

Rethinking Civil Society Participation in the Implementation of the UN Convention Against Corruption in Nigeria

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Abstract

This paper examines the participation of civil society in the implementation of the United Nations Convention against Corruption (UNCAC) in Nigeria. Data is generated through an objective assessment of the UNCAC and literature on civil society involvement in anti-corruption struggles. The paper argues that corruption is found in all spheres of our national life with a wide range of corrosive effects on the nation, its people and processes. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish. The cost of corruption is huge as it also involves human trafficking, child mortality, poor educational standard, environmental destruction and sabotage. Concerned about the magnitude of problems posed by corruption to the stability and security of nations, the United Nations through the United Nations Convention against Corruption (UNCAC) provided a legal framework that offers guidance to countries in the fight against corruption. Although the UNCAC under Article 13 makes provision for the active participation of the civil society in monitoring how it is implemented, little effort is made by Nigeria and the civil society sector in strengthening its implementation. To strengthen the effective implementation of the UNCAC, Nigeria must uphold the Transparency Pledge, and take appropriate measures to promote the active participation of civil society in the crusade against corruption

Keywords: Convention, Civil Society, Corruption, Nigeria, Participation, UN.

Introduction

Transparency International (TI) Corruption Perceptions Index¹ (CPI), 2015 opens up with a banner headline “more than 6 billion people live in countries with a serious corruption problem”. It further declared that Sixty-eight per cent of countries worldwide have a serious corruption problem and as a result, not one single country, anywhere in the world, is corruption-free.

This declaration holds very useful lessons for the global community. It calls the attention of the global community to an epidemic that threatens good governance and deepens poverty. It accounts for the high morbidity and mortality rate in our society because resources meant for the public good are diverted to funding personal whims and caprices. It describes a situation where people in authority pursue a ‘personal policy of primitive accumulation of wealth’. It is not restricted or confined to any environment; it is not a respecter of sovereignty or boundaries as it permeates countries that are even heavily protected by security agents. By this declaration therefore, corruption is a global problem that needs to be addressed through a global interventionist framework.

One of the greatest challenges facing Nigeria today is corruption. It is argued by some scholars (Agbese, 2016 and Ezrow, 2016) that Nigeria has a history of corruption that threatens attempts at good governance and development and dates back to the immediate post-independent era. Within this period, politicians were noted to have been demanding 10% as kickback for any contract awarded (the situation seems the same today). This attitude earned politicians the sobriquet “10-percenters” by Major Chukwuma Kaduna Nzeogwu². Other incidences of corrupt practices within this period could be cited. For instance, when Nigeria purchased six fighter jets in 1975 from the Lockheed Corporation, Nigerian military officers were reported to have received US\$3.6m in kickbacks. Ezrow (2016) mentioned that in exchange for a large kickback in 1975, the military placed a cement order that amounted to two-thirds of the estimated cement needs for the entire continent of Africa. This came at a cost of 25 percent of Nigeria’s oil revenue for that year. This is significant given that oil accounts for 98 percent of Nigeria’s export earnings. It was also revealed, that \$16 billion³ (£11 billion) of Nigeria’s oil revenue disappeared in 2014 (BBC News, 2016) this include the \$2.1 billion arms deal that has been linked to former National Security Adviser, Sambo Dasuki (Global Security, 2016). Udechukwu (2016), quoted the Minister of Information and Culture, Alhaji Lai Mohammed to have said that the sum of N78,325,354,631.82 (Seventy eight billion, three hundred and twenty-five million, three hundred and fifty-four

¹Corruption Perceptions Index is a mechanism used in measuring the perceived levels of public sector corruption worldwide. Because the CPI is based on perceptions; it is difficult to estimate the degree of corruption in countries. Unlike degree of corruption, perceptions are subjective and may change drastically due to media attention and sudden expositions of corruption.

²Dissatisfied with the “10-percenter” syndrome, Major Nzeogwu led the overthrow of the government and ushered in an era of military rule Which; unfortunately for the people of Nigeria, was to be hardly less corrupt.

³This amount seems to be fluid as one is likely to see \$15 billion in some literature and \$16 billion in others.

thousand, six hundred and thirty one Naira and eighty two kobo) had been recovered by the Buhari administration's anti-corruption efforts between May 2015 and May 2016.

