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Review of implementation of the United Nations Convention against Corruption

Executive summary: Nigeria

Note by the Secretariat

The present conference room paper is made available to the Implementation Review Group in accordance with paragraph 36 of the terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption (Conference of the States Parties resolution 3/1, annex). The summary contained herein corresponds to a country review conducted in the first year of the second review cycle.

* CAC/COSP/IRG/2019/1.



II. Executive summary

Nigeria

1. Introduction: overview of the legal and institutional framework of Nigeria in the context of implementation of the United Nations Convention against Corruption

Nigeria signed the Convention on 9 December 2003 and ratified it on 14 December 2004. Nigeria deposited its instrument of ratification with the Secretary-General of the United Nations on 14 December 2004.

Nigeria was under review in the fourth year of the first cycle in 2014 (CAC/COSP/IRG/I/4/1/Add.2).

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 National Assembly has passed several laws which add up to substantial domestication of the provisions of the Convention.

The main legislations in relation to preventive anti-corruption measure and asset recovery include: the Corrupt Practices and Other Related Offences Act 2000 (ICPC Act); the Economic and Financial Crimes (Establishment) Act 2004 (EFCC Act); the Money Laundering (Prohibition) Act 2011 (as amended) (MLPA); the Code of Conduct Bureau and Tribunal Act 1991 (CCBTA); the Electoral Act 2010 (as amended) (EA); the Public Procurement Act 2007 (PPA); and, the Freedom of Information Act 2011 (FOIA).

Dedicated authorities to prevent corruption include the Independent Corrupt Practices and Other Related Offences Commission (ICPC), the Economic and Financial Crimes Commission (EFCC), the Code of Conduct Bureau (CCB), the Bureau of Public Procurement (BPP), and the Nigerian Financial Intelligence Unit (NFIU).

Nigeria is a member of numerous regional, interregional and international bodies and initiatives, such as the African Union Convention against Corruption, the Economic Community of West African States (ECOWAS) Protocol against Corruption, the New Partnership for African Development (NEPAD) Policy on Transparency and Accountability, the Inter-governmental Action Group against Money Laundering in West Africa (GIABA), and the Network of National Anti-Corruption Institutions for West Africa (NACIWA). In addition, the Nigerian FIU is a member of the Egmont Group.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

At the time of the country visit, Nigeria's National Anti-Corruption Strategy (NACS)¹ and a coordinated national Ethics and Integrity Policy were yet to be approved. Nigeria joined the Open Government Partnership (OGP) in 2016, and the National Action Plan (NAP, January 2017–June 2019) was adopted subsequently.

ICPC has developed documents on preventing corruption in various sectors and institutions. ICPC and EFCC both have anti-corruption academies that deliver lecture trainings including to the staff of the various anti-corruption agencies and to public officials. Nigeria created a dedicated unit to carry out anti-corruption studies including risk assessments, the Technical Unit on Governance and Anti-Corruption Reforms (TUGAR) which publishes analytical reports on gaps and the compliance of Nigerian anti-corruption initiatives vis-à-vis regional and global anti-corruption instruments.

¹ The NACS was approved by the Federal Executive Council on 5 July 2017.

These organs as well as others, such as BPP and the Nigerian Extractive Industries Transparency Initiative (NEITI), conduct sectoral evaluations and oversight activities.

Nigeria has established an array of anti-corruption bodies, including: ICPC for investigating corruption, overseeing public bodies and educating the public (ICPC Act, sect. 6); EFCC for conducting investigations, enforcing laws, and carrying out awareness raising campaigns against economic and financial crimes (EFCC Act, sect. 5); and CCB for administering the Code of Conduct for public officers including receiving and examining asset declarations (CCBTA, sect. 3). Furthermore, NEITI is mandated to develop a framework for transparency and accountability for the extractive industry (NEITI Act 2007, sect. 3). TUGAR serves as one-stop shop for data, information, policy and diagnostic reports from conducting studies and corruption risk assessments (by Presidential Fiat 27 July 2006). The Nigerian anti-corruption system is complex with a large number of actors and institutions with a considerable risk of functional overlap.

