation which address the provision under review.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

201. Nigeria cited the following measures.

Section 18(1) of the Economic and Financial Crimes Commission (Establishment) Act 2004 (previously cited).

Section 15 (cited above) and Section 17 of the Money Laundering (Prohibition) Act 2011 (As Amended)

"17. A person who-

(a) conceals, removes from jurisdiction, transfers to nominees or otherwise retains the proceeds of a crime or an illegal act on behalf of another person knowing or suspecting that other person to be engaged in a criminal conduct or has benefited from a criminal conduct, or conspiracy, aiding, etc; and

(b) knowing that any property either in whole or in part directly or indirectly represents another person's proceeds of a criminal conduct, acquires or uses that property or possession of it, commits an offence under this Act and is liable on conviction to imprisonment for a term not less than 5 years or to a fine equivalent to 5 times the value of the proceeds of the criminal conduct or both such imprisonment and fine."

Section 24 of the Corrupt Practices and Other Related Offences Act 2000 (previously cited).

202. Nigeria provided the following example of a case investigated and prosecuted under this article.

FRN v Chief Diepreye Solomon Alamiyeseigha & Others, Fhc/1/328c/2005.

(b) Observations on the implementation of the article

203. Nigeria has adopted measures (Section 15 of the MLPA) corresponding substantially to the provision under review.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) *Subject to the basic concepts of its legal system:*

(ii) *Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

(a) Summary of information relevant to reviewing the implementation of the article

204. Nigeria cited the following measures.

Section 18, Money Laundering (Prohibition) Act 2011 (As Amended)

"A person who-

- (a) conspires with, aids, abets or counsels any other person to commit an offence;
 - (b) attempts to commit or is an accessory to an act or offence; or
 - (c) incites, procures or induces any other person by any means whatsoever to commit an offence, under this Act,
- commits an offence and is liable on conviction to the same punishment as is prescribed for that offence under this Act."

Section 26, Corrupt Practices and Other Related Offences Act 2000

"Attempts, preparations, abetments and criminal conspiracies punishable as offence, delegation of Attorney-General's power to prosecute.

(1) Any person who-

- (a) attempts to commit any offence under this Act;
 - (b) does any act preparatory to or in furtherance of the commission of any offence under this Act; or
 - (c) abets or is engaged in a criminal conspiracy to commit any offence under this Act;
 - (d) commits any offence under this Act;
- shall be guilty of an offence and shall, on conviction, be liable to the punishment provided for such offence.

(2) Prosecution for an offence under this Act shall be initiated by the Attorney-General of the Federation, or any person or authority to whom he shall delegate his authority, in any superior court of record so designated by the Chief Judge of a State or the Chief Judge of the Federal Capital Territory, Abuja under section 60(3) of this Act; and every prosecution for an offence under this Act or any other law prohibiting bribery, Corruption, fraud or any other related offence shall be deemed to be initiated by the Attorney-General of the Federation.

(3) A prosecution for an offence shall be concluded and judgment delivered within ninety (90) working days of its commencement save that the jurisdiction of the court to continue to hear and determine the case shall not be affected where good grounds exist for a delay."

Section 8 Advance Fee Fraud and Other Fraud Related Offences Act 2006

"8. A person who--

- (a) conspires with, aids, abets, or counsels any other person to commit an offence; or
 - (b) attempts to commit or is an accessory to an act or offence; or
 - (c) incites, procures or induces any other person by any means whatsoever to commit an offence,
- under this Act, commits the offence and is liable on conviction to the same punishment as is prescribed for that offence under this Act."

(b) Observations on the implementation of the article

205. The cited measures correspond substantially to the provision under review. No examples of implementation were provided.

Article 23 Laundering of proceeds of crime

Subparagraphs 2 (a) and (b)

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

206. Nigeria cited the following measures.

Section 15, Money Laundering (Prohibition) Act 2011 (As Amended)

"Section 15: Money laundering offences

(1) Money laundering is prohibited in Nigeria.

(2) Any person or body corporate, in or outside Nigeria, who directly or indirectly

(a) conceals or disguises the origin of;

(b) converts or transfers;

(c) removes from the jurisdiction; or

(d) acquires, uses, retains or takes possession or control of:

any fund or property, knowingly or reasonably ought to have known that such fund or property is, or forms part of the proceeds of an unlawful act; commits an offence of money laundering under this Act.

(3) A person who contravenes the provisions of subsection (2) of this section is liable on conviction to a term of not less than 7 years but not more than 14 years imprisonment.

(4) A body corporate who contravenes the provisions of subsection (2) of this section is liable on conviction to -

(a) a fine of not less than 100% of the funds and properties acquired as a result of the offence committed; and

(b) withdrawal of licence.

(5) Where the body corporate persists in the commission of the offence for which it was convicted in the first instance, the Regulators may withdraw or revoke the certificate or licence of the body corporate.

(6) The unlawful act referred to in subsection (2) of this section includes participation in an organized criminal group, racketeering, terrorism, terrorist financing, trafficking in persons, smuggling of migrants, sexual exploitation, sexual exploitation of children, illicit trafficking in narcotic drugs and psychotropic substances, illicit arms trafficking, illicit trafficking in stolen goods, corruption, bribery, fraud, currency counterfeiting, counterfeiting and piracy of products, environmental crimes, murder, grievous bodily injury, kidnapping, hostage taking, robbery or theft, smuggling (including in relation to customs and excise duties and taxes), tax crimes (related to direct taxes and indirect taxes), taxes crimes (related to direct taxes and indirect taxes) extortion, forgery, piracy, insider trading and market manipulation or any other criminal act specified in this Act or in any other law in Nigeria.

(7) A person who commits an offence under subsection (2) of this section shall be subject to the penalties specified in this section notwithstanding that the various acts constituting the offence were committed in different countries or places."

207. Nigeria provided the following example of investigation and prosecution of a predicate offence to money laundering:

FRN v Chief Diepreye Solomon Peter Alamiyeseigha & Others, Fhc/1/328c/2005.

(b) Observations on the implementation of the article

208. During the country visit, officials explained that the term “includes” in Section 15(6) confirms that Nigeria has adopted an all-crimes approach to predicate offences, and that the enumerated crimes (including corruption, bribery and fraud) are illustrative. Officials further explained that the list covers 20 serious crimes, as recommended by the FATF and any other “unlawful act”.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (c)

2. For purposes of implementing or applying paragraph 1 of this article:

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(a) Summary of information relevant to reviewing the implementation of the article

209. Nigeria cited the following measure.

Section 15(2) and (7) of the Money Laundering (Prohibition) Act 2011 (As Amended)
(quoted above).

210. Nigeria provided the following example of investigation and prosecution under this provision:

FRN v Chief Diepreye Solomon Peter Alamiyeseigha & Others, Fhc/1/328c/2005.

(b) Observations on the implementation of the article

211. The cited provision, Section 15(2), covers acts of money laundering committed by “any person or body corporate, in or outside Nigeria”.

212. Section 15(7) extends the offence of money laundering under Section 15(2) “notwithstanding that the various acts constituting the offence were committed in different countries or places”. It was explained during the country visit that the term “the various acts constituting the offence” also covers predicate offences, thus extending money laundering to foreign predicate offences. The reviewers considered that there was some uncertainty to this interpretation of the term “various acts”, given the reference in 15(7) to the laundering offence in subsection (2) and not the predicate offence. Nigeria further

clarified after the country visit that there have been no cases involving foreign predicate offences to date.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (d)

2. For purposes of implementing or applying paragraph 1 of this article:

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(a) Summary of information relevant to reviewing the implementation of the article

213. Nigeria indicated that it has not furnished copies of its laws to the Secretary-General of the United Nations as prescribed by this article.

(b) Observations on the implementation of the article

214. The reviewers recommend that the national authorities take appropriate action to ensure that copies of the current money laundering laws and future amendments to such laws be sent to the UN Secretary-General.

215. Nigeria is encouraged to send the aforementioned information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017 and copy the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).

Article 23 Laundering of proceeds of crime

Subparagraph 2 (e)

2. For purposes of implementing or applying paragraph 1 of this article:

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(a) Summary of information relevant to reviewing the implementation of the article

216. Nigeria indicated that its domestic system does not contain fundamental principles as referred to in this article.

(b) Observations on the implementation of the article

217. Nigeria indicated that all money laundering cases were charged independently of predicate offences because more often than not different courts are vested with jurisdiction to try the predicate offences and the money laundering offences.

(c) Challenges related to article 23

218. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency coordination;
2. Competing priorities;
3. Limited resources for implementation;
4. Limited capacity.

(d) Technical assistance needs related to article 23

219. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;
2. Development of an action plan for implementation.

220. Nigeria has received the previous forms of technical assistance from:

1. DfID
2. UNDP (CPAP Public Accountability Programme)
3. United States Embassy in Nigeria
4. UNODC/EU (NGAX60-10TH EDF).

According to the newsletter of the Nigerian FIU, 2011 (Volume 5, Issue 1)¹, the IMF has also extended a technical assistance project in support of Nigeria's AML/CFT framework, following a request for technical assistance by the NFIU to the IMF. The institutions involved are the core AML/CFT stakeholders, NFIU, Central Bank of Nigeria, Securities and Exchange Commission, the National Insurance Commission (NAICOM), and the Special Control Unit Against Money Laundering (SCUML), as well as the Department of State Services (DSS), the National Drug Law Enforcement Agency (NDLEA) and the ICPC.

Under the NGAT10 project, UNODC in collaboration with the NFIU, SCUML, Chartered Institute of Bankers of Nigeria (CIBN) and the Association of Certified Anti-Money Laundering Specialists (ACAMS), has also organized a series of seminars for compliance officers in financial- and designated non-financial institutions, in Abuja and Lagos. The purpose of the workshop was to increase the awareness of these institutions on the AML/CFT regime and to address topics on business ethics and corporate governance.

221. Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Article 24 Concealment

¹ http://www.nfiu.gov.ng/index.php?option=com_joomdoc&task=doc_download&gid=62&Itemid=71

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

222. Nigeria cited the following measures.

Section 17, Money Laundering (Prohibition) Act 2011 (As Amended) (quoted above)

Section 17, Economic and Financial Crimes Commission (Establishment) Act 2004

"17: A person who –

(a) whether by concealment, removal from jurisdiction, transfer to nominees or otherwise or otherwise retains the control of the proceeds of a criminal conduct or an illegal act on behalf of another person knowing that the proceeds is as a result of criminal conduct by the principal; or

(b) knowing that any property is in whole or in part directly or indirectly represents another person's proceeds of a criminal conduct, acquires or uses that property or has possession of it, commits an offence and is liable on conviction to imprisonment for a term not less than 5 years or to a fine equivalent to 5 times the value of the proceeds of the criminal conduct or to both such imprisonment and fine."

Section 24, Corrupt Practices and Other Related Offences Act 2000 (quoted above).

223. Data from the relevant enforcement agencies (Code of Conduct Bureau, EFCC and ICPC) have been previously cited above.

(b) Observations on the implementation of the article

224. Nigeria confirmed that a person can be charged with concealment under the cited measures if s/he did not participate in the predicate offence.

(c) Challenges related to article 24

225. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency coordination;
2. Limited capacity;
3. Limited resources for implementation

(d) Technical assistance needs related to article 24

226. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned
2. Development of an action plan for implementation

227. Nigeria has received the previous forms of technical assistance from:

1. UNODC/European Union
2. DfID

3. United States Embassy.

228. Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Article 25 Obstruction of Justice

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

229. Nigeria cited the following measures.

Sections 126 and 133 of the Criminal Code (Chapter 14:

"126. (1) Any person who conspires with another to obstruct, prevent, pervert, or defeat the course of justice is guilty of a felony, and is liable to imprisonment for seven years.

The offender cannot be arrested without warrant.

(2) Any person who attempts, in any way not specially defined in this code, to obstruct, prevent, pervert, or defeat, the course of justice is guilty of a misdemeanor, and is liable to imprisonment for two years."

"133. Any person who-

(1) within the premises in which any judicial proceeding is being had or taken, or within the precincts of the same, shows disrespect, in speech or manner, to or with reference to such proceeding, or any person before whom such proceeding is being had or taken; or

(2) having been called upon to give evidence in a judicial proceeding, fails to attend or, having attended, refuses to be sworn or to make an affirmation, or, having been sworn or affirmed, refuses without lawful excuse to answer a question, or to produce a document, or prevaricates, or remains in the room in which such proceeding is being had or taken, after the witnesses have been ordered to leave such room; or

(3) causes an obstruction or disturbance in the course of a judicial proceeding; or

(4) while a judicial proceeding is pending, makes use of any speech or writing, misrepresenting such proceeding, or capable of prejudicing any person in favour of or against any party to such proceeding, or calculated to lower the authority of any person before whom such proceeding is being had or taken; or

(5) publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private; or

(6) attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connection with such evidence; or

(7) dismisses a servant because he has given evidence on behalf of a certain party to a judicial proceeding; or

(8) retakes possession of land from any person who has recently obtained possession by a writ of court; or

(9) commits any other act of intentional disrespect to any judicial proceeding, or to any person before whom such proceeding is being had or taken,

is guilty of a simple offence, and liable to imprisonment for three months.

230. Penal Code, Section 182 (Influencing course of justice) was also considered to be relevant.

182. Whoever with intent to influence the course of justice in any civil or criminal proceeding does any act whereby the fair hearing, trial or decision of any matter in that proceeding may be prejudiced shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

231. Nigeria provided the following case example related to obstruction of justice.

FRN v. Dominic Debusoye. (FHC/KD/110/2005). The convict was charged and convicted for obstructing the course of justice by facilitating the jumping of bail of an accused person facing trial in court. He was charged and convicted under section 38(1) of the Economic and Financial Crimes Commission which provides that:“ A person who willfully obstructs the Commission or any authorized officer of the Commission in exercise of any of the powers conferred on the Commission by this Act commits an offence under this Act and is liable on conviction to imprisonment for a term not exceeding five years or to a fine of twenty thousand naira or to both such imprisonment and fine.” The convict was sentenced to 12 months imprisonment without option of a fine.

(b) Observations on the implementation of the article

232. Section 133(6) of the Criminal Code in particular addresses “attempts wrongfully to interfere with or influence a witness in a judicial proceeding” in connection with evidentiary matters, which reflects the spirit of the provision under review. Section 182 of the Penal Code corresponds broadly to the referenced measure.

233. While the Nigerian legislation corresponds to the provision under review, during the country visit Nigerian officials explained that threats, intimidation and the use of physical force against witnesses in criminal proceedings is a significant concern. The same extends to investigators, prosecutors, heads of agencies and judges (see paragraph (b) below).

234. Nigeria is encouraged to take measures to strengthen the implementation of its obstruction of justice provisions. Reference is made to the observations on the pending Witness Protection bill, 2012 under article 32 below.

Article 25 Obstruction of Justice

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

(a) Summary of information relevant to reviewing the implementation of the article

235. Nigeria cited the following measures.

Section 22 of the Money Laundering (Prohibition) Act 2011 (As Amended)

"A person who wilfully obstructs the officers of the Ministry, the Commission, the Agency or any authorized officer in the exercise of the powers conferred on the Ministry, the Commission, or the Agency by this Act commits an offence and is liable on conviction-

(a) in the case of an individual, to imprisonment for a term not less than 2 years and not exceeding 3 years; and

(b) in the case of a financial institution or other body corporate, to a fine of N1,000,000."

Section 197 of the Criminal Code Act Cap 77 Lfn.

"197. Any person who in any manner obstructs or resists any public officer while engaged in the discharge or attempted discharge of the duties of his office under any Order, Act, Law, or Statute, or obstructs or resists any person while engaged in the discharge or attempted discharge of any duty imposed on him by an Order, Act, Law, or Statute, is guilty of a misdemeanour and is liable to imprisonment for two years."

Section 148 of the Penal Code

"Whoever voluntarily obstructs any public servant in the discharge of his public functions shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to forty naira or with both."

Section 149 of the Penal Code

"Whoever voluntarily obstructs any public servant in the discharge of his public functions under any imperial law or written law or voluntarily obstructs any person engaged in the discharge of any duty imposed on him by an imperial law or written law shall be punished with imprisonment which may extend to two years or with fine or with both."

Sections 15, 25 and 41 of the Corrupt Practices and Other Related Offences Act 2000.

"15. Deliberate frustration of investigation by the Commission

Any person who, with intent to defraud or conceal a crime or frustrate the Commission in its investigation of any suspected crime of corruption under this Act or under any other law:

(a) destroys, alters, mutilates, or falsifies, any book, documents, valuable security, account, computer system, diskette, computer printout or other electronic device which belongs to or is in the possession of his employer, or has been received by him on account of his employment, or any entry in any such book, document, accounts or electronic device, or is privy to any such act; or

(b) makes, or is privy to making any false entry in any such book, document, account or electronic record; or

(c) omits, or is privy to omitting, any materials particular from any such book, document, account or electronic record; is guilty of a felony, and shall on conviction be liable to seven

(7) years imprisonment.

25. Making of statement which is false or intended to mislead, etc.

(1) Any person who makes or causes any other person to make to an officer of the Commission or to any other Public Officer, in the course of the exercise by such Public Officer of the duties of his office, any statement which to the knowledge of the person making the statement, or causing the statement to be made-

(a) is false, or intended to mislead or is untrue in any material particular; or

(b) is not consistent with any other statement previously made by such person to any other person having authority or power under any law to receive, or require to be made such other statement notwithstanding that the person making the statement is not under any legal or other obligation to tell the truth, shall be guilty of an offence and shall on conviction be liable to a

fine not exceeding one hundred thousand naira or to imprisonment for a term not exceeding two (2) years or to both such fine and imprisonment.

(2) Where any person who has made a statement to an officer of the Commission or to the Attorney-General in the course of such officer or Attorney-General exercising any power conferred by this Act, subsequently thereto makes any other statement to any person having authority or power under any law to receive or require to be made such other statement, regardless of whether or not the person making the statement is under a legal or other obligations to tell the truth, he shall, if such other statement is inconsistent with any statement previously made to an officer of the Commission or such other Public Officer, be guilty of an offence and shall on conviction be liable to a fine not exceeding ten thousand naira or to imprisonment for a term not exceeding two years or to both.

(3) For the avoidance of any doubt, it is declared that for the purpose of subsections (1) and (2), any statement made in the course of any legal proceedings before the court, whether civil or criminal, or any statement made by any person in the course of any disciplinary proceedings, whether such legal proceedings or disciplinary proceedings are against the person making the statement or against any other person, shall be deemed to be a statement made to a person having authority or power under the law to receive the statement so made.

41. Obstruction of inspection and search

Any person who-

- (a) refuses any officer of the Commission access to any premises, or fails to submit to a search by a person authorised to search him under this Act;
- (b) assaults, or obstructs any officer of the Commission or any person authorised by the Commission in the execution of his duty under this Act;
- (c) fails to comply with any lawful demand notice, order or requirements of an officer of the Commission in the execution of his duty under this Act;
- (d) fails to produce to or conceals or attempts to conceal from, an officer of the Commission any book, document, or article, in relation to which such officer has reasonable grounds for suspecting or believing that an offence under this Act or any other law prohibiting Corruption has been or is being committed, or which is liable to seizure under this Act;
- (e) rescues or endeavours to rescue or causes to be rescued any person who has been duly arrested or anything which has been duly seized; or
- (f) destroys anything to prevent the seizure thereof or the securing of the thing, shall be guilty of an offence punishable with imprisonment for one(1) year without option of fine."

Section 38 of the Economic and Financial Crimes Commission (Establishment) Act 2004

"Obstruction of the Commission or authorized officers

(1) The Commission shall seek and receive information from any person, authority, corporation or company without let or hindrance in respect of offences it is empowered to enforce under this Act.

(2) A person who -

- (a) wilfully obstructs the Commission or any authorized officer of the Commission in exercise of any of the powers conferred on the Commission by this Act; or
- (b) fails to comply with any lawful enquiry or requirements made by any authorized officer in accordance with the provision of this Act,

commits an offence under this Act and is liable on conviction to imprisonment for a term not exceeding five years or to a fine of twenty thousand naira or to both such imprisonment and fine."

Section 8(3) of the Public Complaints Commission Act 1975

"(3) Any person who wilfully obstructs, interferes with, assaults or resists any Commissioner or any other officer or servant of the Commission in the execution of his duty under this Act or who aids, invites, induces or abets any other person to obstruct, interfere with, assault or resist any such Commissioner, officer or servant, shall be guilty of an offence and liable on

conviction to a fine of N500 or imprisonment for a term of six months or to both such fine and imprisonment."

(b) Observations on the implementation of the article

236. Nigeria confirmed that the Corrupt Practices and Other Related Offences Act, 2000 does not address the use of force, threats or intimidation. Nigeria explained that the Commission may invoke Section 197 of the Criminal Code and Sections 148 and 149 of the Penal Code, as the case may be.

237. Nigeria has a number of relevant provisions to address the obstruction of official duties by justice or law enforcement officials. However, as reported during the country visit, there continue to be significant physical attacks, threats and intimidation of investigators, prosecutors, heads of agencies and also judges that hamper these persons and anti-corruption agencies in the full exercise of their duties. An elevated security risk in fulfilling their functions was reported.

238. Four case examples of physical obstruction of EFCC officers were provided during the country visit:

11/2006: Serious bodily injury to four officials (Plateau State): case investigated by FCID Abuja, but not charged to court.

3/2010: EFCC officer shot dead, and serious bodily injury to another through gunshot wound (Imo State): police investigation revealed a case of armed robbery, suspects charged to court.

4/2013: Physical attack at court premises (Lagos): suspects charged to court for assault.

3/2014: Serious bodily injury to EFCC officer: case under investigation by Ppolice Division in Lagos.

239. Moreover, examples of bribery of public officials were referred to during the country visit: in one case, the attempted bribery of a judge by a high-level official, and in another the attempted bribery of EFCC officials involving approximately 1,500,000 Naira (charges pending at the time of the country visit). A further example was referred to in the *Ibori* case (former Governor of Delta State of Nigeria, referenced below), where bribes were paid in order to interfere with law enforcement officers in their official functions.

240. More generally, it was reported by the anti-corruption agencies during the country visit that there have been very few convictions of obstruction of justice, and that cases were ongoing. Regarding penalties in these cases, it was explained that forfeiture of assets of persons convicted of obstruction of justice is regularly applied.

241. As noted above, Nigeria is encouraged to take measures to strengthen the implementation of its obstruction of justice provisions.

(c) Challenges, where applicable

242. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency coordination;
2. Limited capacity;

3. Limited resources for implementation.

(d) Technical assistance needs

243. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:
1. Summary of good practices/lessons learned
 2. Development of an action plan for implementation
244. Nigeria has received the previous forms of technical assistance from:
1. United States Embassy
 2. UNODC/EU
 3. U.K. DfID.
245. Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Article 26 Liability of legal persons

Paragraphs 1 and 2

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

(a) Summary of information relevant to reviewing the implementation of the article

246. Nigeria cited the following measures.

Section 12 of the Money Laundering (Prohibition) Act 2011 (As Amended)

"12. Where funds are blocked under subsection 7 of section 6 of this Act and there is evidence of conspiracy with the owner of the funds, the Financial Institution or the Designated Non-Financial Institution involved shall not be relieved of liability under this Act and criminal proceedings for all offences arising there from, may be brought against its director and employees involved in the conspiracy."

Section 19 of the Money Laundering (Prohibition) Act 2011 (As Amended)

"(1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed on the instigation or with the connivance of or attributable to any neglect on the part of a director, manager, secretary, or other similar officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate where applicable shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where a body corporate is convicted of an offence under this Act, the court may order that the body corporate shall thereupon and without any further assurances, but for such order, be wound up and all its assets and properties forfeited to the Federal Government."

Section 2 of the Corrupt Practices and Other Related Offences Act 2000

"2. In this Act, unless the context otherwise requires- ...

"Person" includes a natural person, a juristic person or any body of persons corporate or incorporate;"

Section 18 of The Interpretation Act Cap 123 Laws of the Federation of Nigeria 2004

“A person includes anybody corporate or incorporate”

Sections 58(6) and 58(7) of the Public Procurement Act 2007

"(6) Any legal person that contravenes any provision of this Act commits an offence and is liable on conviction to a cumulative penalty of:

debarment from all public procurements for a period not less than 5 calendar years; and

a fine equivalent to 25% of the value of the procurement in issue.

(7) Where any legal person shall be convicted pursuant to subsection (4) of This Section, every director of the company as listed on its records at the Corporate Affairs Commission shall be guilty of an offence and is liable on conviction to a term of imprisonment not less than 3 calendar years but not exceeding 5 calendar years without an option of fine."

Section 16 of the Nigerian Extractive Industries Transparency Initiative Act 2007

16. (1) An extractive industry company which:

(a) gives false information to the Federal Government or its agency regarding its volume or production, sales and income; or

(b) renders false statement of account or fails to render a statement of account required under this Act to the Federal Government or its agencies, resulting in the underpayment or non-payment of revenue accruable to the Federal Government, or statutory recipients commits an offence and is liable on conviction to a fine not less than N30,000,000.

(2) Where the Extractive industry has been convicted of an offence under sub-section (1) of this section, the court shall, in addition to the penalty prescribed there under, order the company to pay the actual amount of revenue due to the Federal Government.

(3) An extractive industry company which delays or refuses to give information or report under this Act, or wilfully negligently fails to perform its obligations under this Act, commits an offence and is liable on conviction to a fine not less than N30,000,000.

(4) Without prejudice to subsections (1), (2) and (3) of this section, the President may on the recommendation of the NSWG suspend or revoke the operational licence of any extractive industry company which fails to perform its obligations under this Act.

(5) If any extractive industry company commits an offence against this Act, every Director or other persons concerned in the management of the company commits the offence and is liable on conviction to not less than 2 years imprisonment or a fine not less than N5,000,000 unless that person proves that:

(a) the offence was committed without his consent or connivance, and

(b) the person exercised all such diligence to prevent the commission of the offence as ought to have been exercised by that person, having regard to the nature of his functions in that company and to all the circumstances.

(6) A government official who renders false statement of account or fails to render a statement of account required under this Act to the Federal Government or its agencies, resulting in the underpayment or non-payment of revenue accruable to the Federal Government, or statutory recipients, commits an offence and is liable on conviction to not less than 2 years imprisonment or a fine not less than N5,000,000 unless that person proves that:

(a) the offence was committed without his consent or connivance; and

(b) the person exercised all such diligence to prevent the commission of the offence as ought to have been exercised by that person, having regard to the nature of his functions in that company and to all the circumstances.

247. The following provisions are also deemed relevant.

Section 1, Criminal Code

“person” and “owner” and other like terms, when used with reference to property, include corporations of all kinds, and any other association of persons capable of owning property; and also, when so used, includes the State;

Section 5, Penal Code. Person.

5. (1) The word “person” includes any company or association or body of persons, whether incorporated or not.

248. Nigeria cited the following case.

In the case of **Altimate Investment Ltd v Castle & Cubicles Ltd (2008), All FWLR (Pt. 417) 124 B-C**, the Court of Appeal of Nigeria held as follows: “In the Interpretation Act, the word ‘person’ is defined as including any company or association or body of persons, corporate or incorporate. Under section 2 of the Corrupt Practice and Other Related Offences Act the word ‘person’ includes a natural person, a juristic person or any body of persons, corporate or incorporate.”

249. Nigeria provided the following case examples of implementation.

EFCC:

1. **FRN v Chief Diepreye Solomon Peter Alamiyeseigha & Others** (which were legal persons, some of which were: Solomon & Peters Ltd; Santolina Investment Corporation Ltd; Pesal Nigeria Ltd; etc.) Fhc/1/328c/2005.
2. **FRN v Tafa Adebayo Balogun & Others** (which were legal persons, some of which were Yeboa Investment Ltd; Caledonia Telecommunications Ltd; Olatrade Ltd; etc) Fhc/abj/cr/14/05.

ICPC:

FRN vs Michael Aideyan & 4 Others, Charge No. B/icpc/1/2012.

Nigeria indicated that the sentences imposed against the legal persons in the cited cases were winding up and forfeiture of all assets of the corporate entities to the Federal Government of Nigeria.

(b) Observations on the implementation of the article

250. Nigeria has established the criminal liability of legal persons and relevant cases have been cited. The provisions are implemented.

Article 26 Liability of legal persons

Paragraph 3

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

(a) Summary of information relevant to reviewing the implementation of the article

251. Nigeria cited the following measures.

Sections 12 and 19 of the Money Laundering (Prohibition) Act 2011 (As Amended) (previously cited).

Section 16(5), Nigerian Extractive Industries Transparency Initiative Act 2007

"(5) If any extractive industry company commits an offence against this Act, every Director or other persons concerned in the management of the company commits the offence and is liable on conviction to not less than 2 years imprisonment or a fine not less than N 5,000,000 unless that person proves that:

- (a) the offence was committed without his consent or connivance, and
- (b) the person exercised all such diligence to prevent the commission of the offence as ought to have been exercised by that person, having regard to the nature of his functions in that company and to all the circumstances."

(b) Observations on the implementation of the article

252. It was explained that in the above referenced cases companies were prosecuted independently of their principals.

Article 26 Liability of legal persons

Paragraph 4

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

(a) Summary of information relevant to reviewing the implementation of the article

253. Nigeria cited the following measures.

Section 15(1), Money Laundering (Prohibition) Act (As Amended) 2011: Minimum of 7 years imprisonment.

Section 16(2), Money Laundering (Prohibition) Act (As Amended) 2011 provides for (a) 2 years or a fine of not less than N10,000,000; and (b) 3 years or a fine of N10,000,000 or both, in the case of individual and, N25,000,000, in the case of a corporate entity under that section.

The **Economic and Financial Crimes Commission (Establishment) Act 2004** provides for a minimum sentence of 2 years and a maximum of 21 years for various offences under that act.

The **Corrupt Practices and Other Related Offences Act 2000** provides for a minimum sentence of one month and maximum of ten years for various offences under the act.

The **Public Procurement Act 2007** provides for a minimum sentence of five calendar years and maximum of ten calendar years for offences created under the act

Other sanctions under the laws include:

- a. Professional sanctions, such as a prohibition from practicing a profession (Section 16(3), Money Laundering (Prohibition) Act).
- b. Winding up in the case of corporate entities (section 19(2) MLPA) and forfeiture of assets

254. Reference is made to the cases cited under paragraphs 1 and 2 where companies were wound up and their assets forfeited.

(b) Observations on the implementation of the article

255. It was explained during the country visit that the Criminal Code and the Criminal Procedure Act do not contain a general provision whereby penal sanctions are converted to monetary or other penalties where an offence specifies only penal sanctions. However, Section 68 of the Corrupt Practices and other Related Offences Act provides a general penalty section for violations of the Act:

68. General penalty section for any other offence

Any person convicted for an offence under this Act for which no penalty is specifically provided shall be liable to a fine not exceeding ten thousand naira or to imprisonment for a term not exceeding two years or both.

256. It was explained that in other cases penalties against persons are subject to judicial discretion, in accordance with legal parameters. These regularly include winding up and forfeiture of assets on conviction.

257. During the country visit there was some discussion of whether the specified general punishment under the ICPC Act (particularly the N10,000 fine), and the penalties imposed against legal persons in concrete cases, were too lenient to be sufficiently dissuasive, as required by the provision under review. The Nigerian authorities acknowledged that the applicable penalties could be further enhanced, and that the Nigerian Law Reform Commission had begun working with the Attorney-General's office on a legislative amendment. This had been presented to the National Assembly some years ago but had not been adopted, and there was an intention to retable the bill.

258. The reviewers welcome the swift adoption of the relevant legal amendment. It is recommended that Nigeria take measures to ensure that legal persons held liable are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, in line with the provision under review.

(c) Challenges related to article 26

259. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency coordination;
2. Inadequacy of existing normative measures (constitution, laws, regulations, etc.);
3. Limited capacity;
4. Limited resources for implementation;
5. Specificities in its legal system,

(d) Technical assistance needs related to article 26

260. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;
2. Development of an action plan for implementation.

261. Nigeria has received the previous forms of technical assistance from:

1. UNODC/EU
2. UK DfID
3. United States Embassy.

262. Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Article 27 Participation and attempt

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

263. Nigeria referred to Section 15 of the Money Laundering (Prohibition) Act (As Amended) 2011 and the previously cited Sections 17 and 18 of the Economic and Financial Crimes Commission (Establishment) Act 2004.

Sections 17 and 18, Economic and Financial Crimes Commission (Establishment) Act 2004

"17: Retention of proceeds of a criminal conduct.

A person who –

- (a) whether by concealment, removal from jurisdiction, transfer to nominees or otherwise or otherwise retains the control of the proceeds of a criminal conduct or an illegal act on behalf of another person knowing that the proceeds is as a result of criminal conduct by the principal; or
- (b) knowing that any property is in whole or in part directly or indirectly represents another person' s proceeds of a criminal conduct, acquires or uses that property or has possession of it, commits an offence and is liable on conviction to imprisonment for a term not less than 5 years or to a fine equivalent to 5 times the value of the proceeds of the criminal conduct or to both such imprisonment and fine."

"18: Offences in relation to economic and financial crimes and penalties

Offences in relation to economic and financial crimes and petitions

(1) A person who, without lawful authority –

- (a) engages in the acquisition, possession or use of property knowing at the time of its acquisition, possession or use that such property was derived from any offence under this Act; or
- (b) engages in the management, organisation or financing of any of the offences under this Act; or
- (c) engages in the conversion or transfer of property knowing that such property is derived from any offence under this Act; or
- (d) engages in the concealment or disguise of the true nature, source, location, disposition, movement, rights, with respect to or ownership of property knowing such property is derived from any offence referred under this Act

commits an offence under this Act and is liable on conviction to the penalties provided in Subsection (2) of this section.

(2) The penalties provided for offences under subsection (1) of this section shall be imprisonment for a term not less than two years and not exceeding three years."

Section 26, Corrupt Practices and Other Related Offences Act 2000

" Attempts, preparations, abetments and criminal conspiracies punishable as offence, delegation

of Attorney-General's power to prosecute.

(1) Any person who-

(a) attempts to commit any offence under this Act;

(b) does any act preparatory to or in furtherance of the commission of any offence under this Act;
or

(c) abets or is engaged in a criminal conspiracy to commit any offence under this Act;

(d) commits any offence under this Act;

shall be guilty of an offence and shall, on conviction, be liable to the punishment provided for such offence.

(2) Prosecution for an offence under this Act shall be initiated by the Attorney-General of the Federation, or any person or authority to whom he shall delegate his authority, in any superior court of record so designated by the Chief Judge of a State or the Chief Judge of the Federal Capital Territory, Abuja under section 60(3) of this Act; and every prosecution for an offence under this Act or any other law prohibiting bribery, Corruption, fraud or any other related offence shall be deemed to be initiated by the Attorney-General of the Federation.

(3) A prosecution for an offence shall be concluded and judgment delivered within ninety (90) working days of its commencement save that the jurisdiction of the court to continue to hear and determine the case shall not be affected where good grounds exist for a delay."

Sections 7 and 8 of the Criminal Code

"7. When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say-

(a) every person who actually does the act or makes the omission which constitutes the offence;

(b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;

(c) every person who aids another person in committing the offence;

(d) any person who counsels or procures any other person to commit the offence.

In the fourth case he may be charged either with himself committing the offence or with counselling or procuring its commission. A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

Any person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission, the act or omission would have constituted an offence on his part, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had himself done the act or made the omission; and he may be charged with himself doing the act or making the omission.

8. When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence."

(b) Observations on the implementation of the article

264. No examples of cases where an accomplice or assistant was convicted of corruption were reported.

265. The following provisions of the Penal Code were deemed relevant.

79. Acts done by several persons in furtherance of common intention

When a criminal act is done by several persons in furtherance of the common interest of all, each of such persons is liable for that act in the same manner as if done by him alone.

80. When such an act is criminal by reason of its being done with a criminal knowledge or intention

Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone.

81. Co-operation by doing one of several acts constituting an offence

When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Abetment

83. Abetment defined

A person abets the doing of a thing, who-

- (a) instigates any person to do that thing; or
- (b) engages with one or more other person or persons in any conspiracy for the doing of that thing; or
- (c) intentionally aids or facilitates by any act or illegal omission the doing of that thing.

96. Criminal conspiracy defined

(1) When two or more persons agree to do or cause to be done-

- (a) an illegal act; or
- (b) an act which is not illegal by illegal means, such an agreement is called a criminal conspiracy.

(2) Notwithstanding the provisions of subsection (1), no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

266. Nigeria has adopted relevant measures to address the participation in corruption related offences, although no case examples were cited.

Article 27 Participation and attempt

Paragraph 2

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

267. Nigeria cited the following measures.

Section 26, Corrupt Practices and Other Related Offences Act 2000 (previously cited)

Section 18(b), Money Laundering (Prohibition) Act 2011 (As Amended) (cited under UNCAC art. 23)

Section 8, Advance Fee Fraud and Other Related Offences Act 2006

"8. A person who--

- (a) conspires with, aids, abets, or counsels any other person to commit an offence; or
- (b) attempts to commit or is an accessory to an act or offence; or
- (c) incites, procures or induces any other person by any means whatsoever to commit an offence,

under this Act, commits the offence and is liable on conviction to the same punishment as is prescribed for that offence under this Act."

(b) Observations on the implementation of the article

268. Nigeria cited Section 4 of the Criminal Code on attempt, which provides as follows:

Section 4 of the Criminal Code

"When a person, intending to commit an offence, begins to put his intention into execution by means adapted to its fulfilment, and manifests his intention by some overt act, but does not fulfil his intention to such an extent as to commit the offence, he is said to attempt to commit the offence.

It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfilment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from the further prosecution of his intention.

It is immaterial that by reason of circumstances not known to the offender it is impossible in fact to commit the offence.

The same facts may constitute one offence and an attempt to commit another offence."

269. Section 95 of the Penal Code was also deemed relevant.

Attempts to commit offences

95. Attempting to commit offences punishable with imprisonment

Whoever attempts to commit an offence punishable with imprisonment or to cause such an offence to be committed and in such attempt does any act towards the commission of the offence shall, where no express provision is made by this Penal Code or by any other Act or Law for the time being in force for the punishment or such attempts, be punished with imprisonment for a term which may extend to one half of the longest term provided for that offence or with such fine as is provided for the offence or with both.

270. No convictions for attempted corruption were reported. The provision is legislatively implemented.

Article 27 Participation and attempt

Paragraph 3

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

271. Nigeria cited Section 26 of the Corrupt Practices and Other Related Offences Act 2000, as previously quoted.

(b) Observations on the implementation of the article

272. The provision seems to be legislatively implemented in Section 26(1)(b) of the cited Act.

(c) Challenges related to article 27

273. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency coordination
2. Inadequacy of existing normative measures (constitution, laws, regulations, etc.)
3. Limited capacity
4. Limited resources for implementation
5. Specificities in its legal system

(d) Technical assistance needs related to article 27

274. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned
2. Development of an action plan for implementation
3. Model legislation

275. Nigeria has received the previous forms of technical assistance from:

1. UNODC/EU
2. UK DfID
3. United States Embassy

276. Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Article 28 Knowledge, intent and purpose as elements of an offence

Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

(a) Summary of information relevant to reviewing the implementation of the article

277. Nigeria cited the following measures.

Sections 8(2)-(4), 9(2), 11, 25(3), 53, 54 and 58(2) of the Corrupt Practices and Other Related Offences Act 2000.

8. (2) If in any proceedings for an offence under this section it is proved that any property or benefit of any kind, or any promise thereof, was received by a public officer, or by some other person at the instance of a public officer from a person-

(a) holding or seeking to obtain a contract, license, permit, employment or anything whatsoever from a Government department, public body or other organisation or institution in which that public officer is serving as such;

(b) concerned, or likely to be concerned, in any proceeding or business transacted, pending or likely to be transacted before or by that public officer or a government department, public body or other organisation or institution in which that public officer is serving as such; and

(c) acting on behalf of or related to such a person;

the property, benefit or promise shall, unless the contrary is proved, be presumed to have been received corruptly on account of such a past or future act, omission, favour or disfavour as is mentioned in subsection (1)(a) or (b).

(3) In any proceedings for an offence to which subsection (1)(b) is relevant, it shall

not be a defence to show that the accused-

(a) did not subsequently do, make or show the act, omission, favour or disfavour in question; or

(b) never intend to do, make or show the act, omission, favour or disfavour.