The last one year has witnessed daily reports of corrupt acts especially by political office holders reflected in money stashed in various accounts within and outside Nigeria, fleet of exotic cars, choice houses and property in highbrow areas around the world. The reports of Transparency International (TI) Corruption Perceptions Index (CPI) aptly capture global perceptions of corruption in Nigeria. Nigeria for instance, was ranked 90th of the 90 countries that were ranked in 2000 by TI on corruption index. Based on this survey, Nigeria was the most corrupt country in the world. It was ranked 90th out of 91 countries in 2001, in 2002, Nigeria was ranked 101th out of 102 countries surveyed based on CPI, same rank in 2003, 144 out of 146 in 2004; 150 out of 158 in 2005; 142 out of 163 in 2006; 147 out of 180 in 2007; 139 out of 176 in 2012; 144 out of 177 in 2013; 136 out of 134 in 2014; 136 out of 168 in 2015.

The above CPI shows a global perceptions trend that suggests that Nigeria is always at the down quantile of global corruption perceptions. Attempts such as the establishment of institutions like Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices and Other Related Offences Commission (ICPC) have been put in place to tackle corruption in Nigeria. This arena is populated by whistleblowers civil society actors which are often represented by formal and informal organizations and civic engagements. The international statute that enables the establishment of anti-corruption institutions like the EFCC and ICPC is the United Nations Convention against Corruption (UNCAC). The UNCAC provides the legal framework that offers guidance to countries in the fight against corruption and further provides the impetus for Civil Society Organisations (CSOs) to support the process of curbing corruption globally. It is within this context, that this paper examines the participation of CSO in the implementation of the UN Convention against Corruption.

Methodology

The study employs a desk review of relevant literature including the United Nations Convention against Corruption (UNCAC). Analyses of issues are based on an objective assessment of the UNCAC and the role of civil society in its implementation in Nigeria. Specifically, the analysis of civil society organisation's roles in the implementation of the UNCAC revolve around a review of related activities of CSOs including; The Civil Society Network against Corruption (CSNAC), the Save Nigeria Group (SNG), Zero Corruption Coalition (ZCC), Independent Advocacy Project (IAP) that produces Nigerian Corruption Index (NCI), the African Parliamentarians Network Against Corruption (APNAC) and analysis of individual actors in supporting the overall processes of the implementation of the UNCAC in Nigeria. The methodology also incorporates analysis of the challenges faced by civil society organisations in the implementation of the UNCAC in Nigeria. Further analysis is done around anti-corruption frameworks and instruments such as; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (the Vienna Convention), the United Nations Convention against Transnational Organized Crimes (2000), African Union Convention on Preventing and Combating Corruption (2003), Economic Community of West African States Protocol on the Fight against Corruption (2001), Money Laundering (Prohibition) Act 2011 as amended, Economic and Financial Crimes Commission (Establishment) Act 2004, Advance Fee Fraud and other Fraud Related Offences Act 2006, Financial Action Task Force (FATF), Nigeria Financial Intelligence Unit (NFIU) and Special Control Unit against Money Laundering (SCUML)

Conceptual Issues and Literature Review

Issues to be conceptualized here are corruption and civil society organizations. Transparency International (TI) is the global institution that measures countries corruption based on perceptions index. It sees corruption generally as "the abuse of entrusted power for private gain". Corruption according to TI can be classified as grand, petty and political¹, depending on the amounts of money lost and the sector where it occurs. While this conceptualisation of corruption may help analysis in some climes, it obviously leaves much to be desired in our efforts to comprehensively conceptualise, understand and support the anti-corruption crusade in Nigeria. For the civil society to effectively engage the anti-corruption crusade, then, it may be necessary to rethink a deconstruction of the concept of corruption as suggested by TI to reflect the peculiarities of our context. Drawn from the above, this paper would therefore conceptualise corruption to include the use of the instrumentalities of office or position including administrative fiat to influence appointments, contracts and similar opportunities to a particular region, ethnic group, religion or gender. This line of reasoning coheres with Udechukwu (2016) who

¹TI conceive Grand corruption to consists of acts committed at a high level of government that distort policies or the central functioning of the state, enabling leaders to benefit at the expense of the public good. Petty corruption refers to everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies. Political corruption is a manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth. This definition can be accessed at: <http://www.transparency.org/what-is-corruption/#define>

maintained that “Total corruption = Non-economic forms of corruption + economic forms of corruption”.