Nigerian law provides functional independence to the anti-corruption bodies. For instance, ICPC Act provides that ICPC is not subject to the direction or control of any other person or authority (sect. 3(14)). The Chairmen or members of ICPC are appointed by the President upon confirmation by the Senate, and they can be removed by the President acting on an address supported by two-thirds majority of the Senate (ICPC Act, sect. 3(6) and (8)). Moreover, the different organs assess their own budget and propose it to the National Assembly.

Nigeria was reminded of its obligation to inform the Secretary-General of the name and address of its preventive anti-corruption authority or authorities in line Article 6 of the Convention.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

Nigeria has established the Federal Civil Service Commission (FCSC) with a mandate to recruit, dismiss and exercise disciplinary control over civil servants. Vacancies are published on the FCSC public website.

The Salaries and Wages Commission (SWC) determines remuneration and pay scales for public officials but does not take into account the corruption risk of respective positions. While members of the specific bodies, such as ICPC and EFCC, are appointed for a limited period of time only (ICPC Act, sect. 3(7) and EFCC Act, sect. 3(1), there is generally no rotation of posts foreseen.

In line with the OGP NAP, Nigeria also committed to ensure full implementation of the Open Contracting Data Standards in the public sector.

ACAN was specifically created to provide ethics and compliance trainings to civil servants. Anti-corruption bodies, including ICPC, individual ministries, departments and agencies also provide training to some officials. In addition, the government-owned training institutions, such as the Public Service Training School, conduct trainings and capacity-building for civil servants in general. However, while initial training is part of the Public Service Training School program, continuous training is neither mandatory nor systematic.

The Constitution's Fifth schedule contains the Code of Conduct for Public Officers. Section 56(1) states that conviction of an offence involving dishonesty or fraud or having been found guilty of a contravention of the Code of Conduct are criteria for vacation of office and disqualification for election to public office.

Nigeria has established the Independent National Electoral Commission (INEC) (Constitution, sect. 153(1)(f)), which has the possibility to limit the amount of contributions from private persons to political parties (EA, sect. 90) but had not done so at the time of the country visit. However, a political party shall not accept any contribution exceeding 100.000 Naira unless it can identify the source of money

(EA, sect. 93(3)). Political parties are not entitled to own or accept any funds or other assets outside of Nigeria (Constitution, sect. 225(3) and EA, sect. 88(1)(a)). Public funding of political parties was not permitted at the time of the country visit.

Nigeria has adopted a Code of Conduct for Public Officers, which is integrated into the Constitution (fifth schedule, Part I). Other dedicated codes of conduct include the Code of Conduct for Procurement Officers, the Code of Conduct for Judicial Officers and the Code of Conduct for Federal Prosecutors. All codes are legally binding, and identifies the organ established to sanction their infringements. The Code of Conduct for Public Officers also prohibits conflict of interests (sect. 1), the definition of which is only available in PPA section 57(12). CCBTA provides limitations for retired public officers from holding certain functions (sects. 8 and 9).

ICPC Act section 23 obliges public officers to report any offer, promise of giving or solicitation of an undue advantage. ICPC has established the Anti-corruption and Transparency Units (ATCUs) within Ministries, Departments and Agencies (MDAs) to facilitate reporting and improve standards within MDAs. Nigeria has also adopted a whistleblowing policy which outlines measures to protect the identity of whistle-blowers but has yet to be codified. The Public Interest Disclosure and Witness Protection Bill would criminalize acts of reprisal (sect. 43). At the time of the country visit the bill on the Whistleblower Protection Act had not yet been adopted.

Certain categories of public officers listed Part II of the Constitution's fifth schedule are required to submit asset declaration to the CCB immediately after taking office, every four years thereafter, and at the expiration of the term of office. (Constitution, fifth schedule, part I, sect. 11). The declaration should contain all property, assets and liabilities of the public officer, the spouse and unmarried children under 18. However, the declaration does not cover potential conflicts of interest and is not made public.

Judges are appointed by the President or State Governors as appropriate upon recommendation of the National Judicial Council (Constitution, sect. 153 and third schedule, part I) from practitioners with a minimum of 10 years at the bar. There is a specialized institute, the National Judicial Institute (NJI) whose mandate is to provide training on diverse issues for judges. These issues include ethics and judicial integrity. However, the judges do not receive any specific training on the risks of corruptions they are exposed to, except from ICPC and EFCC which occasionally provide trainings.