(4) Without prejudice to subsection (3), where a Police Officer or other public officer whose duties include the prosecution, detection or punishment of offenders is charged with an offence under this section arising from-

(a) the arrest, detention or prosecution of any person for an alleged offence; or

(b) an omission to arrest, detain or prosecute any person for an alleged offence; or

(c) the investigation of an alleged offence,

it shall not be necessary to prove that the accused believed that the offence mentioned in paragraph (a) (b) or (c), or any other offence had been committed.

9.(2) If in any proceedings for an offence under this section it is proved that any Property or benefit of any kind, or any promise thereof, was given to a public officer or some other person at the instance of a public officer, by a person-

(a) holding or seeking to obtain a contract, licence, permit, employment or anything whatsoever from a Government department, public body or other organisation or institution in which that public officer is serving as such, or

(b) concerned or likely to be concerned in any proceeding or business transacted, pending or likely to be transacted before or by that public officer or a government department, public body or other organisation or institution in which that public officer is serving as such, or

(c) acting on behalf of or relative to such a person, the property, benefit or promise shall, unless the contrary is proved, be deemed to have been given corruptly on account of such a past or future act, omission, favour or disfavour as is mentioned in section 9(1) and (2).

11. In any proceedings for an offence under this Act it shall not be necessary to prove that:

(a) any public officer counselled the commission of the offence; or

(b) in the course of committing the offence the accused mentioned any particular public officer; or

(c) (in a case to which sections 8,9, & 10 are relevant) the accused believed that any public officer would do, make or show the act, omission, favour or disfavour in question; or

(d) the accused intended to give the property or benefit in question, or any part thereof, to a public officer.

25. (3) For the avoidance of any doubt, it is declared that for the purpose of subsections (1) and (2), any statement made in the course of any legal proceedings before the court, whether civil or criminal, or any statement made by any person in the course of any disciplinary proceedings, whether such legal proceedings or disciplinary proceedings are against the person making the statement or against any other person, shall be deemed to be a statement made to a person having authority or power under the law to receive the statement so made.

58. (2) A certificate issued under sub-section (1) shall be prima facie proof that it was issued by the person purporting to issue it as principal or on behalf of the principal without proof of the signature of the person who issued such certificate and without proof of the authority of such person to issue it in the absence of any reasonable proof to the contrary.

Section 53 of the Corrupt Practices and Other Related Offences Act 2000 allows Courts to presume several factual circumstances in respect of offences under the Act.

"53. (1) Where in any proceedings against any person for an offence under sections 3 to 19 it is proved that any gratification has been accepted or agreed to be accepted, obtained or attempted to be obtained, solicited, given or agreed to be solicited or given, promised or offered, by or to the accused, the gratification shall be presumed to have been corruptly accepted or agreed to be accepted, obtained or attempted to be obtained, solicited, given or agreed to be solicited or given, promised or offered as an inducement or a reward for or on account of the matters set out in the particulars of the offence, until the contrary is proved.

(2) Where in any proceedings against any person for an offence under this Act or any other law prohibiting corruption it is proved that such person has accepted or agreed to accept, obtained or attempted to obtain any gratification, such person shall be presumed to have done so as a motive or reward for the matters set out in the particulars of the offence, until the contrary is proved.

(3) Where in any proceedings against any person for an offence under this Act or any other law prohibiting corruption it is proved that such person has accepted or attempted to obtain any valuable thing without consideration or for a consideration which he knows to be inadequate, such person shall be presumed to have done so with such knowledge as to the circumstances set out in the particulars of the offence, until the contrary is proved.

(4) Where in any proceedings against any person for an offence under the Custom and Excise Act, it is proved that any officer of customs or other person duly employed for the prevention of smuggling has accepted, agreed to accept or attempted to obtain any bribe, gratuity, re-compence, or reward, such officer or person shall be presumed to have done so for such neglect or non-performance of his duty as set out in the particulars of the offence, until the contrary is proved."

Section 54 of the Corrupt Practices and Other Related Offences Act 2000 grants the courts the authority to presume evidence of illicit enrichment against an accused person as corroboration for offences in Sections 8-19 of the Act.

"54. In any proceedings against any person for an offence under sections 8 to 19 of this Act, it may be proved that at or about the time of the alleged offence, or at any time thereafter the accused, or any relative or associate of his -

(a) held any property for which he, or his relative or associate, as the case may be, is unable to give a satisfactory account as to how he came into its ownership, possession, custody or control; or

(b) had entered into any dealing for the acquisition of any property and he is unable to satisfactorily account for the consideration for which it was or is agreed to be acquired, and the evidence in relation thereto shall be presumed to corroborate any evidence relating to the commission of the offence."

Section 20 (2) of the Money Laundering (Prohibition) Act 2011 (As Amended)

"20. Jurisdiction to try offences under this Act

(1) The Federal High Court shall have jurisdiction to –

(a) try offences under this Act or any other related enactment; and

(b) hear and determine proceedings arising under this Act whether or not the offence was commenced in Nigeria and completed outside Nigeria and the victim is –

(i) a citizen or resident of Nigeria;

(ii) not a citizen of any country but ordinarily resident in Nigeria;

(iii) in transit or has a link with Nigeria; and

(iv) dealing with or on behalf of the Government of Nigeria, or a citizen of Nigeria or an entity registered in Nigeria; or

(v) the alleged offender and is in Nigeria and not extradited to any other country for prosecution.

(2) The Federal High Court shall have jurisdiction to impose any penalty provided for an offence under this Act or any other related enactment.

(3) In any trial for an offence under this Act, the Court shall have power, notwithstanding anything to the contrary in any other enactment, adopt all legal measures necessary to avoid unnecessary delays and abuse in the conduct of matters.

(4) Subject to the provisions of the Constitution of the Federal Republic of Nigeria, an application for stay of proceedings in respect of any criminal matter brought under this Act shall not be entertained until judgment is delivered."

Section 98(3)(b) of the Criminal Code

"(3) In any proceedings for an offence under this section to which subsection (1)(ii) is relevant it shall not be a defence to show that the accused-

(a) did not subsequently do, make or show the act, omission, favour or disfavour in question; or

(b) never intended to do, make or show it."

(b) Observations on the implementation of the article

278. Presumptions on corrupt intent are contained in the above-referenced provisions that correspond to the provision under review. No case examples were provided.

(c) Challenges related to article 28

279. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency coordination;
2. Limited capacity;
3. Limited resources for implementation.

(d) Technical assistance needs related to article 28

280. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned
2. Development of an action plan for implementation

281. Nigeria has received the previous forms of technical assistance from:

1. UNODC/EU
2. UK DfID
3. United States Embassy.

Article 29 Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

(a) Summary of information relevant to reviewing the implementation of the article

282. Nigeria indicated that the statute of limitations is not applicable to criminal matters in Nigeria, as there is no time limit to prosecute any criminal offence.

(b) Observations on the implementation of the article

283. Nigeria indicated that generally criminal cases are not statute barred in Nigeria. However, in some offences such as treason, charges must be filed in court within certain period otherwise they would be time barred. Section 43 of the Criminal Code thus provides:

“A person cannot be tried for treason or for any of the felonies defined in the three preceding sections, unless the prosecution is commenced within two years after the offence is committed.” See FRN vs Henry Okar.

284. No corresponding provision was found in the Penal Code.

(c) Successes and good practices

285. It is positively noted that there is no prescription period for corruption cases in Nigeria.

Article 30 Prosecution, adjudication and sanctions

Paragraph 1

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

(a) Summary of information relevant to reviewing the implementation of the article

286. Nigeria cited the following measures.

- The Corrupt Practices and Other Related Offences Act 2000
- The EFCC Act 2004
- The Money Laundering (Prohibition) Act 2011 (As Amended)

287. Nigeria provided the following table of sanctions for offences under the Convention.

UNCAC articles	ICPC Act Sections/Offences	Punishment
15, 16, 21	8. Demanding or receiving gratification by an official	7 years
15 and 16	9. Corrupt offers to public officials	7 years
15 and 16	10. Corrupt demands by persons	7 years
15, 16, 21	17. Gratification by and through agent	5 years
15	18. Bribery of public officers in relation to voting or performance of duty	5 years with hard labour
15	21. Bribery in relation to auctions	3 years and current price of the property

17	19. Using office or position to gratify or confer unfair advantage on oneself, relation or associate	5 years without option of fine
18	22(1) and (2). Bribery for giving assistance or using influence	7 years or 1 million naira fine
19	Sec. 104 Criminal Code and Sec. 13 Code of Conduct Tribunal Act. Abuse of office	2 years/forfeiture of property or vacation of office or ban from holding office for 10 years
20	44(2). Chairman's power to obtain "information"	5 years without option of fine
22	Sec. 390(6) and (7) Criminal Code and Sec. 308-315 Penal Code. Stealing and criminal breach of trust	7 years and/or with or without fine
23 and 24	24. Dealing with, using, holding, receiving or concealing proceeds of crime	Not exceeding 5 years
25	Sec. 113-133 Criminal Code and 156-166 Penal Code. Obstruction of justice	2 to 14 years with or without fine
25	15. Deliberate frustration of investigation by the Commission	7 years
25	25. Making false statement to the Commission	100,000 naira fine or 2 years or both
25	41. Obstruction of inspection and search	1 year without option of fine
27	26(1). Attempts, preparation, abetment, conspiracies	Same prescribed for substantive offence
	23. Failure to report bribery transaction	100,000 naira fine or 2 years or both
33 and 37	64. Willfully making false report	10 years and 100,000 naira fine

UNCAC article	MLPA As Amended	Punishment
23	15. Concealment, disguising the origin; conversion, transfer, removal from jurisdiction, acquisition, use, retention, taking possession of proceeds of unlawful act	7-14 years in the case of an individual; fine of not less than 100% of the funds and properties acquired as a result of the offence, withdrawal of license, and revocation of certificate
23	18. Conspiracy, aiding, abetting, counseling, procuring, inciting or inducing another person to commit money laundering Attempt to commit or accessory to the commission of money laundering	7-14 years in the case of an individual; fine or not less than 100% of funds and properties acquired as a result of the offence, withdrawal of license, and revocation of certificate
24	17. Retention, concealment of proceeds of criminal act on behalf of another person	Not less than 5 years or fine equivalent to 5 times the value of proceeds of the criminal act, or both such imprisonment and fine

288. Section 68 of the Corrupt Practices and other Related Offences Act provides a general penalty section for violations of the Act:

68. General penalty section for any other offence

Any person convicted for an offence under this Act for which no penalty is specifically provided shall be liable to a fine not exceeding ten thousand naira or to imprisonment for a term not exceeding two years or both.

289. Nigeria provided the following information regarding dissuasive sanctions imposed.

Most severe sanction in a case prosecuted by ICPC:

FRN vs Shugaba Umar Gana, Charge No. M/27c/2007

Prison sentence: 28 years.

Most severe sanction in a case prosecuted by EFCC

Austin Udeme, CR /05/06:

Prison sentence: 10 years

(b) Observations on the implementation of the article

290. It was explained during the country visit that there are no sentencing guidelines for judges in Nigeria. Within the legislative framework, the courts lay down sentencing principles by case law, considering the circumstances and gravity of the offence, its prevalence, the offender and his conduct, and the interests of society and the victims.

291. Nigeria has adopted penalties that generally take into account the gravity of offences. It is noted, however, that some offences carry the possibility of a fine instead of, or in addition to, the prison sentence (e.g., Section 16, EFCC Act and Section 17, MLPA, both on retention of criminal proceeds). Some obstruction of justice-related measures under the ICPC Act are punishable by one years' imprisonment or less (Section 28, Power to examine persons). Fixed-term sentences for offences (rather than maximum or minimum penalties) are generally established under the ICPC Act. Some offences under the EFCC Act do not carry minimum sentences (e.g., Section 13, Offences relating to financial malpractices). Bribery offences under the ICPC Act are generally punishable by 7 years' imprisonment.

292. The Nigerian courts have the discretion to impose maximum penalties in deserving cases. They can also exercise discretion within the limits of prescribed maximum (and, where established, minimum) penalties.

293. As noted below, in some cases plea bargaining has led to the imposition of penalties that were considered to be lenient, and the observations under paragraph (3) of this article are referred to.

Article 30 Prosecution, adjudication and sanctions

Paragraph 2

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of

their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

294. Nigeria indicated that it has partly implemented this provision of the Convention.

295. While Section 308 of the Constitution (quoted below) provides near absolute immunity for certain categories of public officials, which effectively prevents their prosecution while in office (the President, Vice President, state Governors and Deputy Governors), Section 52 of the Corrupt Practices and Other Related Offences Act 2000 (quoted below) provides for the appointment of independent counsel to conduct investigations for corruption in respect of those categories of public officers and report to the National Assembly or State House of Assembly thereon. The law provides that the application for independent counsel shall be made by the ICPC to the Chief Justice of the Federation

296. In the case of **Gani Fawehinmi V IGP, 2002 7 NWLR 767** (page 606), the court stated that public officials covered by immunity can be investigated while in office.

297. Nigeria cited the following measures.

Section 308 of the 1999 Constitution of Nigeria

"308. (1) Notwithstanding anything to the contrary in this Constitution, but subject to subsection (2) of this section -

(a) no civil or criminal proceedings shall be instituted or continued against a person to whom this section applies during his period of office;

(b) a person to whom this section applies shall not be arrested or imprisoned during that period either in pursuance of the process of any court or otherwise; and

(c) no process of any court requiring or compelling the appearance of a person to whom this section applies, shall be applied for or issued:

Provided that in ascertaining whether any period of limitation has expired for the purposes of any proceedings against a person to whom this section applies, no account shall be taken of his period of office.

(2) The provisions of subsection (1) of this section shall not apply to civil proceedings against a person to whom this section applies in his official capacity or to civil or criminal proceedings in which such a person is only a nominal party.

(3) This section applies to a person holding the office of President or Vice-President, Governor or Deputy Governor; and the reference in this section to "period of office" is a reference to the period during which the person holding such office is required to perform the functions of the office."

Section 52 of the Corrupt Practices and Other Related Offences Act 2000

"52. (1) When an allegation of corruption or anything purporting to contravene any provision of this Act is made against the President or the Vice President of Nigeria or against any state Governor or Deputy Governor, the Chief Justice of the Federation shall, if satisfied that sufficient cause has been shown upon an application on notice supported by an affidavit setting out the facts on which the allegation is based, authorise an independent counsel (who shall be a legal practitioner of not less than fifteen years standing) to investigate the allegation and make a report of his findings to the National Assembly in the case of the President or Vice President and to the relevant State House of Assembly in the case of the State Governor or Deputy Governor;

(2) The Commission shall be enjoined to fully cooperate with such independent counsel and

provide all facilities necessary for such independent counsel to carry out his functions."

Sections 5 and 65, Corrupt Practices and Other Related Offences Act

"Powers and immunities of Officers of the Commission

(1) Subject to the provisions of this Act, an officer of the Commission when investigating or prosecuting a case of corruption, shall have all the powers and immunities of a police officer under the Police Act and any other laws conferring power on the Police, or empowering and protecting law enforcement agents.

(2) If, in the course of any investigations or proceedings in court in respect of the Commission of an offence under this Act by any person there is disclosed an offence under any other written law, not being an offence under this Act, irrespective of whether the offence was committed by the same person or any other person, the officer of the Commission responsible for the investigation or proceedings, as the case may be, shall notify the Director of Public Prosecutions or any other officer charged with responsibility for the prosecution of criminal cases, who may issue such direction as shall meet the justice of the case.

65. Protection of Officers of the Commission

No legal proceedings, civil or criminal, shall be instituted against any officer of the Commission or any other person assisting such officer for any act which is done in good faith or for any omission in good faith by such officer or other person."

Article 41 of the EFCC Act

"41: Immunities

Subject to the provisions of this Act, an officer of the Commission when investigating or prosecuting a case under this Act, shall have all the powers and immunities of a Police Officer under the Police Act and any other law conferring power on the police or empowering and protecting law enforcement agencies."

298. Nigeria indicated that Section 52 of the Corrupt Practices and Other Related Offences Act 2000 has never been invoked because there are alternative measures of dealing with the issue.

299. Section 98C of the Criminal Code related to proceedings against judicial officers for corruption and abuse of office under the Code is also deemed relevant.

Criminal Code

98C. (1) A judicial officer cannot be arrested without warrant for an offence under section 98, 98A or 98B.

(2) No proceedings for an offence under section 98, 98A Or 98B shall be instituted against a judicial officer except on a complaint or information signed by or on behalf of the Attorney-General of the Federation or by or on behalf of the Attorney-General of the State in which the offence is alleged to have been committed.

(3) In this section, "judicial officer" means, in addition to the officers mentioned in the definition of that expression contained in section 1(1)-

(a) a member of a customary court;

(b) a member of a juvenile court;

(c) an arbitrator, umpire or referee;

(d) a person called upon to serve as an assessor in any civil or criminal proceedings;

(e) a member of a jury;

(f) a member of a tribunal of inquiry constituted under the Tribunals of Inquiry Act; and

(g) any person before whom, under any law in force in Nigeria or any part thereof, there may be held proceedings in which evidence may be taken on oath.

300. Nigeria explained that ICPC does not need formal consent of the Attorney-General before it can institute criminal proceedings under sections 98, 98A and 98B of the Criminal Code against judicial officers because Section 61(1) of the Corrupt Practices and Other Related Offences Act 2000 provides that:

“Every prosecution for an offence under this Act or any other law prohibiting bribery, corruption and other related offences shall be deemed to be done with the consent of the Attorney-General.”

301. It was further explained that the reason why the Attorney-General must give his consent before criminal proceedings can be instituted under Sections 98, 98A or 98B of the Criminal Code against judicial officers is not stated in the law. However, it is submitted that it is in the public interest, the interest of justice and to prevent abuse of legal process so that frivolous charges will not be brought against judicial officers. It is also intended to protect the integrity and image of the judiciary so that public confidence in the judiciary will not be eroded.

302. Regarding concrete instances where the issue of immunities and/or jurisdictional or other privileges accorded to public officials has arisen, Nigeria cited the following case.

FRN V CHIEF DSP ALAMIEYESEIGHA & ORS

The first convict was charged alongside seven companies belonging to him for, inter alia, laundering various sums of money running into millions of pounds under the Money Laundering (Prohibition) Act of 2011. Before he was arrested and charged in court he was the Executive Governor of Bayelsa State of Nigeria and was covered by immunity under Section 308 of the 1999 Constitution of the Federal Republic of Nigeria. Following strong allegations of corruption and money laundering against him, he was impeached as the Executive Governor of the said State, which led to the loss of his immunity. On 26 July 2007, a plea bargain was struck between the prosecution and the defence, resulting in the amendment of the charge plea of guilt by the convicts, their conviction and sentence by the court. The first convict was sentenced to a term of 2 years’ imprisonment, to run concurrently on each of the 6 counts relating to failure to declare his assets under Section 27 of the Economic and Financial Crimes Commission (Establishment) Act, to which he pleaded guilty. The court ordered him to forfeit choice properties in Cape Town, South Africa and Abuja, Nigeria. He also forfeited the sum of N105million, GBP160,000.00 and N1billion shares. The other convicts, which were the companies of the first convict, were convicted upon their plea of guilt for money laundering, and were ordered, apart from being wound up, to forfeit several choice properties in London, Lagos and Abuja. They also had to forfeit various sums of money running into millions of US dollars.

(b) Observations on the implementation of the article

303. Nigeria still retains criminal immunity of certain public officials while in office. Section 308 of the 1999 Constitution provides that certain public officers – the President, Vice President, 36 Governors and the Deputy Governors – shall not be subject to criminal prosecution during their tenure in office. Moreover, they cannot be arrested, imprisoned or compelled to appear in court while in office.

304. Functional immunities of officers of the ICPC, EFCC and police are provided for. It was explained that there are no judicial immunities, although Section 98C of the Criminal Code is referred to. Once a magistrate or judge is removed from office following disciplinary proceedings by the National Judicial Council, s/he can be prosecuted. Magistrates and judges can be investigated while in office in the same manner as governors and the Head of State (Section 52, ICPC Act). It was explained that investigations of judges were ongoing at the time of the country visit.
305. Officials explained during the country visit that Section 52 of the Corrupt Practices and Other Related Offences Act 2000 has never been invoked because EFCC and ICPC officers have proceeded to investigate the covered persons under their general investigative mandate. There is no comparable provision in the EFCC Act, and EFCC officers can also prosecute cases under the ICPC Act.
306. The cited case is a strong example of the application of the immunity provision in practice in respect of the former Executive Governor of Bayelsa State of Nigeria who was immune from criminal proceedings under Section 308 of the Constitution while in office and charged with corruption and money laundering after his impeachment. Another example is the Ibori case (former Governor of Delta State of Nigeria, referenced below).
307. During the country visit there was some discussion of the scope of immunities for state and deputy governors. It was explained that there have been many cases where such officials were impeached, also on the basis of investigation results, and that the legal framework presented impediments in the case of sitting governors due to the wide range of immunities. In the case of Joshua Dariye (former Governor of Plateau State) the impeachment was overturned because it lacked quorum, thus extending the criminal immunities.
308. It is recommended that Nigeria review the scope of persons covered by criminal immunities to ensure an appropriate balance between such immunities and the possibility of effectively investigating and prosecuting such persons. Nigeria should further take measures to strengthen procedures for lifting immunities, in appropriate cases, (including proceedings against judicial officers under the Criminal Code) to ensure that such persons are held to account for corruption-related offences.

Article 30 Prosecution, adjudication and sanctions

Paragraph 3

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

309. Nigeria indicated that, while Sections 174 and 211 (for states' Attorneys-General) of the Constitution give the Attorney-General powers to prosecute, take over or discontinue criminal proceedings, he is enjoined to exercise this discretion judiciously.

Section 174 and 174(3), 1999 Constitution of Nigeria

"174. (1) The Attorney-General of the Federation shall have power -

(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial, in respect of any offence created by or under any Act of the National Assembly;

(b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and

(c) to discontinue at any stage before judgement is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.

(2) The powers conferred upon the Attorney-General of the Federation under subsection (1) of this section may be exercised by him in person or through officers of his department.

(3) In exercising his powers under this section, the Attorney-General of the Federation shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process."

This principle was further espoused and elaborated by the court in the case of

State v Ilori & Others, 1983 14 NSCC (page 69).

The Supreme Court of Nigeria reaffirmed in *State v Ilori* that in exercising his powers under this section (ie. Section 174 of the Constitution) the Attorney-General shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process. Nevertheless, he is still not subject to any control in so far as the exercise of his powers under the Constitution is concerned and, except for public opinion and reaction of his appointer.

Section 211, 1999 Constitution of Nigeria

"211. (1) The Attorney General of a state shall have power

(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court-martial in respect of any offence created by or under any law of the House of Assembly;

(b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and

(c) to discontinue at any stage before judgement is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.

(2) The powers conferred upon the Attorney-General of a state under subsection 1 of this section may be exercised by him in person or through officers of his department.

(3) In exercising his powers under this section, the Attorney-General of a state shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process."

310. Nigeria indicated that the major anti-corruption agencies, the ICPC and the EFCC, prosecute cases without reference to the Attorney-General. Their establishment statutes confer on them full prosecutorial powers with respect to their respective mandates. Therefore, they enjoy autonomy to the extent allowed by their enabling statutes. They report generally to Parliament. The level of oversight by the Attorney-General of the Federation is limited to policy issues.

311. Section 6 of the Corrupt Practices and Other Related Offences Act, 2000 empowers the ICPC to prosecute cases under the Act and any other laws prohibiting corruption, including the Criminal Code. Aside from case law already cited, which confirms the powers of the law enforcement agencies to prosecute, Section 61 (1) of the Corrupt Practices and Other Related Offences Act, 2000 provides that every prosecution done by the ICPC is deemed to have been done with the consent of the Attorney-General. However, the Attorney-General has the power under Section 174 of the Constitution to continue, take over or discontinue any case in the public interest.

Section 6(a) of the Corrupt Practices and Other Related Offences Act, 2000

6. It shall be the duty of the Commission –

(a) where reasonable grounds exist for suspecting that any person has conspired to commit or has attempted to commit or has committed an offence under this Act or any other law prohibiting corruption, to receive and investigate any report of the conspiracy to commit, attempt to commit or the commission of such offence and, in appropriate cases, to prosecute the offenders;

Section 61 (1) of the Corrupt Practices and Other Related Offences Act, 2000

“Every prosecution for an offence under this Act or any other law prohibiting bribery, corruption and other related offences shall be deemed to be done with the consent of the Attorney-General.”

Section 3 (6) of the Corrupt Practices and Other Related Offences Act, 2000

“The Chairman and members of the Commission who shall be persons of proven integrity shall be appointed by the President, upon confirmation by the Senate and shall not begin to discharge the duties of their offices until they have declared their assets and liabilities as prescribed in the constitution of the Federal Republic of Nigeria.”

312. Nigeria indicated that the ICPC is accountable to the Executive and Legislature in fiscal matters but independent in the discharge of its duties.

Section 10 (14) of the Corrupt Practices and Other Related Offences Act, 2000

“The Commission shall in the discharge of its functions under this Act, not subject to the direction or control of any other person or authority.”

313. During the country visit reference was also made to Section 180 of the Criminal Procedure Law.

Withdrawal of Remaining Charges

180. (1) When more charges than one are made against a person and a conviction has been had on one or more of them the prosecutor may, with the consent of the court, withdraw the remaining charge or charges or the court, of its own motion, may stay the trial of such charge or charges.

(2) Such withdrawal shall have the effect of an acquittal on such charge or charges unless the conviction which has been had is set aside in which case subject to any order of the court setting aside such conviction, the court before which the withdrawal was made may, on the request of the prosecutor, proceed upon the charge or charges so withdrawn.

314. Section 14(2) of the EFCC Act 2004 was referred to in the context of plea bargaining.

Section 14(2) of the EFCC Act 2004

"Subject to the provision of Section 174 of the Constitution of the Federal Republic of Nigeria 1999, the Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, not exceeding the amount of the maximum fine to which that person would have been liable if he had been convicted of that offence."

315. Nigeria provided the following example of implementation.

In **Osahon v FRN**, 2003 16 NWLR (part 845) 89, the Supreme Court held that all agencies established by statute to investigate and prosecute offences do not require the formal authorization of the Attorney-General to do so, but the Attorney-General can take over or discontinue cases under Section 174 of the Constitution.

(b) Observations on the implementation of the article

316. Nigeria indicated that the ICPC and EFCC have full prosecutorial powers to prosecute cases “without reference” to the Attorney-General.
317. The oversight function is performed by the National Assembly and is limited to policy issues.
318. As indicated under UNCAC article 19 above, the Code of Conduct Bureau (CCB) has prosecution powers, overseen by the Attorney-General. During the country visit, reference was made to 12 cases of the CCB that were withdrawn by the Attorney-General upon request by the President. It was explained that these cases were sent to other law enforcement agencies for further investigation, due to their better specialization, and the EFCC confirmed that the cases would eventually be charged by the EFCC in court. Further reference was made to one CCB case, where the Attorney-General requested that the matter be reviewed by the Attorney-General.
319. It was explained during the country visit that there is no right of complaint or appeal by an aggrieved persons against a decision not to prosecute. Instead, a procedure for private prosecutions exists. Although the office of the Attorney-General is not subject to any control or direction, there have been cases where attorneys general have been removed following administrative sanctioning by the Nigerian Bar Association. It was reported that in one case, a state Governor ordered the removal of a state Attorney General due to a decision nolle prosequi.
320. Given the extensive powers of the Attorney-General over criminal prosecutions, it is recommended that Nigeria ensure that those powers are exercised in accordance with the spirit of paragraph 3 of article 30.
321. Please see article 36 below for observations regarding the independence of the agencies.
322. Regarding plea bargaining and settlement powers of the agencies, Nigeria confirmed that, although Section 14(2) of the EFCC Act 2004 allows the EFCC to settle a charge without entering a conviction based only on the payment of compensation by a defendant, other factors like the public interest, magnitude of the offence, and cooperation of a defendant are also considered.
323. The EFCC (Enforcement) Regulations, 2010 (published in the Official Gazette of Nigeria on 21 September, 2010, Vol., 97 and provided to the reviewers during the country visit) contain a regulation on plea bargaining:

EFCC (Enforcement) Regulations, 2010

Part VII – Plea Bargain

22. (1) No officer of the Commission shall enter into plea bargain discussions with an accused person without prior knowledge and approval of the Attorney-General of the Federation. An agreement made pursuant to such discussions shall be subject to the Attorney-General’s approval.

(2) Where before trial or in the course of trial the accused proposes or signifies readiness to plead guilty to a lesser charge as part of a plea bargain agreement, the Commission shall before entering discussion leading to such agreement

(a) be satisfied that the plea bargain will enable the court to pass a sentence that matches the seriousness of the offence taking into account other aggravating features;

- (b) consider the public interest and in particular the interest of the victim of the offence if any.
- (3) Without prejudice to paragraph (1) of this Regulation, where the discussion leads to a plea bargain agreement, the agreement must be reduced into writing as a plea agreement, signed by both parties and including:
 - (a) A list of charges;
 - (b) A statement of the facts; and
 - (c) A declaration, signed by the defendant personally, to the effect that he or she accepts the stated facts and admits he or she is guilty of the agreed charges.
- (4) When seeking the approval of the Attorney-General for an agreement referred to in paragraph (3) of this Regulation the Commission shall send with the request:
 - (a) the signed plea agreement;
 - (b) a joint submission as to sentence and sentencing considerations;
 - (c) any relevant sentencing guidelines or authorities;
 - (d) all of the material provided by the Commission to the accused in the course of the plea discussions;
 - (e) any material provided by the accused to the Commission; and
 - (f) the minutes of any meetings between the parties and any correspondence generated in the plea discussions.

324. Copies of the “Code of Conduct and General Prosecutorial Guidelines for Federal Prosecutors 2013” and Guidelines for investigators and prosecutors in the ICPC (undated) were also provided to the reviewers. Relevant provisions on plea bargaining are excerpted.

Code of Conduct and General Prosecutorial Guidelines for Federal Prosecutors 2013

13.0 Plea bargains and Agreements

13.1 No prosecutor shall enter into a plea bargain discussion with an accused person without the prior knowledge and approval of the Attorney-General of the Federation. The views of the investigator and the victim must be sought at the outset of formal discussions, and in any event before any formal position is communicated to the defence, and must be recorded on file. An agreement made pursuant to such discussions shall also be subject to the Attorney-General’s approval.

13.1.1 Where before trial or in the course of trial the defendant proposes or signifies readiness to plead guilty to a lesser charge as part of a plea bargain agreement, the Prosecutor may subject to paragraph 13.1 above enter into discussion leading to such agreement in any of the following cases:

- (a) the alternative charge adequately reflects the essential criminality of the conduct and the plea provides adequate scope for sentencing;
- (b) there is need to obtain reliable and material testimony from an accomplice as prosecution witness and the evidence cannot be obtained in any other way;
- (c) the evidence available to support the prosecution case is weak in any material respect;
- (d) the saving of cost and time weighed against the likely outcome of the matter if it proceeded to trial is substantial;
- (e) it will save a witness, particularly a victim or other vulnerable witness, from the stress of testifying in a trial; and
- (f) a victim has expressed a wish not to proceed with the original charge or charges.

13.1.2 Where the discussion leads to a plea bargain agreement, the agreement must be reduced into writing as a plea agreement, signed by both parties and including

- (a) A list of the charges;
- (b) A statement of the facts; and
- (c) A declaration, signed by the defendant personally, to the effect that he or she accepts the stated facts and admits he or she is guilty of the agreed charges.

13.1.3 When seeking the approval of the Attorney-General for an agreement referred to in paragraph 13.1.2 of these guidelines the prosecutor must send with the request:

- (a) The signed plea agreement;

- (b) The extent to which the views of the person who investigated the offence and the views of the victim were considered;
- (c) A joint submission by the prosecutor and the counsel for the defence on considerations taken into account in proposing the sentence;
- (d) Any relevant sentencing guidelines or authorities;
- (e) All of the material provided by the prosecution to the accused in the course of the plea discussions;
- (e) Any material provided by the accused to the Prosecutor and
- (f) The minutes of any meetings between the parties and any correspondence generated in the plea discussions.

325. The following cases of plea bargaining by the EFCC were discussed during the country visit. It was explained that there have been no cases by the ICPC, although it has the power to enter into settlements.

- An early case of plea bargaining by the EFCC was *FRN v Chief Diepreye Solomon Peter Alamiyeseigha & Others*, Fhc/1/328c/2005 (referred to above).
- A case from 2004 involved a settlement with a cell phone provider, MTN, in relation to the provision of free mobile phone lines.

326. Officials explained that in two cases, plea bargaining led to penalties that were deemed to be lenient. In one case the judge issued a fine instead of a prison sentence in circumstances where imprisonment would otherwise have been justified. In another case from 2013, a N750,000 fine was issued in lieu of a 3-year prison sentence.

327. It was explained by a judge in discussions during the country visit that plea bargains are negotiated directly by agencies like the EFCC and that the terms are usually subject to judicial approval, albeit with varying levels of judicial scrutiny. For example, the *Guidelines for Federal Prosecutors* and the *EFCC Regulations* (quoted above) both detail the process for approval of plea agreements by the Attorney-General but make no reference to any judicial oversight.

328. Although it was explained during the country visit that plea bargaining is rarely conducted by the EFCC, the reviewers note that, in the absence of transparency and clear guidelines providing for adequate predictability, the possibility of undermining the effective pursuit of corruption cases through such plea bargains and out-of-court settlements remains. In this context, the experts were of the view that such settlements should be subject to judicial scrutiny independent of the prosecutor's office and that an independent body could be considered which would have a formal role in reviewing sensitive cases. Nigeria should also consider providing more detail on settlements to the public to enhance transparency, for example concerning guidance on what factors are taken into account in determining recoverable amounts.

329. A recent statement by the Attorney-General and Minister of Justice (published prior to the adoption of the prosecution guidelines in the EFCC publication), "EFCC of my Dreams", would seem to support such enhanced oversight: "Going forward, I would expect to see ... stricter adherence to laws, regulations and guidelines issued to regulate the activities of the Commission and provide some measure of oversight over its activities – the Draft Guidelines for Public prosecutors is expected to come into effect soon; and greater openness, transparency and accountability by the Commission in the discharge of its mandate. This will engender public confidence and acceptability."

330. Nigerian officials explained during the country visit that the draft Bill on the Administration of Criminal Justice would provide greater oversight of plea bargains. A copy of the Bill was provided to the reviewers during the country visit. It is noted that the Bill would provide for a greater level of judicial oversight.

Bill for an Act to Make Provisions for Speedy and Efficient Administration of Criminal Justice in Courts and by Law Enforcement Agencies in Nigeria

268. Defendant may plead guilty for lesser offence than offence charged

...

(2) Where the Prosecutor is of the view that the offer or acceptance of a plea bargain is in the interest of justice, the public interest, public policy and the need to prevent abuse of legal process, he may offer or accept the plea bargain and the court:

(a) seized of the matter shall be so informed; and

(b) shall proceed to enter a guilty plea to such lesser offence and impose the due punishment accordingly.

(3) In determining whether it is in the public interest to enter into a plea bargain, the prosecution shall weigh all relevant factors, including:

(a) the defendant's willingness to cooperate in the investigation or prosecution of others;

(b) the defendant's history with respect to criminal activity

(c) the defendant's remorse or contrition and his willingness to assume responsibility for his conduct

(d) the desirability of prompt and certain disposition of the case

(e) the likelihood of obtaining a conviction at trial, the probable effect on witnesses

(f) the probable sentence or other consequences if the defendant is convicted

(g) the need to avoid delay in the disposition of other pending cases; and

(h) the expense of trial and appeal.

...

(4) The provisions of this section shall not apply to persons:

(a) charged with capital offences, or an offence involving the use of firearms; or

(b) who had, in the last ten years, been convicted and sentenced for an offence involving grievous violence or sexual assault.

269. Plea to information or charge

(1) Before a person takes his plea, the court shall inform him of the provisions of section 68 of this Act.

(2) The person to be tried on a charge or an information shall be:

(a) brought before the court unfettered unless the court sees cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court; and

(b) called upon to plead instantly unless, where the person is entitled to service of the information, he objects to the want of the service and the court finds that he has not been duly served.

(3) The court shall record the fact that it is satisfied that the defendant understands the charge or information read over and explained to him in the language he understands, and shall record the plea of the defendant to the charge or information as nearly as possible in the words used by him.

331. Nigeria should ensure adequate transparency, predictability and proportionality in entering into plea bargains and out-of-court settlements, especially at the agency level, in accordance with existing guidelines. The reviewers welcome steps being taken and under consideration by Nigeria in this regard.

Article 30 Prosecution, adjudication and sanctions

Paragraph 4

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

332. Nigeria cited the following measures.

Sections 118-143 of the Criminal Procedure Act CAP 80 LFN

"Part 14

Provisions as to Bail and Recognisance Generally

118.(1) A person charged with any offence punishable with death shall not be admitted to bail, except by a judge of the High Court.

(2) Where a person is charged with any felony other than a felony punishable with death, the court may, if it thinks fit, admit him to bail.

(3) When a person is charged with any offence other than those referred to in the two last preceding subsections, the court shall admit him to bail, unless it sees good reason to the contrary.

119. Where any person is brought before a court on any process in respect of any matter not included within section 118 of this Act, such person may, in the discretion of the court, be released upon his entering, in the manner hereinafter provided, into a recognisance conditioned for his appearing before such court or any other court at the time and place mentioned in the recognisance.

120. The amount of bail to be taken in any case shall be in the discretion of the court by whom the order for the taking of such bail is made, shall be fixed with due regard to the circumstances of the case and shall not be excessive.

121. Where in any case the person in respect of whom the court makes an order requiring that a recognisance be entered into is a minor, the minor shall not execute the recognisance but the court shall require a parent, legal guardian or other fit person, with or without sureties, to enter into a recognisance that the minor shall do what is required under the court's order.

122. An accused admitted to bail may be required to produce such surety or sureties as, in the opinion of the court admitting him to bail, will be sufficient to ensure his appearance as and when required and shall with him or them enter into a recognisance accordingly.

123. A judge of the High Court may, if he thinks fit, admit any person charged before a court in the State subject to the jurisdiction of the High Court to bail although the court before whom the charge is made has not thought fit to do so.

124. Where a magistrate, after a preliminary inquiry commits a person for trial and does not admit him to bail the magistrate shall inform the person so committed of his right to apply for bail to a Judge of the High Court.

125. Notwithstanding the provisions of sections 119 and 120 of this Act, a Judge of the High

Court may in any case direct that any person in custody in the State be admitted to bail or that the bail required by a magistrate's court or police officer be reduced.

126. When as respects any recognisance the court has fixed the amount in which the sureties, if any, are to be bound, the recognisance need not be entered into before the said court, but may be entered into by the parties before any other court, or before any registrar, or before any superior officer of police or officer in charge of a police station, or where any of the parties is in a Government prison before the superintendent or other person in charge of such prison, and thereupon all the consequences of law shall ensue and the provisions of this Law with respect to recognisance before a court shall apply as if the recognisance had been entered into before the said court.

127. Where as a condition of the release of any person he is required to enter into a recognisance with sureties, the recognisance of the sureties may be taken separately and either before or after the recognisance of the principal, and if so taken the recognisance of the principal and sureties shall be as binding as if they had been taken together and at the same time.

128. Where a person is remanded on bail, the recognisance may be conditioned for his appearance at every time and place to which during the course of the proceedings the hearing may be from time to time adjourned, without prejudice, however, to the power of the court to vary the order at any subsequent hearing.

129. (1) Where the entering into of a recognisance is a condition of the release of any person, that person shall be released as soon as the recognisance has been entered into and if he is in prison or police custody, the court shall issue an order of release to the officer in charge of the prison or other place of detention and such officer on receipt of the order shall release him.
(2) Nothing in this section or in any other section relating to bail shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the recognisance was entered into or to which the bail relates.

130. If it is made to appear to any court by information on oath by a complainant, surety or other person that any person bound by recognisance to appear before any court or police officer is about to leave Nigeria, or, for the purpose of evading justice, is about to leave or has left the division or district of the court before which he is to appear or in which he normally resides, the court may cause him to be arrested and may commit him to prison until the trial or preliminary inquiry unless the court shall see fit to admit him to bail upon further recognisance.