The TI conceptualisation of corruption basically considers the economic and political dimensions of corruption leaving out the role of religion, ethnicity and gender¹. When official powers are used to favour a particular set of people at the expense of public good there is a tendency that such powers can also be deployed to cover up corrupt acts. It is alleged within this context, that the anti-corruption crusade of President Buhari is directed at his political opponents in the People’s Democratic Party (PDP) while he is said, to be protecting people alleged of acts of corruption in his party (the All Progressives Congress-APC). For instance, Rotimi Amaechi (Nigeria’s Transport Minister and member of the ruling party- the APC) is said to be protected by the president from been investigated for corruption even when it is alleged that he has been petitioned to the EFCC. To this end, Odunsi (2016) notes that Amaechi remains in his post despite being accused of misappropriating £338million by a commission investigating the sale of state assets. He further declared that Amaechi is also accused of diverting £140million of state funds into Buhari’s presidential campaign, and he is also said to have paid for media, consultants and private jets. This demonstrates that the President is using his office to shield one of ‘his party men’ from investigation. If this act which is obviously not covered by TI’s conceptualisation is left unnoticed, then the civil society may have overlooked an important dimension in its attempt to support UNCAC. A broad conceptualisation of corruption may strengthen our knowledge and help civil society organisations to more effectively support the UNCAC from the perspective that drives corruption in Nigeria.

The arena of whistle blowers is populated by civil society actors either acting in concert with others (organization) or alone (civic engagement). Civil society and its role in strengthening good governance have assumed a prominent position in public policy debates of the last two decades. A substantial discourse and practice have emerged in establishing the link between civil society and good governance through advocacy and anti-corruption struggles. Today, no one questions that CSOs are critical actors in sustaining anti-corruption efforts and good governance as this has been reflected in the works of scholars including Obi, (2011); Skocpol (2003); Lewis (2002); Kukah (1999); Diamond, Juan and Seymour (eds) (1998); Ekeh (1998); Salamon and Anheier (1997); Hall (1995); Judge (1994); Seligman (1992); Bayart (1986); Lipnack and Jeffrey (1982) who for instance, see civil society as the vital link in the transition to, and sustainability of democracy and good governance. This paper therefore, adapts a definition of civil society which according to CIVICUS (2011:17), refers to all the modern or traditional, non-political and non-governmental organizations, registered or informal, which aim at promoting sustainable peace and true democracy through socio-economic and cultural development, and which act as an intermediary between the state, political parties and the masses.

In this context, it represents motley of organisations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations. This goes beyond formally registered organisations to include community groups, women’s association, labour unions, indigenous groups, youth groups, charitable organizations, foundations, faith-based organizations, independent media, professional associations, think tanks, independent educational organizations and social movements as well as individuals who engage in civic actions. This broad conceptualisation of civil society which includes the recognition of individual efforts in the fight against corruption makes civic engagement an important addition to the functional perspective of civil society. The term civic engagement according to Putnam (2000) is commonly used by social capital theorists to refer to the participation of private actors in the public sphere, conducted through direct and indirect CSO and citizen interactions with government, business community and external agencies to influence decision making or pursue common goals. Individual whistle blowers are commonly found in the anti-corruption arena.

A major individual whistle blower in Nigeria that readily leaps to mind is Femi Falana² (the radical Lagos-based lawyer and human rights activist). Civil society groups like Socio-Economic Right Accountability Project (SERAP)³ have also been in the forefront of the fight against corruption in Nigeria. Civil society has demonstrated strength and won the confidence of multinational organizations as a credible partner in the fight against corrupt practices. The involvement of civil society in the UN system has been institutionalized and continues to expand and evolve (UN 2003) even though the nature and impact of this global civil society

¹ Evidence in Nigeria’s recent history, especially, under the leadership of President Muhammadu Buhari shows that major sensitive appointments are given to northerners and Muslims (representing the President’s region and religion hence, earning the name “North-gerian President”). Details can be accessed at: <http://punchng.com/president-buharis-lopsided-appointments/>, <http://www.thisdaylive.com/index.php/2016/07/22/the-north-gerian-president-2/>,

² In 2016, Falana for instance challenged the attempt by the Nigerian Senate to confer immunity on heads of legislative houses in the country because officers may hide under the guise of immunity to perpetrate acts of corruption. See details at: <http://thenigerialawyer.com/official-corruption-and-immunity-in-nigeria-by-femi-falana/>