The prosecution service does not form part of the judiciary. Federal Prosecutors have a standalone Code of Conduct and are also subject to Ethics for Legal Practitioners as well as the Code of Conduct for public officers. As each anti-corruption organ retains its own prosecution service, specific codes of conduct of each institution also exist.

Public procurement and management of public finances (art. 9)

Public procurement in Nigeria is regulated by PPA which establishes and entrusts the BPP to monitor and supervise the correct implementation of the rules as well as determine whether a procuring entity has violated the PPA (sects. 5–6). Nigeria applies a de-centralized procurement system (PPA, sect. 15), but at the time of the country visit, an e-procurement portal was being piloted in order to centralize all public procurement advertisements.

Open competitive bidding is the default procedure (PPA, sect. 24) and invitations must be advertised publicly (PPA sect. 25). The threshold for open competitive bidding is N2.5 million (approx. USD6,800) according to guidelines issued by BPP and in line with the PPA. In order to use a special and restricted method of procurement, the procuring entity must also receive the authorization of BPP or, at least, a certificate of "No Objection" (PPA, sect. 39). PPA provides tender rules as well as general criteria for bidders (sects. 23 to 27).

Per PPA section 54, an unsuccessful bidder can seek administrative review in front of the procuring entity but without a suspensive effect. This can be appealed to the BPP which can prohibit a procuring or disposing entity from taking further actions

(PPA, sect. 54(4)(b)(i)). A subsequent judicial review on appeal can be performed by the Federal High Court.

PPA section 57 outlines where a conflict of interest exists (para. 12) and obliges all public procurement officials to declare to the authority any actual or potential interest (para. 10).

With regard to the public finances, MDAs are called on a yearly basis to make proposals for their own budget which are collated by the Budget Office. Based on this, the National Assembly discusses the National budget in public hearings, where civil society participates. The Fiscal Responsibility Act 2007 (FRA) provides that the National Budget follow the previously approved Medium Term Expenditure Framework (MTEF) which is established in consultation with non-governmental organisations. The Government policy provides the creation of the Government Integrated Financial Management Information System (GIFMIS) and the Implementation of the Treasure Single Account (TSA) to monitor the financial activities of MDAs from a single platform. Nigeria has also committed to the plan to ensure more effective citizen's participation across the entire budget cycle.

Nigeria applies electronic financial record keeping. All archives are kept within the Ministry of Finance. In addition, MDAs must keep hard copies of all financial documents for seven years (Financial Regulations 2009).

Public reporting; participation of society (arts. 10 and 13)

The Freedom of Information Act (FOIA) provides the right to access information (sect. 1(1)), without showing any specific interest (sect. 1(2)). FOIA also outlines the detailed grounds for denial (sects. 11–12, 14–17, 19).

While asset declarations are not made public, at the time of the country visit, a bill for access to public officers' asset declaration foresaw that possibility for a citizen with a well-founded suspicion of breach of the Code of Conduct.

The Service Compact Initiative (SERVICOM) has established desks within each MDA to facilitate the access to information as well as service delivery. However, SERVICOM is not established by law and the staff manning the desks are employed by each respective MDA. Most public institutions, including ICPC, EFCC, NEITI, TUGAR and NFIU, publish their reports online, albeit not always in a timely manner.

Nigeria has successfully engaged civil society, including through their representation in the Boards of several public institutions and joined the OGP in 2016. ICPC works closely with civil society in its public education efforts (ICPC Act, sect. 6(e)). ICPC has on its register 357 civil society organizations (CSOs) constituting the National Anti-Corruption Coalition (NACC). EFCC and CSOs have signed several MoUs.

Each anti-corruption agency has created various public channels of communication including hotlines and websites.

Private sector (art. 12)

The Corporate Affairs Commission (CAC), was established pursuant to the Companies and Allied Matters Act (CAMA) and has issued regulations on compliance and reporting standards for private sector entities. The Convention on Business Integrity (CBi) was formally launched in 1997. Most private companies have since signed the CBi and committed to respect the standards of integrity. Nigeria is also a member of the Extractive Industries Transparency Initiative (NEITI). In response, extractive industry private sector entities have established internal compliance departments.

At the time of the country visit, Nigeria had introduced the notion of conflict of financial interest in the draft National Ethics and Integrity Policy. Conflict of interest is also captured in the Code of Conduct for Public Officers. While judges are prohibited from practicing law on exiting office (Constitution sect. 292(2)) and other institutions foresee a cooling off period before assuming a post in the private sector,

Nigeria's legislation remains largely unclear about a cooling off period after retirement.