131. Where an accused person has been admitted to bail and circumstances arise which, if the accused person had not been admitted to bail would, in the opinion of a law officer or police officer, justify the court in refusing bail or in requiring bail of greater amount, a judge or magistrate, as the case may be, may, on the circumstances being brought to his notice by a law officer or police officer, issue his warrant for the arrest of the accused person and, after giving the accused person an opportunity of being heard, may either commit him to prison to await trial or admit him to bail for the same or an increased amount as the judge or magistrate may think just.

132. (1) Where an accused person who has been admitted to bail by a magistrate is indicated by a law officer for an offence which is not bailable by a magistrate, the magistrate shall, on being informed of the fact by any superior police officer, issue his warrant for the arrest of the accused person and commit him to prison in the same manner as if he had been originally committed for trial for the offence for which he is indicted.
(2) For the purposes of this section, a person shall be deemed to be indicted when the information against him has been filed in a High Court.

133. If at any time after a recognisance has been entered into it appears to the court that for any reason the surety or sureties are unsuitable, such court may issue a summons or warrant for the appearance of the principal, and upon his coming to the court may order him to execute a fresh recognisance with other surety or sureties, as the case may be.

134.(1) Any surety for the appearance of a person may at any time apply to the court to discharge the recognisance either wholly or so far as it applies to the applicant.

(2) On such application being made the court shall issue a warrant of arrest directing that the principal to the recognisance be brought before the court.

(3) On the appearance of such principal pursuant to the warrant, or on his voluntary surrender, the court shall direct the recognisance to be discharged either wholly or so far as it relates to the applicant or applicants and shall call upon the person previously bound to find other sufficient surety or sureties and enter into a fresh recognisance and if he fails to do so may deal with him in the same manner as if he were a person who has failed to comply with an order to enter into a recognisance, with or without sureties, as the case may be.

135. When any surety to a recognisance becomes insolvent or dies or when any recognisance is forfeited under the provisions of section 137 of this Act, the court may order the person from whom such recognisance was demanded to furnish fresh security in accordance with the directions of the original order and, if such security is not furnished, such court may proceed as if there had been default in complying with such original order.

136. Where a surety to a recognisance dies before the recognisance is forfeited his estate shall be discharged from all liability in respect of the recognisance.

137. Where it is proved to the satisfaction of a court that a recognisance entered into under Chapters 1 to 11 inclusive of this Act has been forfeited the court shall record the facts and by order declare the recognisance to be forfeited.

138. The court may at any time cancel or mitigate the forfeiture, upon the person liable under the recognisance applying and giving security, to the satisfaction of the court, for the future performance of the condition of the recognisance and paying, or giving security for the payment of the costs incurred in respect of the forfeiture or upon such other conditions as the court may think just.

139.(1) Where a recognisance to keep the peace and to be of good behaviour or not to do or commit some act or thing, has been entered into by any person as principal or as surety before a court, a court may, upon proof of the conviction of the person bound as principal by such recognisance of any offence which is by law a breach of the condition of the same, by order, adjudge such recognisance to be forfeited and adjudge the persons bound thereby, whether as principal or as sureties or any of such persons to pay the sums for which they are respectively bound.

(2) A certified copy of the judgment of the court by which such person was convicted of such offence may be used as evidence in proceedings under this section and, if such certified copy is so used, the court shall presume such offence was committed by such person until the contrary is proved.

140. Where any recognisance is declared or adjudged to be forfeited, the court having jurisdiction over the matter of the complaint may, forthwith or at any time after such declaration, issue a warrant of commitment against any person liable, whether as principal or surety under such recognisance, for any term not exceeding the term prescribed in respect of a like sum in the scale of imprisonment set forth in section 390 of this Act, with or without hard labour, unless the amount due under such recognisance is sooner paid.

141. All sums paid or recovered in respect of any recognisance declared or adjudged by a court in pursuance of section 140 of this Act to be forfeited shall be paid to the proper officer of the court.

142. Any order of forfeiture made under section 137 or 139 of this Act shall be subject to appeal in the case of a Magistrate's order to the High Court and in the case of a judge's order to the Court of Appeal.

143. When any person who is bound by any recognisance entered into under this Act to appear before a court does not so appear, the officer presiding in such court may issue a warrant directing that such person be arrested and brought before him."

Section 35 of the Constitution

"35. (1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law -

(a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;

(b) by reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law;

(c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;

(d) in the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare;

(e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or

(f) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto:

Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.

(2) Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.

(3) Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention.

(4) Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of -

(a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or

(b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

(5) In subsection (4) of this section, the expression "a reasonable time" means -

(a) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day; and

(b) in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.

(6) Any person who is unlawfully arrested or detained shall be entitled to compensation and

public apology from the appropriate authority or person; and in this subsection, "the appropriate authority or person" means an authority or person specified by law.

(7) Nothing in this section shall be construed -

(a) in relation to subsection (4) of this section, as applying in the case of a person arrested or detained upon reasonable suspicion of having committed a capital offence; and

(b) as invalidating any law by reason only that it authorises the detention for a period not exceeding three months of a member of the armed forces of the federation or a member of the Nigeria Police Force in execution of a sentence imposed by an officer of the armed forces of the Federation or of the Nigeria police force, in respect of an offence punishable by such detention of which he has been found guilty."

333. In the case of **Bamaiyi v State, 2001 8 NWLR Part 715 (page 270)**, the court espoused the conditions for bail in a criminal trial. In the case of *Bamaiyi v State* the Supreme Court stated as follows:

"It is a proper and useful test whether bail should be granted or refused to consider the probability that the accused will appear in court to take his trial: see *R. v. Robinson* (1854) 23 L.J.Q.B. 286; *Mamuda Dantata v. Police* (1958) NRNLR 3. In that regard it is proper to consider the nature of the offence, the nature of the evidence in support of it, and the severity of the punishment which conviction will entail. The learned trial Judge took this critical factor as to availability to stand trial into consideration. He added another crucial one, namely, the likelihood that witnesses may be tampered with, harassed or put at risk if bail was granted having regard, I think, to the affidavit evidence."

334. Nigeria referred to the case of *Federal Republic of Nigeria v. Tafa Adebayo Balogun and Others*, Charge No. FHC/ABJ/CR/14/05 (a copy of the judgment was provided to the reviewers during the country visit). In the case, the court stated, inter alia, that "the main purpose of bail is to ensure the attendance of the accused at trial" and granted bail under the circumstances of the case, noting that the two sections of law the defendant was charged with (Section 14(1) MLPA and Section 289 Penal Code) were both bailable in that they carried a maximum sentence of 3 and 5 years, respectively.

335. Nigeria indicated that the courts in recent years have imposed bail conditions that guarantee the presence of accused persons in corruption cases. Examples are the deposit of international passports, exemplified in the case of **FRN V Chimaroke Nnamani**, FHC/L/09C/2007. Copies of the judgment were provided to the reviewers during the country visit.

(b) Observations on the implementation of the article

336. Nigeria has established conditions on release pending trial designed to ensure the presence of a defendant, including periodic appearances at every time and place during the course of proceedings. The cited case *Bamaiyi v State* further attests to this.

Article 30 Prosecution, adjudication and sanctions

Paragraph 5

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

337. Nigeria indicated that it has not implemented this provision of the Convention.

(b) Observations on the implementation of the article

338. Nigeria indicated that parole is not part of its criminal jurisprudence. However, under Section 175(1)(a) of the Nigerian Constitution dealing with the prerogative of mercy, the President of Nigeria may grant any person concerned or convicted of any offence created by an Act of the National Assembly a pardon, either free or subject to lawful conditions.

Article 30 Prosecution, adjudication and sanctions

Paragraph 6

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

(a) Summary of information relevant to reviewing the implementation of the article

339. Nigeria cited Regulations 010103 and 030402 of the Public Service Rules 2008. Interdiction is provided for in Regulations 030404 and 030406 of the Public Service Rules.

Public Service Rules 2008

Regulation 010103 - General definitions

"Except where otherwise indicated by the context or in special definitions for particular Chapters the following words and terms are used with the following meanings wherever they occur in these Public Service Rules. ...

030404 - Interdiction

(i) When **a serious case** that may lead to dismissal has been instituted against an officer, the Permanent Secretary/Head of Extra-Ministerial Office may interdict him/her on not more than half pay pending the determination of the case.

(i) Recommendations to the Commission for interdiction shall be made only if it is against the public interest that the officer should continue to perform any of the duties of his/her rank. When the charge against him/her is such that the continued performance of his/her present duties is against the public interest or prejudicial to the investigation of the charge against him/her, consideration shall be given to putting him/her on alternative duties. Interdiction shall only be resorted to when this is not possible.

(ii) When an officer is interdicted, he/she shall cease to report for duty. In the letter informing the officer of his/her interdiction it shall be indicated that the proportion of emoluments he/she is to receive while on interdiction shall be 50% of his/her emoluments.

(iii) If proceedings under Rule 030404 (i) reveal that he/she is not guilty of the charge made against him/her, the officer shall immediately be reinstated and shall receive the full amount of his/her emoluments denied him/her while he/she was interdicted.

(iv) If the officer is found guilty but is not dismissed, he/she may be refunded such portion of the emoluments denied him/her as the Commission may determine.

030406 - Suspension

Suspension should not be used as a synonym for interdiction. It shall apply where a prima facie case, the nature of which is serious, has been established against an officer and it is considered necessary in the public interest that he/she should forthwith be prohibited from carrying out his/her duties. Pending investigation into the misconduct, the Federal Civil Service Commission or the Permanent Secretary/Head of Extra-Ministerial Office (if within his/her delegated powers) shall forthwith suspend him/her from the exercise of the powers and functions of his/her office and from the enjoyment of his/her emolument.

030402 – Example

SERIOUS ACTS OF MISCONDUCT INCLUDE:

- (a) Falsification of records;
- (b) Suppression of records;
- (c) Withholding of Files;
- (d) Conviction on a criminal charge (other than a minor traffic or sanitary offence or the like);
- (e) Absence from duty without leave;
- (f) False claims against Government Officials;
- (g) Engaging in partisan political activities;
- (h) Bankruptcy / serious financial embarrassment;
- (i) Unauthorized disclosure of official information;
- (j) Bribery;
- (k) Corruption;
- (l) Embezzlement;
- (m) Misappropriation;
- (n) Violation of Oath of Secrecy;
- (o) Action prejudicial to the security of the State;
- (p) Advance Fee Fraud (Criminal Code 419)
- (q) Holding more than one full-time paid job;
- (r) Nepotism or any other form of preferential treatment;
- (s) Divided loyalty;
- (t) Sabotage;
- (u) Wilful damage to Public property.
- (v) Sexual Harassment; and
- (w) Any other act unbecoming of a Public Officer."

340. Nigeria indicated that the following public officers charged with corruption related offences have been interdicted and suspended pending the determination of cases against them:

EFCC:

List of public officers interdicted or suspended while prosecution is going on: at least one example of such case:

- i. Alhaji Yahaya Andarai (Director of Finance, Kebbi State-under prosecution)
- ii. Farouk Abubakar, (Ministry Of Education, Kebbi State-under prosecution)
- iii. Bilyaminu Idowu (Ministry Of Education, Lagos (suspension, convicted)
- iv. Esai Dangabar (Director, Police Pension Office)
- v. Dr. Shuiabu Sani (Director Pension, Finance and Account, Office of The Head Of Service)

ICPC:

An example of a public officer interdicted or suspended while prosecution is going on.

(b) Observations on the implementation of the article

341. Nigeria indicated that the term “serious case” (Order 030404) is not defined in the Public Service Rules. However, serious misconduct is defined in Rule 030404 of the Public Service Rules as “a specific act of very serious wrongdoing and improper behaviour which is inimical to the image of the service and which can be investigated and if proven, may lead to dismissal.” Going by the definition of serious misconduct, ‘a serious case’ can be said to be a case involving a serious misconduct as defined under the said rule.

342. It is noted that not all public officials, as provided under the Convention (article 2), fall under the Public Service Rules. Notably, political office holders, members of Parliament and elected officials are not included, but it was explained that the possibility of their removal is provided under separate codes of conduct or their respective enabling laws. The relevant definition of which categories of public officers are covered by the Public service Rules is included in Chapter I (Introduction), Rule 010101 (Application) of the Public Service Rules, which provides as follows:

Rule 010101.

“These Public Service Rules apply to all officers except where they conflict with specific terms approved by the Federal Government and written into the contracts of employment or letters of appointment. Insofar as the holders of the offices of:

The President;

The Vice President;

Chief Justice of Nigeria;

Justices of the Supreme Court;

President and Justice of the Court of Appeal;

Chief Judge and Judges of the High Court of the Federal Capital Territory;

Grand Khadi and Khadis of the Sharia Court of Appeal of the Federal Capital Territory;

President and Judges of the Customary Court of Appeal of the Federal Capital Territory;

The Chairman and Members of the following statutory bodies, namely:

The Code of Conduct Bureau;

The Federal Civil Service Commission;

The Independent National Electoral Commission;

The Federal Character Commission;

The Code of Conduct Tribunal;

The Revenue Mobilisation, Allocation and Fiscal Commission;

The National Population Commission;

The Police Service Commission;

The Auditor-General of the Federation;

and any other similar organs that derive their appointments from the Constitution of the Federal Republic of Nigeria are concerned, these Rules apply only to the extent that they are not inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria in so far as their conditions of service and any other law applicable to these officers are concerned.”

Moreover, the relevant organs that derive their appointments from the Constitution are referred to in Part II of the 5th Schedule to the Constitution and in Section 318.

343. Interdiction, suspension, reassignment and removal of public officers accused of offences is possible in 'serious cases' under the Public Service Rules. Bribery, corruption, embezzlement and misappropriation are specifically included. Relevant cases were cited.
344. Nigeria has adopted relevant measures in line with the provision under review that are applicable to certain public officers, as defined under the Public Service Rules.

Article 30 Prosecution, adjudication and sanctions

Subparagraph 7 (a)

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(a) Summary of information relevant to reviewing the implementation of the article

345. Nigeria cited the following measures.

Section 23 of the Code of Conduct Bureau and Tribunal Act CAP 15 LFN 1990

"23. Powers of the tribunal to impose punishment

- (1) Where the code of conduct tribunal finds a public officer guilty of contravention of any of the provisions of this code it shall impose upon that officer any of the punishments specified under sub-paragraph (2) of this paragraph and such other punishment as may be prescribed by the national assembly.
- (2) The punishment which the code of conduct tribunal may impose shall include any of the following:-
- (a) Vacation of office or seat in any legislative house, as the case may be;
 - (b) Disqualification from membership of a legislative house and from the holding of any public office for a period not exceeding ten years; and
 - (c) Seizure and forfeiture to the state of any property acquired in abuse or corruption of office.
- (2) The punishments mentioned in sub-paragraph (2) hereof shall be without prejudice to the penalties that may be imposed by any law where the breach of conduct is also a criminal offence under the criminal code or any other enactment or law.
- (3) Where the code of conduct tribunal gives a decision as to whether or not a person is guilty of a contravention of any of the provisions of this act, an appeal shall lie as of right from such decision or from any punishment imposed on such person to the court of appeal at the instance of any party to the proceedings.
- (4) Any right of appeal to the court of appeal from the decisions of the code of conduct tribunal conferred by sub-paragraph (4) hereof shall be exercised in accordance with the provisions of the rules of court for the time being in force regulating the powers, practice and procedure of the court of appeal.
- (5) Nothing in this paragraph shall prejudice the prosecution of a public officer punished under this paragraph or preclude such officer from being prosecuted or punished for an offence in a court of law.
- (6) The provisions of the constitution of the Federal Republic of Nigeria 1999, relating to prerogative of mercy, shall not apply to any punishment imposed in accordance with the provisions of this paragraph."

Section 137 (1)(e) of the Constitution (for the president and vice president)

Section 182(1)(e) of the Constitution (for Governors)

Section (66)(1) (d) of the Constitution (for Members of the National Assembly)

"137. (1) A person shall not be qualified for election to the office of President if - ...

(e) within a period of less than ten years before the date of the election to the office of President he has been convicted and sentenced for an offence involving dishonesty or he has been found guilty of the contravention of the Code of Conduct;

182. (1) No person shall be qualified for election to the office of Governor of a State if - ...

(e) within a period of less than ten years before the date of election to the office of Governor of a State he has been convicted and sentenced for an offence involving dishonesty or he has been found guilty of the contravention of the Code of Conduct;

66. (1) No person shall be qualified for election to the Senate or the House of Representatives if:

(d) within a period of less than 10 years before the date of an election to a legislative house, he has been convicted and sentenced for an offence involving dishonesty or he has been found guilty of a contravention of the Code of Conduct;"

346. Nigeria indicated that all persons convicted of offences with elements of fraud or dishonesty are barred from holding public office under the Nigerian law.

(b) Observations on the implementation of the article

347. Nigeria provides for temporary disqualification from holding public office for a period up to ten years under the Code of Conduct Bureau and Tribunal Act. Moreover, the Constitution provides for the disqualification from office of the President, Vice President, Governors and Members of the National Assembly of convicted persons and those found to have contravened the Code of Conduct. The provision is implemented.

Article 30 Prosecution, adjudication and sanctions

Subparagraph 7 (b)

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(b) Holding office in an enterprise owned in whole or in part by the State.

(a) Summary of information relevant to reviewing the implementation of the article

348. Nigeria cited the following measures.

Section 23(2) of the Code of Conduct Bureau and Tribunal Act CAP 15 LFN 1990 (quoted above), which applies to public officers, including Chairpersons of Boards of private entities where the Government has a controlling interest (see Second Schedule: "14. Chairmen and members of the Boards of other government bodies and staff of statutory corporations and of companies in which the Federal or any State Government has controlling interests").

Section 592 of the Company and Allied Matters Act (CAMA) (for trustees)
Section 257 CAMA (for disqualification of directors)
Section 254 CAMA (for disqualification of fraudulent persons)
Section 20(1)(c) and (d) CAMA (capacity of an individual to form a company)

349. Nigeria provided the following case example of implementation under this section.

Cecilia Ibru, who was prosecuted and convicted in the case of **FRN v Cecilia Ibru, Fhc/l/cs/297c/09**, has been removed and disqualified from the directorship of companies.

(b) Observations on the implementation of the article

350. The Cecilia Ibru case deals with disqualification from the directorship of companies. No cases were cited dealing with the disqualification from holding public office, as per the UNCAC provision.

351. Section 23(2) of the Code of Conduct Bureau and Tribunal Act 1990 provides for the disqualification from holding public office for up to ten years for contraventions of the Code, including positions in statutory corporations and companies in which the Federal or any State Government has a controlling interest (Second Schedule).

Article 30 Prosecution, adjudication and sanctions

Paragraph 8

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

(a) Summary of information relevant to reviewing the implementation of the article

352. Nigeria cited the following measures.

The Corrupt Practices and Other Related Offences Act 2000
The EFCC Act 2004
The Public Procurement Act 2007
The Public Service Rules 2008

Please refer the data from the relevant anti-corruption agencies.

(b) Observations on the implementation of the article

353. Nigeria indicated that disciplinary issues are captured in 030101-030444 of the Public Service Rules, Sections 57-58 of the Public Procurement Act 2007 and the Code of Conduct for Public Officers enshrined in Part 1 of the Fifth Schedule of the 1999 Constitution.

Article 30 Prosecution, adjudication and sanctions

Paragraph 10

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

354. Nigeria indicated that there is no legal provision pertaining to applicable measures. However, the prison system has a rehabilitation policy, i.e. Nigerian Prison Service Standing Orders (Revised Edition) 2011.

(b) Observations on the implementation of the article

355. A copy of the Prison Service Standing Orders is available online². Could Nigeria please confirm that Section 103 is the relevant section for rehabilitation?

Nigerian Prison Service Standing Orders (Revised Edition) 2011

103. Consideration of the Prisoner's future after release

(a) From the beginning of a prisoner's sentence, consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the prison so as to promote the best interests of his family and his own social rehabilitation.

(b) Maintenance of relations between the Prisoner and his/her relations.

Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interest of both.

356. Section 103 of the Nigerian Prison Service Standing Orders provides a general rehabilitation policy and for assistance to prisoners to promote their social rehabilitation. No examples of implementation were provided. It was explained that the reintegration of prisoners would be more comprehensively addressed in the draft Administration of Criminal Justice Bill. The reviewers welcome steps being taken by Nigeria to address the rehabilitation of prisoners and encourage the adoption of relevant measures in this regard.

(c) Challenges related to article 30

357. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency coordination
2. Inadequacy of existing normative measures (constitution, laws, regulations, etc.)
3. Limited capacity
4. Competing priorities
5. Limited resources for implementation.

(d) Technical assistance needs related to article 30

358. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned
2. Development of an action plan for implementation

359. Nigeria has received the previous forms of technical assistance from:

1. United States Embassy

² <http://www.prawa.org/wp-content/uploads/2013/01/NIGERIAN-PRISONS-STANDING-ORDER.pdf>

2. UNODC/EU
3. UK DfID.

360. Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Article 31 Freezing, seizure and confiscation

Paragraph 1

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

361. Nigeria cited the following measures.

Sections 47 and 48 of the Corrupt Practices and Other Related Offences Act 2000

47. Forfeiture of property upon prosecution for an offence
Forfeiture of property upon prosecution for an offence.

(1) In any prosecution for an offence under this Act, the court shall make an order for the forfeiture of any property which is proved to be the subject-matter of the offence or to have been used in the commission of the offence where-

(a) the offence is proved against the accused; or

(b) the offence is not proved against the accused but the court is satisfied:

(i) that the accused is not the true and lawful owner of such property; and

(ii) that no other person is entitled to the property as a purchaser in good faith for valuable consideration.

(2) Where the offence is proved against the accused or the property referred to in subsection (1) has been disposed of, or cannot be traced, the court shall order the accused to pay as a penalty a sum which is equivalent to the amount of the gratification or is, in the opinion of the court, the value of the gratification received by the accused, and any such penalty shall be recoverable as a fine.

48. Other grounds for forfeiture of property

(1) Where in respect of any property seized under this Act there is no prosecution or conviction for an offence under this Act, the Chairman of the Commission may, before the expiration of twelve months from the date of the seizure, apply to a Judge of the High Court for an order of forfeiture of that property if he is satisfied that such property had been obtained as a result of or in connection with an offence under sections 3 to 19.

(2) The Judge to whom an application is made under subsection (1) shall direct to be published a notice in the Gazette and in at least two newspapers circulating in Nigeria, which shall be in English Language calling upon any person who claims to have an interest in the property to attend before that court on a date specified in the notice, to show cause why the property should not be forfeited to the Government.

(3) Where the Judge to whom an application is made under subsection (1) is satisfied-

- (a) that the property is the subject-matter of or used in the commission of an offence under this Act; and
- (b) there is no purchaser in good faith for valuable consideration of the property, he shall make an order for the forfeiture of the property.
- (4) Any property in respect of which no application is made under subsection (1) shall, after the expiration of twelve months from the date of its seizure, be released to the person from whom it was seized.

Section 20-22, 24-25 and 27-30 of the Economic and Financial Crimes (Establishment) Act 2004 (EFCC Act)

"20: Forfeiture after conviction in certain cases

- (1) A person convicted of an offence under this Act shall forfeit to the Federal Government -
 - (a) all the assets and properties which may or are the subject of an interim order of the Court after an attachment by the Commission as specified in section 26 of this Act;
 - (b) any asset or property confiscated, or derived from any proceeds, the person obtained directly or indirectly, as a result of such offences not already disclosed in the Assets Declaration Form specified in Form A of the Schedule to this Act or not falling under paragraph (a) of this subsection;
 - (c) any of the person's property or instrumentalities used in any manner to commit or to facilitate the commission of such offence not already disclosed in the Declaration of Assets Form or not falling under paragraph (a) of this subsection.
- (2) The Court in imposing a sentence on any person under this section, shall order, in addition to any other sentence imposed pursuant to Section 11 of this Act, that the person forfeit to the Federal Government all properties described in subsection (1) of this section.
- (3) In this section, "proceeds" means any property derived or obtained, directly, through the commission of an offence under this Act.

21: Forfeiture in property

For the avoidance of doubt and without any further assurance than this Act, all the properties of a person convicted of an offence under this Act and shown to be derived or acquired from such illegal act and already the subject of an interim order shall be forfeited to the Federal Government.

22: Foreign Assets

- (1) Where it is established that any convicted person has assets or properties in a foreign country, acquired as a result of such criminal activity, such assets or properties, subject to any treaty or arrangement with such foreign country, shall be forfeited to the Federal Government.
- (2) The Commission shall, through the office of the Attorney-General of the Federation, ensure that the forfeited assets or properties are efficiently transferred and vested in the Federal Government.

24: Property subject to forfeiture

Any property-

- (a) Whether real or personal, which represents the gross receipts a person obtains directly as a result of the violation of this Act or which is traceable to such gross receipts;
- (b) Within Nigeria which represents the proceeds of an offence under the laws of a foreign country within whose jurisdiction such offense of activity would be punishable by imprisonment for a term exceeding one year and which would be punishable by imprisonment under this Act if such act or activity had occurred within Nigeria, is subject to forfeiture to the Federal Government and no other property rights shall exist on it

25: Further Provisions as to the forfeiture of Property

Without prejudice to the provision of any other law permitting the forfeiture of property, the following shall also be subject to forfeiture under this Act and no proprietary right shall exist in them -

- (a) all means of conveyance, including aircraft, vehicles, or vessels which are used or are intended for use to transport or in any manner, to facilitate the transportation, sale, receipt, possession or concealment of economic or financial crime except that-
- (i) No means of conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under this section unless it shall appear that the owner or other person in the charge of such means of conveyance was a consenting party or privy to a violation of this Act;
- (ii) No means of conveyance shall be forfeited under this section by reason of any act established by the owner thereof to have been committed by any person other than such owner while such means of conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of Nigeria or any part thereof, and
- (iii) No means of conveyance shall be forfeited under this section to the extent of an interest of an owner, by reason of any act established by that owner to have been committed without the knowledge, consent or willful connivance of that owner;
- (b) all books, records, research and data used or intended to be used in violation of any provision of this Act;
- (c) all monies, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for any illegal act or in violation of this Act or all proceeds traceable to such an exchange, and all monies, negotiable instruments and securities used or intended to be used to facilitate any violation of this Act;
- (d) all real property, including any right, title and interest (including any leasehold interest) in the whole or any piece or parcel of land and any improvements or appurtenances which is used or intended to be used, in any manner or part to commit, or facilitate the commission of an offence under this Act.

PART V – FORFEITURE OF ASSETS OF PERSONS ARRESTED FOR OFFENCES UNDER THIS ACT

27: Disclosure of Assets and Properties by an arrested person etc

- (1) Where a person is arrested for committing an offence under this Act, such a person shall make full disclosure of all his assets and properties by completing the declaration of Assets Form as specified in form A of the Schedule to this Act.
- (2) The completed Declaration of Assets Form shall be investigated by the Commission
- (3) Any Person who –
- (a) knowingly fails to make full disclosure of his assets and liabilities ;or
- (b) knowingly makes a declaration that is false; or
- (c) fails, neglects or refuses to make a declaration or furnishes any information required, in the Declaration of Assets Form;
- commits an offence under this Act and is liable on conviction to imprisonment for a term of five years.
- (4) Subject to the provisions of section 24 of this Act, whenever the assets and properties of any person arrested under this Act are attached, the General and Assets Investigation Unit shall apply to the Court for an interim forfeiture order under the provision of this Act.

Schedule

- (5) The Chairman of the Commission shall have powers to make changes or modifications to the Declaration of Assets Form specified in Form A of the Schedule to this Act as may become necessary in order to give effect to the provisions of this Act

28: Investigation of assets and properties of a person arrested of an offence under this Act etc

Where a person is arrested for an offence under this Act, the Commission shall immediately trace and attach all the assets and properties of the person acquired as a result of such economic and financial crime and shall thereafter cause to be obtained an interim attachment order from the Court.

29: Interim forfeiture order

Where:

(a) the assets or properties of any person arrested for an offence under this Act has been seized;
or

(b) any assets or property has been seized by the Commission under this Act, the Commission shall cause an application to be made to the Court for an interim order forfeiting the property concerned to the Federal Government and the Court shall, if satisfied that there is Prima Facie evidence that the property concerned is liable to forfeiture, make an interim order forfeiting the property to the Federal Government.

30: Final Order

Where a person is convicted of an offence under this Act, the Commission or any authorized officer shall apply to the Court for the order of confiscation and forfeiture of the convicted person's assets and properties acquired or obtained as a result of the crime already subject to an interim under this Act.

362. Nigeria provided the following examples of cases where proceeds or instrumentalities of crime have been seized or confiscated:

ICPC:

Provost, College of Education, Pankshin, Plateau State (computers sets).

EFCC:

FRN v Ervin Anitas and 12 Others, Fhc/b/130c/2009. Asset involved: vessel mt Akuada, valued at 1,000,000 USD

363. Nigeria provided the following information on the amount/types of property, equipment or other instrumentalities confiscated:

EFCC

Value of assets recovered from 2010-2012:

The valuation of assets in this period is ongoing. However:

About 40% of the assets valued so far give a value of US\$18,000,000.

Total cash recovered from 2010-2012

Total: US\$547,726,567.12

Types of assets forfeited:

- i. Real estate
- ii. Petrol station
- iii. Company shares
- iv. Bank accounts
- v. Cash
- vi. Hotels
- vii. Vehicles
- viii. Vessels
- ix. Petroleum produce, e.g. crude oil, pms

ICPC:

Value of assets recovered since inception:

US\$3,238,195,059.07 (as of May 2013)

(b) Observations on the implementation of the article

364. Nigerian law provides for the confiscation of properties which represent proceeds from and instrumentalities used in the commission of illegal acts and property of corresponding value. The law also extends to assets or properties held in a foreign country, acquired as a result of criminal activity. While instrumentalities intended for use in offences are covered under the EFCC (Section 25), they are not addressed in the ICPC Act, which covers: 1) property proved to be the subject-matter of offences or used in the commission of offences, and 2) property obtained as a result of or in connection with offences. The types of confiscation and recovery measures provided in the law are criminal confiscation, seizure and forfeiture of proceeds either through plea bargain or by court order. It was confirmed during the country visit that a conviction is not required under Sections 47 and 48 of the Corrupt Practices and Other Related Offences Act, nor under Section 17 of the Advance Fee Fraud and Other Fraud Related Offences Act 2006. It was explained that under the EFCC Act, the Commission may apply to a court ex parte in respect of proceeds reasonably suspected to be criminal proceeds.

365. While the cited provisions correspond largely to the paragraph under review, the reviewers recommend that Nigeria take measures to ensure that instrumentalities intended to be used in the commission of offences under the ICPC Act are equally liable to criminal confiscation, seizure and forfeiture. The cited case examples by the ICPC, EFCC and related statistics demonstrate the application of forfeiture provisions in practice.

Article 31 Freezing, seizure and confiscation

Paragraph 2

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

(a) Summary of information relevant to reviewing the implementation of the article

366. Nigeria cited the following measures.

Sections 36-37, 39-41, 44, 46 and 49-50 of the Corrupt Practices and Other Related Offences Act 2000

36. Forceful entry of premises.

(1) Whenever it appears to the Chairman upon information, and after such inquiry as he shall think necessary, that there is reasonable cause to suspect that in any place there is any evidence of the commission of any offence under this Act, he may by written order direct an officer of the Commission to obtain a court order to-

(a) enter any premises and there search for, seize and take possession of any book, document or other article evidencing the commission of such offence;

(b) inspect, make copies of; or take extracts from any book, record or document;

(c) search any person who is in or on such premises, and for the purpose of such search detain such person and remove him to such place as may be necessary to facilitate such search, and seize and detain any article found on such person;

(d) break open, examine, and search any article, container or receptacle; or

(e) stop, search; and seize any vehicle or conveyance.

(2) Whenever it is necessary so to do, an officer of the Commission exercising any power under subsection (1) shall obtain a warrant from a judge or magistrate to

(a) break open any outer or inner door or window of any premises and enter thereto, or

- otherwise forcibly enter the premises and every part thereof;
- (b) remove by force any obstruction to such entry search, seizure or removal as he is empowered to effect; or
- (c) detain any person found in or on any premises or in any conveyance search under subsection (1), or until such premises or conveyance has been searched.
- (3) No person shall be searched under this section or under section 35 except by a person who is of the same gender as the person to be searched.

37. Seizure of movable or immovable property

- (1) If in the course of an investigation into an offence under this Act any officers of the Commission has reasonable grounds, to suspect that any movable or immovable property is the subject matter of an offence of evidence relating to the offence he shall seize such property.
- (2) A list of all movable or immovable property seized pursuant to subsection (1) and of the places in which they are respectively found shall be prepared by the officer of the Commission effecting the seizure and signed by him.
- (3) A copy of the list referred to in sub-section (2) shall be served on the owner of such property or on the person from whom the property was seized as soon as possible.
- (4) Where any movable or immovable property liable to seizure under subsection (2) is in the possession, custody or control of a bank, subsections (1), (2) and (3) shall not apply thereto and the seizure shall be effected in the manner provided for in sections 35 and 42.

39. Disclosure of otherwise privileged information

Notwithstanding the provisions of any other written law, a Judge of the High Court may, on application made to him in relation to an investigation into any offence under this Act or any other law prohibiting corruption, order a legal practitioner to disclose information available to him in respect of any transaction or dealing relating to any property which is liable to seizure under this Act provided that no court shall require an advocate or solicitor to disclose any privileged information or communication which came to his knowledge for the purpose of prosecuting any pending proceeding.

40. Legal obligation to give information

Subject to such limitation as is provided under this Act, every person required by an officer of the Commission to give any information on any subject which it is the duty of such officer to inquire into under this Act and which it is in that person's statutory power to give, shall be legally bound to give information, failing which he shall be guilty of an offence on conviction liable to imprisonment for six (6) months or a fine of (N 10,000.00) ten thousand naira.

41. Obstruction of inspection and search

Any person who-

- (a) refuses any officer of the Commission access to any premises, or fails to submit to a search by a person authorised to search him under this Act;
- (b) assaults, or obstructs any officer of the Commission or any person authorised by the Commission in the execution of his duty under this Act;
- (c) fails to comply with any lawful demand notice, order or requirements of an officer of the Commission in the execution of his duty under this Act;
- (d) fails to produce to or conceals or attempts to conceal from, an officer of the Commission any book, document, or article, in relation to which such officer has reasonable grounds for suspecting or believing that an offence under this Act or any other law prohibiting Corruption has been or is being committed, or which is liable to seizure under this Act;
- (e) rescues or endeavours to rescue or causes to be rescued any person who has been duly arrested or anything which has been duly seized; or
- (f) destroys anything to prevent the seizure thereof or the securing of the thing, shall be guilty of an offence punishable with imprisonment for one(1) year without option of fine.

44. Chairman's power to obtain "information".

(1) Notwithstanding any written law or rule of law to the contrary, the Chairman of the Commission, if he has reasonable grounds to believe, arising from investigation carried out by an officer of the Commission, that any offence under this Act has been committed, may by written notice-

(a) require any person suspected of having committed such offence to furnish a statement in writing, on oath or affirmation and-

(i) identify every property, whether movable or immovable, whether within or outside Nigeria, belonging to him or in his possession, or in which he has any interest, whether legal or equitable, and specifying the date on which each of the properties so identified was acquired and the manner in which it was acquired, whether by way of any dealing, bequest, devise, inheritance, or any other manner;

(ii) identify every property sent out of Nigeria by him during such period as may be specified in the notice;

(iii) set out the estimated value and location of each of the properties identified under sub-paragraphs (i) and (ii), and if any of such properties cannot be located, the reason therefore;

(iv) state in respect of each of the properties identified under sub-paragraphs (i) and (ii) whether the property is held by him or by any other person on his behalf or whether it has diminished in value since its acquisition by him or and whether it has been commingled with other property which cannot be separated or divided without difficulty;

(v) set out all other information relating to his properties, business, travel or other activities as may be specified in the notice; and

(vi) set out all his sources of income, including earnings and gifts or other assets for such period; and

(b) require any relative or associate of the person referred to in sub-section (1) (a), or any other person whom the Chairman of the Commission has reasonable grounds to believe is able to assist in the investigation, to furnish a statement in writing on oath or affirmation and;

(i) identify every property, whether movable or immovable, whether within or outside Nigeria, belonging to him or in his possession, or in which such person has any interest, whether legal or equitable, and specifying the date on which each of the properties identified was acquired and the manner in which it was acquired, whether by way of any dealing, bequest, devise, inheritance, or any other manner;

(ii) identify every property sent out of Nigeria by him during such period as may be specified in the notice;

(iii) set out the estimated value and location of each of the properties identified under sub-paragraphs (i) and (ii) and if any of such properties cannot be located, the reason therefore;

(iv) state in respect of each of the properties identified under sub-paragraphs (i) and (ii) whether the property is held by him or by any other person on his behalf or whether it has been transferred, sold, or kept with any person or whether it has diminished in value since its acquisition by him or whether it has been commingled with other property which cannot be separated or divided without difficulty;

(v) set out all other information relating to each of the properties identified under sub-paragraphs (i) and (ii), and the business, travel or other activities of such person; and

(vi) set out all the sources of income, earnings, gifts or other assets for such period; and

(c) require any officer of any bank or financial institution, or any person who is in any manner or to any extent responsible for the management and control of the affairs of any bank or any financial institution to furnish copies of any or all accounts, documents and records relating to any person to whom a notice may be issued under paragraphs (a) or (b).

(2) Where the Chairman of the Commission has reasonable grounds to believe that any Public Officer who has been served with the written notice referred to in sub-section (1) owns, possesses, controls or holds any interest in any property which is excessive, having regard to his present or past emoluments and all other relevant circumstances, the Chairman may by written direction require him to furnish a statement on oath or affirmation explaining how he was able to own, possess, control or hold such excess and if he fails to explain satisfactorily such excess, he shall be presumed to have used his office to corruptly enrich or gratify himself and charged accordingly.

(3) Every person to whom a notice or direction is sent by the Chairman under this section shall state the truth and disclose all information which is within his knowledge, or which is available to him, or which is capable of being obtained by him.

(4) Where any person discloses any information or produces any accounts, documents or records, in response to a notice under sub-section (1), such person, his agent or employee, or any other person acting on his behalf or under his direction, shall not, by reason only of such disclosure or production, be liable to prosecution for any offence or civil claim under or by virtue of any law, Contract, agreement or arrangement, or otherwise.

Provided that

Sub-section (4) shall not bar, prevent or prohibit the institution of any prosecution for any offence provided by this section or for giving false evidence in relation to any statement on oath or affirmation furnished to the Chairman of the Commission pursuant to this section; or as provided for in section 27 (1) of this Act.

46. Prohibition of dealing with property outside Nigeria

Where the Chairman of the Commission is satisfied that any property is the subject-matter of an offence under this Act or was used in the commission of the offence, and such property is held or deposited outside Nigeria, he may make an application by way of an affidavit to a Judge of the High Court for an order prohibiting the person by whom the property is held or with whom it is deposited from dealing with the property.

49. Dealing with property after seizure to be null and void

Where any property has been seized under this Act, and so long as such seizure remains in force, any dealing effected by any person or between any persons in respect of such property, except any dealing effected under this Act or by virtue of this Act by an officer of a public body in his capacity as such officer, or otherwise by or on behalf of the Government of Nigeria, or the Government of a State, or a Local Government or other statutory authority, shall be null and void, and shall not be registered or otherwise given effect to by any person or authority.

50. Surrender of travel documents

(1) Notwithstanding any written law to the contrary, the Chairman of the Commission may upon a court order where he has reasonable grounds to believe that any person, who is the subject of investigation in respect of any offence under this Act is likely to leave Nigeria, by written notice require such person to surrender his passport or exit permit or any other travel documents in his possession.

(2) A notice under subsection (1) shall be served personally on the person to whom it is addressed.

Sections 6(d), 26 and 34 of the Economic and Financial Crimes (Establishment) Act 2004 (EFCC Act)

"6: The Commission shall be responsible for -

(d) The adoption of measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities, economic and financial crimes related offences or the properties the value of which corresponds to such proceeds"

26: Seizure of Property

(1) Any property subject to forfeiture under this Act may be seized by the Commission in the following circumstances –

(a) the seizure incidental to an arrest or search; or

(b) in the case of property liable to forfeiture upon process issued by the Court following an application made by the Commission in accordance with the prescribed rules.