The Financial Reporting Council (FRCN), established by the Financial Reporting Council Act 2011, is responsible for elaborating accounting, auditing, and reporting standards for the private and public sectors². CAMA also obliges the private companies to submit their accounts to the Federal Inland Revenue Service (FIRS). The establishment of off the books accounts is clearly identified as prohibited (Sect. 11 MLPA) as well as the use of false documents and the intentional destruction of bookkeeping documents (sect. 15 of the ICPC Act). However, inadequately identified transactions or objects and recording of non-existent expenditure, are not expressly prohibited when carried out in order to commit an offence of the Convention.

Tax deductibility of expenses that constitute bribes is not explicitly disallowed under the list contained in Section 27 of the Companies Income Tax Act.

Measures to prevent money-laundering (art. 14)

The Nigerian Financial Intelligence Unit (NFIU) was previously established through Section 1(2)(c) of the Economic and Financial Crimes Commission (EFCC) Act. The Nigeria Financial Intelligence Unit Act 2018 which establishes the NFIU as an independent entity has been enacted. Nigeria has established a domestic regulatory and supervisory regime for a wide range of financial institutions (FIs) and designated non-financial institutions (DNFIs) (MLPA, sects. 3–5). The DNFIs are defined in a non-exhaustive list in Section 25 of the MLPA.

Further, the Special Control Unit against Money-Laundering (SCUML) was established to analyse and disseminate information relating to designated non-financial businesses and professionals (DNFBPs). SCUML works in close cooperation with the EFCC and the NFIU, but reports to the Federal Ministry of Industry, Trade & Investment. All suspicious transaction reports (STRs) are to be filed with the NFIU which is required to analyse the STRs; DNFIs are to report currency transaction reports to SCUML; and DNFIs are to report cash transactions exceeding USD1,000 to SCUML.

Nigeria adopts a risk-based approach, and MLPA requires FIs and DNFIs to conduct customer and beneficial owner identification (sect. 3), keep records of customers and transactions for at least five years (sect. 7) and report STRs to NFIU. At the time of the country visit, Nigeria was contemplating establishing a beneficial ownership registry.

NFIU is a member of the Egmont Group and has signed about 40 MOUs with local and international agencies to exchange and disseminate intelligence information as appropriate. In addition, the Inter-Ministerial Committee, which includes anti-money-laundering stakeholders, is in place at the national level for cooperation and information exchange among Nigerian ministries, departments and agencies.

FIs and DNFIs are obliged to include and keep accurate originator information for wire transfers based on CDD and apply enhanced scrutiny (MLPA, sect. 2, 3, 7).

Nigeria requires all individuals travelling in and out of Nigeria with cash or negotiable instruments above USD10,000 to declare to the Nigerian Customs Service (MLPA, sect. 2(3)).

In order to prevent money-laundering, the relevant institutions have issued regulations, including the Central Bank of Nigeria (CBN) AML Regulation 2013, the Securities and Exchange Commission (SEC) Regulations, National Insurance Commission (NAICOM) Regulations 4, and the Corporate Affairs Commission Regulations 2012.

² An Audit Law which will further strengthen the audits processes especially further strengthening the supreme audit institution, has been passed into law and currently awaiting presidential assent.

At the time of the country visit, the Money Laundering (Prevention and Prohibition) Bill 2017 (AML Bill) foresaw the enhancement of Nigeria's anti-money-laundering measures, such as CDD, record-keeping and the definition of beneficial owners.

2.2. Successes and good practices

- Nigeria created a Unit dedicated to anti-corruption studies and assessments (TUGAR) (art. 5, para. 3)
- The ICPC has established the Anti-corruption and Transparency Units (ACTUs) within MDAs in order to facilitate reporting and improve standards (art. 8 para. 4)
- Civil society participates in the adoption of the national budget within the National Assembly and is also consulted for the adoption of the MTEF (art. 9, para. 2 and art. 13, para. 1)
- Any person who requests access to information need not demonstrate any specific interest (art. 10 (a))

2.3. Challenges in implementation

It is recommended that Nigeria:

- Endeavour to adopt the NACS³ as well as the Coordinated National Ethics and Integrity Policy and continue its coordination efforts through energising the inter-agency meetings at policy and operational levels (art. 5, para. 1)
- Endeavour to ensure clarification and complementarity of functions among anti-corruption bodies in order to avoid duplication and facilitate reporting by citizens (art. 6, para. 1, art. 13, para. 2)
- Ensure that all anti-corruption bodies be granted the necessary independence to enable them to carry out their functions effectively and free from undue influence (art. 6, para. 2)
- Endeavour to implement OGP NAP and all the commitments taken (art. 7, paras. 1 and 4, art. 9, para. 2, art. 10 c))
- Endeavour to enhance specific training for civil servants, in particular for public positions considered vulnerable to corruption, and rotation of such individuals (art. 7, para. 1 (b) and (d))
- Consider establishing a limit of private contributions to political parties (art. 7, para. 3)
- Endeavour to adopt a definition of conflicts of interest outside the public procurement area and to establish a clear cooling off period after public officials' retirement (art. 7, para. 4, art. 12, para. 2 e))
- Endeavour to clarify the application scope of each specific code in order to avoid duplication, in particular regarding sanctions (art. 8, paras. 2 and 6)
- Consider adopting the bill of Whistleblower Protection Act, as well as the Public Interest Disclosure and Witness Protection Bill (art. 8, para. 4)
- Endeavour to extend the applicability of asset declaration to all public officials, as well as the declaration of interest from which a conflict of interest may result (art. 8, para. 5)
- Endeavour to make the declarations available to the public (art. 8, para. 5, art. 10 (a))

³ The NACS was approved by the Federal Executive Council on 5 July 2017.

- Consider implementing the e-procurement portal and make it fully operational (art. 9, para. 1)
- Give a suspensive effect to the first step of public procurement administrative review (art. 9, para. 1 (d))
- Take appropriate measures, with sanctions as needed, to ensure timely reporting on revenue and expenditure to the parliament (art. 9, para. 2)
- Consider clarifying and collating the reasons for denial in the FOIA (art. 10 (a))
- In view of ensuring the independence and viability of the SERVICOM Initiative, Nigeria may wish to consider regulating and simplifying such administrative procedures in order to facilitate public access to the information held by the competent decision-making authorities (art. 10 (b));
- Enhance the provision of specialized training for the judiciary on the risks of corruption to which the profession is exposed on a more systematic basis (art. 11 (a));
- Consider adopting the National Ethics and Integrity Policy (art. 12, paras. 1 and 2)
- Review and consider harmonizing cooling off periods for public officials wishing to assume posts in the private sector (art. 12, para. 2(e))
- Prohibit all elements as described under article 12, paragraph 3 of the Convention when they are carried out to commit an offence established in accordance with the Convention (art. 12, para. 3)
- Ensure that expenses that constitute bribes are specifically disallowed as tax deductions (art. 12, para. 4)
- Proceed with the establishment of a beneficial ownership register and that consideration be given housing it within one of the many already existing institutions (art. 14, para. 1(a) and 52 para. 1)
- Ensure that the lists of DFNI and DNFBPs are updated regularly or consider including a catch-all clause in order to ensure that the list remains relevant (art. 14, para. 1(a))

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

- Capacity-building (arts. 5, 6, 7, 9, 10, 11, 13):
 - For the Anti-Corruption Academies (training risk assessors, conducting risk assessments) (art. 5)
 - Policy advisories in policy analysis (art. 5)
 - Training and Mentoring (art. 5)
 - To the anti-corruption bodies (art. 6)
 - Of agencies on data storage and retrieval (art. 7)
- Institution building (arts. 5, 6, 7, 8, 9, 10, 11, 13):
 - Capacity-building for the institutions in developing and deploying strategic action plans, internal Code of Ethics and Business Processes (art. 5)
 - Capacity-building in data-management, i.e. storage, interpretation and deployment (art. 5)
 - Relevant skills enhancement trainings in accordance with job description (art. 5)