(2) Whenever property is seized under any of the provisions of this Act, the Commission may –

(a) place the property under seal; or

(b) remove the property to a place designed by the Commission.

(3) Properties taken or detained under this section shall be deemed to be in the custody of the

Commission, subject only to an order of a Court.

34: Freezing order on banks or other financial institutions

(1) Notwithstanding anything contained in any other enactment or law, the Chairman of the Commission or any officer authorized by him may, if satisfied that the money in the account of a person is made through the commission of an offence under this Act or any enactments specified under section 6 (2) (a)-(f) of this Act, apply to the Court ex-parte for power to issue or instruct a bank examiner or such other appropriate regulatory authority to issue an order as specified in Form B of the Schedule to this Act, addressed to the manager of the bank or any person in control of the financial institution where the account is or believed by him to be or the head office of the bank or other financial institution to freeze the account.

(2) The Chairman of the Commission, or any officer authorized by him may by an order issued under subsection (1) of this section, or by any subsequent order, direct the bank or other financial institution to supply any information and produce books and documents relating to the account and to stop all outward payments, operations or transactions (including any bill of exchange) in respect of the account of the arrested person.

Schedule

(3) The manager or any other person in control of the financial institution shall take necessary steps to comply with the requirements of the order made pursuant to subsection (2) of this section.

(4) In this section –

a. “bank” has the meaning given to it in the Banks and other Financial Institutions Act 1999 as amended; 1991 No. 25

b. the reference to an order issued includes a reference to any order, direction or requirement addressed to the manager of a bank or any other officer of a bank which directs the manager or such officer to stop all outward payments, operations or transactions in respect of any account with that bank.

367. Nigeria provided the following examples of cases involving identifying, tracing, and freezing of assets:

EFCC:

FRN v Chief Diepreye Solomon Peter Alamiyeseigha & Others (which were legal persons, some of which were: Solomon & Peters Ltd; Santolina Investment Corporation Ltd; Pesal Nigeria Ltd; etc.) Fhc/1/328c/2005.

FRN v Tafa Adebayo Balogun & Others (which were legal persons, some of which were Yeboa Investment Ltd; Caledonia Telecommunications ltd; Olatrade Ltd; etc) Fhc/abj/cr/14/05.

EFCC:

An example of a case where an asset was traced and the value of such asset:

FRN Vs Dr. Shuaibu Sani & 32 Others, FHC/ABJ/CS/607/1 1.

Value of asset: over US\$40,000,000.

ICPC:

An example of a case where assets have been traced and the value of such assets:

Engr. Victor Nnamdi Igboanugo, N63.3 million.

368. The Nigerian FIU operates go-AML, a software system developed by UNODC and available for Financial Intelligence Units to counter terrorist financing and money laundering.

(b) Observations on the implementation of the article

369. Relevant provisions for the identification, tracing, freezing and seizure of criminal proceeds and instrumentalities are established. The observations above with respect to instruments destined for use in offences under the ICPC Act are referred to also in respect of tracing, freezing and seizure. Case examples were provided.

370. It was explained during the country visit that during the investigation phase, if a defendant's assets appear, in the opinion of the ICPC Chairman, to be disproportionate to his lawful sources of wealth, the assets can be seized by the ICPC through an interim seizing order and the defendant can be required to explain the lawful origin of the assets. Where property is seized, the Commission may then apply for a court order for confiscation. If the defendant does not challenge the seizing, and no third party interests are established following publication of the matter in the Gazette and at least two other newspapers, the assets are forfeited in accordance with Section 48 of the ICPC Act (quoted above).

Article 31 Freezing, seizure and confiscation

Paragraph 3

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

371. Nigeria indicated that it has partially implemented the provision under review.

Section 38 of the Corrupt Practices and Other Related Offences Act 2000

38. Custody of seized property, etc.

(1) Where any movable property is seized under this Act, the seizure shall be effected by removing the movable property from the custody or control of the person from whom it is seized and placing it under the custody of such person or authority and at such place as an officer of the Commission may determine.

(2) Where it is not practicable, or it is otherwise not desirable, to effect removal of any property under subsection (1), the officer referred to in that subsection may leave it at the premises in which it is seized under the custody of such person as he may detail for the purpose.

(3) Notwithstanding subsection (1), when any movable property, including any movable property referred to in subsection (6), has been seized under this Act, an officer of the Commission other than the officer who effected the seizure, may in his discretion-

(a) temporarily return the movable property to the owner thereof; or to the person from whose possession, custody or control it was seized, or to such person as may be entitled thereto, subject to such terms and conditions as may be imposed, and subject, in any case, to sufficient security being furnished to ensure that the movable property shall be surrendered on demand being made by the officer who authorised the release or any other officer of the Commission and that such terms and conditions, if any shall be complied with; or

(b) return the movable property to the owner thereof; or to the person from whose possession, custody or control it was seized, or to such person as may be entitled thereto, with liberty for the person to whom the movable property is so returned to dispose of the property, such return being subject to security being furnished in an amount not less than an amount which represents

the open market value of such property on the date on which it is returned.

(4) Where any person to whom movable property is temporarily returned under sub-section (3) (a) fails to surrender such property on demand or to comply with any term or condition imposed under that sub-section-

(a) the security furnished in respect of such property shall be forfeited; and

(b) that person shall be guilty of an offence and shall on conviction be liable to a fine of not less than two times the amount of the security furnished by him, and to imprisonment for a term not exceeding two years.

(5) Where an order of forfeiture is made by the court in respect of property returned under sub-section (3) (b), such forfeiture shall be effected by forfeiting the security furnished by the person to whom the property was returned in lieu of the property.

(6) When any movable property seized under the Act consists of money, shares, securities, stocks, debentures or any chose-in-action, in the possession or under the custody or control of any person other than the person against whom the prosecution is intended to be taken, the seizure shall be effected by an officer of the Commission serving an order on such person-

(a) prohibiting him from using, transferring, or dealing with such property; or

(b) requiring him to surrender the property to an officer of the Commission in the manner and within the time specified in the order.

(7) Where any movable property seized is liable to decay or deterioration, or is property which cannot be maintained without difficulty, or which it is not practicable to maintain, and which cannot be dealt with under subsection (3), an officer of the Commission may sell or cause such property to be sold at the prevailing market value and shall hold the proceeds of the sale, after deducting therefrom the costs and expenses of the maintenance and of the sale of the property, to abide the result of any proceedings under this Act.

Sections 31-33 and 35-37 of the EFCC Act

31: Final Disposal of forfeited property

(1) A copy of every final order forfeiting the asset and property of a person convicted under this Act shall be forwarded to the Commission.

(2) Upon receipt of a final order pursuant to this section, the Secretary to the Commission shall take steps to dispose of the property concerned by sale or otherwise and where the property is sold, the proceeds thereof shall be paid into the Consolidated Revenue Fund of the Federation.

(3) Where any part of the property included in a final order is money in a bank account or in the possession of any person, the Commission shall cause a copy of the order to be produced and served on the manager or any person in control of the head office or branch of the bank concerned and that manager or person shall forthwith pay over the money to the Commission without any further assurance than this Act and the

Commission shall pay the money received into the Consolidated Fund of the Federation.

(4) The Attorney General of the Federation may make rules or regulations for the disposal or sale of any property or assets forfeited pursuant to this Act.

32: Offences in relation to forfeiture orders

(1) Any person who, without due authorization by the Commission, deals with, sells or otherwise disposes of any property or assets which is the subject of an attachment, interim order or final order commits an offence and is liable on conviction to imprisonment for a term of five years without the option of a fine.

(2) Any manager or person in control of the head office or branch of a bank or other financial institution who fails to pay over to the Commission upon the production to him of a final order commits an offence under this Act and is liable on conviction to imprisonment for a term of not less than one year and not more than three years, without the option of a fine.

33: Consequences of an acquittal in respect of assets and properties

(1) Where a person is discharged or acquitted by a Court of an offence under this Act, the Court may make an order of revocation or confirmation as the case may be, of an interim order made pursuant to this Act whichever order is considered just, appropriate or reasonable within the

circumstances.

(2) The property may be attached where a discharge is merely given on technical grounds.

(3) Where an interim order is revoked by a Court under subsection (1) of this section, all assets and properties of the person concerned shall be released to him by the Commission.

372. Regarding the administration of frozen, seized or confiscated property, Nigeria indicated that the EFCC has appointed consultants, Etudo and Co., who manage assets attached in the interim. After permanent forfeiture, the EFCC puts a process in place to appoint auctioneers who dispose of the property in accordance with the orders of the court and the provisions of the EFCC Act.

373. Nigeria indicated that in order to (fully) implement the provision under review, authorities should enact a legal framework and establish a structure to manage such assets within the next two years.

(b) Observations on the implementation of the article

374. The ICPC Act gives broad discretion to an ICPC officer to place seized property under the custody of “such person or authority and at such place” as he may determine. Conversely, the cited measures in the EFCC Act deal with the disposal but not management of seized property.

375. During the country visit, officials confirmed that there is no centralized office or department to manage seized or confiscated assets, but that each agency that recovers assets manages them as well. It was also explained that usually assets are remitted to the Consolidated Revenue Fund in the Central Bank of Nigeria. The case of Joshua Dariye (former Governor of Plateau State) was cited as a case example where confiscated assets were returned to the State of origin following confiscation proceedings.

376. It was explained that measures are being taken by Nigeria to more fully regulate the management of frozen or confiscated assets. A draft Proceeds of Crime Bill is being prepared for presentation to the National Assembly. It was explained that the Bill was under consideration by the Federal Executive Council and would then be submitted by the President to the National Assembly.

377. During the discussions in the country visit, officials acknowledged that the management of seized and confiscated assets in Nigeria should be strengthened. It is recommended that Nigeria take measures to strengthen the administration of frozen, seized or confiscated property, including considering the establishment of a centralized office or department to manage such assets. The reviewers encourage the swift adoption of the draft Proceeds of Crime Bill.

Article 31 Freezing, seizure and confiscation

Paragraph 4

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

378. Nigeria cited the following measures.

Section 20 read with Section 18, and Sections 24-34 (previously cited) of the EFCC Act.

"18: Offences in relation to economic and financial crimes and petitions

(1) A person who, without lawful authority –

(a) engages in the acquisition, possession or use of property knowing at the time of its acquisition, possession or use that such property was derived from any offence under this Act; or

(b) engages in the management, organisation or financing of any of the offences under this Act; or

(c) engages in the conversion or transfer of property knowing that such property is derived from any offence under this Act; or

(d) engages in the concealment or disguise of the true nature, source, location, disposition, movement, rights, with respect to or ownership of property knowing such property is derived from any offence referred under this Act

commits an offence under this Act and is liable on conviction to the penalties provided in Subsection (2) of this section.

(2) The penalties provided for offences under subsection (1) of this section shall be imprisonment for a term not less than two years and not exceeding three years."

"20: Forfeiture after conviction in certain cases

(1) A person convicted of an offence under this Act shall forfeit to the Federal Government -

(a) all the assets and properties which may or are the subject of an interim order of the Court after an attachment by the Commission as specified in section 26 of this Act;

(b) any asset or property confiscated, or derived from any proceeds, the person obtained directly or indirectly, as a result of such offences not already disclosed in the Assets Declaration Form specified in Form A of the Schedule to this Act or not falling under paragraph (a) of this subsection;

(c) any of the person's property or instrumentalities used in any manner to commit or to facilitate the commission of such offence not already disclosed in the Declaration of Assets Form or not falling under paragraph (a) of this subsection.

(2) The Court in imposing a sentence on any person under this section, shall order, in addition to any other sentence imposed pursuant to Section 11 of this Act, that the person forfeit to the Federal Government all properties described in subsection (1) of this section.

(3) In this section, "proceeds" means any property derived or obtained, directly, through the commission of an offence under this Act.

Sections 263 and 263A of the Criminal Procedure Act

"Part 30

Seizure, Restitution, Forfeiture and Disposition of

263.(1) During or at the conclusion of any trial or inquiry, the court may make such order as it thinks fit for the disposal whether by way of forfeiture, confiscation or otherwise of any property produced before it regarding which any offence appears to have been committed or which has been used for the commission of any offence.

(2) Where the court orders the forfeiture or confiscation of any property as provided in subsection (1) of this section but does not make an order for its destruction or for its delivery to any person the court may direct that the property shall be kept or sold and that the same or, if sold, the proceeds thereof, shall be held as it directs until some person establishes to the court's satisfaction a right thereto. If no person establishes such a right within six months from the date of forfeiture or confiscation such property or the proceeds thereof shall be paid into and form part of the general revenue.

(3) The power conferred by subsections (1) and (2) of this section upon the court shall include the power to make an order for the forfeiture or confiscation or for the destruction or for the delivery to any person of such property, but shall be exercised subject to any special

provisions regarding forfeiture, confiscation, destruction, detention or delivery contained in the written law under which the conviction was had or in any other written law applicable to the case.

(4) When an order is made under this section in a case in which an appeal lies such order shall not, except when the property is livestock or is subject to speedy and natural decay, be carried out until the period allowed for presenting such appeal has passed or when such appeal is entered until the disposal of such appeal.

263A. In this Part of this Act, the term "property" include, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same has been converted or exchanged and anything acquired by such conversion or exchange, whether immediately or otherwise."

379. Nigeria provided the following example of implementation:

FRN vs. Emmanuel Nwude & Others.

(b) Observations on the implementation of the article

380. Nigeria indicated that proceeds of crime in the cited case (FRN vs. Emmanuel Nwude & Others) were converted or transformed into real estate and stocks. The assets were traced and frozen by a court order pending the conclusion of the trial. At the end of the trial, they were disposed of by the order of the court, and the proceeds of the sale were dealt with according to law.

381. The reviewers consider that Section 47(2) of the ICPC Act in respect of pecuniary penalties would also provide for the confiscation of transformed or converted proceeds:

47. Forfeiture of property upon prosecution for an offence

(2) Where the offence is proved against the accused or the property referred to in subsection (1) has been disposed of, or cannot be traced, the court shall order the accused to pay as a penalty a sum which is equivalent to the amount of the gratification or is, in the opinion of the court, the value of the gratification received by the accused, and any such penalty shall be recoverable as a fine.

382. Nigeria has implemented the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 5

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

383. Nigeria cited the following measures.

Sections 6(d) and 24(a) of the EFCC Act 2004

"6: The Commission shall be responsible for - ...

(d) the adoption of measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities, economic and financial crimes related offences or the properties the value of which corresponds to such proceeds;

24: Property subject to forfeiture

Any property-

(a) Whether real or personal, which represents the gross receipts a person obtains directly as a result of the violation of this Act or which is traceable to such gross receipts;"

384. Nigeria provided the following example of a case where intermingled assets have been traced and identified:

FRN Vs Dr. Shuaibu Sani & 32 Others, FHC/ABJ/CS/607/1 1.

(b) Observations on the implementation of the article

385. Nigeria indicated that by virtue of Section 24 of the EFCC Act, any property whether real or personal which represents the gross receipts a person obtains directly as a result of a violation of the provisions of the Act **or which is traceable to such gross receipts** is liable to confiscation. The burden shifts to the defendant to establish that some percentage of the intermingled property was acquired legitimately.

In the cited case (FRN Vs Dr. Shuaibu Sani & 32 Others), John Yusuf was an Assistant Director in the Nigerian Police Pension Office. He was charged alongside others for misappropriating N32.8 billion naira (i.e about \$202 million) belonging to the Nigerian Police Pension fund. He was convicted for criminal misappropriation and sentenced to 2 years imprisonment with an option of a fine. His 32 immovable properties in Abuja, and other parts of Nigeria were confiscated. The whole sum of N325,187,867.17 (i.e about \$2 million) which was found in his account was also confiscated. The onus was on him to establish that part of the properties including the sum of money found in his account, were legitimately acquired, which he could not do.

386. The reviewers considered Section 20(1)(b) of the EFCC Act also relevant:

"20: Forfeiture after conviction in certain cases

(1) A person convicted of an offence under this Act shall forfeit to the Federal Government -

(a) all the assets and properties which may or are the subject of an interim order of the Court after an attachment by the Commission as specified in section 26 of this Act;

(b) any asset or property confiscated, or derived from any proceeds, the person obtained directly or indirectly, as a result of such offences not already disclosed in the Assets Declaration Form specified in Form A of the Schedule to this Act or not falling under paragraph (a) of this subsection;

387. Section 47(2) of the ICPC Act in respect of pecuniary penalties (quoted under the previous provision) would also address the confiscation of intermingled proceeds.

Article 31 Freezing, seizure and confiscation

Paragraph 6

6. *Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.*

(a) Summary of information relevant to reviewing the implementation of the article

388. Nigeria cited the following measures.

Section 20(1) of the EFCC Act of 2004

"20: (1) A person convicted of an offence under this Act shall forfeit to the Federal Government - ...

(a) all the assets and properties which may or are the subject of an interim order of the Court after an attachment by the Commission as specified in section 26 of this Act;

(b) any asset or property confiscated, or derived from any proceeds, the person obtained directly or indirectly, as a result of such offences not already disclosed in the Assets Declaration Form specified in Form A of the Schedule to this Act or not falling under paragraph (a) of this subsection; ..."

24: Property subject to forfeiture

"Any property-

(a) Whether real or personal, which represents the gross receipts a person obtains directly as a result of the violation of this Act or which is traceable to such gross receipts;"

389. Nigeria cited the following example of implementation:

FRN Vs Dr. Shuaibu Sani & 32 Others, FHC/ABJ/CS/607/1 1.

(b) Observations on the implementation of the article

390. Section 47(2) of the ICPC Act in respect of pecuniary penalties (quoted under the previous UNCAC provision) would also address the confiscation of intermingled proceeds.

391. It is noted that the case was cited for intermingled property. The defendant was asked to explain the lawful origin of the sum of money found in his account.

Article 31 Freezing, seizure and confiscation

Paragraph 7

7. *For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.*

(a) Summary of information relevant to reviewing the implementation of the article

392. Nigeria cited the following measures.

Section 43 of the Corrupt Practices and Other Related Offences Act 2000

43. Investigation of share Accounts, etc.

(1) Notwithstanding the provisions of any other written law or any rule of law, the Chairman

of the Commission, shall upon a court order direct in writing, for the purpose of any investigation into an offence under this Act or any other law prohibiting corruption, and upon a court order authorise any officer of the Commission to exercise, in relation to any bank or financial institution specified in the authorisation, all the powers of investigation set out in subsection (2).

(2) An officer of the Commission authorised under subsection (1) may, in relation to the bank or financial institution in respect of which he is so authorised-

(a) inspect and take copies of any banker's book, bank accounts or any documents belonging to or in the possession, custody or control of the bank or financial institution including computer data, disks, diskettes, printouts and any other electronic medium by which information or data is stored;

(b) inspect and take copies of any share accounts, purchase account, expenses accounts or any other accounts of any person kept in the bank;

(c) inspect the contents of any safe deposit box in the bank; or

(d) request for any other information related to any documents, accounts or articles referred to in paragraphs (a), (b) and (c).

(3) Notwithstanding anything in subsection (2), an officer of the Commission authorised under subsection (1) may take possession of any books, documents, accounts, titles, securities or cash to which he has access under that subsection where in his opinion -

(a) the inspection, the copying or the taking of extracts from them, cannot reasonably be undertaken without taking possession of them;

(b) they may be interfered with or destroyed unless he takes possession of them; or

(c) they may be needed as evidence in any prosecution for an offence under this Act or any other written law.

(4) Any person who willfully fails or refuses to disclose any information or produce any account, document or article referred to in subsection (2) to any officer of the Commission authorised under subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand naira or to imprisonment for a term not exceeding two years or to both.

(5) Any person who discloses any information or produces any account or document or article to an authorised officer of the Commission whether by himself or through any agent shall not, on account of such disclosure or production, be liable to any prosecution, except for an offence under section 41 (1) of this Act, or for any offence under or by virtue of any Law, or to any proceeding or claim by any person under or by virtue of any law, contract, agreement or arrangement, or otherwise.

Section 45 of the Corrupt Practices and Other Related Offences Act 2000

45. Seizure of movable property in bank.

(1) Where the Chairman of the Commission is satisfied on information given to him by an officer of the Commission that any movable property, including any monetary instrument or any accretion thereto which is the subject-matter of any investigation under this Act or evidence in relation to the Commission of such offence is the possession, custody or control of a bank or financial institution, he may, notwithstanding any other written law or rule of law to the contrary by order direct the bank or financial institution not to part with, deal in, or otherwise dispose of such property or any part thereof until the order is revoked or varied.

(2) No bank, agent or employee of a bank shall on account of such compliance, be liable to any prosecution or to any civil proceeding or claim by any person under or by virtue of any law, contract, agreement, or arrangement, or otherwise.

(3) Any person who fails to comply with an order of the Chairman of the Commission under sub-section (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two times the amount which was paid out in contravention of the Chairman's order or fifty thousand naira, whichever is the higher, and to imprisonment for a term not exceeding two (2) years.

(4) The subject-matter of an offence under this Act or evidence of the commission of such offence shall be liable to seizure and the seizure shall be effected-

- (a) by the issuance of a Notice of Seizure signed by the Chairman of the Commission or any other person authorised by him setting out therein the particulars of the immovable property which is to be seized in so far as such particulars are within his knowledge, and prohibiting all dealings in such immovable property; and
 - (b) by publishing a copy of such Notice in two newspapers circulating in Nigeria which shall be in the English Language; and
 - (c) by serving a copy of such Notice on the officer of the Ministry of Lands of the Area in which the immovable property is situate.
- (5) The Officer responsible for land matter referred to in subsection (4) (c) shall immediately upon being served with a Notice of Seizure under subsection (1) endorse the terms of the notice of seizure on the document of title in respect of the immovable property in the Register at his Office.

Section 13 of the Money Laundering (Prohibition) Act of 2011 (As Amended)

"13. (1) The Commission, Agency, Central Bank of Nigeria or other regulatory authorities pursuant to an order of the Federal High Court obtained upon an *ex-parte* application supported by a sworn declaration made by the Chairman of the Commission or an authorized officer of the Central Bank of Nigerian or other regulatory authorities justifying the request, may in order to identify and locate proceeds, properties, objects or other things related to the commission of an offence under this Act, the Economic and Financial Crimes Commission (Establishment) Act or any other law-

- (a) Place any bank account or any other account comparable to a bank account under surveillance;
- (b) Obtain access to any suspected computer system;
- (c) Obtain communication of any authentic instrument or private contract, together with all bank, financial and commercial records, when the account, telephone line or computer system is used by any person suspected of taking part in a transaction involving the proceeds, of a financial or other crime.

(2) The Agency may exercise the powers conferred under subsection (1) of this section where it relates to identifying or locating properties, objects or proceeds of narcotic drugs or psychotropic substances.

(3) In exercising the power conferred under subsection (2) of this section, the Agency shall promptly make a report to the Commission

(4) Banking secrecy or preservation of customer confidentiality shall not be invoked as a ground for objecting to the measures set out in subsection (1) and (2) of this section or for refusing to be a witness to facts likely to constitute an offence under this Act, the Economic and Financial Crimes Commission (Establishment, Etc.) Act or any other Law."

Sections 34 (Freezing order on bank or other financial institutions: cited under UNCAC article 31(2) above) and 38 of the EFCC Act

38: Power to receive information without hindrance

(1) The Commission shall seek and receive information from any person, authority, corporation or company without let or hindrance in respect of offences it is empowered to enforce under this Act.

(2) A person who –

- (a) willfully obstructs the Commission or any authorized officer of the Commission in exercise of any of the powers conferred on the Commission by this Act; or
 - (b) fails to comply with any lawful enquiry or requirements made by any authorized officer in accordance with the provision of this Act,
- commits an offence under this Act and is liable on conviction to imprisonment for a term not exceeding five years or to a fine of twenty thousand naira or to both such imprisonment and fine.

393. Nigeria provided the following examples of cases where the above provision has been applied

ICPC:

Examples and statistics where bank records have been accessed without hindrance:

- (i) **FRN vs John Eddie Manasa**, Charge no. FRN/ic/2010
- (ii) **Federal Polytechnic, Kaduna**
- (iii) **Federal Polytechnic, Mubi, Adamawa State**
- (iv) **Auchi Polytechnic, Edo State**
- (v) **Kankaru Local Government Area**
- (vi) **Engr. Victor Nnamdi Igboanugo**
- (vii) **Dr. Henry Aloh (Ebonyi State Commissioner for Health) & Sam Agbo of Intercontinental Bank Plc., Abakaliki, Ebonyi State**
- (viii) **A former caretaker chairman of Orire Local Government, Ikoyi-Ile, Oyo State**
- (ix) **Mr. Michael Tyonongu Kohol**
- (x) **Sir (barr.) Chief Godwin C. Agbo**
- (xi) **Alhaji Ibrahim Idris, immediate past Governor of Kogi State**
- (xii) **Mr. Isaiah Eme Ben Iroha of Nipp, Abuja**
- (xiii) **A multi-purpose co-operative society.**

EFCC

From inception in 2003, bank records have always been accessed without hindrance.

Examples:

- FRN V Chidi Adabanya & Others**
- FRN V Francis Akingbola & Others**
- FRN V James Onanefe Ibori & Others**
- FRN V Tafa Adebayo Balogun & Others**
- FRN V Kenny Martins & Others**

394. Please refer to the previously cited cases.

(b) Observations on the implementation of the article

395. Nigeria has adopted relevant measures to implement the paragraph under review and case examples were provided where bank and financial records were provided without hindrance.

Article 31 Freezing, seizure and confiscation

Paragraph 8

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

396. Nigeria cited the following measures.

Sections 44(2) and 44(3) of the Corrupt Practices and Other Related Offences Act 2000

"(2) Where the Chairman of the Commission has reasonable grounds to believe that any Public Officer who has been served with the written notice referred to in sub-section (1) owns, possesses, controls or holds any interest in any property which is excessive, having regard to his present or past emoluments and all other relevant circumstances, the Chairman may by written direction require him to furnish a statement on oath or affirmation explaining how he was able to own, possess, control or hold such excess and if he fails to explain satisfactorily such excess, he shall be presumed to have used his office to corruptly enrich or gratify himself and charged accordingly.

(3) Every person to whom a notice or direction is sent by the Chairman under this section shall state the truth and disclose all information which is within his knowledge, or which is available to him, or which is capable of being obtained by him."

Sections 7(1) and 20 of the Economic and Financial Crimes (Establishment) Act 2004 (EFCC Act)

"7: (1) The Commission has power to –

(a) cause investigations to be conducted as to whether any person, corporate body or organization has committed any offence under this Act or other law relating to economic and financial crimes

(b) cause investigations to be conducted into the properties of any person if it appears to the commission that the person's lifestyle and extent of the properties are not justified by his source of income;"

"20: Forfeiture after conviction in certain cases.

(1) A person convicted of an offence under this Act shall forfeit to the Federal Government -
(a) all the assets and properties which may or are the subject of an interim order of the Court after an attachment by the Commission as specified in section 26 of this Act;

(b) any asset or property confiscated, or derived from any proceeds, the person obtained directly or indirectly, as a result of such offences not already disclosed in the Assets Declaration Form specified in Form A of the Schedule to this Act or not falling under paragraph (a) of this subsection;

(c) any of the person's property or instrumentalities used in any manner to commit or to facilitate the commission of such offence not already disclosed in the Declaration of Assets Form or not falling under paragraph (a) of this subsection.

(2) The Court in imposing a sentence on any person under this section, shall order, in addition to any other sentence imposed pursuant to Section 11 of this Act, that the person forfeit to the Federal Government all properties described in subsection (1) of this section.

(3) In this section, "proceeds" means any property derived or obtained, directly, through the commission of an offence under this Act.

397. Nigeria provided the following example of a case where an offender has been required to prove the lawful origin of an asset:

Chairman Economic and Financial Crimes Commission V Samuel Omomehin, FHC/KD/CS/1 10/10. The Offender was required to appear in court and prove that the attached assets, which were suspected to be proceeds of crime, were legitimately acquired. He failed to appear, and the assets were consequently forfeited to the Federal Government of Nigeria.

(b) Observations on the implementation of the article

398. Nigeria has adopted measures consistent with the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 9

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

399. Nigeria cited the following measures.

Section 47(1)(b) of the Corrupt Practices and Other Related Offences Act 2000

47. Forfeiture of property upon prosecution for an offence.

(1) In any prosecution for an offence under this Act, the court shall make an order for the forfeiture of any property which is proved to be the subject-matter of the offence or to have been used in the commission of the offence where-

(a) the offence is proved against the accused; or

(b) the offence is not proved against the accused but the court is satisfied:

(i) that the accused is not the true and lawful owner of such property; and

(ii) that no other person is entitled to the property as a purchaser in good faith for valuable consideration.

400. Nigeria provided the following example of a case where confiscation has taken place and the court took cognizance of third party rights.

FRN Vs Bayo Lawal, FHC/IKJ/CS/175/2011. The property involved was real estate. Only the unexpired interest of the suspect in the property was eventually forfeited.

(b) Observations on the implementation of the article

401. The current legislation does not set out modalities relating to freezing having regard to the rights of third persons who may have grievances. However, the provisions on forfeiture take into account third party interests. Nigeria is encouraged to clarify the legislation in this respect.

(c) Challenges related to article 31

402. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency coordination
2. Inadequacy of existing normative measures (constitution, laws, regulations, etc.)
3. Limited capacity
4. Competing priorities
5. Limited resources for implementation.

(d) Technical assistance needs related to article 31

403. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:
1. Summary of good practices/lessons learned
 2. Development of an action plan for implementation
 3. Model legislation
404. Nigeria has received the previous forms of technical assistance from:
1. United States Embassy
 2. UNODC/EU
405. Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Article 32 Protection of witnesses, experts and victims

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of the article

406. Nigeria indicated that it has partially implemented this article of the Convention.
407. Nigeria indicated that the Federal Ministry of Justice has been developing a bill for the protection of witnesses. A Witness Protection Bill, 2012 is currently pending before the National Assembly. It is expected to be passed into law in the next two years.
408. In order to (fully) implement the provision under review, Nigeria indicated that the following steps or measures are needed:
1. Enactment into law of the draft legislation pending before the National Assembly within the next year;

2. Setting up structures for implementation within the next two years.

409. Nigeria further indicated that it has not implemented subparagraph 2(b) of the Convention and that such evidentiary protections are not provided for under the Evidence Act, 2011.

410. No relocation agreements or arrangements with other States are in place.

411. Nigeria indicated that it has not implemented subparagraphs 4 and 5 of the article of the Convention relating to the protection of victims.

(b) Observations on the implementation of the article

412. Based on information provided by Nigeria, and as clarified with the authorities during the country visit, there is no substantive witness protection law in Nigeria and there are no relevant measures in the Criminal Code, Penal Code or the Criminal Procedure Law. However, a Witness Protection bill is pending before the National Assembly. It was explained that the bill, which was presented as an Executive Bill, contains elements of witness and whistleblower protection.

413. The bill is designed “to ensure that due administration in criminal and related proceedings is not prejudiced by the unwillingness of witnesses to give evidence for fear of violence, serious injury, death ...; and provide a framework for giving special protection, on behalf of the State, to persons in possession of important information and who are facing potential risk of intimidation due to their cooperation with prosecution, investigation, inquiry or tribunal”. It would establish a witness protection agency and witness protection programme, which could provide both physical and evidentiary protections in due circumstances to protect the safety and welfare of witnesses at risk.

414. It was explained that under the current framework, the legal basis for video testimony in appropriate cases was being tested in the courts, given the limited budgets of the agencies to compel witnesses especially from remote locations to appear in court. It was explained that foreign witness testimony had been admissible in the Nigerian courts in one terrorism case, where judges deviated from the normal evidentiary standards due to risks of reprisal and security concerns.

415. Another case example was referred to where 24-hour security had to be provided to a witness by the Nigerian authorities. As noted under UNCAC article 25 above, the risk of physical attacks, threats and intimidation of investigators, prosecutors and judicial officers is a challenge and the absence of relevant protections was noted.

416. The reviewers welcome the swift adoption of the Witness Protection bill, although they note that the bill dates from 2012. It is recommended that Nigeria ensure as a matter of priority the full implementation of the article and establish necessary measures to provide for the protection of witnesses, experts and victims (as well as law enforcement officials), including as appropriate their physical protection and related evidentiary rules, in line with the Convention, and to consider entering into relocation agreements with other States. It is noted that the Witness Protection bill would allow the Witness Protection Agency to enter into such agreements.

(c) Challenges related to article 32

417. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency coordination
2. Inadequacy of existing normative measures (constitution, laws, regulations, etc.)
3. Limited capacity
4. Competing priorities
5. Limited resources for implementation
6. Specificities in its legal system
7. Limited awareness of state-of-the-art programmes and practices for witness and expert protection.

(d) Technical assistance needs related to article 32

418. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned
2. Development of an action plan for implementation
3. Model legislation
4. Capacity-building programmes for authorities responsible for establishing and managing witness and expert protection programmes
5. On-site assistance by a relevant expert
6. Capacity-building programmes for authorities responsible for establishing and managing witness, expert and victim protection programmes.

419. Nigeria has received the previous forms of technical assistance from:

1. UNODC/EU

420. Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Article 33 Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

421. Nigeria indicated that it has partially implemented the article.

422. Nigeria explained that a Witness Protection Bill, 2012 is pending in the National Assembly and is expected to be enacted into law in the next two years.

(b) Observations on the implementation of the article

423. Nigeria has not established measures on the protection of whistleblowers, although it has reportedly considered establishing such protections in the pending Witness Protection

Bill, dating from 2012. As noted above, the bill would establish a witness protection agency and witness protection programme to protect the safety and welfare of witnesses at risk. While the definition of “witness” under the bill is focused on witnesses, their family members and associates, it also includes a person: who has “witnessed or has information about the commission of an offence or other wrongdoing, and has given, is giving, or agreed to give, evidence on behalf of the State” in hearings or proceedings before relevant investigating authorities; who has otherwise agreed to give evidence “in relation to the commission or possible commission of an offence”; or who has made a statement to a law enforcement agency in Nigeria; as well as persons who may, for any other reason, require protection or other assistance under the Act.

424. It was further noted during the country visit that the agencies need a dedicated budget for the protection of whistleblowers, which would cover expenses associated with their protection. A case example of reprisal was referred to involving the attempted killing of a whistleblower, where the ICPC took proactive action to transfer the person from his position in a local government agency to the Commission for protection. Two other cases of whistleblower retaliation were referred to where persons were dismissed from their civil service jobs for reporting corruption and the ICPC to action to remedy the problem by coming down on the agencies.
425. Regarding the reporting modalities, it was explained that anonymous reporting is possible under Section 64 of the ICPC Act, and that the EFCC also draws on social media and operates a toll-free hotline to receive complaints.
426. It is recommended that Nigeria consider establishing relevant protections in line with the article under review and dedicate the necessary resources for its implementation, including by clarifying the protections for whistleblowers in its pending legislation.

(c) Challenges related to article 33

427. Nigeria has identified the following challenges and issues in fully implementing the article under review:
1. Inter-agency coordination
 2. Specificities in its legal system
 3. Limited awareness of state-of-the-art systems and programmes to protect reporting persons
 4. Limited capacity (e.g. Human/technological/institution/other)
 5. Limited resources for implementation (e.g. Human/financial/other).

(d) Technical assistance needs related to article 33

428. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:
1. Summary of good practices/lessons learned
 2. Capacity- building programmes for authorities responsible for establishing and managing protection programmes for reporting persons
 3. Development of an action plan for implementation
 4. On-site assistance by a relevant expert.
429. Nigeria has received the previous forms of technical assistance from:

1. UNODC/EU

430. Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Article 34 Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

(a) Summary of information relevant to reviewing the implementation of the article

431. Nigeria indicated that it has partly implemented this provision of the Convention and cited the following measure.

Section 53 of the Public Procurement Act 2007

"(1) The Bureau may review and recommend for investigation by any relevant authority any matter related to the conduct of procurement proceedings by a procuring entity, or the conclusion or operation of a procurement contract if it considers that a criminal investigation is necessary or desirable to prevent or detect a contravention of this act.

(2) The relevant authority may in the course of investigation:

- (a) require an officer, employee or agent of the procuring entity or bidder, supplier, Contractor, or consultant to produce any books, records, accounts or documents;
- (b) search premises for any books, records, accounts or documents;
- (c) examine and make extracts from and copies of books, records, accounts or documents of any procuring entity, bidder, supplier, contractor or consultant;
- (d) remove books, records, accounts or documents of the procuring entity, bidder, supplier, contractor or consultant for as long as may be necessary to examine them or make extracts from or copies of them but the investigator shall give a detailed receipt for the books, records, accounts or documents removed;
- (e) require an officer, employee or agent of the procurement entity or bidder, supplier, or contractor or consultant:
 - (i) to explain an entry in the books, records, accounts or documents;
 - (ii) to provide the investigator with information concerning the management or activities of the procurement entity or bidders as may be reasonably required;
- (f) explain an entry in the books, records, accounts or documents; and
- (g) provide the investigator with information concerning the management or activities of the procurement entity or bidders as may be reasonably required.

(3) The Bureau may, pursuant to the advice of the procuring entity, results of its review of a procurement or report of investigation by a relevant government agency issue a variation order requiring a contractor at his own expense to repair, replace, or to do anything in his or her contract left undone or found to have been carried out with inferior or defective materials or with less skill and expertise than required by the contract of award.

(4) The Bureau shall, if satisfied that there has been a contravention of this Act or any regulations in relation to procurement proceedings or procurement contracts, take action to rectify the contravention which action shall include: nullification of the procurement proceedings; Cancellation of the procurement contract; Ratification of anything done in relation to the proceedings; or a declaration consistent with any relevant provisions of this act.

(5) On completion of the investigation, the relevant authority shall if an offence is disclosed,

take all necessary steps to commence prosecution and inform, the Bureau and the procurement entity accordingly, but where no offence is disclosed, the file shall be closed and the Bureau and procuring entity shall be duly informed."

432. Also under the Nigerian case law from application of common law principles, fraud vitiates a contract. Many instances of corruption, if not all, involve fraud.

433. Nigeria mentioned the following steps that domestic or other authorities would need to take to ensure the implementation of the provision under review:

1. Amendment of the enabling law of key anti-corruption agencies such as the ICPC and EFCC to include a provision that a breach of those laws will vitiate contractual arrangements related thereto in transactions.
2. Incorporating anti-corruption clauses in all contractual and concession documents.

(b) Observations on the implementation of the article

434. Nigeria indicated that bona fide third parties who stand to be prejudiced by the cancellation of a contract can sue the contracting party for losses sustained. The interest of the third party cannot be used as a ground to legitimize a contract that was founded on a fraudulent or illegal procurement process.

435. The cited measure seems to be limited to irregularities in the procurement process or violations of the Procurement Act (see Section 53(4)). Nigeria explained that more generally under the common law contracts can be cancelled if based on corruption.

436. Nigeria is encouraged to strengthen measures to address consequences of corruption, including through amendment of the enabling law of key anti-corruption agencies and incorporating anti-corruption clauses in contractual and concession documents.

(c) Challenges related to article 34

437. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Limited capacity
2. Limited resources for implementation
3. Specificities in its legal system.

(d) Technical assistance needs related to article 34

438. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned
2. Development of an action plan for implementation.

Article 35 Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a

result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of the article

439. Nigeria indicated that it has not implemented this provision of the Convention.

440. Nigeria explained that the Criminal Justice Administration Act of Lagos State has a provision for compensation of victims, but this is only applicable for cases prosecuted in Lagos State.

441. The Criminal Justice Administration Bill pending before the National Assembly has a provision for compensation of victims and will have general application within the country. The bill is expected to be enacted into law within the next two years

(b) Observations on the implementation of the article

442. Nigeria explained that the Administration of Criminal Justice Bill has a provision to enable victims to initiate legal proceedings to obtain compensation. The reviewers welcome the swift adoption of the Bill and recommend that Nigeria take measures to address the compensation of persons or entities who have suffered damages.

(c) Challenges related to article 35

443. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency coordination
2. Limited capacity
3. Limited resources for implementation
4. Specificities in its legal system

(d) Technical assistance needs related to article 35

444. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned.