- Building Capacity of Agencies on Data Storage and Retrieval (art. 7)
- Policy making (arts. 5, 6, 8, 9, 10, 11, 12, 13):
 - Capacity-building and mentoring in Policy analysis and Policy advisories (art. 5)
- Good practice examples in deploying multi-sector anti-corruption strategies at different levels of government (art. 5):
- Legislative assistance (arts. 6, 7, 8, 9, 12, 13):
 - To amend the EFCC Act to ensure independence and security of the Chairman and the Board (art. 6)
 - To provide financial autonomy to Anti-corruption agencies (art. 6)
- Research/data-gathering and analysis (arts. 5, 7, 9, 10, 11, 13):
 - Training and mentoring on research skills, methodology, data storage, data retrieval and data analysis (art. 5)
- Facilitation of international cooperation with other countries (art. 5):
 - Good practice examples in International cooperation (art. 5)

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

Nigeria has received and successfully responded to requests related to asset recovery and return. The Mutual Legal Assistance Act (MLA Act) and its guidelines have been established to facilitate international cooperation including asset recovery. The Central Authority Unit within the Federal Ministry of Justice facilitates speedy international cooperation and mutual legal assistance.

At the time of the country visit, an amendment to the MLA Act (Mutual Assistance in Criminal Matters Bill 2017, MLA Bill) was pending at the National Assembly to expand its coverage of State parties beyond the Commonwealth. The MLA Bill would also address a number of current discrepancies and bring Nigeria's asset recovery legislation largely in line with the Convention regarding enhanced due diligence (EDD), the enforcement of foreign orders, the rights of bona fide third parties etc.

Nigeria shares information with other countries through the Egmont group, as well as the INTERPOL I24/7.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

Section 3 of the MLPA requires FIs and DNFI to conduct detailed customer and beneficial owner identification when establishing a business relationship or carrying out transactions. In addition to the CBN Act and the Bank and Other Financial Institutions Act (BOFIA), Nigeria has the Know Your Customer (KYC) Directive and the Money Laundering Examination Procedure/Methodology Guidance Note, which are mandatory for banks, non-bank financial institutions and DNFBPs.

The CBN Regulations 2013 require obligated entities to conduct enhanced due diligence (EDD) and continued monitoring of the accounts of Politically Exposed Persons (PEPs) (sect. 3(7) MLPA and sect. 18(4) CBN-AML). The NFIU has also developed a regulatory oversight operational manual for enhanced scrutiny, as has the Central Bank of Nigeria. There is no distinction between domestic and foreign PEPs.

While there is no definition of high-value accounts, Regulation 83 of the CBN AML/CFT Regulations 2013, identifies trusts, nominees and fiduciary accounts as

accounts that present a higher money-laundering risk than others and require financial institutions to conduct enhanced due diligence.

While the definition of a shell bank can be found in the MLPA, there is only a prohibition for FIs to enter into or continue correspondent banking relationship with foreign shell banks. The establishment of shell banks is prohibited in Nigeria (Sect. 11(2)). The FI shall satisfy itself that the foreign country does not permit its accounts to be used by shell banks (e.g. MLPA, sect. 12).

The Code of Conduct for Public Officers provides for declaration of assets, (Constitution Schedule 5 sect. 11). Although all public servants who are elected and appointed are prohibited from maintaining foreign accounts (Code of Conduct Bureau and Tribunal Act, sect. 7), there is no requirement to declare interest or signature or other authority over foreign accounts.

The NFIU receives and analyses financial data consisting of currency transaction reports (CTRs) and suspicious transaction reports (STRs) and disseminates the information to domestic law enforcement authorities and other FIUs. In addition to NFIU, SCUML was established in 2005 to enhance anti-money-laundering measures for DNFBPs in Nigeria (reference above article 14).

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

All legal persons, including foreign States as well as their embassies and missions in Nigeria, have *locus standi* and can therefore initiate civil action and sue for compensation or damages in Nigeria. The Administration of Criminal Justice Act 2015 (ACJA) provides a court with the power to order the defendant or convict to pay compensation or expenses to the victims (sect. 319). As there is no disaggregation of victims, a State that has been harmed can also receive such payments but is also required to retain local counsel.

The Foreign Judgement (Reciprocal and Enforcement) Act outlines the procedure for the registration and enforcement of foreign confiscation orders obtained in other jurisdictions and is not limited to the Commonwealth (Part I). In order to register and enforce foreign confiscation orders, the procedure in the foreign country needs to be in accordance with the Nigerian law and can be recognized under through treaty-based reciprocity.

Forfeiture of proceeds of crime is governed by the Advance Fee Fraud and Other Fraud Related Offences Act 2006 (sect. 17) and EFCC Act (sect. 24b). Nigeria has several legal provisions on non-conviction based forfeiture (e.g. sect. 17 (6) of Advance Fee Fraud and Other related Offences Act, sect. 330 of ACJA).

EFCC Act provides for measures to identify, trace, freeze, confiscate and seize proceeds of crime as well as collaborate with other States (sect. 5(j) and 6 para. 1(d)). EFCC Act sect. 5(k), 28 and 29, MLPA section 6, paragraph 5(b), and ICPC Act sect. 46 permit competent authorities to freeze or seize property upon a request from other States also on suspected involvement in any crime. In addition, Section 44(2)(k) of Nigerian Constitution provides for preservation of property for confiscation on the basis of a foreign arrest or criminal charge. The management of recovered assets is also outlined in Sections 153–157 ACJA.

The EFCC Act establishes the Commission's authority in general to deal with economic and financial crime matters with other countries (sect. 6 (k)), but without detailed procedures on how to handle foreign requests.

Dual criminality and legal review of all MLA requests are required to make decisions or actions under paragraphs 1 and 2 of article 55 of the Convention. The Central Authority Unit has issued guidelines for the evaluation of MLA requests.

Nigeria does not have a *de minimis* threshold. As a matter of practice, NFIU informs the requesting State prior to the lifting of provisional measures and provides it with

an opportunity to provide reasons in favour of continuing the measure. MLPA does not have a provision in this regard. The rights of bona fide third parties are protected under several laws (e.g. EFCC Act, Advance Fee Fraud Act, Administration of Criminal Justice Act, ICPC Act). Nigeria provides cooperation based on reciprocity and does not require a treaty basis.

Return and disposal of assets (art. 57)

The final return and disposal of assets is outlined in ACJA section 321 and the compensation of bona fide third parties in section 319(1)b. On the disposition of confiscated property, Nigeria has concluded MoUs with several countries, such as Venezuela, France, Spain, Italy and Switzerland (EFCC Sect. 6(k)).

At the time of the country visit, a Guidance Note for Judges on the disposal of assets was being drafted.

3.2. Successes and good practices

- The initiative of some institutions to keep records for twice as long as required (10 years instead of 5). (art. 52)
- The number of asset recovery cases successfully initiated by Nigeria based on bilateral agreements and reciprocity pending the adoption of the MLA Bill
- Nigeria's willingness and readiness to share its experiences in various international fora, particularly in the area of asset recovery, is fully in line with article 51

3.3. Challenges in implementation

It is recommended that Nigeria:

- Proceed with the establishment of a beneficial ownership register and that consideration be given housing it within one of the many already existing institutions (art. 14, para. 1(a) and 52 para. 1)
- Review and consider cross-referencing the various conflict of interest and asset declaration provisions between the MLPA and the BPP to ensure coherence (art. 52, para. 5)
- Widen the requirement to declare also interest in, signature or other authority over financial accounts held outside Nigeria (art. 52, para. 6)
- Redouble efforts to pass the Proceeds of Crime Act Bill⁴ into law (art. 53)
- Redouble efforts to pass the MLA Bill into law⁵ and ensure that its provisions remain in line with the requirements of the Convention, inter alia regarding:
 - Consulting the requesting State before lifting any provisional measures (art. 55, para. 8)
 - Expanding MLA to beyond the Commonwealth countries (art. 56)
 - Finalising and disseminate the MLA Manual (art. 56)
 - Limiting the deductible expenses to what is reasonable (art. 57, para. 4)

⁴ The Proceeds of Crime Act was passed by Parliament on XX and is awaiting Presidential Assent.

⁵ The Mutual Legal Assistance Bill was passed by Parliament on XX and is awaiting Presidential Assent.

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

i. Legislative assistance:

- Whistle-blower and Witness Protection Bill

ii. Institution-building:

- *Implementation of POCA*
- Support to for each law enforcement agency to have asset recovery/forfeiture and management unit

iii. Policymaking:

- Develop harmonized SOP for managing assets across all agencies

iv. Capacity-building:

- Specialized training
- Database management

v. Strategic plans

- *Research/data-gathering and analysis:*
- Central database
- Agency specific database

vi. Research

vii. Facilitation of international cooperation with other countries:

- Training in the area of MLA, extradition, Forfeiture, Intelligence etc.
-