445. Nigeria has received the previous forms of technical assistance from:

1. UNODC/EU.

446. Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Article 36 Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of the article

447. Nigeria indicated that it partly implemented this article of the Convention.

448. Section 3 of the Corrupt Practices and Other Related Offences Act 2000 grants the ICPC legal independence as well as security of tenure for the chairman and members of the commission.

Section 3 of the Corrupt Practices and Other Related Offences Act 2000

"3. Establishment of the Independent Corrupt Practices Commission, etc.

(1) There is hereby established a Commission to be known as the Independent Corrupt Practices and Other Related Offences Commission (hereinafter in this Act referred to as "the Commission").

(2) The Commission shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

(3) The Commission shall consist of a chairman and twelve (12) other members, two of whom shall come from each of the six geo-political zones-

(a) a retired Police Officer not below the rank of Commissioner of Police;

(b) a legal practitioner with at least 10 years post-call experience;

(c) a retired Judge of a superior court of record;

(d) a retired Public Servant not below the rank of a Director;

(e) a woman;

(f) a youth not being less than 21 or more than 30 years of age at the time of his or her appointment; and

(g) a chartered accountant.

(4) The Chairman shall be a person who has held or is qualified to hold office as a Judge of a superior court of record in Nigeria.

(5) Remuneration for members of the Commission shall be determined by the National Revenue Mobilisation, Allocation and Fiscal Commission.

(6) The Chairman and members of the Commission who shall be persons of proven integrity shall be appointed by the President, upon confirmation by the Senate and shall not begin to discharge the duties of their offices until they have Declared their assets and liabilities as prescribed in the Constitution of the Federal Republic of Nigeria.

(7) The Chairman shall hold office for a period of five (5) years and may be reappointed for another five(5) years but shall not be eligible for reappointment thereafter; and the other members of the Commission shall hold office for a period of four (4) years and may be reappointed for another term of four (4) years but shall not be eligible for reappointment thereafter.

(8) Notwithstanding the provisions of section 3 (7) of this Act, the Chairman or any member of the Commission may at any time be removed from the office by the President acting on an address supported by two-thirds (2/3) majority of the Senate praying that he be removed for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misconduct.

(9) The Chairman or any member of the Commission may resign his appointment by notice in writing under his hand addressed to the President and the Chairman or that member shall on the date of the receipt of the notice of resignation by the President cease to be a member of the Commission.

(10) The Chairman and members of the Commission shall hold office on such terms and conditions as may be specified in their instruments of appointment, and in the exercise of their functions, they shall not be subject to any other authority excepts as provided by the Act,

(11) The tenure of office and conditions of service of the staff of the Commission shall, subject to the provisions of this Act, be determined by the Commission.

(12) The Commission shall have power to appoint, dismiss and exercise disciplinary control over its staff and for this purpose shall prescribe its own rules.

(13) The Commission shall have power to appoint, designate and deploy such number and category of staff and officers which, in the opinion of the Commission, shall be required to assist it in the discharge of all or any of its functions and shall have powers to pay persons so employed such remuneration (including allowances) as is in accordance with section 3 (12) of this Act.

(14) The Commission shall in the discharge of its functions under this Act, not be subject to the direction or control of any other person or authority."

Economic and Financial Crimes Commission (Establishment) Act 2004

2. Composition of the Commission.

(1) The Commission shall consist of the following members –

(a) a chairman, who shall -

(i) be the Chief Executive and Accounting Officer of the Commission.

(ii) be a serving or retired member of any government security or law enforcement agency not below the rank of Assistant Commissioner of Police or equivalent; and

(iii) Possess not less than 15 years cognate experience

(b) the Governor of the Central Bank or his representative; and

(c) a representative each of the following Federal Ministries

(i) Foreign Affairs,

(ii) Finance,

(iii) Justice,

(d) the Chairman National Drug Law Enforcement Agency or his representative;

(e) the Director General of –

(i) the National Intelligence Agency,

(ii) the Department of State Security Services or his representative;

(f) the Registrar-General of the Corporate Affairs Commission or his Representative;

(g) the Director-General, Securities and Exchange Commission or his representative;

(h) the Managing- Director, Nigeria- Deposit Insurance Corporation or his representative

(i) the Commissioner for Insurance or his representative;

(j) the Postmaster-General of the Nigerian Postal Services or his representative;

(k) the Chairman, Nigerian Communications Commission or his representative;

(l) the Comptroller-General, Nigeria Customs Services or his representative;

(m) the Comptroller-General Nigeria Immigration Services or his representative;

(n) a Inspector General of Police or his representative

(o) four eminent Nigerians with cognate experience in any of the following, that is finance, banking or accounting; and

(p) the Secretary to the commission who shall be the head of administration

(2) The members of the Commission, other than the Chairman and the Secretary shall be part time members.

(3) The Chairman and members of the Commission other than ex-officio members shall be appointed by the President and appointment shall be subject to the confirmation of the Senate.

3. Tenure of Office.

(1) The Chairman and members of the Commission other than ex-officio members shall hold office for a period of four years and may be re-appointed for a further term of four years and no more.

(2) A member of the Commission may at any time be removed by the President for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misconduct or if the President is satisfied that it is not in the interest of the Commission or the interest of the public that the member should continue in office.

(3) A member of the Commission may resign his membership by notice in writing addressed to the President and that member shall, on the date of the receipt of the notice by the President, cease to be member.

449. Section 153 of the 1999 Constitution establishes the Code of Conduct Bureau and Tribunal.

Section 153 of the 1999 Constitution

"Establishment of certain Federal Executive Bodies

153. (1) There shall be established for the Federation the following bodies, namely:

- (a) Code of Conduct Bureau;
- (b) Council of State;
- (c) Federal Character Commission;
- (d) Federal Civil Service Commission;
- (e) Federal Judicial Service Commission;
- (f) Independent National Electoral Commission;
- (g) National Defence Council;
- (h) National Economic Council;
- (i) National Judicial Council;
- (j) National Population Commission;
- (k) National Security Council;
- (l) Nigeria Police Council;
- (m) Police Service Commission; and
- (n) Revenue Mobilisation Allocation and Fiscal Commission.

(2) The composition and powers of each body established by subsection (1) of this section are as contained in Part 1 of the Third Schedule to this Constitution."

Part 1 of the Third Schedule to the Constitution

A – Code of Conduct Bureau

1. The Code of Conduct Bureau shall comprise the following members:

- (a) a Chairman; and
- (b) nine other members, each of whom, at the time of appointment, shall not be less than fifty years of age and subject to the provisions of section 157 of this Constitution shall vacate his office on attaining the age of seventy years.

2. The Bureau shall establish such offices in each state of the Federation as it may require for the discharge of its functions under this Constitution.

3. The Bureau shall have power to:

- (a) receive declarations by public officers made under paragraph 12 of Part I of the Fifth Schedule to this Constitution;
- (b) examine the declarations in accordance with the requirements of the Code of Conduct or any law;
- (c) retain custody of such declarations and make them available for inspection by any citizen of Nigeria on such terms and conditions as the National Assembly may prescribe;
- (d) ensure compliance with and, where appropriate, enforce the provisions of the Code of Conduct of any law relating thereto;
- (e) receive complaints about non-compliance with or breach of the provisions of the Code of Conduct or any law in relation thereto, investigate the complaint and, where appropriate, refer

such matters to the Code of Conduct Tribunal;

(f) appoint, promote, dismiss and exercise disciplinary control over the staff of the Codes of Conduct Bureau in accordance with the provisions of an Act of the National Assembly enacted in that behalf; and

(g) carry out such other functions as may be conferred upon it by the National Assembly.⁴ The terms and conditions of service of the staff of the Code of Conduct Bureau shall be the same as those provided for public officers in the civil service of the Federation.

4. The terms and conditions of service of the staff of the Code of Conduct Bureau shall be the same as those provided for public officers in the civil service of the Federation.

450. Nigeria explained that the independence of the ICPC and the Code of Conduct Bureau (CCB) are guaranteed by statute and the Constitution, respectively.

451. The anti-corruption bodies have a full complement of staff and budget to ensure specialized training for the staff. The anti-corruption agencies get regular budgetary appropriations from the National Assembly.

452. Nigeria provided the following statistics on staff seconded to the EFCC from other agencies or institutions.

Total number of seconded staff: 35%

- From the Nigerian Police: 35% (679 policemen);
- From other institutions: 1% (2 officers from Nigerian Deposit Insurance Corporation);
- 8 officers from the Federal Ministry of Trade and Investment.

453. To ensure the implementation of the provision under review, Nigeria indicated that there is need to amend the enabling laws of some other anti-corruption agencies, i.e. the EFCC and the Bureau of Public Procurement, to provide for such independence and security of tenure.

454. The legal provisions relating to the Nigerian Financial Intelligence Unit (NFIU) are set out in Section 1 (2) of the Economic and Financial Crimes Commission (Establishment) Act (EFCC Act) and the EFCC Board Resolution of 2 June, 2004 (a copy of which was provided to the reviewers during the country visit). The NFIU is an administrative type FIU that became operational in January 2005. Pursuant to Paragraph 1 of the EFCC Board Resolution, the main function of the NFIU is to receive, analyze and disseminate Suspicious Transaction Reports (STRs) related to AML/CFT activities in Nigeria. As such, NFIU is the central authority with the mandate to receive, analyze and disseminate information on STRs as required by the FATF. Nigeria was delisted by the FATF from its list of high-risk jurisdictions in October 2013, but recent developments in the country (essentially related to the operational independence of the FIU) have raised concerns, also from the Egmont group. FATF is therefore monitoring developments and maintaining active engagement with the Nigerian authorities.

455. Nigeria has also established a Special Control Unit Against Money Laundering (SCUML)³ charged with the responsibility of monitoring, supervising and regulating the activities of designated non-financial institutions (DNFIs) in line with the Money

³ <http://www.scuml.org>

Laundering (Prohibition) Act 2011 and the Prevention of Terrorism Act 2011. SCUML collects CTRs from covered institutions and forwards them to the NFIU.

(b) Observations on the implementation of the article

456. Nigeria indicated that Section 3 of the Corrupt Practices and Other Related Offences Act, 2000 confirms the independence of the ICPC. See specifically Section 3(10) and (14). Appointment of the Chairman and members of the ICPC is by the President, upon confirmation by the Senate under Section 3(6), and removal for misconduct or inability to discharge the functions of office is by the President acting on an address supported by two-thirds majority of the Senate, under Section 3(8). By law, the ICPC may establish branch offices in each of the 36 States of the Federation and the Federal Capital Territory, Abuja (Section 7(2) of the ICPC Act). However, it was explained that due to funding constraints the ICPC has offices in 13 States and in six “dual zones” that cover several regions. It was explained that the staff of the ICPC was recently increased from 535 to 830 at the time of the country visit. It was explained that the ICPC has three broad mandates: 1) systems audits (approx. 50 percent of operations), 2) enforcement, 3) prevention and education.

457. The independence of the EFCC is not established in its enabling statute. While appointment of the Chairman and members of the EFCC is by the President upon confirmation by the Senate under Section 2(3), the reviewers note that removal is by the President alone with no confirmation or action by the Senate (as required under the ICPC Act). Notably, grounds for removal include not only misconduct or inability to discharge the functions of office (as under the ICPC Act) but also “if the President is satisfied that it is not in the interest of the Commission or the interest of the public that the member should continue in office” (Section 3(2)). The reviewers expressed concern at this broad provision and note the acknowledgement by Nigeria that there is a need to amend the enabling law of the EFCC to enhance its independence. Nigeria indicated that there have been proposals for an amendment of the EFCC Act to ensure a more secured tenure for the Chairman by providing for his removal from office to be confirmed by the two-third majority of the Senate instead of the President of Nigeria.

458. It is recommended that Nigeria strengthen the independence of the EFCC, by amending the EFCC Act to ensure a more secured tenure for the Chairman, including the process and grounds for removal (currently on decision by the President alone in the interest of the public or the Commission).

459. The observations regarding the EFCC’s independence also apply to the Nigerian Financial Intelligence Unit as, pursuant to Section 1(2)(c) of the EFCC Act, the Commission “is the designated Financial Intelligence Unit (FIU) in Nigeria, which is charged with the responsibility of co-ordinating the various institutions involved in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes in Nigeria”. The NFIU’s operational independence is based on the EFCC Board Resolution of June, 2004. However, it is noted that the NFIU is housed within EFCC and derives its budget from EFCC’s budgetary allocations on a quarterly basis. The reviewers note that similar observations have been raised by the Egmont group and FATF.

460. The NFIU has a staff of 62 at the time of review. The monthly newsletters of the NFIU are published regularly, but lack statistics regarding the number of STRs or CTRs

collected or analyzed, or the number of cases referred to law enforcement agencies for further investigation or prosecution. It was explained by NFIU officials during the country visit that the Unit had sufficient resources to carry out its functions effectively. It is recommended that Nigeria strengthen the independence and operations of the NFIU, including regular collection and availability of statistics regarding the number of STRs or CTRs collected or analyzed, and the number of cases referred to law enforcement agencies for further investigation or prosecution.

461. As described under UNCAC article 30(3), the ICPC and the EFCC prosecute cases without reference to the Attorney-General, according to their establishment statutes. The level of oversight by the Attorney-General of the Federation is limited to policy issues.

462. Both agencies are housed in the Executive and report generally to Parliament. It was explained that the agencies operate autonomously and there is no control by the President's Office as a result of this arrangement. For example, the son of a previous Director of Public Prosecutions had been investigated by the EFCC while his father was still in office.

463. Regarding the Code of Conduct Bureau (CCB), Nigeria confirmed that the CCB has law enforcement powers, which are exercised through the Code of Conduct Tribunal, a special court established for the purpose of enforcing the Code of Conduct and Tribunal Act. Regarding the independence of the CCB, it was explained that the Attorney-General provides legal advisers to the Bureau but does not interfere in or scrutinize its operations, investigations or prosecutions of asset declarations and violations of the Code. Appointment of the Chairman and other 9 members of the CCB is by the President subject to confirmation of the Senate (Section 1(3), CCBTA). The Chairman and members of the CCBT may not be removed from office or appointment by the President except upon an address supported by two-thirds majority of each House of the National Assembly based on inability to discharge the functions of office or for misconduct or contravention of the Code (Section 22(3), CCBTA). Reference is made to the functions, mandate and independence of the CCB as described under articles 19 and 30(3) above.

464. Nigeria reported that the ICPC and EFCC get regular budgetary appropriations from the National Assembly that allow them to provide specialized training for staff. It was explained during the country visit that the EFCC budget for 2013 was 10 billion Naira, while the ICPC budget was 4.4 billion Naira. It was explained that the additional resources for EFCC were necessary due to the high volume of financial transactions handled by the agency and required manpower. During the visit, the Chairmen of the ICPC and EFCC expressed a need for additional resources for the operations of both Commissions determined as a percentage of the national budget. Specifically, the Chairman of the EFCC indicated a need to strengthen the anti-corruption institutions in Nigeria and the Chairman of the ICPC expressed the need for a comprehensive needs assessment of all anti-corruption institutions to work out a regular funding pattern for the country. The reviewers welcome such a needs assessment. They note that human and material resources across the enforcement agencies and training opportunities may not be evenly distributed. More resources may be required to strengthen the capacity of the agencies to handle large and complex cases, and to build their specialized skills.

465. It is recommended that Nigeria strengthen available resources, within existing means, for specialized anti-corruption institutions to carry out their functions effectively in line

with article 36, including human and material resources and the development of specialized skills. The reviewers welcome a comprehensive needs assessment of all anti-corruption agencies

466. Nigeria indicated that the police have the traditional role of investigating all forms of crimes, including corruption and money laundering, by virtue of the Police Act. Following the establishment of specialized agencies like ICPC and EFCC to investigate such crimes, the Police have in practice left the investigation of these offences to the specialized agencies. There is, however, no law that prevents the police from investigating them. To the contrary, Section 69 of the Corrupt Practices and Other Related Offences Act, 2000 provides for the dual investigative mandate:

“Nothing contained in this Act shall derogate from the powers of a police officer to investigate any offence under this Act, or to prosecute any person in respect of any such offence provided that the police shall bring to the attention of the Commission every case of bribery, corruption or fraud being investigated or prosecuted by them after the coming into force of this Act.”

467. The EFCC is the central coordinating agency in the investigation of money laundering. However, the Nigerian Police Force and the National Drug Law Enforcement Agency (NDLEA) have powers to investigate money laundering offences to a lesser extent.

468. The above institutional framework creates a very real risk of overlap and duplication of efforts in the absence of coordinated cooperation mechanisms. This was confirmed during the country visit, as inter-agency coordination was not perceived to be effective across all institutions. More information in the area of national coordination is provided under article 38 below. The observations and recommendations made there are referred to.

469. The EFCC operates a specialized training unit that is developing as a center of learning for other agencies in the West Africa region. The establishment and operation of this training academy was positively noted by the reviewers (see article 48 below).

(c) Successes and good practices

470. Based on discussions during the country visit it emerged that there is a significant backlog of corruption cases in the courts. This was confirmed by a judge who hears corruption cases during the visit. It was explained that a practice direction for judges was issued in February 2014 by the Chief Judge of the High Court of Abuja (copies were provided to the reviewers). The purpose of the Direction is to establish a system of case management that would contribute to eliminating delays in the adjudication of corruption cases. The rules under the practice corruption would minimize the time spent at trials dealing with interlocutory orders by requiring that such orders to be heard together. They further provide that the possibility of settlements is explored before the parties go to hearing, and give further directions regarding the availability of witnesses in cases brought by the EFCC and the ICPC. The reviewers positively note the introduction of the practice direction as a procedural step towards minimizing delays in the adjudication of corruption cases.

(d) Challenges related to article 36

471. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency coordination
2. Limited capacity
3. Limited resources for implementation.

(e) Technical assistance needs related to article 36

472. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned
2. Development of an action plan for implementation.

Article 37 Cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

473. Nigeria indicated that it has partly implemented this provision of the Convention.

474. Nigeria cited the following measures.

Section 14(2) of the EFCC Act 2004

"Subject to the provision of Section 174 of the Constitution of the Federal Republic of Nigeria 1999 [which relates to the power of the Attorney-General of the Federation to institute, continue or discontinue criminal proceedings against any persons in any court of law], the Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, not exceeding the amount of the maximum fine to which that person would have been liable if he had been convicted of that offence."

Section 39 of the EFCC Act 2004

39: Protecting informants and information, etc and Penalty for false information

(1) Officers of the Commission cannot be compelled to disclose the source of information or identity of their informants except by the order of the court

(2) Any person who makes or causes any other person to make to an officer of the Commission or to any other Public Officer, in the course of the exercise by such Public officer of the duties of his office, any statement which to the knowledge of the person making the statement, or causing the statement to be made

(a) is false, or intended to mislead or is untrue in any material particular; or

(b) is not consistent with any other statement previously made by such person to any other person having authority or power under any law to receive, or require to be made such other statement notwithstanding that the person making the statement is not under any legal or other obligation to tell the truth, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred thousand naira or to imprisonment for a term not exceeding two (2) years or to both such fine and imprisonment.

(c) Where any person who has made a statement to an officer of the Commission or to the Attorney-General, in the course of such officer or Attorney-General exercising any power conferred by this Act, subsequently thereto makes any other statement to any person having authority or power under any law to receive or require to be made such other statement regardless of whether or not the person making the statement is under a legal or other obligation to tell the truth, he shall, if such other statement is inconsistent with any statement previously made to an officer of the Commission or such other Public Officer, be guilty of an offence and shall on conviction be liable to a fine not exceeding ten thousand Naira or to an imprisonment for a term not exceeding two years or both.

(d) For the purpose of sub-section (1) and (2), any statement made in the course of any legal proceedings before any court, whether civil or criminal, or any statement made by any person in the course of any disciplinary proceedings, whether such legal proceedings or disciplinary proceedings are against the person making the statement or against any other person, shall be deemed to be a statement made to a person having authority or power under the law to receive the statement so made.

475. **Section 64 of the Corrupt Practices and Other Related Offences Act 2000** provides for partial protection of an informant by seeking to guard his identity. The section states as follows:

"64. Protection of informers and information.

(1) Subject to subsection (2), where any complaint made by any officer of the Commission states that the complaint is made in consequence of information received by the officer making the complaint, the information referred to in the complaint and the identity of the person from whom such information is received shall be secret between the officer who made the complaint and the person who gave the information, and everything contained in such information, identity of the person who gave the information and all other circumstances relating to the information, including the place where it was given, shall not be disclosed or be ordered or required to be disclosed in public but only to the trial judge and the defence lawyer in attendance in any civil, criminal or other proceedings in any court or tribunal.

(2) If any book, paper or other document, or any visual or sound recording, or other matter or material which is given in evidence or liable to inspection in any civil, criminal or other proceedings in any court, or other authority as are referred to in subsection (1) contains any entry other matter in which any person who gave the information is named or described or shown, or which might lead to his discovery, the court before which the proceedings are held shall cause all such parts thereof or passages therein to be concealed from view or to be obliterated or otherwise removed so far as is necessary to protect such person from discovery-

(3) Any person who gives the information referred to in subsection (1) knowing the information to

be false shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding ten years, and shall also be liable to a fine not exceeding one hundred thousand naira;

Provided that Sub-sections (1) and (2) shall not apply to any investigation or prosecution for any offence arising from any breach of the provisions of this sub-section."

476. Nigeria provided the following examples of implementation:

FRN v Chief Diepreye Solomon Peter Alamiyeseigha & Others,

Dhc/1/328c/2005.

FRN v Tafa Adebayo Balogun & Others, Fhc/ abj/cr/14/05.

FRN v Cecilia Ibru, Fhc/1/cs/297c/09.

477. Nigeria indicated that, except as provided above, there is no legal framework that will enable the granting of immunity from prosecution.

478. Nigeria indicated that it has not implemented paragraph 4 of this article of the Convention.

479. Nigeria has not entered into agreements or arrangements on the relocation of cooperating defendants.

480. Nigeria indicated that in order to (fully) implement the provision under review, the Criminal Justice Administration Bill would need to be enacted into law and the consequent framework for plea bargaining adopted.

(b) Observations on the implementation of the article

481. Nigeria confirmed that the power of the Attorney-General under Section 174 of the Constitution could be exercised in a manner to take into account the cooperation of a defendant in deciding whether to institute, continue or discontinue criminal proceedings.

482. A cooperative defendant who played a minor role in the commission of the offence is used as a prosecution witness. He is therefore not prosecuted. Accomplice witnesses exist. Nigeria indicated that witnesses are determined during the investigation. Therefore, any person whose testimony will be material to the successful prosecution of the case can be used as a witness for the prosecution and can therefore be regarded as a crown witness.

483. Nigeria confirmed that although Section 14(2) of the EFCC Act 2004 allows the Commission to settle a charge without entering a conviction based only on the payment of compensation by a defendant, other factors like public interest, magnitude of the offence, and cooperation of a defendant are also considered. Reference is made to the observations and recommendations under article 30(3) of the Convention above.

484. Nigeria has adopted limited provisions to protect informants and information, including protections of their identity and measures on plea bargaining. Prosecutorial discretion can be exercised to take into account the cooperation of accused persons. It was explained that the cooperation of a defendant could serve as a mitigating factor taken into account at sentencing within judicial discretion and applying case law principles. The reviewers welcome the swift adoption of the bill that would more specifically regulate the

cooperation and immunity of participating offenders and address the possibility of mitigated punishment, within existing sentencing principles, in line with UNCAC article 37.

(c) Challenges related to article 37

485. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency co-ordination
2. Limited capacity
3. Limited resources for implementation
4. Specificities in its legal system

(d) Technical assistance needs related to article 37

486. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned
2. Development of an action plan for implementation
3. Model agreement/arrangement.

487. Nigeria has received the previous forms of technical assistance from:

1. UNODC/EU

488. Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Article 38 Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of the article

489. Nigeria considered that it partly implemented this provision of the Convention and cited the following measures.

Section 23 of the Corrupt Practices and Other Related Offences Act 2000

"23. Duty to report bribery transactions.

(1) Any Public officer to whom any gratification is given, promised, or offered, in contravention of any provision of this Act shall report such gift, promise or offer together with the name, if known, of the person who gave, promised or offered such gratification to him to the nearest officer of the Commission or Police Officer.

(2) Any person from whom any gratification has been solicited or obtained, or from whom an attempt has been made to obtain such gratification, in contravention of any provision of this Act, shall, at the earliest opportunity thereafter, report such soliciting or obtaining, or attempt to obtain the gratification together with the name, if known, or a true and full description of the person who solicited, or obtained, or attempted to obtain the gratification from him, to the nearest officer or officer of the Commission or a Police Officer.

(3) Any person who fails, without reasonable excuse, to comply with subsections (1) and (2) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred thousand naira or to imprisonment for a term not exceeding two years or to both fine and imprisonment."

Section 38(1) of the EFCC Act 2004

"38: (1) The Commission shall seek and receive information from any person, authority, corporation or company without let or hindrance in respect of offences it is empowered to enforce under this Act."

490. Nigeria reported that the anti-corruption agencies (Code of Conduct Bureau, ICPC and EFCC) receive petitions from members of the public, some of whom are public officials. See article 39(2) of the Convention for statistics on reports received from the public.

491. The Nigerian FIU also collaborates with other departments, like the Nigeria Customs Service to counter trade-based money laundering and illegal cash movements.

(b) Observations on the implementation of the article

492. Nigeria has established provisions to require public officials and members of the public to report corruption-related incidents to the Commission and the police. Limited provisions in relation to the EFCC also exist, and Nigeria provided statistics on corruption allegations received by the agencies. There was no evidence that Nigeria provides any incentives or protections to reporting persons, or a duty of cooperation by the agencies with law enforcement. Nigeria has partially implemented the article.

493. Regarding inter-agency coordination, as noted under article 36 above, the institutional framework in Nigeria creates a very real risk of overlap and duplication of efforts in the absence of coordinated cooperation mechanisms. This was confirmed during the country visit, as inter-agency coordination was not perceived to be effective across all institutions.

494. During the country visit it was explained that inter-agency coordination is addressed at two levels: through Heads of agencies' meetings and through trainings across agencies and operational synergies. By way of example, Nigerian authorities mentioned the following activities:

- Joint training hosted by the EFCC Academy involving staff from the ICPC, EFCC, CCB and DLEA, including weapons training with the military;
- Joint investigations between ICPC, EFCC and the police, as well as other institutions and support from the police in investigations, especially in the regions;
- Cross-checking complaints with other anti-corruption bodies to avoid duplication of investigations;
- Trainings conducted by ICPC as part of corruption risk assessments of government departments;
- Inter-agency task team comprising 21 agencies that meet regularly to discuss policy issues, including the development of the national anti-corruption strategy for Nigeria as well as the self-assessment for the UNCAC review;

- Secondment of officers from the police and customs to the EFCC.

495. While noting the constructive interagency relations, Nigeria is encouraged to continue to enhance inter-institutional cooperation at all levels and to strengthen coordinated cooperation mechanisms to address the risk of overlap and duplication of efforts.

(c) Challenges related to article 38

496. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency coordination
2. Limited capacity
3. Limited resources for implementation

(d) Technical assistance needs related to article 38

497. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned
2. Development of an action plan for implementation.

498. Nigeria has received the previous forms of technical assistance from:

1. United States Embassy
2. UNODC/EU
3. UK DfID.

499. Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Article 39 Cooperation between national authorities and the private sector

Paragraph 1

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

500. Nigeria cited the following measures.

Section 38(1) of the EFCC Act 2004

"38: (1) The Commission shall seek and receive information from any person, authority, corporation or company without let or hindrance in respect of offences it is empowered to enforce under this Act."

Section 21 of the Money Laundering (Prohibition) Act 2011 (As Amended)

"For the purpose of this Act, the Director of Investigation or an officer of the Ministry, Commission, or Agency duly authorized in that behalf may demand, obtain and inspect the books and records of the Financial Institution or Designated Non-Financial Institution to

confirm compliance with the provision of this Act."

501. Nigeria provided the following examples of implementation:

1. Submitting of Currency Transaction Reports (CTRs) and Suspicious Transaction Reports (STRs) by financial institutions to the Nigerian Financial Intelligence Unit.
2. Submitting of records of financial transactions by Designated Non-Financial Institutions (DNFIS) to the Special Control Unit Against Money Laundering (SCUML).
3. Implementation of Know Your Customer (KYC) and Know Your Customer's Business (KYCB) by financial institutions.
4. Joint trainings and workshops by the EFCC and Financial Institutions.
5. Interactions between the Securities and Exchange Commission (SEC) and capital market operators.
6. The Nigerian FIU also provides AML compliance and corporate governance training to financial and private sector institutions.

502. Nigeria provided the following data on implementation:

No. of DNFIS registered: 137,000.

No. of Currency Declaration Forms (CDFs) received from Nigerian Customs Service

2010: 4,255,492,938

2011: 6,670,322,640

2012: 9,926,739,648

503. Nigeria provided the following information on recent cases in which entities of the private sector have collaborated with national investigating or prosecuting authorities:

1. Corruption risk assessment project in the port sector (2013): Here, anti-corruption agencies (ICPC, BPP and TUGAR) collaborated with entities in the private sector to conduct a corruption risk assessment.
2. The Nigerian Extractive Industries Transparency Initiative (NEITI) audits the extractive sector in collaboration with entities working in the private sector.
3. Sensitization of financial and DNFIs on their obligations under the anti- money laundering legislation through seminars, workshops, conferences, electronic and print media.
4. Ensuring that financial institutions and DNFIs comply with anti-money laundering guidelines.

(b) Observations on the implementation of the article

504. Cooperation with the private sector is mainly through oversight by the NFIU, EFCC, SCUML and other regulating agencies, including AML training and other sensitization by these institutions. Audits and corruption risk assessments in targeted sectors have been conducted. Nigeria is encouraged to continue its cooperation with the private sector, including in raising awareness and strengthening measures on corruption prevention.

Article 39 Cooperation between national authorities and the private sector

Paragraph 2

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

505. Nigeria cited the following measures.

Section 23 of the Corrupt Practices and Other Related Offences Act 2000 (previously cited under UNCAC art. 38(a))

506. Nigeria also referred to the previously cited statistics on reports received from the public.

507. Nigeria provided the following information regarding hotlines or other mechanisms for offences to be reported, and about the number of reports received:

ICPC: Number of reports received from the public: 9,817 (from Inception in 2000 to May 2013)

EFCC: Number of reports received from the public: 24,278 (from 2010-2013)

CCB: Number of Petitions received: 501 (from 2007-2013).

Anonymous reports received:

ICPC: 47 (as at May 2013)

EFCC: None

(b) Observations on the implementation of the article

508. Section 23 of the Corrupt Practices and Other Related Offences Act 2000 establishes a duty on members of the public to reported attempted acts of corruption and establishes punishment in the form of imprisonment or fines for failure to report. Nigeria provided statistics on corruption allegations received by the agencies. There was no evidence that Nigeria provides any incentives or protections to reporting persons.

(c) Challenges related to article 39

509. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency coordination
2. Limited capacity
3. Limited resources for implementation.

(d) Technical assistance needs related to article 39

510. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Capacity-building programmes for authorities responsible for the establishment and management of reporting programmes and mechanisms
2. Summary of good practices/lessons learned
3. Capacity-building programmes for authorities responsible for regulating matters related to the private sector
4. Development of an action plan for implementation

511. Nigeria has received the previous forms of technical assistance from:

1. UNDP
2. UNODC/EU
3. UK DfID.

As mentioned under UNCAC article 23, under the NGAT10 project, UNODC in collaboration with a number of counterparts has also organized a series of seminars for compliance officers in financial- and designated non-financial institutions, in Abuja and Lagos on the AML/CFT regime and to address topics on business ethics and good corporate governance.

512. Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Article 40 Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

(a) Summary of information relevant to reviewing the implementation of the article

513. Nigeria cited the following measures.

Section 34 of the EFCC Act

"34: Freezing order on banks or other financial institutions

(1) Notwithstanding anything contained in any other enactment or law, the Chairman of the Commission or any officer authorized by him may, if satisfied that the money in the account of a person is made through the commission of an offence under this Act or any enactments specified under section 6 (2) (a)-(f) of this Act, apply to the Court ex-parte for power to issue or instruct a bank examiner or such other appropriate regulatory authority to issue an order as specified in Form B of the Schedule to this Act, addressed to the manager of the bank or any person in control of the financial institution where the account is or believed by him to be or the head office of the bank or other financial institution to freeze the account.

(2) The Chairman of the Commission, or any officer authorized by him may by an order issued under subsection (1) of this section, or by any subsequent order, direct the bank or other financial institution to supply any information and produce books and documents relating to the account and to stop all outward payments, operations or transactions (including any bill of exchange) in respect of the account of the arrested person.

Schedule

(3) The manager or any other person in control of the financial institution shall take necessary

steps to comply with the requirements of the order made pursuant to subsection (2) of this section.

(4) In this section –

a. “bank” has the meaning given to it in the Banks and other Financial Institutions Act 1999 as amended; 1991 No. 25

b. the reference to an order issued includes a reference to any order, direction or requirement addressed to the manager of a bank or any other officer of a bank which directs the manager or such officer to stop all outward payments, operations or transactions in respect of any account with that bank."

Section 13(4) of the Money Laundering (Prohibition) Act of 2011 (As Amended)

"(4) Banking secrecy or preservation of customer confidentiality shall not be invoked as a ground for objecting to the measures set out in subsection (1) and (2) of this section or for refusing to be a witness to facts likely to constitute an offence under this Act, the Economic and Financial Crimes Commission (Establishment, Etc.) Act or any other Law."

Section 43 of the Corrupt Practices and Other Related Offences Act 2000 (cited under UNCAC art. 31 above).

514. Please refer to the previously stated examples of implementation.

(b) Observations on the implementation of the article

515. It was explained during the country visit that the ICPC and EFCC obtain bank and financial records by issuing orders pursuant to their enabling laws and do not require a court warrant. In most cases, they reported receiving maximum cooperation from the concerned financial institutions and that only in a few cases where banks are remotely located or recently reorganized have there been delays in obtaining the requested information. The existence of the NFIU was also described as facilitating access to financial information by the anti-corruption bodies.

Article 41 Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

516. Nigeria cited the following measures.

Sections 248 and 249 of the Evidence Act, 2011

"Part XIII - Evidence of Previous Conviction

248. (1) Where it is necessary to prove a conviction of a criminal offence. The same may be proved

(a) by the production of a certificate of conviction containing the substance and effect of the conviction only, purporting to be signed by the registrar or other officer of the court in whose custody is the record such of the said conviction;

(b) if the conviction was before a customary court. By a similar certificate signed by the clerk of court or scribe of the court in whose custody is the record of the said such conviction; or

(c) by a certificate purporting to be signed by the Director of Prisons or officer in charge of the

records of a prison in which the prisoner was confined giving the offence for which the prisoner was convicted, the date and the sentence.

(2) If a person alleged to be the person referred to in the certificate denies that he is such person the certificate shall not be put in evidence unless the court is satisfied by the evidence.

That the individual in question and the person named in the certificate are the same.

249. (1) A previous conviction in a place outside Nigeria may be proved by the production of a certificate purporting to be given under the hand of a police officer in the country where the conviction was had, containing a copy of the sentence or order and the finger prints of the person or photographs of the finger prints of the person so convicted, together with evidence that the finger prints of the person so convicted are those of the defendant.

(2) A certificate given under subsection (1) of this section shall be prima facie evidence of all facts set out in it. without proof that the officer purporting to sign it did in fact sign it and was empowered to do so."

517. Nigeria indicated that some recent cases where previous conviction of the alleged offender was used are as follows:

EFCC: FRN V Chief James Onanefe Ibori & Others, FHC/ASB/1 C/2009.

(b) Observations on the implementation of the article

518. Nigeria confirmed that the previous certificate of conviction, as referenced in Section 248 of the Evidence Act, 2011, could be from a foreign country.

519. Regarding the cited case, Nigeria explained that Mr. Ibori was convicted in the United Kingdom and is still serving his sentence there. As a result, Nigeria is yet to use the certificate of foreign conviction in Nigeria.

(c) Challenges related to article 41

520. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency coordination
2. Limited capacity
3. Limited resources for implementation
4. Limited or no cooperation from other States.

(d) Technical assistance needs related to article 41

521. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned
2. Development of an action plan for implementation.

Article 42 Jurisdiction

Subparagraph 1 (a)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

522. Nigeria indicated that the Nigerian Parliament is empowered constitutionally to make laws for the Federation of Nigeria. Thus, when an offence is committed in the territory of Nigeria, Nigerian courts have the jurisdiction over such offence.

523. Nigeria cited the following measures.

Section 12(2) of The Criminal Code

12. Where by the provisions of any Federal law the doing of any act or the making of any omission is constituted an offence those provisions shall apply to every person who is in Nigeria at the time of his doing the act or making the omission.

With regard to such offences which are of such a nature that they comprise several elements, if any acts or omissions or events actually occur, which, if they all occurred in Nigeria, would constitute an offence, and any of such acts or omissions or events occur in Nigeria, although all or some of the other acts or omissions or events which, if they occurred in Nigeria, would be elements of the offence occur elsewhere than in Nigeria; then-

(1) if the act or omission, which in the case of an offence wholly committed in Nigeria would be the initial element of the offence, occurs in Nigeria, the person who does that act or makes that omission is guilty of an offence of the same kind and is liable to the same punishment, as if all the subsequent elements of the offence had occurred in Nigeria; and

(2) if that act or omission occurs elsewhere than in Nigeria, and the person who does that act or makes that omission afterwards comes into Nigeria, he is by such coming into Nigeria guilty of an offence of the same kind, and is liable to the same punishment, as if that act or omission had occurred in Nigeria and he had been in Nigeria when it occurred.

But in any such case it is a defence to the charge to prove that the accused person did not intend that the act or omission should have effect in Nigeria. This section does not extend to a case in which the only material event that occurs in Nigeria is the death in Nigeria of a person whose death is caused by an act, done or omitted to be done, at a place not in Nigeria and at a time when he was not in Nigeria.

Section 66(1) of the Corrupt Practices and Other Related Offences Act 2000

(previously cited)

Section 61(3) of the Corrupt Practices and Other Related Offences Act 2000

(3) The Chief Judge of a State or the Federal Capital Territory, Abuja shall, by order under his hand, designate a court or judge or such number of courts or judges as he shall deem appropriate to hear and determine all cases of bribery, Corruption, fraud or other related offences arising under this Act or any other laws prohibiting fraud, bribery or Corruption; a court or judge so designated shall not, while being so designated, hear or determine any other cases provided that all cases of fraud, bribery, or corruption pending in any court before the coming into effect of this Act shall continue to be heard and determined by that court.

Section 19 of the EFCC Act 2004

19: (1) The Federal High Court or High Court of a state of the Federal Capital Territory has jurisdiction to try offenders under this Act.

(2) The Court shall have power, notwithstanding anything to the contrary in any other enactment,

(a) to impose the penalties provided for in this Act.

(b) To ensure that all matters brought before the court by the Commission against any person, body or authority shall be conducted with dispatch and given accelerated hearing

(c) To adopt all legal measures necessary to avoid unnecessary delays and abuse in the conduct

of matters brought by the Commission before it or against any person, body or authority.

(3) The Chief Judge of the Federal High Court or a High Court of a State or the High Court of The Federal Capital Territory Abuja, as the case may be shall by order under his hand, designate a court or judge he shall deem appropriate to hear and determine all cases under this act or other related offences under this Act.

(4) A court or judge so designated shall give such matters priority over other matter pending before it.

(5) In any trial for an offence under this act, the fact that an accused person is in possession of pecuniary resources or property for which he cannot satisfactorily account and which is disproportionate to his known sources of income, of that he had at or about the time of the alleged offence obtained an accreditation to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and taken into consideration by the Court as corroborating the testimony of any witness in the trial.

Sections 15(2) (quoted under UNCAC article 23(2)(c) above) and 20 of the Money Laundering (Prohibition) Act 2011 (As Amended)

20. Trial of offences.

(1) The Federal High Court shall have exclusive jurisdiction to try offences under this Act.

(2) In any trial for an offence under this Act, the fact that an accused person is in possession of pecuniary resources or property for which he cannot satisfactorily account and which is disproportionate to his known sources of income, or that he had at or about the time of the alleged offence obtained an accretion to his pecuniary resources of property for which he cannot satisfactorily account, may be proved and may be taken into consideration by the Federal High Court as corroborating the testimony of any witness in such trial.

524. For examples of implementation, Nigeria referred to the general data on investigations and prosecutions from the EFCC and ICPC, which show that the courts have variously assumed jurisdiction in corruption cases.

(b) Observations on the implementation of the article

525. Jurisdiction is based on the territoriality principle, as regulated in Section 12(2) of the Criminal Code, Sections 66(1) and 61(3), ICPC Act; Section 19 of the EFCC Act; Sections 15(2) and 20, MLPA, and under general principles of common law.

Article 42 Jurisdiction

Subparagraph 1 (b)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

(a) Summary of information relevant to reviewing the implementation of the article

526. Nigeria indicated that under the international law, when an offence is committed on board a vessel that is flying the flag of Nigeria or an aircraft that is registered under the laws of Nigeria, such offence is deemed to have been committed in the territory of Nigeria.

527. Nigeria cited the following additional measures.

Section 66 [1] of the Criminal Code (cited above)

Section 15(2) of the Money Laundering (Prohibition) Act (MLPA) 2011 (As Amended).

"(2) A person who commits an offence under subsection (1) of this section, shall be subject to the penalties specified in that subsection notwithstanding that the various acts constituting the offence were committed in different countries or places."

528. Nigeria provided the following examples of implementation:

The Philipinos Case, Charge No. FHC/B/130C/2008

Federal Republic of Nigeria and

1. Erwin Antas
2. Celso T. Bael
3. Pedro Gementiza
4. Reagau Colorage
5. Ronnie Fabricante
6. Sabastian G. Teodosio
7. George N. Balore
8. Roland D. Caro
9. Marcelo Galola
10. Perel A. Dosdosir
11. Rechardo Peniano
12. Arjay Alvrez
13. Celso V. Zapanta

The Ghanian Case, Charge No. FHC/B/29C/2009.

Federal Republic of Nigeria and

1. Frank Opoku Anim
2. Ernest Anim
3. Wellington Adoba
4. Kwesi Eminsang
5. Seth Kpodisime
6. Abraham Yaoahador
7. Ochuko Omoreode

(b) Observations on the implementation of the article

529. Nigeria regulates jurisdiction over offences committed aboard vessels or aircraft by reference to principles of international law.

Article 42 Jurisdiction

Subparagraph 2 (a)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

530. Nigeria indicated that generally under the Nigerian criminal justice system, criminal laws cover both nationals and non-nationals in Nigeria. Thus, when an offence is committed it does not matter against whom it is committed, whether against a foreigner or a national, the law will be enforced accordingly.

531. In addition the commission of offences against any person in Nigeria is deemed to be an offence committed against the State. Therefore, the Nigerian State prosecutes the offenders in its name. The following provisions are referred to.

Section 12 of the Criminal Code
(previously cited)

Section 66(1) of the Corrupt Practices and Other Related Offences Act 2000
(previously cited)

Section 15(2) of the Money Laundering (Prohibition) Act 2011 (As Amended)
(previously cited)

Section 7(2) of the EFCC Act 2004
(previously cited)

(b) Observations on the implementation of the article

532. In the interest of greater legal certainty, Nigeria may wish to consider adopting measures to more clearly address the passive personality principle.

Article 42 Jurisdiction

Subparagraph 2 (b)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

533. Nigeria cited the following measures.

Section 66(1) Corrupt Practices and Other Related Offences Act 2000

"66. (1) The provisions of this Act shall, in relation to citizens and persons granted permanent residence in Nigeria, have effect outside as well as within Nigeria, and when an offence under this Act is committed in any place outside Nigeria by any citizen or persons granted permanent residence in Nigeria, he may be dealt with in respect of such offence as if

it was committed at any place within Nigeria."

Section 15(2) of the Money Laundering (Prohibition) Act 2011 (As Amended)

"A person who commits an offence under sub section (1) of this section, shall be subject to the penalties specified in that subsection notwithstanding that the various acts constituting the offence were committed in different countries or places."

(b) Observations on the implementation of the article

534. In the interest of greater legal certainty, Nigeria may wish to consider adopting measures to more clearly address the active personality principle, in particular with respect to stateless persons resident in Nigeria.

Article 42 Jurisdiction

Subparagraph 2 (c)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

535. Nigeria referred to the previously cited Section 15(2) of the Money Laundering (Prohibition) Act 2011 (As Amended).

(b) Observations on the implementation of the article

536. Nigeria confirmed that Section 18 of the Money Laundering (Prohibition) Act (As Amended) covers participatory acts to money laundering, including those committed outside Nigeria pursuant to Section 15(2).

Article 42 Jurisdiction

Subparagraph 2 (d)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(d) The offence is committed against the State Party.

(a) Summary of information relevant to reviewing the implementation of the article

537. Nigeria cited the following measures.

Section 15(2) of the Money Laundering (Prohibition) Act 2011 (As Amended) (quoted above)

Section 390(5) of the Criminal Code

"(5) If the offender is a person employed in the public service and the thing stolen is the property of the State, or came into the possession of the offender by virtue of his employment, he is liable to imprisonment for seven years."

Section 66(1) of the Corrupt Practices and Other Related Offences Act 2000 (previously cited).

(b) Observations on the implementation of the article

538. Relevant provisions are found principally in the Criminal Code and MLPA. In the interest of greater legal certainty, Nigeria may wish to consider adopting measures to more clearly address the State protection principle.

Article 42 Jurisdiction

Paragraph 3

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

(a) Summary of information relevant to reviewing the implementation of the article

539. Nigeria indicated that it extradites its nationals in accordance with the provisions of the Extradition Act, which specify that extradition shall be by treaty. However, where some of the elements of the offence occurred in Nigeria, the country will prosecute the offender if he or she is not extradited on the grounds of nationality.

Section 6(c), Extradition Act Cap 125 Lfn 1990

6. Requests for surrender, and powers of Attorney-General thereon

...

(c) Except in so far as an extradition agreement in force between Nigeria and the requesting country otherwise provides, the Attorney-General may refuse to make an order under this section in respect of any fugitive criminal who is a citizen of Nigeria.

540. The following are examples of cases where Nigeria has extradited its nationals:

1. Attorney-General of the Federation v Emmanuel Ekhaton.

Emmanuel Ekhaton was charged on a 16-count charge of money laundering, conspiracy, mail fraud and wire fraud. He was alleged to have defrauded over 70 law firms of US\$29 million and then escaped to Nigeria. The United States requested his extradition. The EFCC, through the office of the Attorney-General, commenced extradition proceedings against him. Judgment was delivered on 26 July 2011 by the Federal High Court, which ordered his extradition to the United States. He has been extradited and is facing trial in the United States.

2. Attorney-General of the Federation v Rasheed Abayomi Yusuf.

The case of Rasheed Abayomi Yusuf involves a 29-count charge of conspiracy, mail fraud, money laundering and theft from a retirement fund and aggravated identity theft involving over US\$200 million in the United States. Again, consequent upon the request of the United States, EFCC, through the office of the Attorney-General,

commenced extradition proceedings against him. Judgment was delivered on 30 January 2012, and the court ordered that he be extradited to the United States to face trial. EFCC has done that.

3. Attorney-General of the Federation V Godwin Ezeocha.

This case involves health care fraud and money laundering to the tune of US\$30 million. Judgment has been delivered, and the subject was extradited to the United States pursuant to a judgment of the court.

541. Nigeria indicated that there is no impediment to extradition solely on the ground that the offender is a Nigerian national. Extradition in Nigeria is by bilateral treaty or, in the case of Commonwealth countries, by multilateral treaty.

(b) Observations on the implementation of the article

542. Nigeria has previously refused the extradition of a citizen. The information and observations under article 44, paragraph 11 are referred to.

Article 42 Jurisdiction

Paragraph 4

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

(a) Summary of information relevant to reviewing the implementation of the article

543. Nigeria cited Section 12(2) of the Criminal Code (quoted above).

(b) Observations on the implementation of the article

544. In the interest of greater legal certainty, Nigeria may wish to consider adopting measures to more clearly address the provision under review.

Article 42 Jurisdiction

Paragraph 5

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

(a) Summary of information relevant to reviewing the implementation of the article

545. Nigeria cited Section 6(k) of the EFCC Act 2004.

Section 6(k) of the EFCC Act

"6: The Commission shall be responsible for - ...

(k) dealing with matters connected with the extradition, deportation and mutual legal or other assistance between Nigeria and any other country involving Economic and Financial Crimes;"

(b) Observations on the implementation of the article

546. Nigeria provided the following examples where it has spontaneously shared information with other countries.

FRN v. Chimaroke Nnamani. An investigation into the matter which bordered on corruption and money laundering revealed that some of the culprits were in the United States of America. The EFCC spontaneously shared information with the FBI to determine their whereabouts.

Emmanuel Ekhaton. The EFCC also proactively shared information with the USA with respect to the culprit, who was wanted in the United States for fraud and money laundering. He was subsequently extradited to the USA.

Article 42 Jurisdiction

Paragraph 6

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

547. Nigeria indicated that all other laws dealing with criminal jurisdiction, such as the Criminal Code, Penal Code and the Criminal Procedure Act are operational in Nigeria.

548. Nigeria explained that the Nigerian police and other law enforcement agencies prosecute some corruption-related offences using other existing laws, such as the Criminal Code and the Penal Code.

(b) Observations on the implementation of the article

549. Nigeria has adopted measures providing for criminal jurisdiction in corruption-related cases.

(c) Challenges related to article 42

550. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Inadequacy of existing implementing normative measures (laws, regulations, etc.)
2. Limited resources for implementation (e.g. Human/financial/other)
3. Competing priorities
4. Inter-agency coordination
5. Limited capacity (e.g. Human/technological/institution/other)
6. Specificities in its legal system.

(d) Technical assistance needs related to article 42

551. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned
2. Development of an action plan for implementation
3. Capacity-building programmes for investigative, prosecution or judicial authorities on cross-border cooperation and coordination mechanisms.

552. Nigeria has received the previous forms of technical assistance from:

1. UNODC/EU
2. UK DdID.

553. Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Chapter IV. International cooperation

Article 44 Extradition

Introduction

554. The Central Authority Unit for international cooperation (both extradition and mutual legal assistance) in Nigeria is the Attorney-General of the Federation and Minister of Justice. The powers of the Attorney-General in extradition cases stem from Section 174(1)(a) of the Constitution, which provides that the Attorney-General shall have power to “institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial, in respect of any offence created by or under any Act of the National Assembly.”
555. During the country visit, officials in the Central Authority Unit provided the following information on the process and legal framework for extradition in Nigeria.
556. The legal basis for extradition in Nigeria is the Extradition Act, 1990, which applies to all Commonwealth countries without any further specification in the Act (Section 2, quoted below). In all other cases, extradition is subject to the existence of treaties between Nigeria and treaty partner countries. It was explained that extradition on the basis of multilateral treaties such as the ECOWAS Convention on Extradition and UNCAC is possible although these agreements have not been fully incorporated into Nigeria’s national legislation.
557. For non-Commonwealth countries, it was explained that a treaty basis is always required for extradition, notwithstanding Section 1(a) of the Act (quoted below), which provides that the President may by order apply the Act to “any other country” with which a treaty “or other arrangement” is in place. It was explained that this Section does not permit extradition on the basis of reciprocity or other arrangements, but that a treaty basis is always required. Due to the treaty requirement, there have been no designations of countries by order of the President. Where a treaty is in place, it was explained the terms of the treaty and the Act are both applied.
558. The relevant provisions are set forth below.

Extradition Act

Application of Act

1. Power to apply Act by order

- (a) Where a treaty or other arrangement (in this Act referred to as an extradition agreement) has been made by Nigeria with any other country for the surrender, by each country to the other, of persons wanted for prosecution or punishment, the President may by order published in the Federal Gazette apply this Act to that country.
- (b) An order under subsection (a) of this section shall recite or embody the terms of the extradition agreement, and may apply this Act to the country in question subject to such conditions, exceptions and qualifications as may be specified in the order.
- (c) While an order under subsection (a) of this section is in force in respect of any country, this Act shall apply to that country subject to the provisions of the order and to the terms of the extradition agreement as recited or embodied therein.

(d) The power to vary the an order made under subsection (a) of this section shall include power, where the terms of the relevant extradition agreement have been varied, to amend so much of the order as recites or embodies those terms; and if an extradition agreement to which an order relates is determined, or otherwise ceases to have effect, the President shall forthwith revoke the order.

(e) Every order made under subsection (a) of this section, which includes this Act to any country, shall include a provision inserting in the First Schedule of this Act, an entry consisting of the name of that country and the year and number of the Legal Notice containing the order; and where any such order is varied or revoked, the varying or revoking order shall include a provision amplifying or deleting the relevant entry in that Schedule, as the case may require.

(f) An order under this section, applying this Act to any country with which an extradition agreement is in force on the date on which this Act is made, may be made at anytime after that date, but shall not come into force before the commencement of this Act.

2. Application to Commonwealth countries

(a) Subject to provisions of this section, this Act shall apply to every separate country within the Commonwealth.

...

(d) If it appear to the President that the law of a country to which this Act applies by virtue of subsection (a) of this section no longer contain provisions substantially equivalent to the provisions of this Act, as it applies to the countries within the Commonwealth, the President may by order published in the Federal Gazette direct that this Act shall apply in relation to that country with such modifications (whether by way of addition, alteration or omission) as may be specified in the order; and where an order under this subsection is in force with respect to any country, this Act shall have effect in relation to that country with modifications specified in the order.

(e) In the case of a country to which this Act applies by virtue of subsection (a) of this section, that fact shall not prevent an order from being made under section 1(a) of this Act in respect of that country if an extradition agreement is made with that country, and on the coming into force of an order under section 1(a) of this Act in respect of such a country, this section shall cease to apply to that country and any order made under subsection (d) of this section in respect of that country, shall cease to have effect.

559. Nigeria also subscribes to the Commonwealth (London) Scheme on Extradition, which provides a framework for extradition between Commonwealth countries. Nigerian authorities explained that the Extradition Act is applicable to all Commonwealth countries by virtue of the London Scheme without a further treaty basis.

560. The condition that treaties are in place for extradition and the small number of bilateral treaties was initially noted as a limitation by the reviewers. However, due to the application of the Act to all 53 Commonwealth countries, the existence of three bilateral extradition treaties with countries with frequent requests (United Kingdom, United States of America and South Africa), and assurances by the Nigerian authorities that extradition could proceed on the basis of UNCAC and the ECOWAS Convention (among others), as well as the London Scheme, the reviewers were satisfied that there currently appears to be an adequate legal basis for extradition. Nonetheless, as described below, they were informed that Nigeria is currently negotiating treaties with three countries with which no extradition arrangements are in place based on the frequency of incoming requests. The review team thus recommends that the Nigerian authorities continue their good efforts in this area and closely monitor the legal framework, in particular the number and application of its treaties, to ensure there continues to be an adequate legal basis for

extradition, also with countries outside the Commonwealth region, with the aim to enhance the effectiveness of extradition mechanisms. There was some assurance due to the fact that extradition requests on the basis of multilateral treaties had been received and were under consideration by the Nigerian authorities at the time of review, as noted under paragraph 4 of this article below.

561. Nigeria has adopted extradition guidelines, dated 1 October 2013, to guide other countries in making extradition requests, "*Guidelines for authorities outside of the Federal Republic of Nigeria, Federal Ministry of Justice, 1st Edition, 1 October 2003*". These were not available on the website of the Central Authority Unit⁴ at the time of review but copies were provided to the reviewers during the visit. The guidelines also confirm that a bilateral or multilateral legal instrument is required for the extradition of any person, notwithstanding reciprocity.
562. The procedure for extradition is summarized in Section 6(a) of the Extradition Act and the Extradition Guidelines (Section 2, pages 6-10).
563. Regarding the date of the Extradition Act, it was explained that there was a comprehensive compilation of all laws in 1990. As a result, all laws were given a number and the 1990 date was added to the citation. Thus, the 1967 Extradition Act is cited as Cap 125 1990.

Paragraph 1

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

564. Nigeria cited Section 20 of the Extradition Act Cap 125 Lfn 1990.

Extradition Act

"20. Returnable offences

- (1) A fugitive criminal may only be returned for a returnable offence.
- (2) For the purposes of this Act, a returnable offence is an offence however described, which is punishable by imprisonment for two years or a greater penalty both in Nigeria as well as the Commonwealth country seeking his surrender.
- (3) Offences described in subsection (2) of this section are returnable offences notwithstanding that any such offences are of a purely fiscal nature under the laws of the country seeking the return of the fugitive and punishable as prescribed in subsection (2) of this section."

565. Nigeria reported that from 1 January 2012 to 17 June 2013, 19 requests for extradition were received (of which 6 related to corruption and money laundering) and 7 of the incoming requests have been concluded. Out of the 12 remaining extradition requests, 11 were still pending at the time of the country visit. No data was available on incoming requests for 2010 and 2011. Nigerian officials confirmed that only one request had been

⁴ <http://www.justice.gov.ng/index.php/about-us/9-uncategorised/171-the-central-authority-unit>

refused by Nigeria to date, which did not relate to corruption but involved a child adoption offence under UK law that is not recognized in Nigeria.

566. The list of extradition treaties is noted in the introduction and under paragraph 6 of the UNCAC article.

(b) Observations on the implementation of the article

567. The Nigerian authorities indicated that they have executed 7 requests for extradition since 2012. Nigeria explained that the countries from which the requests originated are the United Kingdom and the United States of America. The requests related to criminal offences of fraud and money laundering.

568. The extradition legislation is subject to the application of dual criminality principles. In light of the dual criminality requirement, extradition is limited to the extent that not all offences established under the Convention have been criminalized.

569. During the country visit, the reviewers received copies of Nigeria's bilateral extradition treaties with the United States of America (originally signed with the United Kingdom), dated 22 December 1931, and South Africa, dated 2005. No other bilateral extradition treaties are in place. The reviewers noted that dual criminality is required under the extradition treaty with South Africa, which applies to offences punishable under the laws of both States by deprivation of liberty of more than one year or a more severe penalty (Article 2). However, the treaty with the USA takes a list-based approach to extradition crimes (Article 3), which includes certain types of fraud and "bribery, defined to be the offering, giving or receiving of bribes" but not corruption offences under the Convention.

570. The dual criminality requirement under the Extradition Act is qualified by a two-year minimum penalty requirement under the laws of both countries. Please see paragraph 8 of the article below.

Article 44 Extradition

Paragraph 2

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

571. Nigeria indicated that it has not implemented this provision of the Convention.

572. Nigeria indicated that by virtue of the Extradition Act CAP 125 LFN, extradition to or from Nigeria is by treaty and for a "returnable offence," which is defined as an offence punishable by a term of imprisonment of two years or more in both Nigeria and the requesting country. It is, therefore, not possible to extradite in the absence of dual criminality.

573. Nigeria mentioned the following steps that domestic or other authorities would need to take to ensure the implementation of the provision under review:

1. Amendment of the Extradition Act to remove the requirement for dual criminality.
2. Entering into more bilateral and multilateral treaties.

(b) Observations on the implementation of the article

574. It was confirmed during the country visit that dual criminality is required under Nigeria's Extradition Act and some treaties. Nigeria has not implemented this non-mandatory provision .

575. Nigeria further indicated that the Extradition Act is under review.

Article 44 Extradition

Paragraph 3

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) Summary of information relevant to reviewing the implementation of the article

576. Nigeria indicated that it has not implemented this provision of the Convention.

577. Nigeria indicated that extradition is by treaty and under very definite conditions established by law.

(b) Observations on the implementation of the article

578. The conditions referred to include a two-year minimum penalty requirement for extradition under the Extradition Act and a one-year penalty requirement under some bilateral treaties. Please see paragraph 8 of the article below. Nigeria has not implemented this non-mandatory provision. Accessory extradition may need to be considered when updating the Extradition Act.

Article 44 Extradition

Paragraph 4

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

(a) Summary of information relevant to reviewing the implementation of the article

579. Nigeria indicated that it has not implemented this provision of the Convention.

580. As mentioned above, Nigeria indicated that it makes extradition conditional on the existence of a treaty.

(b) Observations on the implementation of the article

581. As noted above, not all of Nigeria's treaties cover the offences under the Convention. For example, the treaty with the United States of America takes a list-based approach to extradition crimes (Article 3), which includes certain types of fraud and "bribery, defined to be the offering, giving or receiving of bribes" but not all offences under the Convention. Nigeria is recommended to ensure that UNCAC offences are extraditable under its existing and future treaties.

582. During the country visit, officials in the Central Authority Unit confirmed that Nigeria considers this Convention as the legal basis for extradition, although it has not been fully incorporated into Nigeria's national legislation (e.g., the ICPC and EFCC Acts). There has been no experience in the execution of extradition requests made on the basis of UNCAC, although officials reported that one request from the USA made on the basis of UNCAC and a bilateral treaty was executed. A request from the Netherlands on the basis of UNCAC and the United Nations Convention against Transnational Organized Crime (UNTOC) was reported to be pending in court at the time of the country visit. As noted under paragraph 6 below, Nigeria did not notify the United Nations at the time of deposit of its instrument of ratification that it considers the Convention as the legal basis for extradition.

583. Regarding the political offence exception, reference is made to Section 3 of the Extradition Act (quoted below). The matter is also addressed in the Extradition Treaties with the USA (Article 6) and South Africa (Article 5(1)).

Extradition Act

3. Restrictions on surrender of fugitives

(a) A fugitive criminal shall not be surrendered if the Attorney-General or a court dealing with the case is satisfied that the offence in respect of which his surrender is sought is an offence of a political character.

Article 44 Extradition

Paragraph 5

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

584. Nigeria indicated that it makes extradition conditional on the existence of a treaty.

585. Nigeria stated that it could consider this Convention as the legal basis for extradition in respect to offences to which this article applies, although there has been no experience in its application.

(b) Observations on the implementation of the article

586. It was confirmed during the country visit that Nigeria could consider the Convention as the legal basis for extradition, although it has not executed any requests on the basis of UNCAC.

Article 44 Extradition

Paragraph 6

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

(a) Summary of information relevant to reviewing the implementation of the article

587. Nigeria indicated that it makes extradition conditional on the existence of a treaty.

588. Nigeria stated that it could consider this Convention as the legal basis for extradition in respect to any offence to which this article applies, although there has been no experience in its application.

589. Nigeria did not notify the United Nations accordingly at the time of deposit of its instrument of ratification.

590. Nigeria has concluded three bilateral extradition treaties with the United Kingdom, United States of America, and South Africa.

591. Nigeria has ratified the ECOWAS Convention on Extradition, which is applicable to Member States in the West African (ECOWAS) region. Nigeria also has extradition relations with all 53 Commonwealth countries under the London Scheme.

(b) Observations on the implementation of the article

592. As noted above, there has been no experience in the execution of extradition requests made on the basis of UNCAC, although a request from the Netherlands on the basis of UNCAC and UNTOC was reported to be pending in court at the time of the country visit.

593. Nigeria has not made the requisite notification at the time of ratification⁵. Nigeria is encouraged to make the relevant notification to the United Nations by sending the aforementioned information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017, and a copy to the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).

594. During the country visit, officials from the Central Authority Unit indicated that Nigeria is currently negotiating three bilateral treaties with Turkey, Switzerland and Italy due to a number of requests from those countries. They further explained that the three existing treaty partners were selected based on the frequency of requests from those countries.

595. Although, based on the information provided, paragraph 6(b) is not applicable to Nigeria since it considers the Convention as the legal basis for extradition, the observations and recommendation in the introduction to this article regarding the legal basis for extradition are referred to.

Article 44 Extradition

Paragraph 7

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

(a) Summary of information relevant to reviewing the implementation of the article

596. Nigeria indicated that it has not implemented this provision of the Convention.

(b) Observations on the implementation of the article

597. The provision is considered not applicable since Nigeria stated that it makes extradition conditional on the existence of a treaty. The observations under paragraph 4 are referred to.

Article 44 Extradition

Paragraph 8

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of the article

⁵ <http://treaties.un.org/doc/Treaties/2003/12/20031209%2002-0%20PM/Related%20Documents/CN.1259.2004-Eng.pdf>

598. Nigeria cited the following measures.

Sections 1-3, The Extradition Act CAP 125 LFN

"1. Power to apply Act by order

- (a) Where a treaty or other arrangement (in this Act referred to as an extradition agreement) has been made by Nigeria with any other country for the surrender, by each country to the other, of persons wanted for prosecution or punishment, the President may by order published in the Federal Gazette apply this Act to that country.
- (b) An order under subsection (a) of this section shall recite or embody the terms of the extradition agreement, and may apply this Act to the country in question subject to such conditions, exceptions and qualifications as may be specified in the order.
- (c) While an order under subsection (a) of this section is in force in respect of any country, this Act shall apply to that country subject to the provisions of the order and to the terms of the extradition agreement as recited or embodied therein.
- (d) The power to vary an order made under subsection (a) of this section shall include power, where the terms of the relevant extradition agreement have been varied, to amend so much of the order as recites or embodies those terms; and if an extradition agreement to which an order relates is determined, or otherwise ceases to have effect, the President shall forthwith revoke the order.
- (e) Every order made under subsection (a) of this section, which includes this Act to any country, shall include a provision inserting in the First Schedule of this Act, an entry consisting of the name of that country and the year and number of the Legal Notice containing the order; and where any such order is varied or revoked, the varying or revoking order shall include a provision amplifying or deleting the relevant entry in that Schedule, as the case may require. [First Schedule]
- (f) An order under this section, applying this Act to any country with which an extradition agreement is in force on the date on which this Act is made, may be made at anytime after that date, but shall not come into force before the commencement of this Act.

2. Application to Commonwealth countries

- (a) Subject to provisions of this section, this Act shall apply to every separate country within the Commonwealth.
- (b) For the purposes of this Act, each of the following areas shall be treated as constituting a separate country within the Commonwealth, that is to say- (a) each sovereign and independent within the Commonwealth together with such (if any) of that country's dependent territories, as the President may by order published in the Federal Gazette designate as forming part of that country for the purposes of this Act; and (b) each country within the Commonwealth which, not being sovereign and independent, is not a territory for the time being designated under paragraph (a) of this subsection as forming part of some country for the purposes of this Act.
- (c) An order under subsection (b)(a) of this section designating a dependent territory as forming part of a sovereign and independent country shall be made if, but only if, that country has signified to the Federal Government that it desires that territory to be so designated for the purposes of this Act.
- (d) If it appear to the President that the law of a country to which this Act applies by virtue of subsection (a) of this section no longer contain provisions substantially equivalent to the provisions of this Act, as it applies to the countries within the Commonwealth, the President may by order published in the Federal Gazette direct that this Act shall apply in relation to that country with such modifications (whether by way of addition, alteration or omission) as may be specified in the order; and where an order under this subsection is in force with respect to any country, this Act shall have effect in relation to that country with modifications specified in the order.

- (e) In the case of a country to which this Act applies by virtue of subsection (a) of this section, that fact shall not prevent an order from being made under section 1(a) of this Act in respect of that country if an extradition agreement is made with that country, and on the coming into force of an order under section 1(a) of this Act in respect of such a country, this section shall cease to apply to that country and any order made under subsection (d) of this section in respect of that country, shall cease to have effect.

3. Restrictions on surrender of fugitives

- (a) A fugitive criminal shall not be surrendered if the Attorney-General or a court dealing with the case is satisfied that the offence in respect of which his surrender is sought is an offence of a political character.
- (b) A fugitive criminal shall not be surrendered if it appears to the Attorney-General or a court dealing with the case-
 - (a) that the request for his surrender; although purporting to be made in respect of an extradition crime, was in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions or was otherwise not made in good faith or in the interest of justice; or
 - (b) that, if surrendered, he is likely to be prejudiced at his trial, or to be punished, detained or restricted in his personal liberty, by reason of his race, religion, nationality or political opinions.
- (c) A fugitive criminal shall not be surrendered if the Attorney-General or a court dealing with the case is satisfied that, by reason of-
 - (a) the trivial nature of the offence for which his surrender is sought; or
 - (b) the passage of time since the commission of the offence, it would, having regard to all the circumstances in which the offence was committed, be unjust or oppressive, or be too severe a punishment, to surrender the offender.
- (d) A fugitive criminal shall not be surrendered if the Attorney-General or a court dealing with the case is satisfied that, whether in Nigeria or elsewhere, he-
 - (a) has been convicted of the offence for which his surrender is sought; or
 - (b) has been acquitted thereof, and that, in a case falling within paragraph (a) of this subsection, he is not unlawfully at large.
- (e) A fugitive criminal shall not be surrendered if criminal proceedings are pending against him in Nigeria for the offence for which his surrender is sought.
- (f) A fugitive criminal-
 - (a) who has been charged with an offence under the law of Nigeria or any part thereof, not being the offence for which his surrender is sought; or
 - (b) who is serving a sentence imposed in respect of any such offence by a court in Nigeria, shall not be surrendered until such a time as he has been discharged whether by acquittal or on the expiration of his sentence, or otherwise.
- (g) A fugitive criminal shall not be surrendered to any country unless the Attorney-General is satisfied that provision is made by the law of that country, or that special arrangements have been made, such that, so long as the fugitive has not had a reasonable opportunity of returning to Nigeria, he will not be detained or tried in that country for any offence committed before his surrender other than the extradition offence which may be proved by the facts on which the surrender is granted.
- (h) A fugitive criminal shall not be surrendered until the expiration of the period of fifteen days beginning with the day on which he is committed to prison to await his surrender.
- (i) In this section "a court dealing with the case" in relation to a fugitive criminal means any magistrate dealing with the fugitive's case in pursuance of section 8 of this Act or any court before which the fugitive is brought on or by virtue of an application made by him or on his behalf for a writ of habeas corpus.

"20. Returnable offences

(1) A fugitive criminal may only be returned for a returnable offence.

(2) For the purposes of this Act, a returnable offence is an offence however described, which is punishable by imprisonment for two years or a greater penalty both in Nigeria as well as the Commonwealth country seeking his surrender.

(3) Offences described in subsection (2) of this section are returnable offences notwithstanding that any such offences are of a purely fiscal nature under the laws of the country seeking the return of the fugitive and punishable as prescribed in subsection (2) of this section."

599. Nigeria stated the following conditions and grounds upon which extradition requests may be refused.

By virtue of the law extradition requests may be refused under the following circumstances:

1. Where there is no treaty between Nigeria and the requesting State party;
2. Where the offence is not a returnable offence.

600. As noted above, Nigeria has refused only one extradition request to date, which was not related to corruption or money laundering.

(b) Observations on the implementation of the article

601. The dual criminality requirement under the Extradition Act is qualified by a two-year minimum penalty requirement for extradition under the laws of both countries. As noted under Chapter III above, this threshold excludes certain offences, including some obstruction of justice-related measures under the ICPC Act, which are punishable by one years' imprisonment. While the ECOWAS Convention also applies a two-year term, the reviewers noted that some of Nigeria's treaties impose a lower penalty requirement.

602. As noted above, the extradition treaty with South Africa applies to offences punishable under the laws of both States by deprivation of liberty of more than one year or a more severe penalty (Article 2). However, the treaty with the USA takes a list-based approach to extradition crimes (Article 3), which does not include all offences under the Convention. Other conditions and grounds for refusal are included in the treaties.

603. It is recommended that Nigeria review its Extradition Act and existing treaties and consider whether there is a need for harmonization, to ensure all offences under the Convention are extraditable, including by reason their period of imprisonment.

Article 44 Extradition

Paragraph 9

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

604. Nigeria indicated that a central authority unit has been established within the federal Ministry of Justice to expedite action and simplify procedures under the Extradition Act CAP 125 LFN.

605. Please refer to the previously stated statistics.

(b) Observations on the implementation of the article

606. There is no specification in the Extradition Act regarding the length of time to respond to extradition requests and there may be concerns regarding the efficiency of the existing process.

607. The statistics on extradition show that of 19 incoming requests since 2012 only 7 had been completed by Nigeria at the time of review. Although it was explained during the country visit that extradition cases generally take between six months to one year to be completed, the reviewers were not convinced that the statistics evidence the expedited handling of extradition cases in practice.

608. According to Nigeria's Guidelines on Extradition, direct communication between central authorities is possible without recourse to diplomatic channels in MLA but not extradition cases (page 14). The Guidelines indicate that this procedure is not possible in extradition cases because most extradition arrangements Nigeria is signatory to are regional or multilateral.

609. However, the reviewers noted that simplified extradition arrangements are available with Commonwealth countries under the London Scheme.

610. Moreover, the reviewers considered the procedures for provisional arrest to be relevant, which allow the Central Authority to request from a court of competent jurisdiction for an order of provisional arrest of a person located in Nigeria who has committed an extraditable offence. The provisional arrest may occur in the case of urgency or as an emergency measure to arrest a person sought for extradition before a formal extradition request is received. It is noted that a request for provisional arrest generally requires less supporting documentation than formal extradition and hence takes less time to make. It was explained that in Nigeria, requests for provisional arrest must still be received through regular (ie diplomatic) channels, although other countries also accept transmission via channels like INTERPOL.

Section 8, Extradition Act

8. Power of magistrate to issue provisional warrant

(a) A provisional warrant for the arrest of a fugitive criminal, whether accused of or unlawfully at large after conviction of an extradition offence, may be issued by a magistrate without any order of the Attorney-General under section 6 of this Act, if such information and evidence is produced as would, in the opinion of the magistrate, justify the issue of the warrant for the arrest of the fugitive, if the offence in question had been committed in the district or division in which he has jurisdiction or the fugitive had been convicted of the offence there.

(b) A provisional warrant may be issued under this section in respect of a person who is, or is suspected of being, on his way to Nigeria, in any case where such a warrant could be issued if he were, or were suspected to be, in Nigeria; and references in this section to a fugitive criminal shall be construed accordingly.

(c) A magistrate issuing a provisional warrant under this section shall forthwith send to the Attorney-General a report of the fact, together with the information and evidence on which he acted or certified copies thereof, and on receipt of the report the Attorney-General may, if he thinks fit, order the warrant to be cancelled and the fugitive criminal, if already arrested, to be released.

(d) A provisional warrant issued under this section may be executed anywhere in Nigeria.

(e) A fugitive criminal arrested on a provisional warrant issued under this section shall be brought before a magistrate as soon as is practicable after he is so arrested, and the magistrate- (a) shall remand him, either in custody or on bail, pending receipt from the Attorney-General of an order under section 6 of this Act signifying that a request for his surrender has been received, or an order under subsection (3) of this section for the cancellation of the warrant and the release of the fugitive; and (b) shall forthwith inform the Attorney-General of the fact that the fugitive has been arrested and remanded as aforesaid. and for the purposes of paragraph (a) of this subsection, the magistrate shall have the same powers of remand as if the fugitive were brought before him charged with an offence committed within his jurisdiction.

(f) Without prejudice to section 14 of this Act, if within the period of thirty days beginning with the day on which he was arrested, no such order as is mentioned in subsection (5)(a) of this section is received from the Attorney-General, the fugitive criminal shall be released at the end of that period.

(g) The release of any person under subsection (3) or (6) of this section shall not prejudice his subsequent arrest and surrender if a request is afterwards made.

611. Incoming requests must be made through diplomatic channels following the specified evidentiary procedure:

Section 6(a), Extradition Act

6. Requests for surrender, and powers of Attorney-General thereon

(a) A request for the surrender of a fugitive criminal of any country shall be made in writing to the Attorney-General by a diplomatic representative or consular officer of that country and shall be accompanied by a duly authenticated warrant of arrest or certificate of conviction issued in that country.

612. Nigeria is encouraged to expedite its extradition procedures and to simplify evidentiary requirements in line with the provision under review.

Article 44 Extradition

Paragraph 10

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

613. Nigeria cited Sections 5-13 of the Extradition Act.

"5. Liability of fugitives to surrender Every fugitive criminal of a country to which this Act applies shall, subject to the provisions of this Act, be liable to be arrested and surrendered in the manner provided by this Act, whether the offence in respect of which his surrender is sought was committed before or after the commencement of this

Act or the application of this Act to that country, and whether or not there is concurrent jurisdiction in any court in Nigeria over that offence.

6. Requests for surrender, and powers of Attorney-General thereon

(a) A request for the surrender of a fugitive criminal of any country shall be made in writing to the Attorney-General by a diplomatic representative or consular officer of that country and shall be accompanied by a duly authenticated warrant of arrest or certificate of conviction issued in that country.

(b) Where such a request is made to him, the Attorney-General may by an order under his hand signify to a magistrate that such a request has been made and require the magistrate to deal with the case in accordance with the provisions of this Act, but shall not make such an order if he decides on the basis of information then available to him that the surrender of the fugitive is precluded by any of the provisions of subsection (1) to (7) of section 3 of this Act.

(c) Except in so far as an extradition agreement in force between Nigeria and the requesting country otherwise provides, the Attorney-General may refuse to make an order under this section in respect of any fugitive criminal who is a citizen of Nigeria.

(d) If the surrender of the same fugitive criminal is requested in accordance with this section by more than one country, whether for the same offence or different offences, the Attorney-General shall determine which request is to be accorded priority, and accordingly may refuse the other request or requests; and in determining which request is to be accorded priority, the Attorney-General shall have regard to all circumstances of the case, and in particular-

(a) the relative seriousness of the offences, if different;

(b) the relative dates on which the requests were made; and

(c) the nationality of the fugitive and the place where he is ordinarily resident.

7. Power of magistrate to issue warrant on receipt of order under section 6

(a) A warrant for the arrest of a fugitive criminal, whether accused of or unlawfully at large after conviction of an extradition offence, may be issued by a magistrate on receipt of an order of the Attorney-General under section 6 of this Act relating to the fugitive, if such evidence is produced as would in the opinion of the magistrate justify the issues of the warrant if the offence in question had been committed in Nigeria or the fugitive had been convicted of it in Nigeria.

(b) A warrant issued under this section may be executed anywhere in Nigeria.

(c) A fugitive criminal arrested on a warrant issued under this section shall be brought before a magistrate as soon as it is practicable after he is arrested.

8. Power of magistrate to issue provisional warrant

(a) A provisional warrant for the arrest of a fugitive criminal, whether accused of or unlawfully at large after conviction of an extradition offence, may be issued by a magistrate without any order of the Attorney-General under section 6 of this Act, if such information and evidence is produced as would, in the opinion of the magistrate, justify the issue of the warrant for the arrest of the fugitive, if the offence in question had been committed in the district or division in which he has jurisdiction or the fugitive had been convicted of the offence there.

(b) A provisional warrant may be issued under this section in respect of a person who is, or is suspected of being, on his way to Nigeria, in any case where such a warrant could be issued if he were, or were suspected to be, in Nigeria; and references in this section to a fugitive criminal shall be construed accordingly.

(c) A magistrate issuing a provisional warrant under this section shall forthwith send to the Attorney-General a report of the fact, together with the information and evidence on which he acted or certified copies thereof, and on receipt of the report the Attorney-General may, if he thinks fit, order the warrant to be cancelled and the fugitive criminal,

if already arrested, to be release.

(d) A provisional warrant issued under this section may be executed anywhere in Nigeria.

(e) A fugitive criminal arrested on a provisional warrant issued under this section shall be brought before a magistrate as soon as is practicable after he is so arrested, and the magistrate-

(a) shall remand him, either in custody or on bail, pending receipt from the Attorney-General of an order under section 6 of this Act signifying that a request for his surrender has been received, or an order under subsection (3) of this section for the cancellation of the warrant and the release of the fugitive; and

(b) shall forthwith inform the Attorney-General of the fact that the fugitive has been arrested and remanded as aforesaid. and for the purposes of paragraph (a) of this subsection, the magistrate shall have the same powers of remand as if the fugitive were brought before him charged with an offence committed within his jurisdiction.

(f) Without prejudice to section 14 of this Act, if within the period of thirty days beginning with the day on which he was arrested, no such order as is mentioned in subsection (5)(a) of this section is received from the Attorney-General, the fugitive criminal shall be released at the end of that period.

(g) The release of any person under subsection (3) or (6) of this section shall not prejudice his subsequent arrest and surrender if a request is afterwards made."

614. Nigeria cited the following example of a recent court case.

Attorney-General of the Federation v Rasheed Abayomi Yusuf. The case of Rasheed Abayomi Yusuf involves a 29-count charge of conspiracy, mail fraud, money laundering and theft from a retirement fund and aggravated identity theft involving over US\$200m in the United States. Consequent upon the request of the United States, EFCC through the office of the Attorney-General commenced extradition proceedings against him. Judgment was delivered on the 30 January 2012, and the court ordered that he be extradited to the United States to face trial. EFCC has done that.

(b) Observations on the implementation of the article

615. The cited measures are relevant to the implementation of the provision under review.

616. During the country visit it was explained that courts exercise discretion and impose conditions on bail based on the facts of the case to ensure the presence of the accused person.

Article 44 Extradition

Paragraph 11

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

617. Nigeria cited the following measures.

Section 6 of the Extradition Act CAP 125 LFN (quoted above).

618. The following are examples of cases where Nigeria has extradited its nationals:

1. Attorney-General of the Federation v Emmanuel Ekhaton.

Emmanuel Ekhaton was charged on a 16-count charge of money laundering, conspiracy, mail fraud and wire fraud. He was alleged to have defrauded over 70 law firms of US\$29 million and then escaped to Nigeria. The United States requested his extradition. The EFCC, through the office of the Attorney-General, commenced extradition proceedings against him. Judgment was delivered on 26 July 2011 by the Federal High Court, which ordered his extradition to the United States. He has been extradited and is facing trial in the United States.

2. Attorney-General of the Federation v Rasheed Abayomi Yusuf.

The case of Rasheed Abayomi Yusuf involves a 29-count charge of conspiracy, mail fraud, money laundering and theft from a retirement fund and aggravated identity theft involving over US\$200 million in the United States. Again, consequent upon the request of the United States, EFCC, through the office of the Attorney-General, commenced extradition proceedings against him. Judgment was delivered on 30 January 2012, and the court ordered that he be extradited to the United States to face trial. EFCC has done that.

3. Attorney-General of the Federation V Godwin Ezeocha.

This case involves health care fraud and money laundering to the tune of US\$30 million. Judgment has been delivered, and the subject was extradited to the United States pursuant to a judgment of the court.

(b) Observations on the implementation of the article

619. Section 6(c) of the Extradition Act provides that the Attorney-General may refuse the extradition of a Nigerian citizen, unless an extradition agreement in force between Nigeria and the requesting country otherwise provides.

620. It is clearly stated in which cases an extradition request may be refused. However, the reviewers noted that the obligation to undertake criminal proceedings against the person whose extradition was refused is not prescribed in the Nigerian legislation.

621. The reviewers further note that nationality is not a grounds for refusal under the extradition treaty with South Africa, which specifically provides in Article 4 (Nationality) that "Extradition shall not be refused on the ground that the person sought is a citizen or national of the Requested State". Nationality is also not a ground for refusal under the treaty with the USA.

622. Nigeria indicated that it has previously refused the extradition of a national. No further statistics or examples were provided.

623. Given that the nationality of the person sought is a permissive ground for refusal under the Extradition Act, Nigeria should ensure that the *aut dedere aut judicare* (extradite or prosecute) obligation is observed in its extradition law, relevant treaties and practice.

Article 44 Extradition

Paragraph 12

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

624. Nigeria indicated that it has not implemented this provision of the Convention.

(b) Observations on the implementation of the article

625. Nigeria confirmed that it does not make extradition of its nationals conditional on them returning to Nigeria to serve the remainder of the sentence imposed.

Article 44 Extradition

Paragraph 13

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

(a) Summary of information relevant to reviewing the implementation of the article

626. Nigeria indicated that it has partially implemented this provision of the Convention.

(b) Observations on the implementation of the article

627. It was explained that Nigeria would consider the enforcement of the remainder of the sentence imposed where extradition of a national is refused, provided there is dual criminality (Section 20 of the Extradition Act). A request for a national to serve the remainder of his/her sentence in Nigeria would be handled in the same manner as other requests for extradition. There have been no such cases.

Article 44 Extradition

Paragraph 14

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

(a) Summary of information relevant to reviewing the implementation of the article

628. Nigeria cited the following measures.

1. Section 36 Chapter IV of the 1999 Constitution - (right to fair hearing)

36. (1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

(2) Without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law -

(a) provides for an opportunity for the persons whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person; and

(b) contains no provision making the determination of the administering authority final and conclusive.

(3) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public.

(4) Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal:

Provided that -

(a) a court or such a tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice;

(b) if in any proceedings before a court or such a tribunal, a Minister of the Government of the Federation or a commissioner of the government of a State satisfies the court or tribunal that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.

(5) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty;

Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.

(6) Every person who is charged with a criminal offence shall be entitled to -

(a) be informed promptly in the language that he understands and in detail of the nature of the offence;

(b) be given adequate time and facilities for the preparation of his defence;

(c) defend himself in person or by legal practitioners of his own choice;
(d) examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution; and
(e) have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.

(7) When any person is tried for any criminal offence, the court or tribunal shall keep a record of the proceedings and the accused person or any persons authorised by him in that behalf shall be entitled to obtain copies of the judgement in the case within seven days of the conclusion of the case.

(8) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed

(9) No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.

(10) No person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.

(11) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(12) Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.

2. Sections 7 and 8 of the Extradition Act (quoted under para. 10 of the UNCAC article above).

3. Section 36(1) of the Extradition Act.

"In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality."

(b) Observations on the implementation of the article

629. Nigerian authorities reported that issues of fair treatment have not arisen in practice to date in any extradition cases. It was explained that the alleged fugitive in an extradition case is given fair treatment in that he has a Constitutional right to a fair hearing before an impartial court or tribunal and has a right to retain a counsel of his choice. The review team was satisfied with the confirmation that the Constitutional provisions guarantee a presumption of innocence and the right to be informed of the details of the charge in a language known to the defendant, among other protections.

Article 44 Extradition

Paragraph 15

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

(a) Summary of information relevant to reviewing the implementation of the article

630. Nigeria cited Section 3 of the Extradition Act Cap 125 Lfn 1990 (quoted above under para. 8 of this UNCAC article).

631. Please refer to the previously stated data on extradition.

(b) Observations on the implementation of the article

632. Nigeria indicated that there is no case law for the implementation of this provision.

633. The review team was satisfied that Section 3(c) of the Extradition Act is in compliance with this UNCAC provision and that extradition shall not be granted in cases where there are substantial grounds for believing that the request was made on the basis of a discriminatory purpose.

634. Nigerian officials reported that there have been no cases where the issue of a discriminatory purpose was invoked.

Article 44 Extradition

Paragraph 16

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

635. Nigeria cited Section 20 of The Extradition Act.

"20. Returnable offences

(1) A fugitive criminal may only be returned for a returnable offence.

(2) For the purposes of this Act, a returnable offence is an offence however described, which is punishable by imprisonment for two years or a greater penalty both in Nigeria as well as the Commonwealth country seeking his surrender.

(3) Offences described in subsection (2) of this section are returnable offences notwithstanding that any such offences are of a purely fiscal nature under the laws of the country seeking the return of the fugitive and punishable as prescribed in subsection (2) of this section."

(b) Observations on the implementation of the article

636. Nigeria indicated that there is no case law in this matter. No case examples were provided where Nigeria granted extradition for an offence involving fiscal matters. It was explained that most extradition cases relate to serious offences, such as money laundering, fraud and child trafficking.

Article 44 Extradition

Paragraph 17

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

(a) Summary of information relevant to reviewing the implementation of the article

637. Nigeria indicated that the Central Authority interacts with requesting States Parties in such cases. The Central Authority Unit has simplified procedures of interaction with central authorities of various countries, e.g. Meetings with Heads of Central Authority Units at Cartahena, Columbia

(b) Observations on the implementation of the article

638.

639. A duty to consult with requesting States before refusing extradition is not specified in the Extradition Act or Nigeria's Guidelines on Extradition, the "Guidelines for authorities outside of the Federal Republic of Nigeria, Federal Ministry of Justice, 1st Edition, 1 October 2003", which were provided to the reviewers during the country visit. Moreover, the treaty with South Africa allows for general consultations (Articles 20) but does not require consultations to be held before extradition is refused.

640. It is recommended that Nigeria adopt relevant measures to ensure that consultations are held with requesting States *before* extradition is refused, in accordance with the provision under review.

Article 44 Extradition

Paragraph 18

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

(a) Summary of information relevant to reviewing the implementation of the article

641. Nigeria indicated that it has entered into bilateral and multilateral agreements on extradition with the following countries:

1. United Kingdom
2. South Africa
3. United States Of America.

(b) Observations on the implementation of the article

642. As noted in the introduction to this article, the reviewers recommend that Nigeria closely monitor the legal framework, in particular the number and application of its treaties, to ensure there continues to be an adequate legal basis for extradition, also with countries outside the Commonwealth region, with the aim to enhance the effectiveness of extradition mechanisms.

(c) Challenges related to article 44

643. During the country visit, authorities in the Nigerian OAG explained that the only challenge in the area of extradition are difficulties in the apprehension and arrest of fugitives but that there are no issues relating to the court process or other aspects of its extradition practice.

Article 45 Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of the article

644. Nigeria referred to its treaties on mutual legal assistance (MLA), some of which include provisions on the transfer to sentenced persons for purposes of mutual legal assistance (see UNCAC article 46).

(b) Observations on the implementation of the article

645. Upon review of the bilateral MLA treaties with the UK, USA and South Africa, the reviewers noted that some of the treaties contain transfer of prisoner provisions for purposes of mutual legal assistance (e.g, Article XII of the USA Treaty; and Article 13 of the South Africa Treaty).

646. It was explained during the country visit that Nigeria has signed only one agreement on the transfer of prisoners with the United Kingdom and that this was concluded on 9 January 2014. Copies were not provided to the reviewers during the country visit.

647. Two case examples of prisoner transfers were referred to during the country visit, one involving a prisoner from Romania who voluntarily requested to serve the remainder of his prison term in Nigeria, and one involving a prisoner from the UK who was transferred to complete his sentence in Nigeria prior to 2014. It was further explained by the Nigerian authorities that transfer of prisoner agreements do not need to be domesticated but are automatically incorporated into the domestic legislation upon ratification.

648. Nigeria has considered entering into bilateral or multilateral agreements or arrangements on the transfer of prisoners in accordance with the article under review and has had experience in the transfer of prisoners to its territory, although there were no

examples in corruption-related cases. Moreover, during the country visit a Bill to amend the Transfer of Convicted Offenders Act, Cap. 16, 2004 was provided to the reviewers.

(c) Challenges related to article 45

649. Nigeria has identified the following challenges and issues in fully implementing the article under review:
1. Inter-agency coordination
 2. Limited capacity
 3. Limited resources for implementation
 4. Specificities in its legal system

(d) Technical assistance needs related to article 45

650. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:
1. Development of an action plan for implementation
 2. Summary of good practices/lessons learned
 3. Model treaties
 4. Capacity-building programmes for authorities responsible for international cooperation in criminal matters
651. Nigeria has received the previous forms of technical assistance from:
1. The United States Embassy;
 2. UNODC/European Union;
 3. United Kingdom Department for International Development (DfID).
652. Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Article 46 Mutual legal assistance

General observations

653. Nigeria does not have a comprehensive legislation on international cooperation. Mutual legal assistance related legislation has to be distilled from multiple laws and various multilateral and bilateral agreements. The Mutual Assistance in Criminal Matters within the Commonwealth (Enactment and Enforcement) Act (1998 No. 13) permits the provision of mutual assistance to 53 Commonwealth Member States. In the West Africa region, Nigeria has ratified the ECOWAS Protocol on Mutual Legal Assistance, which is applicable to Member States in the region. For non-Commonwealth and non-ECOWAS Countries, there is a treaty requirement and the Constitution permits the negotiation of multilateral and bilateral agreements on mutual legal assistance (MLA).
654. In addition, Nigeria grants MLA requests on the basis of reciprocity, even in circumstances where there are no treaties. However, it was explained that most requests received on the basis of reciprocity were usually from countries with which treaties were in place. The Attorney-General and Minister for Justice is responsible for the negotiation

and implementation of mutual legal assistance treaties and arrangements. So far, no regulation has been issued regarding the process for initiating and concluding MLA.

655. Nigeria has adopted MLA guidelines, dated 1 October 2013, to guide other countries in making MLA requests, “*Guidelines for authorities outside of the Federal Republic of Nigeria, Federal Ministry of Justice, 1st Edition, 1 October 2003*”. These were not available on the website of the Central Authority Unit⁶ at the time of review but copies were provided to the reviewers during the visit. The guidelines confirm that Nigeria grants MLA requests on the basis of reciprocity, even in the absence of treaties.
656. According to Nigeria’s Guidelines on MLA, direct communication between central authorities is possible in MLA cases without recourse to diplomatic channels (page 14). It was explained that this process has increased the effectiveness of international cooperation by avoiding delays that may be caused by diplomatic channels.
657. Nigeria indicated that it has signed three bilateral agreements on mutual legal assistance with the following countries:
1. United Kingdom - A copy of the MLA treaty with the UK and Northern Ireland, 1989 (entry into force in 1993) was provided to the reviewers.
 2. South Africa - A copy of the MLA treaty with the UK and South Africa, 2005 was provided to the reviewers.
 3. United States of America - A copy of the MLA treaty with the UK and the USA, 1987 was provided to the reviewers.
658. Reference is also made to the “Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth” (Harare Scheme), of which Nigeria is a member.
659. Because there is no comprehensive framework for mutual legal assistance in Nigeria outside the MLA Act for the Commonwealth and treaties, the observations in this article are generally limited to the provisions of that Act and treaties.
660. The reviewers were satisfied that there currently appears to be an adequate legal basis for MLA due to assurances by the Nigerian authorities and in the MLA Guidelines that MLA can proceed on the basis of reciprocity even in the absence of a treaty, as well as under UNCAC and the ECOWAS Convention (among others), the application of the MLA Act to all 53 Commonwealth countries, the existence of three bilateral MLA treaties with countries with frequent requests (UK, USA and South Africa), as well as the Harare Scheme. Nonetheless, Nigeria is currently developing a Mutual Legal Assistance Bill, 2013 (based on the UNODC Model Law) that would provide a comprehensive framework for MLA in Nigeria. Copies were provided during the country visit.
661. The reviewers welcome the swift adoption of the Bill and recommend that Nigeria closely monitor the legal framework, in particular the number and application of its treaties and reciprocity grants, to ensure there continues to be an adequate legal basis for MLA, also with countries outside the Commonwealth region, with the aim to enhance the effectiveness of mechanisms for MLA.

⁶ <http://www.justice.gov.ng/index.php/about-us/9-uncategorised/171-the-central-authority-unit>

662. There was some assurance due to the fact that MLA requests on the basis of multilateral treaties had been received and were under consideration or executed by the Nigerian authorities at the time of review. Specifically, a copy of an MLA request from the Republic of Niger on the basis of UNCAC (articles 46, 48 and 49) as well as UNTOC dated 15 March, 2012 for assistance with a joint investigation pertaining to bribery offences under article 15 of UNCAC was provided to the reviewers. It was explained that Nigeria provided the requested assistance and the person was being prosecuted.
663. Reference was also made to a request for evidence from Zambia in a major corruption case based on UNCAC involving the former President of Zambia, where Nigeria provided the evidence and the trial was ongoing at the time of the country visit. Nigeria indicated that the EFCC collaborated with Zambia in the investigation with good results. Nigeria assisted Zambia in the gathering of evidence, and also ensured that a witness from Nigeria testified in the trial.

Paragraph 1

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

664. The Mutual Assistance in Criminal Matters within the Commonwealth (Enactment and Enforcement) Act (1998 No. 13) (“**MLA Act**”) gives force of law to the Scheme for Mutual Assistance in Criminal Matters within the Commonwealth, of which Nigeria is a member. This Act regulates and enables MLA between Nigeria and 53 Commonwealth countries. It, among others, provides for the following assistance to be provided (Section 2 (3)): identifying and locating criminal offenders; service of relevant documents; examination of witnesses; search and seizure of assets; obtaining evidence; facilitating the personal appearance of witnesses before an administrative panel, a court, a tribunal or such similar proceedings; effecting a temporary transfer of a person in custody to enable him appear as a witness; securing the production of official or judicial records; tracing, seizing and forfeiting the proceeds of criminal activities. The Act also contains details with respect to procedures to be followed.
665. Nigeria also cited the following measures regarding the execution of MLA requests.
- Section 6(K) of the EFCC Act 2004
"The Commission shall be responsible for dealing with matters connected with extradition, deportation and mutual legal or other assistance between Nigeria and any other country involving economic and financial crimes."
666. Section 46 EFCC Act, which provides a definition of economic and financial crimes, was also deemed to be relevant in the context of mutual legal assistance.

“Economic and Financial Crimes” means the non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering,

embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc.;"

667. Nigeria indicated that a central authority has been set up in the office of the Attorney-General of the Federation in the Federal Ministry of Justice to facilitate mutual legal assistance (MLA).

668. Nigeria reported that it has provided MLA to the following requesting States:

1. United States
2. United Kingdom
3. South Africa.

669. The following are examples of cases in which MLA has been provided.

FRN v Chief Diepreye Solomon Peter Alamiyeseigha & Others (which were legal persons, some of which were: Solomon & Peters Ltd; Santolina Investment Corporation Ltd; Pesal Gigeria Ltd; etc.) Fhc/1/328c/2005.

FRN v Dr. Bolanle Olawale Babalakin & Others (including Stabilini Vision Ltd; Bi-Courtney Ltd; and Renix Nigeria Ltd) id/239c/12.

Requests were made and received for MLA on taking of evidence and service of judicial process.

FRN v Awe Odessa, All States Trust Bank & Others (connected to Chief Joshua Cibi Dariye).

670. Nigeria indicated that the total number of MLA requests received from 1 January to December 2012 are 30, out of which 12 related to corruption and money laundering. 4 of the requests received since 2012 were concluded as at 30 May 2013.

(b) Observations on the implementation of the article

671. The reviewers acknowledge the cited provisions of the MLA Act and EFCC Act to be relevant for the requirements of the UNCAC provision under review.

672. There is also a requirement of dual criminality. Dual criminality is required for mutual legal assistance, including non-coercive measures (except under conditions of reciprocity) and may affect requests for freezing orders and investigation where the offence is not criminalized under Nigerian law. The reviewers note that the provision of mutual legal assistance is limited to the extent that not all offences established under the Convention have been criminalized.

673. Regarding the procedure for MLA, it was explained that there is a division of labour amongst the relevant competent authorities, e.g. EFCC, ICPC, Police which execute requests received from the Attorney-General, who is the Central Authority for MLA. He evaluates the findings of the relevant authority and confirms if the investigation is in conformity with the request before transmitting the response to the requesting State. Requests are usually received through diplomatic channels by, but can also be transmitted

directly to, the Central Authority, which analyzes the request and identifies which competent authority in Nigeria is mandated to execute it (e.g., if it relates to money-laundering, the EFCC; if it relates to corruption, the ICPC; or otherwise the Police, or others). It was further explained that the Central Authority delivers a legal opinion by the Attorney-General stating what investigative steps are needed for transmission to competent authorities and follows up on the execution of requests by the authorities. Once results are received and are determined to be in conformity with the request, the Central Authority immediately forwards the information to requesting States, often through direct Embassy contacts to avoid delays through diplomatic channels. Reference is also made to the MLA Guidelines, which specify the “Nigerian Competent/Executing Authorities” (page 5) and were provided to the reviewers during the country visit.

674. It was confirmed by the Nigerian authorities during the country visit that 26 out of 30 requests received since 2012 were still pending at 30 May 2013, and that no requests for MLA had been formally refused by Nigeria to date. It was thus difficult for the reviewers to conclude that Nigeria has fully implemented the provision under review. However, it is positively noted that Nigeria has not refused assistance to date.

675. As noted above, the reviewers welcome the swift adoption of the MLA Bill and recommend that Nigeria monitor the legal framework to ensure there continues to be an adequate legal basis for MLA, also with countries outside the Commonwealth.

Article 46 Mutual legal assistance

Paragraph 2

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

676. Nigeria explained that Section 6(k) of the EFCC Act is applied to both natural and legal persons.

677. As for the extent of MLA to be afforded, this has been detailed in the MLA Act for Commonwealth countries (see paragraph 3 of article 46 below).

678. Nigeria referred to the examples of implementation cited above (under para. 1 of this UNCAC article).

(b) Observations on the implementation of the article

679. Nigeria recognizes the criminal liability of legal persons (see UNCAC article 26 above). Moreover, the practical cases seem to indicate compliance with the implementation of the UNCAC provision under review.

Article 46 Mutual legal assistance

Subparagraph 3

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*
- (j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*
- (k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

(a) Summary of information relevant to reviewing the implementation of the article

680. Nigeria cited the following measures.

Section 2 (3) of the MLA Act involving Commonwealth countries

2. (3) Assistance which may be exchanged between Nigeria and any other Commonwealth country under this Act include, that is to say-

- (a) identifying and locating criminal offenders;
- (b) the service of relevant documents;
- (c) examination of witnesses;
- (d) search and seizure of assets;
- (e) obtaining evidence;
- (f) facilitating the personal appearance of witnesses before an administrative panel, a court, a tribunal or such similar proceedings;
- (g) effecting a temporary transfer of a person in custody to enable him appear as a witness;
- (h) securing the production of official or judicial records;
- (i) tracing, seizing and forfeiting the proceeds of criminal activities.

Section 6 (d), (j) and (k) of the EFCC Act 2004

"The Commission shall be responsible for –

(d) the adoption of measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities, economic and financial crimes related offences or the properties the value of which corresponds to such proceeds; ...

(j) collaborating with government bodies both within and outside Nigeria carrying on functions wholly or in part analogous with those of the Commission concerning -

(i) the identification, determination, of the whereabouts and activities of persons suspected of being involved in economic and financial crimes,

(ii) the movement of proceeds or properties derived from the commission of economic and financial and other related crimes;

(iii) the exchange of personnel or other experts,

(iv) the establishment and maintenance of a system for monitoring international economic and financial crimes in order to identify suspicious transactions and persons involved,

(v) maintaining data, statistics, records and reports on person, organizations, proceeds, properties, documents or other items or assets involved in economic and financial crimes;

(vi) undertaking research and similar works with a view to determining the manifestation, extent, magnitude, and effects of economic and financial crimes and advising government on appropriate intervention measures for combating same

(k) dealing with matters connected with extradition, deportation and mutual legal or other assistance between Nigeria and any other country involving economic and financial crimes."

681. Nigeria cited the following examples of cases in which the above provision has been applied:

1. FRN v Chief James Onanefe Ibori & Others, Fhc/asb/1c/2009.

Chief James Onanefe Ibori was an Executive Governor of Delta State of Nigeria from May 1999 to May 2007. During his tenure he was engaged in massive corruption and laundering of the funds of the State using his companies in most cases. He laundered several sums of money running into millions of pounds sterling, which he stashed in banks and also used to purchase movable and immovable properties in the United Kingdom. The Economic and Financial Crimes Commission of Nigeria commenced investigation in the matter, and through mutual legal assistance with the Metropolitan Police of the United Kingdom, some of the proceeds of crime were traced in the United Kingdom and frozen. Ibori was later prosecuted and convicted in the United Kingdom for money laundering. He is now serving a jail term of 13 years, and the confiscation proceeding is still pending. Nigeria provided useful evidence with which he was convicted, and which will also be used in the confiscation proceeding.

2. FRN v Chief Diepreye Solomon Peter Alamiyeseigha & Others (which were legal persons, some of which were: Solomon & Peters Ltd; Santolina Investment Corporation Ltd; Pesal Nigeria Ltd; etc.) Fhc/1/328c/2005.

Chief Alamiyeseigha was the Executive Governor of Bayelsa State of Nigerian from May 1999 to May 2007. He was also involved in massive corruption and laundering of the funds of the State. He transferred the proceeds of crime to banks in the United Kingdom, and also acquired properties with part of them in Nigeria, the United Kingdom and South Africa using his companies. With mutual legal assistance between the EFCC of Nigeria, the Metropolitan Police of the United Kingdom and South African Police, the assets were traced, frozen and eventually confiscated. Alamiyeseigha and his companies were prosecuted and convicted.

3. FRN v Awe Odessa, All States Trust Bank & Others (connected to Chief Joshua Cibi Dariye).

4. **FRN v Tafa Adebayo Balogun & Others** (which were legal persons, some of which were Yeboa Investment Ltd; Caledonia Telecommunications Ltd; Olatrade Ltd; etc) Fhc/abj/cr/14/05.

(b) Observations on the implementation of the article

682. The reviewers acknowledge the contents of Section 2 (3) of the MLA Act, applied only among Commonwealth countries, as well as the EFCC Act and the referenced case examples.

683. Reference is also made to the MLA Guidelines, which specify the “Types of MLA that can be provided by Nigeria” (pages 4-5).

684. The reviewers found the cited domestic legislation to include the requirements of the Convention’s paragraph under review.

Article 46 Mutual legal assistance

Paragraphs 4 and 5

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

685. Nigeria cited Section 6(k) of the EFCC Act (quoted above). Section 19 of the MLA Act involving Commonwealth countries was also deemed relevant.

Section 19, MLA Act involving Commonwealth countries.

19. Other assistance

After consultation between the requesting and requested countries, either party may seek and receive other terms of assistance in criminal matters not specified in this Act on such terms and conditions as may be agreed between the two countries.

686. Concerning examples of implementation and related mutual legal assistance, Nigeria indicated that information relating to suspicious financial transactions is regularly transmitted without request through the Nigerian financial intelligence unit to other FIUs.

(b) Observations on the implementation of the article

687. Regarding the confidentiality of information received spontaneously outside the formal MLA channels, it was explained that Nigeria has a law on safeguarding official secrets. That is the Official Secrets Act Cap 03, Laws of the Federation of Nigeria⁷.

688. It was further explained during the country visit by the Chairman of the EFCC that confidentiality is observed as a matter of practice when information is received spontaneously by law enforcement agencies, and that such information can be received by telephone, physically or in writing. By way of example, the *Ibori* case was referred to in which Nigeria provided useful evidence with which he was convicted, and which will also be used in the confiscation proceeding. Nigerian investigators collaborated with the UK Metropolitan Police over the course of months in an investigation that was ongoing and unknown to the defendant until he departed from office. The case originated through direct police-to-police cooperation in the absence of a formal MLA request.

689. While the provision is not implemented in Nigeria's legislation, it was confirmed that direct police cooperation channels (see article 48) routinely observe confidentiality requests to not jeopardize investigations. However, Nigeria would consider the disclosure of information that is exculpatory to an accused person if required under domestic legislation or in the course of criminal proceedings.

690. Reference is also made to the MLA Guidelines, which specify that "the informal police-to-police correspondence in order to obtain intelligence may take place for purposes of administrative assistance which does not involve the central authority" (page 9).

Article 46 Mutual legal assistance

Paragraph 8

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

691. Nigeria cited the following measures.
Section 13(4) of the Money Laundering (Prohibition) Act 2011 (As Amended)
Section 34 of the EFCC Act

(b) Observations on the implementation of the article

692. It was confirmed during the country visit that the cited provisions are also applicable to the provision of banking and financial records pursuant to MLA requests. The reviewers found the cited domestic legislation in compliance with paragraph 8 of article 46 UNCAC.

⁷ Available online at: <http://www.placng.org/lawsofnigeria/node/475>

693. Regarding case examples where Nigeria was able to provide bank or financial records in response to an MLA request, Nigeria referred to the cases of FRN v. Chief James Onanefe Ibori; and FRN v. Diepreye Solomon Peter Alamiyeseigha & Others.

Article 46 Mutual legal assistance

Paragraph 9

(a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

(a) Summary of information relevant to reviewing the implementation of the article

694. Nigeria indicated that it has not implemented this provision of the Convention.

(b) Observations on the implementation of the article

695. Nigerian authorities stated dual criminality as a mandatory precondition for the provision of MLA, including non-coercive measures. However, Nigerian authorities indicated during the country visit that dual criminality may be dispensed with in some cases on grounds of reciprocity, and that this is a matter of discretion in the opinion of the Attorney-General. Nonetheless, it was reported that there have been no case examples where Nigeria flexibly interpreted the dual criminality requirement, or where assistance was provided in the absence of dual criminality.

696. Nigeria's MLA Guidelines confirm that Nigeria may grant MLA on the basis of reciprocity even in the absence of a treaty; however, they are silent on the issue of dual criminality.

697. In the interest of greater legal certainty to requesting States that assistance may be granted in the absence of dual criminality on the grounds of reciprocity, it is recommended that Nigeria specify the matter in its legislation and treaties, as well as the MLA Guidelines. Moreover, Nigeria should adopt measures to ensure that assistance is provided in the absence of dual criminality where the request does not involve coercive measures.

Article 46 Mutual legal assistance

Paragraphs 10 to 12

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

698. With respect to paragraph 10, the reviewers considered specifically sections 13, 15, 17, and 18 of the MLA within the Commonwealth Act. Nigeria explained that no other legal provisions are in place.

Mutual Assistance In Criminal Matters Within The Commonwealth (Enactment And Enforcement) Act

13. Identifying and locating persons

(1) Without prejudice to the generality of this Act, a request may seek assistance in identifying or locating persons believed to be within the requested country.

(2) A request under this section shall indicate the purpose for which the information is requested and shall contain such information as is available to the Central Authority of the requesting country as to the whereabouts of the person concerned and such other information as it possesses which would facilitate the identification of the person concerned.

15. Examination of witness

(1) A request under this Act may seek assistance in the examination of witnesses in the requested country.

(2) A request under this section shall in an appropriate case and in so far as the circumstances of the case permit, obtain the following particulars-

- (a) the name, addresses and official designations of the witnesses to be examined;
 - (b) the questions to be put to the witnesses or the subject-matter about which they are to be examined;
 - (c) whether it is desired that the witness be examined orally or in writing;
 - (d) whether it is desired that the oath be administered to the witness or, as the law of the requested country allows, that they be required to make a solemn affirmation;
 - (e) the provisions of any law of the requesting country as to the privilege or exemption from giving evidence which appears especially relevant to the request; and
 - (f) any special requirement of the law of the requesting country as to the manner of taking evidence relevant to its admissibility in that country.
- (3) A request under this Act may ask that, so far as the law of the requested country permits, the accused person or his legal representative may attend the examination of the witness and may ask questions of the witness.

17. Personal appearance of witnesses in the requesting country

- (1) A request under this Act may seek assistance in facilitating the personal appearance of witnesses before a court exercising jurisdiction in the requesting country.
- (2) A request under this section shall specify-
- (a) the subject-matter upon which it is desired to examine the witness;
 - (b) the reasons for which personal appearance of the witness is required; and
 - (c) the details of the travelling, subsistence and other expenses payable by the requesting country in respect of the personal appearance of the witness.
- (3) The competent authorities of the requested country shall invite persons whose appearance as witnesses in the requesting country is desired; and
- (a) ask whether they agree to appear;
 - (b) inform the Central Authority of the requesting country of the answer of the witnesses;
 - (c) if they are willing to appear, make appropriate arrangements to facilitate the personal appearance of the witnesses.

18. Personal appearance of witnesses in custody

- (1) A request under this Act may seek the temporary transfer of persons in custody in the requested country to appear as witnesses before a court exercising jurisdiction in the requesting country.
- (2) A request under this section shall specify-
- (a) the subject-matter upon which it is desired to examine the witness;
 - (b) the reason for which personal appearance of the witness is required;
- (3) The requested country shall refuse to comply with a request for the transfer of a person in custody if the person does not consent to the transfer.
- (4) The requested country may refuse to comply with a request for the transfer of a person in custody and shall be under no obligation to inform the requesting country or the reason for such refusal.
- (5) Where a person in custody is transferred, the requested country shall notify the requesting country of-
- (a) the dates upon which the person concerned is due under the law of the requested country to be released from custody; and
 - (b) the date by which the requested country requires the return of such persons, and shall similarly notify any variations in such dates.
- (6) The requesting country shall keep in custody a person transferred under this section and shall return the person to the requested country when his presence as witness in the requesting country is no longer required; and in any case, by the earlier of the dates specified under subsection (5) of this section.
- (7) The obligation to return any person transferred under this section shall subsist notwithstanding the fact that the witness is a citizen of the requesting country.

(8) The period during which the person transferred is in custody in the requesting country shall for all purposes be deemed to be service in the requested country of an equivalent period in custody in that country.

(9) Nothing in this section shall preclude the release in the requesting country without return to the requested country of any person transferred under this section if both the requested and requesting countries agree to such release.

699. With respect to paragraph 11, the reviewers considered relevant provisions in the MLA Commonwealth Act, specifically section 18 cited above.

700. With respect to paragraph 12, the reviewers considered as relevant section 25 of the MLA Commonwealth Act. Nigeria explained that no other legal provisions are in place.

Mutual Assistance In Criminal Matters Within The Commonwealth (Enactment And Enforcement) Act

25. Indemnity of persons appearing

(1) Subject to the provisions of section 20 of this Act, any witness appearing in the requested country in response to a request under section 18 of this Act or persons transferred to that country in response to a request under section 18 of this Act shall be immune in the requesting country from prosecution, detention or any other restriction of personal liberty in respect of criminal acts, omissions or convictions before the time of the departure of the witness from the requested country.

(2) The immunity conferred under subsection (1) of this section shall cease-

(a) in the case of a witness appearing in response to a request under section 17 or 18 of this Act, when the witness having had been notified by the appropriate authority that his presence was no longer required and having afforded him the opportunity to leave the country, he has continued to remain in the requesting country or having left it, he has returned to it, and

(b) in the case of a person in custody transferred in response to a request made under section 19 of this Act and remaining in custody, when he has been returned to the requested country.

(b) Observations on the implementation of the article

701. No examples of practical implementation were provided. The provisions are legislatively implemented.

Article 46 Mutual legal assistance

Paragraph 13

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances,

where the States Parties agree, through the International Criminal Police Organization, if possible.

(a) Summary of information relevant to reviewing the implementation of the article

702. Nigeria reported that a central authority unit staffed with attorneys has been established in the Office of the Attorney-General of the Federation in the federal Ministry of Justice. This unit processes MLA requests and handles international cooperation with competent authorities, i.e. anti-corruption agencies and other law enforcement agencies. The Central Authority was established by an Executive Decree from the office of the Attorney-General for the Federation and Minister of Justice (a copy was provided to the reviewers).

(b) Observations on the implementation of the article

703. Reference is made to the observations and description of the procedure for MLA and the roles and responsibilities of the central authority and the competent authorities of Nigeria in the introduction to this article. A copy of the MLA Guidelines was also provided to the reviewers.

704. With respect to the requirement of “speedy and proper execution or transmission of requests received” in the paragraph under review, it is noted that the MLA Guidelines “are to ensure that requests for MLA received by Nigeria can be executed quickly and efficiently” by providing guidance to Requesting States as to what can be requested and the forms of assistance that Nigeria can provide (page 3). However, as described further under paragraph 24 of the article below, no specific timeframes are specified in the Guidelines, nor is there any specified procedure for regulating timeframes or periodic follow up. In this context, the reviewers noted Section 5(1) of the MLA Commonwealth Act, which directs the Central Authority to grant assistance as expeditiously as practicable. The observations under paragraph 24 of the article are referred to.

Section 5(1), MLA Commonwealth Act

5. Action in the requested country

(1) Subject to this section, where Nigeria is the requested country, the Central Authority shall, in an appropriate case, grant the assistance requested as expeditiously as practicable; and for that purpose, the Central Authority of Nigeria shall ensure that all competent authorities in Nigeria comply with the request.

705. Nigeria has not made the requisite notification of its central authority to the United Nations at the time of ratification⁸. Nigeria is encouraged to make the relevant notification to the United Nations by sending the aforementioned information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017, and a copy to the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org). It indicated that it would do so.

Article 46 Mutual legal assistance

⁸ <http://treaties.un.org/doc/Treaties/2003/12/20031209%2002-0%20PM/Related%20Documents/CN.1259.2004-Eng.pdf>

Paragraph 14

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

(a) Summary of information relevant to reviewing the implementation of the article

706. The reviewers considered Section 12 (2) of the MLA within the Commonwealth Act as containing requirements provided for in paragraph 14 of the UNCAC article.

Mutual Assistance In Criminal Matters Within The Commonwealth (Enactment And Enforcement) Act

12. Contents of request for assistance

(2) A request shall normally be in writing but if having regard to the urgency of the matter it is expedient to make a request orally, such request shall be confirmed in writing forthwith.

707. Nigeria also provided the following information.

Service of documents - Navigational guide:

- i. Documents forwarded from requesting State to the Central Authority for the purpose of Service.
- ii. Central authority will forward to the Chief Judge of the Federal High Court to effect service through the Bailiff of the Court.
- iii. The Bailiff, after effecting service of the foreign courts process, will depose to an affidavit of service and forward the same through the Chief Registrar of the Federal High Court to the Honourable Attorney-General of the Federation of Nigeria.
- iv. The Attorney-General (Central Authority) on receipt of document will forward same to the requesting country.

708. Reference is also made to the MLA Guidelines, which outline the “Content and Format of a Letter of Request for MLA to Nigeria” (page 6). The Guidelines provide the address of the Central authority of Nigeria where requests are to be sent as well as the following instructions (page 8):

“(5) The request shall be:

- (a) in writing and, unless otherwise agrees, in the English language;
- (b) dated and signed by or on behalf of the person making the request; and
- (c) may be transmitted by electronic or through other means.”

As noted, the Guidelines were not available online at the time of review.

709. The UN Secretary General has not been notified of the language or languages acceptable to Nigeria at the time it deposits its instrument of ratification⁹.

⁹ <http://treaties.un.org/doc/Treaties/2003/12/20031209%2002-0%20PM/Related%20Documents/CN.1259.2004-Eng.pdf>

(b) Observations on the implementation of the article

710. No examples of implementation were provided.

711. Nigeria is encouraged to ensure that its Guidelines are available online to specify the above requirements.

712. Nigeria is further encouraged to make the relevant notification to the United Nations by sending the aforementioned information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017, and a copy to the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org). It indicated that it would do so.

Article 46 Mutual legal assistance

Paragraphs 15 and 16

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

(a) Summary of information relevant to reviewing the implementation of the article

713. The reviewers considered Section 12 of the MLA within the Commonwealth Act as containing requirements provided for in paragraph 15 of the UNCAC article.

Mutual Assistance In Criminal Matters Within The Commonwealth (Enactment And Enforcement) Act

12. Contents of request for assistance

(1) A request for assistance under this Act shall contain all appropriate information as specified in this section, that is to say-

(a) specify the nature of the assistance requested;

(b) indicate any limit within which compliance with the request is desired, stating the reasons therefore;

(c) specify the identity of the agency or authority initiating the request;

(d) specify the nature of the criminal matter concerned;

(e) specify whether or not criminal proceedings have been initiated; and

(f) where criminal proceedings have been instituted, disclose the following information, that is to say-

- (i) the court exercising jurisdiction in the matter;
 - (ii) the identity of the accused person;
 - (iii) the offences of which he stands accused and a summary of the facts;
 - (iv) the stage reached in the proceedings; and
 - (v) any date fixed for further stages in the proceedings;
 - (g) where criminal proceedings have not been initiated, the request shall disclose the offence which the Central Authority of the requesting country has reasonable cause to believe have been committed, with a summary of the known facts.
- (2) A request shall normally be in writing but if having regard to the urgency of the matter it is expedient to make a request orally, such request shall be confirmed in writing forthwith.

(b) Observations on the implementation of the article

714. No examples of implementation were provided.

715. In addition to the referenced provision, reference is also made to the MLA Guidelines, which outline the “Content and Format of a Letter of Request for MLA to Nigeria” (page 6). They further provide that: “Failure to comply with [these requirements] shall be a ground for refusing assistance” (page 8). It is recommended that Nigeria ensure that the Guidelines are available online.

Article 46 Mutual legal assistance

Paragraph 17

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of the article

716. Nigeria indicated that there is no specific relevant text, stating however that the provision is implemented in practice.

(b) Observations on the implementation of the article

717. The matter is partially specified in Nigeria’s MLA Guidelines, which provide for “details of the procedure which that foreign State wishes Nigeria to follow in giving effect to the request, including details of the manner and form in which any information or thing is to be supplied to that foreign State pursuant to the request” as well as “a statement setting out the wishes of that foreign State concerning confidentiality ... [and] details of the period of time in which that foreign State wishes the request to be met” (page 7).

718. As the matter is not addressed in Nigeria’s legislation, it is recommended that Nigeria adopt relevant measures in the interest of greater legal certainty to requesting States.

Article 46 Mutual legal assistance

Paragraph 18

18. *Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.*

(a) Summary of information relevant to reviewing the implementation of the article

719. Nigeria indicated that it has not implemented this provision of the Convention.

(b) Observations on the implementation of the article

720. The provision under review is an optional provision. As noted above under article 32, it was explained during the country visit that the legal basis for video testimony in appropriate cases was being tested in the Nigerian courts. However, no examples were provided.

721. It was explained during the country visit that the MLA Bill currently being developed would provide for the possibility of video conferencing. The reviewers encourage Nigeria to consider adopting relevant measures to implement the provision under review.

Article 46 Mutual legal assistance

Paragraph 19

19. *The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.*

(a) Summary of information relevant to reviewing the implementation of the article

722. The reviewers considered Section 10 of the MLA within the Commonwealth Act as relevant.

Mutual Assistance In Criminal Matters Within The Commonwealth (Enactment And Enforcement) Act

10. Limitation on use of information or evidence

A requesting country under this Act shall not use any information or evidence obtained in response to a request for assistance under this Act in connection with any other matter other than the criminal matter specified in the request without the prior consent of the requested country.

(b) Observations on the implementation of the article

723. Limitations on use clauses are contained in the bilateral treaties with the UK (Article 9(2)), USA (Article VIII) and South Africa (Article 9).

724. A limitation on use provision is also contained in the MLA Guidelines: “To the extent permitted by Nigeria law, evidence obtained from foreign jurisdictions pursuant to an MLA request will not be used in Nigeria for any other purpose other than that specified in the request without the consent of the foreign jurisdiction” (page 6). Nigeria would consider the disclosure of information that is exculpatory to an accused person if required under its domestic legislation or in the course of criminal proceedings.

725. No examples of implementation were provided as to cases where Nigeria honoured limitations on the use of information obtained pursuant to MLA.

Article 46 Mutual legal assistance

Paragraph 20

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

726. The reviewers considered Section 9 of the MLA within the Commonwealth Act as relevant.

Mutual Assistance In Criminal Matters Within The Commonwealth (Enactment And Enforcement) Act

9. Confidentiality: The Central Authority and all competent authorities in Nigeria and the requesting or requested countries respectively, as the case may be, shall use their best endeavours to keep confidential any request and its contents and the information and materials supplied in compliance with a request, unless such disclosure occurs in the course of criminal proceedings or where the disclosure is otherwise authorised by the Central Authority for Nigeria or that other country.

727. Nigeria provided the following examples of implementation and cases in which it was not possible to comply with the requirement of confidentiality.

1. **FRN V Chief James Onanefe Ibori & Others**, FHC/ASB/1C/2009.
2. **FRN V Chief Diepreye Solomon Peter Alamiyeseigha**, FHC/L/328C/2005.

(b) Observations on the implementation of the article

728. Confidentiality clauses are included in the bilateral treaties with the UK (Article 9(1), USA (Article VI) and South Africa (Article 6).

729. The MLA Guidelines further provide that, “In line with established international practice, the Central Authority Unit will neither confirm nor deny the existence of an MLA request, nor disclose any of its content outside government departments, agencies, the courts or enforcement agencies in Nigeria without the consent of the requesting State. Requests are not disclosed further than is necessary to obtain the co-operation of the witness or other person concerned” (pages 5-6).

730. Nigeria referred to the cases described above, but no further information was provided as to why confidentiality could not be safeguarded in the cited cases.

731. Based on the information provided, it is recommended that Nigeria monitor the application of this provision to ensure that the confidentiality of requests continues to be ensured as a matter of law and practice.

Article 46 Mutual legal assistance

Paragraph 21

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

(a) Summary of information relevant to reviewing the implementation of the article

732. The reviewers considered Section 6 of the MLA within the Commonwealth Act as relevant.

Mutual Assistance In Criminal Matters Within The Commonwealth (Enactment And Enforcement) Act

6. Refusal of assistance

(1) The Central Authority for Nigeria after consultation with the President, may refuse to comply in part or in whole with a request for assistance under this Act if the criminal matter in respect of which the assistance is sought appears to the Central Authority to concern-

(a) conduct which does not constitute an offence under any law in force in Nigeria;

(b) an offence or proceedings of a political character;

(c) conduct which in the requesting country is an offence only under military law or relating to military obligations;

(d) conduct in relation to which the person now accused or suspected of having committed an offence had previously been acquitted or convicted by a court in Nigeria.

(2) The Central Authority for Nigeria after consultation with the President may refuse to comply in whole or part with a request for assistance under this Act-

(a) to the extent that it appears to the Central Authority aforesaid that compliance would be contrary to the Constitution of the Federal Republic of Nigeria, 1999 or would be prejudicial to the security, international relations or other essential public interests of Nigeria; or

(b) where there are substantial grounds leading the Central Authority to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions or would cause prejudice on account of any of the reasons aforesaid, to the person affected by the request.

(3) The Central Authority for Nigeria may after consultation with the President, refuse to comply in whole, or in part with a request for assistance to the extent that the steps required to be taken in

order to comply with the request cannot lawfully be taken under the any law in force in Nigeria in respect of criminal matters arising in Nigeria.

(4) An offence shall not be regarded as an offence of a political character for the purpose of subsection (1) (b) of this section, if it is an offence within the scope of any international convention to which both Nigeria and the requesting or requested country, as the case may be, are parties and which imposes on the parties thereto an obligation either to extradite or prosecute a person accused of the commission of the offence.

(5) The provisions of sections 4, 5 and 6 of this Act shall apply mutatis mutandis to any case in which Nigeria is either the requesting or requested country, as the case may require.

Reference is also made to Section 5(2) of the Act:

5. (2) If the Central Authority in Nigeria considers that-

(a) the request does not comply with the provisions of this Act;

(b) in accordance with the provisions of this Act, the assistance ought to be refused either in whole or in part; or

(c) there are circumstances which are likely to cause a significant delay in complying with the request,

then the Central Authority of Nigeria shall promptly so inform the Central Authority of the requesting country, adducing reasons.

733. Nigeria indicated that 4 out of 30 requests received since 2012 were concluded as at 30 May 2013.

(b) Observations on the implementation of the article

734. Grounds for refusal are also specified in the bilateral treaties with the UK (Article 6), USA (Article III) and South Africa (Article 3).

735. Nigeria recognizes grounds for refusal in line with the Convention.

736. As noted above, the Nigerian authorities indicated that no requests for MLA had been formally refused by Nigeria to date.

Article 46 Mutual legal assistance

Paragraph 22

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

737. Nigeria indicated that the MLA within the Commonwealth Act and EFCC Act, which are the main enabling, laws do not provide for such an exception.

(b) Observations on the implementation of the article

738. The fact that an offence also involves fiscal matters is not a ground for refusal under the MLA Act or Nigeria's bilateral treaties. The review team found the domestic legislation to comply with the UNCAC provision. No examples were provided where

Nigeria was able to provide assistance in cases involving fiscal matters. The provision is legislatively implemented.

Article 46 Mutual legal assistance

Paragraph 23

23. Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

739. The reviewers considered Section 5 of the MLA within the Commonwealth Act as relevant.

Mutual Assistance In Criminal Matters Within The Commonwealth (Enactment And Enforcement) Act

5. Action in the requested country

(1) Subject to this section, where Nigeria is the requested country, the Central Authority shall, in an appropriate case, grant the assistance requested as expeditiously as practicable; and for that purpose, the Central Authority of Nigeria shall ensure that all competent authorities in Nigeria comply with the request.

(2) If the Central Authority in Nigeria considers that-

(a) the request does not comply with the provisions of this Act;

(b) in accordance with the provisions of this Act, the assistance ought to be refused either in whole or in part; or

(c) there are circumstances which are likely to cause a significant delay in complying with the request.

then the Central Authority of Nigeria shall promptly so inform the Central Authority of the requesting country, adducing reasons.

(b) Observations on the implementation of the article

740. Relevant measures are also found in Nigeria's bilateral treaties with the UK (Article 6(4)), USA (Article V) and South Africa (Article 3(5)). The matter is not addressed in Nigeria's MLA Guidelines.

741. The review team found the domestic legislation to comply with the UNCAC provision. The provision under review is legislatively implemented.

Article 46 Mutual legal assistance

Paragraph 24

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of the article

742. Nigeria has developed MLA Guidelines.

743. Nigeria indicated that 4 out of 30 requests received since 2012 were concluded as at 30 May 2013.

(b) Observations on the implementation of the article

744. The reviewers noted Section 5(1) of the MLA Commonwealth Act, which directs the Central Authority to grant assistance “as expeditiously as practicable”. Similar provisions are found in the bilateral treaties with the UK (Article 5), USA (Article V) and South Africa (Article 5).

745. As noted under paragraph 13 of the article above, no specific timeframes are specified in the Guidelines, nor is there any specified procedure for regulating timeframes or periodic follow up. The cited statistics on completed MLA requests also do not conclusively indicate timely execution, as the majority of requests were still pending at the time of review.

746. A more detailed procedural manual could be advisable for the Central Authority in this respect, which is applicable to all incoming MLA requests. Examples of good practice from other jurisdictions could also be provided if requested by Nigeria.

Article 46 Mutual legal assistance

Paragraph 25

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(a) Summary of information relevant to reviewing the implementation of the article

747. The reviewers considered Section 5(2)(c) of the MLA within the Commonwealth Act (quoted above) as relevant.

(b) Observations on the implementation of the article

748. No case examples were provided where Nigeria postponed assistance on the ground of an ongoing investigation or proceeding.

749. Relevant provisions are also found in the bilateral treaties with the USA (Article III) and South Africa (Article 3(4)). Although the treaty with the UK contains relevant measures in Article 5, it also permits assistance to be refused on the specified grounds (Article 6). In the interest of greater legal certainty, Nigeria may wish to consider adopting measures to more clearly regulate the issue.

Article 46 Mutual legal assistance

Paragraph 26

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) Summary of information relevant to reviewing the implementation of the article

750. The reviewers considered Section 5 (2) of the MLA within the Commonwealth Act, cited above, to be partially relevant..

(b) Observations on the implementation of the article

751. Section 5 (2) of the MLA Act partially addresses the issue, although a duty of consultation before refusing or postponing assistance is not specified. The matter is partially addressed in the bilateral treaties (for example, the treaty with the USA, which provides for a duty to consult before refusing assistance, Article III).

752. No case examples were provided where such consultations were held.

753. In the interest of greater legal certainty, it is recommended that Nigeria adopt measures to more clearly regulate the issue, including in future treaties.

Article 46 Mutual legal assistance

Paragraph 27

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) Summary of information relevant to reviewing the implementation of the article

754. The reviewers considered Section 25 of the MLA within the Commonwealth Act as relevant.

Mutual Assistance In Criminal Matters Within The Commonwealth (Enactment And Enforcement) Act

25. Indemnity of persons appearing

(1) Subject to the provisions of section 20 of this Act, any witness appearing in the requested country in response to a request under section 18 of this Act or persons transferred to that country in response to a request under section 18 of this Act shall be immune in the requesting country from prosecution, detention or any other restriction of personal liberty in respect of criminal acts,

omissions or convictions before the time of the departure of the witness from the requested country.

(2) The immunity conferred under subsection (1) of this section shall cease-

(a) in the case of a witness appearing in response to a request under section 17 or 18 of this Act, when the witness having had been notified by the appropriate authority that his presence was no longer required and having afforded him the opportunity to leave the country, he has continued to remain in the requesting country or having left it, he has returned to it, and

(b) in the case of a person in custody transferred in response to a request made under section 19 of this Act and remaining in custody, when he has been returned to the requested country.

(b) Observations on the implementation of the article

755. The matter is addressed in some of the bilateral treaties (e.g., USA, Article X; and South Africa, Article 11). Although the provision is largely implemented in the existing law and treaties, Nigeria is invited to consider more clearly specifying the issue, as no case examples were provided where such safe conduct was assured.

Article 46 Mutual legal assistance

Paragraph 28

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

(a) Summary of information relevant to reviewing the implementation of the article

756. The reviewers considered Section 11 of the MLA within the Commonwealth Act as relevant.

Mutual Assistance In Criminal Matters Within The Commonwealth (Enactment And Enforcement) Act

11. Expenses of compliance

(1) Except as provided in the following provisions of this section, a requesting country shall not incur any claim for expenses arising out of compliance by the competent authorities of the requested country.

(2) The requesting country shall be responsible for the travel and incidental expenses of witnesses travelling to and from the requested country, including the travelling and incidental expenses of accompanying officials, fees of experts and the costs if any translation required by the requesting country.

(3) If in the opinion of the requested country the expenses to be incurred in order to comply with the request are of an extraordinary nature, the Central Authority of the requested country shall consult with the Central Authority of the requesting country as to the terms and conditions under which compliance with the request may continue and in the absence of such agreement, the requested country may refuse to comply with the request.

(b) Observations on the implementation of the article

757. The cited provision largely corresponds to the paragraph under review. Relevant measures are also found in the bilateral treaties with the UK (Article 8), USA (Article VII)

and South Africa (Article 8). The MLA Guidelines contain similar provisions (pages 8-9). However, no examples of how cost arrangements were handled in practice were provided.

Article 46 Mutual legal assistance

Paragraph 29

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

(a) Summary of information relevant to reviewing the implementation of the article

758. The reviewers considered Sections 14, 16 and 26 of the MLA within the Commonwealth Act as relevant.

Mutual Assistance In Criminal Matters Within The Commonwealth (Enactment And Enforcement) Act

14. Service of documents

(1) A request under this Act may seek assistance in the service of documents relevant to a criminal matter arising in the requesting country.

(2) A request under this section shall be accompanied by the documents to be served and, where those documents relate to attendance in the requesting country, such notice as the Central Authority of the requesting country is able to provide pertaining to any outstanding warrants or other judicial orders in criminal matters issued or made against the person to be served.

(3) The Central Authority of the requested country shall endeavour to have the documents served-

(a) in the particular method stated in the request unless such method is incompatible with the law of the requested country; or

(b) by any method prescribed by the law of the requested country for the service of documents in criminal proceedings.

(4) The requested country shall transmit to the Central Authority of the requesting country a certificate as to the service of documents or, if the documents have not been served, as to the reasons which have prevented service.

16. Production of judicial or official records

(1) A request under this Act may seek the production of judicial or official records relevant to a criminal matter arising in the requesting country.

(2) For the purposes of this section, “judicial record” means judgments, orders and decisions of courts and tribunals and other documents held by judicial or tribunal authorities and “official record” means documents held by government departments or agencies or prosecution authorities.

(3) The requested country shall provide copies of judicial or official records not publicly available, to the same extent and under the same circumstances as apply to the provision of such records to its own law enforcement agencies or prosecution or judicial authorities.

26. Transmission and return of material

(1) Where compliance with a request under this Act involves the transmission to the requesting country of any document, record or property, the requested country-

(a) may postpone the transmission of such material if it is required in connection with proceedings in that country, and in such a case shall provide certified copies of a document or record pending transmission of the original; or

(b) may require the requesting country to agree to such terms and conditions as may protect third party interests in the material to be transmitted and may refuse to effect such transmission pending such agreement.

(2) Where any document, record or property is transmitted to the requesting country in compliance with a request under this Act, it shall be returned to the requested country when it is no longer required in connection with the criminal matter specified in the request unless that country has indicated that its return is not desired.

(b) Observations on the implementation of the article

759. Some of Nigeria's bilateral treaties contain provisions in this regard, e.g., USA (Article XI) and South Africa (Article 12). No examples of implementation were provided.

Article 46 Mutual legal assistance

Paragraph 30

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

(a) Summary of information relevant to reviewing the implementation of the article

760. Nigeria referred to the bilateral and multilateral treaties, and examples of implementation stated above.

(b) Observations on the implementation of the article

761. The list of Nigeria's bilateral and multilateral agreements on MLA is provided in the introduction to this article. The observations made there are referred to.

(c) Challenges related to article 46

762. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency coordination
2. Limited capacity
3. Limited resources for implementation
4. Specificities in its legal system

(d) Technical assistance needs related to article 46

763. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned.
2. Capacity-building programmes for authorities responsible for international cooperation in criminal matters.

3. Development of an action plan for implementation.
4. Model treaties.

764. Nigeria has received the previously mentioned forms of technical assistance from:

1. The United States Embassy;
2. UNODC/European Union;
3. United Kingdom Department for International Development (DfID).

765. Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Article 47 Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

766. Nigeria indicated that it has not implemented this article of the Convention.

(b) Observations on the implementation of the article

767. It was explained during the country visit that there has been law or practice on the transfer of criminal proceedings to or from Nigeria and that there is no law, treaty or practice on the issue. Nigeria is encouraged to consider taking relevant measures to implement the article.

Article 48 Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

768. Nigeria cited the following measures.

1. Section 6 of the EFCC Act 2004

"The Commission shall be responsible for -

- (a) the enforcement and the due administration of the provisions of this Act;
- (b) the investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam, etc.;
- (c) the co-ordination and enforcement of all economic and financial crimes laws and enforcement functions conferred on any other person or authority;
- (d) the adoption of measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities, economic and financial crimes related offences or the properties the value of which corresponds to such proceeds;
- (e) the adoption of measures to eradicate the commission of economic and financial crimes;
- (f) the adoption of measures which includes coordinated preventive and regulatory actions, introduction and maintenance of investigative and control techniques on the prevention of economic and financial related crimes;
- (g) the facilitation of rapid exchange of scientific and technical information and the conduct of joint operations geared towards the eradication of economic and financial crimes;
- (h) the examination and investigation of all reported cases of economic and financial crimes with a view to identifying individuals, corporate bodies or groups involved;
- (i) the determination of the extent of financial loss and such other losses by government, private individuals or organizations;
- (j) collaborating with government bodies both within and outside Nigeria carrying on functions wholly or in part analogous with those of the Commission concerning -
 - (i) the identification, determination, of the whereabouts and activities of persons suspected of being involved in economic and financial crimes,
 - (ii) the movement of proceeds or properties derived from the commission of economic and financial and other related crimes;
 - (iii) the exchange of personnel or other experts,
 - (iv) the establishment and maintenance of a system for monitoring international economic and financial crimes in order to identify suspicious transactions and persons involved,
 - (v) maintaining data, statistics, records and reports on person, organizations, proceeds, properties, documents or other items or assets involved in economic and financial crimes;
 - (vi) undertaking research and similar works with a view to determining the manifestation, extent, magnitude, and effects of economic and financial crimes and advising government on appropriate intervention measures for combating same
- (k) dealing with matters connected with the extradition, deportation and mutual legal or other

assistance between Nigeria and any other country involving Economic and Financial Crimes;

(l) The collection of all reports relating suspicious financial transactions, analyse and disseminate to all relevant Government agencies;

(m) taking charge of, supervising, controlling, coordinating all the responsibilities, functions and activities relating to the current investigation and prosecution of all offenses connected with or relating to economic and financial crimes;

(n) the coordination of all existing economic and financial crimes, investigating units in Nigeria;

(o) maintaining a liaison with office of the Attorney-General of the Federation, the Nigerian Customs Service, the Immigration and Prison Service Board, the Central Bank of Nigeria, the Nigeria Deposit Insurance Corporation, the National Drug Law Enforcement Agency, all government security and law enforcement agencies and such other financial supervisory institutions in the eradication of economic and financial crimes;

(p) carrying out and sustaining rigorous public and enlightenment campaign against economic and financial crimes within and outside Nigeria and;

(q) carrying out such other activities as are necessary or expedient for the full discharge of all or any of the functions conferred on it under this Act."

2. Section 66(3) of the Corrupt Practices and Other Related Offences Act 2000

"(3) The Commission shall have the power to engage the service of INTERPOL or such local or international institution, body or persons possessing special knowledge or skill on the tracing of properties or detention of cross border crimes."

769. Nigeria indicated that it does not have a database through which information can be shared.

770. Nigeria provided the following examples of implementation:

1. **FRN V Chief James Onanefe Ibori & Others**, FHC/ASB/1C/2009.
2. **FRN V Chief Diepreye Solomon Peter Alamiyeseigha**, FHC/L/328C/2005.
3. **FRN Erastus Akingbola**, ID/148C/2011; FHC/L/CS/2012.
4. **FRN V Cecilia Ibru**, FHC/L/CS/297C/09.

771. Nigeria provided the following recent case examples of implementation.

1. **FRN Erastus Akingbola**, ID/148C/2011; FHC/L/CS/2012.
2. **FRN V Cecilia Ibru**, FHC/L/CS/297C/09.

772. As noted under article 44, Nigeria has cooperated with the following competent authorities in investigations and prosecutions, including in the Ibori case referred to above:

1. United States of America Federal Bureau of Investigation;
2. United Kingdom Metropolitan Police;
3. Netherlands Police;
4. Australian Federal Police;
5. Federal German Police;
6. South African Police.

773. Nigeria has also signed agreements with the following law enforcement organizations:

1. Joint Working Agreement with British Serious Fraud Office
2. MOUs with the U.S. Department of Justice, U.S. Postal Inspection Service and U.S. Consumer Protection Agency.
3. MOUs with the Australian Federal Police and the Western Australian Police Force.
4. South African Police.

The examples and agreements on law enforcement cooperation are also listed under article 44 above, as they relate equally to extradition.

774. Nigeria also cooperates through the Egmont Group of Financial Intelligence Units and INTERPOL. Following the country visit, Nigeria provided examples of cooperation through INTEROPL, none of which related to corruption-related offences. No statistics of police cooperation or cooperation by the NFIU were provided.

775. At the time of review, the NFIU had signed 33 MOUs with other FIUs, as follows.

S/N	FIU /COUNTRY	DATE OF SIGNING	LOCATION OF SIGNING
1	Anti-Money Laundering Office (AMLO) Thailand	7 th APR 2006	Abuja, Nigeria
2	National Financial Intelligence Processing Unit (CENTIF-SENEGAL) Senegal	17 th OCT 2006	Abuja, Nigeria
3	Financial Reporting Authority (CAYFIN) Cayman Islands	8 th FEB 2007	Abuja, Nigeria
4	State Committee on for Financial Monitoring of Ukraine (SCFM)	17 th OCT 2007	Kyiv Ukraine
5	Unusual Transactions Reporting Centre(MOT) Curacao	12 th MAR 2008	Seoul, Korea
6	Financial Intelligence Centre (FIC) South Africa	12 th MAR 2008	Abuja, Nigeria
7	Financial Intelligence Inspectorate and Evaluation Unit (“FIIES”), Zimbabwe	4 th APR 2008	Abuja, Nigeria
8	Federal Service of Financial Monitoring (FSFM) Russia	26 th MAY 2008	Seoul, Korea
9	Financial Intelligence Unit (FIU) Bahamas	27 th MAY 2008	Seoul, Korea
10	National Office for the Prevention and Control of Money Laundering(ONPCSB) Romania	28 th MAY 2008	Seoul, Korea
11	Financial Intelligence Agency (FIA) Bermuda	27 th MAY 2009	Doha, Qatar
12	Anti-Money Laundering and Suspicious Cases Unit (AMLSCU) United Arab Emirates	27 th MAY 2009	Doha, Qatar
13	Anti-Money Laundering Council (AMLC) Philippines	27 th MAY 2009	Doha, Qatar
14	Money Laundering Prevention Directorate (MLPD) Macedonia	8 th Aug 2009	Abuja, Nigeria
15	Financial Intelligence Unit Mauritius	20 th OCT 2009	
16	National Unit for the Processing of Financial Information Côte d'Ivoire (CENTIF-CI)	12 th OCT 2010	Chisinau, Moldova
17	Financial Intelligence Unit (FIU-IND) India	12 th OCT 2010	Chisinau, Moldova
18	Financial Crimes Enforcement Network (FinCEN) United States of	12 th OCT 2010	Chisinau, Moldova

	Africa		
19	Unit Perisikan Kewangan, Bank Negara Malaysia (UPWBNM)	12 th OCT 2010	Chisinau, Moldova
20	Japan Financial Intelligence Center (JAFIC)	17 th JAN 2011	Abuja, Nigeria
21	Financial Intelligence Unit of St. Maarten	2 ND FEB 2011	Abuja, Nigeria
22	Office for Prevention and Control of Money Laundering(OPCML) Moldova	JULY 2011	Yerevan, Armenia
23	Financial Intelligence Unit (FIU) Barbados	23 RD AUG 2011	Abuja, Nigeria
24	Cellule Nationale de Traitement des Informations Financières, CENTIF-BF, Burkina Faso	16 th NOV 2011	Lomé, Togo
25	The Anti-Money Laundering division, Investigation Bureau, Ministry of Justice The People's Republic of China	31 ST JAN 2012	Manila, Philippines
26	Financial Intelligence Centre Ghana	25 TH JUNE 2012	Abuja, Nigeria
27	Cellule Nationale de Traitement des Informations Financières, CENTIF- Mali	21 st NOV 2012	Dakar, Senegal
28	Cellule Nationale de Traitement des Informations Financières, CENTIF- Niger	22 nd NOV 2012	Dakar, Senegal
29	Cellule Renseignement Financier/Cellule Nationale de Traitement des Informations Financières, CENTIF/CRF Togo	21 st DEC 2012	Abuja, Nigeria
30	UAF- Panama	4 th JULY 2013	Sun City, South Africa
31	Financial Intelligence Unit Malawi	4 th JULY 2013	Sun City, South Africa
32	Cellule Renseignement Financier/Cellule Nationale de Traitement des Informations Financières, CENTIF/CRF Cape Verde	February, 2014	Abuja, Nigeria
33	The Financial Intelligence Unit of the Republic of Sierra Leone	7 th May, 2014	Niamey, Niger

776. The following example of direct law enforcement cooperation is mentioned in the Newsletter of the Nigerian FIU, 2011 (Volume 5, Issue 1)¹⁰.

Currency and Monetary Instruments Reports (CMIR) Initiative.

It is believed that Politically Exposed Persons (PEPS) in Nigeria use individuals as a medium to move cash across borders from Nigeria to developed countries of the world, particularly China, the USA and the UK. It is also certain that Nigerians resident in the USA, UK and other developed countries, who are engaged in illegal acts, use this same medium to transfer the proceeds of their criminal acts into Nigeria from these countries.

¹⁰ http://www.nfiu.gov.ng/index.php?option=com_joomdoc&task=doc_download&gid=62&Itemid=71

These acts are further aided by the inadequacy of Nigeria's currency declaration laws, the administrative systems and procedures. It is from this background that the Nigerian Financial Intelligence Unit (NFIU) and the US FIU- Financial Crimes Enforcement Network (FinCEN) embarked on a joint US Currency and Monetary Instruments Reports (CMIR)/Nigerian Currency Declaration Reports (CDR) analysis project under the NFIU/FinCEN Analyst exchange program, which took effect in 2009. The initiative is aimed at addressing the challenges associated with illicit cross border cash movement from Nigeria to other countries. In view of this, two officials of Fincen visited the NFIU, to work with some analysts in the NFIU on this project. The Nigeria Customs Service co-operated with the NFIU on this project and provided the NFIU with export transaction and other relevant records to corroborate the CMIR data from the US. This has proved very useful in the analysis of the US CMIR Data and the generation of intelligence packages. The NFIU/FinCEN project is aimed at analyzing the CMIR/CDR data for patterns in currency declaration, repeated travelers, locations and any suspicious activity arising from the declarations. As a follow up to the visit made by FinCEN, a group of analysts from the NFIU visited FinCEN, to discuss the prospects of the CMIR exchange program and to come up with improved goal indicators to guide analysts in their work.

Since the beginning of the project to date the Nigerian FIU has received a total of 6,627 CMIR reports from FinCEN in 9 batches. From these reports the Unit has developed and disseminated two intelligence packages to FinCEN for dissemination to US law enforcement agencies, four intelligence packages for law enforcement agencies in Nigeria and is currently working on five cases. This exchange program has a lot of advantages, some of which are: The CMIR/CDR has provided an additional information source for the NFIU's analysis, and a good platform for trade-based money laundering analysis and investigations for the NFIU and the Nigerian Customs Service. It has also provided a deeper understanding of the declaration regime and system of United States and can be used to study the declaration regimes of other jurisdictions.

777. Nigeria is a member of the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA). GIABA was established on 10 December 1999 by a decision of the ECOWAS. GIABA became an Associate Member of the Financial Action Task Force (FATF) in June 2010. The objectives of GIABA are to:

- Protect the national economies and the financial and banking systems of signatory States against the proceeds of crime and combat the financing of terrorism;
- Improve measures and intensify efforts to combat the proceeds from crime;
- Strengthen cooperation amongst its members.

778. Regarding subparagraph 1(d) of the article under review, Nigeria referred to Section 6(g) and (k) of the EFCC Act of 2004 (quoted above) and provided the following examples of cases in which the above provision has been applied.

1. **Adewale Nurudeen**, Case No. ID/78C/07

A 56-year old female Gold Coast resident met a certain '*Benson Lawson*' purporting to be a 57-year old British civil engineer working in Nigeria on a dating site. The victim sent \$47,816 as medical fees to Nigeria for Benson said to be in coma. The case was reported to EFCC in 2007 via the Queensland Police service. The principal suspect was arrested through the controlled delivery of a Federal Express package in 2007. He was identified to be Adewale Nurudeen, a surveying and geo-informatics engineering university undergraduate. The suspect was charged to the Lagos State High Court and was convicted to a cumulative term of 29 years'

imprisonment. He was ordered to refund the money obtained and has so far repaid \$5,900 and N514,212.10. The money was sent to the victim through the Australian High Commission, Nigeria.

2. Bike John Niye, Case No. ID/141C/1 1.

28-year old Bike John Niye falsely represented himself as ‘Toby Encore’ to a 57-year old lady in Avon, whom he met on the Internet site, singlesnet.com. The victim sent a blackberry phone and cash sum of \$40,020, stuffed inside a teddy bear, to the suspect in Lagos in May 2010. The suspect was arrested in a controlled delivery operation and found to have earlier collected another \$25,000 from the same victim. The suspect was convicted to 17 years’ imprisonment by the Lagos State High Court.

3. Nosakhare Peter Iyen, Case No. FHC/L/62C/06.

A Nigerian graduate of computer science registered with the “Association of the Advancement of Criminal Activity” also known as “Theft Services” using a screen name. He has a wide number of contacts in the criminal circle, and posts his exploits and specialization on the Internet. The suspect sent fake cheques to an American victim, who remitted the value of the cheques through Western Union to Nosa in Benin City and Lagos, respectively. EFCC, in conjunction with undercover investigators of the US Postal Inspection Service, arrested the suspect in Lagos. The suspect was convicted to 5 years’ imprisonment in May 2013 by the Federal High Court in Nigeria.

779. Nigeria indicated that the exchange of specific case-related information in accordance with subparagraph 1(d) is done under the general power to detect and investigate corruption and economic and financial crimes, provided such exchange is not prohibited by law and does not violate the right of the defendant.
780. It was further explained that in practice, the operatives of EFCC or the concerned agency in Nigeria, upon receipt of necessary information work undercover with the relevant competent authorities and the courier company. They keep a tab on or monitor the transaction in order to arrest the culprit. At the point of delivery the operatives act as the delivery agents of the courier company or make sure they are present when the culprit or his confederate comes to collect the parcel or money. He is then arrested.
781. Concerning subparagraph 1(e), Nigeria referred to Section 6(j)(iii) of the EFCC Act of 2004 (quoted above) and provided the following examples of cases in which the referenced provision has been applied:
1. An official from the U.S. Department of Justice was stationed in Nigeria to work closely with the EFCC, ICPC and Nigeria’s National Agency for the Prohibition of Traffic in Persons and Other Related Matters (NAPTIP) from 2004-2007.
 2. Some Nigerian officials have been sent to the U.S. Federal Bureau of Investigation (FBI) for training.
782. Nigeria indicated that the exchange of personnel with the USA was done on the basis of the Memorandum of Understanding (MoU) concluded with the U.S. Department of Justice.

783. Joint training programmes are also held with INTERPOL and other international organizations. In October 2013, the Nigerian EFCC Academy hosted the Global INTERPOL Seminar on Anti-Corruption, Financial Crimes and Asset Recovery.

784. Regarding subparagraph 1(f), Nigeria referred to Section 6 (j) of the EFCC Act (quoted above).

(b) Observations on the implementation of the article

785. Based on the information provided, Nigerian law enforcement authorities cooperate with their counterparts through regional and international networks and in specific matters on a case-by-case basis. It was explained that INTERPOL channels have been used in the investigation of corruption matters and that some MOUs and agreements are in place, although this is not a prerequisite for direct law enforcement cooperation. Nigeria explained that cooperation is done by sharing of intelligence through formal and informal channels using the principle of reciprocity in the absence of a treaty. The exchange of personnel with foreign counterparts has been largely with U.S. agencies. For example, the EFCC has received officers from the U.S. Postal Inspection Service and, in 2004 and 2005, also sent officers to the same agency for a three-month period.

786. Nigeria has a range of networks and channels available to enhance the effectiveness of law enforcement action, as was also discussed during the country visit.

(c) Successes and good practices

787. The EFCC operates a specialized training unit that is developing as a center of learning for other agencies in the West Africa region. The establishment and operation of this training academy is positively noted by the reviewers. The exchange of personnel at the international level was also mentioned during the country visit, including the attachment of an ICPC staff member to the International Anti-Corruption Academy.

Article 48 Law enforcement cooperation

Paragraph 2

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

(a) Summary of information relevant to reviewing the implementation of the article

788. Nigeria cited the following measures.

1. The EFCC, NDLEA and NAPTIP have each cooperated successfully with law enforcement agencies in other countries to investigate cases of trans-border crimes within their respective mandates.

2. The EFCC has engaged in law enforcement cooperation with the U.K., USA, Australia and INTERPOL.

789. Nigeria indicated that it can consider UNCAC as the basis for mutual law enforcement cooperation in respect of the offences covered by the Convention.

(b) Observations on the implementation of the article

790. The information and observations above on Nigeria's agreements and arrangements on law enforcement cooperation are referred to.

791. During the country visit it was clarified that Nigeria can consider UNCAC as the basis for mutual law enforcement cooperation in respect of the offences covered by the Convention. An example is the request from the Republic of Niger on the basis of UNCAC (articles 46, 48 and 49) as well as UNTOC dated 15 March, 2012, which is referred to in the introduction to article 46 above. It was explained that the matter originated as a request for law enforcement cooperation that was followed by a formal request for MLA. Nigerian law enforcement authorities cooperated in the matter and the person is being prosecuted.

Article 48 Law enforcement cooperation

Paragraph 3

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) Summary of information relevant to reviewing the implementation of the article

792. Nigeria cited Section 6(j) of the EFCC Act (quoted above).

(b) Observations on the implementation of the article

793. Nigeria indicated that it has operationalized the UNODC go-CASE management system, an integrated investigative case management and analysis tool for government law enforcement, investigative and prosecution agencies. The Nigerian Financial Intelligence Unit also guarantees a high level of security.

(c) Challenges related to article 48

794. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency coordination
2. Limited capacity
3. Limited resources for implementation
4. Specificities in its legal system

(d) Technical assistance needs related to article 48

795. Nigeria indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;
2. Technological assistance (e.g. set-up and management of databases/information-sharing systems);
3. Capacity-building programmes for authorities responsible for cross-border law enforcement cooperation;
4. Development of an action plan for implementation.

796. Nigeria has received the previous forms of technical assistance from:

1. United States Embassy.
2. UNODC/European Union.

797. Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Article 49 Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of the article

798. Nigeria cited the following measures.

1. Section 6 (g) and (j) of the EFCC Act of 2004.
2. Section 6 of the EFCC Act of 2004 (quoted above under UNCAC art. 48(1)(a)).

799. Nigeria provided the following examples of joint investigations at the international level:

1. **FRN V Chief James Onanefe Ibori & Others**, FHC/ASB/1C/2009.
2. **FRN V Chief Diepreye Solomon Peter Alamiyeseigha**, FHC/L/328C/2005.
3. **FRN V Cecilia Ibru**, FHC/L/CS/297C/09.
4. **FRN v Awe Odessa, All States Trust Bank & Others** (connected to Chief Joshua Cibi Dariye
5. **FRN Erastus Akingbola**, ID/148C/2011; FHC/L/CS/2012.

800. Nigeria referred to the following agreements pertaining to joint investigations:

1. U.S. DOJ
2. U.K. Metropolitan Police
3. INTERPOL

(b) Observations on the implementation of the article

801. Reference is made to the request from the Republic of Niger on the basis of UNCAC (articles 46, 48 and 49) as well as UNTOC dated 15 March, 2012 for assistance with a

joint investigation pertaining to bribery offences under article 15 of UNCAC, in which Nigerian law enforcement authorities cooperated and the person is being prosecuted.

802. Based on the information provided, Nigeria has had experience with joint investigations in corruption cases at the international level and can conduct such investigations on the basis of existing agreements and reciprocity.

(c) Challenges related to article 49

803. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency coordination;
2. Limited capacity;
3. Limited resources for implementation;
4. Specificities in its legal system.

(d) Technical assistance needs

804. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned
2. Development of an action plan for implementation
3. Capacity-building programmes for relevant legislative and investigating

805. Nigeria has received the previous forms of technical assistance from:

1. United States Embassy.
2. UNODC/European Union.

806. Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.

Article 50 Special investigative techniques

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

(a) Summary of information relevant to reviewing the implementation of the article

807. Nigeria cited Section 6(f) of the EFCC Act (quoted above).

808. Nigeria indicated that special investigative techniques are done under the general power to detect and investigate corruption, and economic and financial crimes, provided such techniques are not prohibited by law and do not violate the right of the defendant. They are not limited to any specified period of time.

809. Furthermore, the EFCC and the NDLEA can apply special techniques in the investigation of money laundering and terrorist financing, including controlled delivery, interception of communication records and documents required for effective investigation and prosecution of cases.

810. Regarding paragraphs 2 and 3, Nigeria referred to the bilateral and multilateral MLA treaties previously mentioned.

(b) Observations on the implementation of the article

811. It was explained during the country visit that controlled deliveries have been done at the international level, and that these are usually conducted in corruption cases. Examples involving cases with the U.S. Postal Inspection Service were referred to.

812. Another case example was mentioned during the country visit in which the Nigerian law enforcement authorities assisted the U.S. FBI in a corruption case that led to the arrest of U.S. Congressman William J. Jefferson.

813. In the case of **FRN V Chief Diepreye Solomon Peter Alamiyeseigha**, FHC/L/328C/2005 referred to above, there was some surveillance of the person's movement by Nigerian authorities in Germany. It was explained that the EFCC sent an investigator to Germany to conduct surveillance in Germany so he could be arrested by the UK authorities.

814. Regarding paragraphs 2 and 3, it is noted that the above-mentioned treaties do not specifically mention joint investigations. However, it was explained that such investigative measures would be permitted in furtherance of the objectives of the treaties. While the reviewers were of the understanding that this would most likely be preceded by a formal MLA request, they also refer to the MOUs and agreements on direct law enforcement cooperation, including on the basis of reciprocity, and under multilateral agreements, that would permit such techniques.

815. There was some lack of certainty as to the legal basis for admitting evidence derived from special investigative techniques in a court of law. As mentioned above under article 32, the Nigerian authorities explained that the legal basis for video testimony was being tested in the courts, given the limited budgets of the agencies to compel witnesses especially from remote locations to appear in court. Moreover, the MLA Bill currently

being developed would provide for the possibility of video conferencing. No further information was available.

816. While it appears that there is no challenge to conducting special investigative techniques at the international level in appropriate cases under Nigeria's general investigative powers, the reviewers recommend that Nigeria consider clarifying the legal basis for admissibility of evidence derived therefrom, in accordance with the provisions under review.

(c) Challenges related to article 50

817. Nigeria has identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency coordination;
2. Specificities in its legal system;
3. Limited awareness of state-of-the-art special investigative techniques;
4. Limited resources for implementation (e.g. human/financial/other);
5. Limited capacity.

(d) Technical assistance needs related to article 50

818. Nigeria has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;
2. Capacity-building programmes for authorities responsible for designing and managing the use of special investigative techniques;
3. Development of an action plan for implementation.

819. Nigeria indicated that the extension or expansion of such assistance would help it more fully implement the article under review.