³ SERAP in reaction to the statement by the speaker of the Nigeria House of Representative, Yakubu Dogara that budget padding is not an offence declared through its Executive Director Adetokunbo Mumuni that budget padding is in fact “corruption as it is implicit in corruption offences such as abuse of office, attempt to embezzle, divert, and misappropriate public funds, conspiracy to act corruptly, and illicit enrichment, which are recognized under the UN Convention against Corruption to which Nigeria is a state party. Accessed details at: <http://www.premiumtimesng.com/news/top-news/208211-serap-dogara-resign-now-budget-padding-crime.html>

according to Kaldor (2003) is debatable. Some scholars (Cardoso, 2003; Clark 2003) see it as a reflection of globalization processes that is likely to improve global governance by promoting debate and bridging societal divides while critics (Anderson & Rieff 2004) question their legitimacy and claims that such organizations are representative of international civil society. It is within this context that the UN Convention against Corruption (UNCAC) made special provision for the involvement of civil society in the fight against corruption globally.

The most obvious act of corruption however, is money laundering, a term, which is declared by Bantekas & Keramidas (2006:22) to have been first used in legal context in 1982 in the case of *US v \$4,255,625.39* involving the confiscation of laundered Columbian drug proceeds. According to International Compliance Association (n.d), money laundering is construed as the process by which criminal elements disguise the original ownership and control of the proceeds of criminal conduct by making such proceeds appear to have been derived from a legitimate source. Existing literature however, indicate a debate between the conceptualization of money laundering as provided by the Vienna Convention (1988) that limited its definition to proceeds from drug related transactions and the UNCAC Article 23 (2a-b) and Article 2b of the United Nations Convention against Transnational Organized Crimes and the Protocols Thereto that expanded the definition to cover areas beyond drugs related dealings. An obvious take away from the debate is the fact that money laundering is the conscious attempt to legitimize proceeds from illegitimate enterprises. The process of legitimizing illegitimate proceeds can be done through a trifocal perspective. First, is the process of *Placement* which involves the movement of proceeds of criminal enterprises and placement of such proceeds in an environment considered safe by the perpetrators. In most instances, such proceeds are placed in banks and financial institutions in countries other than the country of crime. The second perspective is what is referred to as *layering*. Here, after the *placement* of the proceeds, the perpetrators resort to moving the proceeds in a coordinated but complex web of financial transactions with the intent of confusing any interested observer and obliterating any link of the proceeds to its original criminal source. The third perspective is *integration*. With the process of *layering* over, perpetrators look for legitimate businesses to invest criminal proceeds. Here, such criminal proceeds are integrated into nations' economy with the overarching objective of laundering (a process of dry cleaning and decontaminating) and giving such proceeds a new and legitimate outlook. Globalization driven by advancement in technology has made it easy for criminals to seamlessly attain the objective of *placement, layering and integration*.

It is obvious by now that the internationalization of corruption presupposes that it has defied national borders and only a supranational framework can possibly address factors conducive to its spread. As stated earlier, a key element in corrupt practices is money laundering. The criminalization of money laundering according to the International Compliance Association (n.d) therefore is to inhibit criminals from benefiting from the proceeds of their criminal activities and preventing legitimate individuals and organizations from facilitating the commission of such crimes by providing financial services to them. Agube (2016:67) aptly made the point in his disquisition where it was declared that the regulatory framework on money laundering differs from one jurisdiction to another but international legislation, has essentially proven to be an important facilitator in the provision of guidance and legitimacy in the development of regional and national legislations to address issues of corruption. At the global level, a few of the anti-corruption frameworks and legislations are identified and briefly reviewed here.

United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (The Vienna Convention)

This reflects the first international attempt to criminalize money laundering. The Convention which criminalizes proceeds from narcotic drugs was criticised on grounds of the fact that it limits the classification and understanding of corrupt practices because corruption is found in all spheres of human endeavour including narcotic drugs trade. It is important to note that in spite of its obvious shortcoming, it however, laid a foundation for the development of related frameworks and legislations.

The United Nations Convention against Transnational Organised Crime 2000

Adopted in November 2000 by the UN Millennium Assembly, the Convention is a binding International instrument focused on the promotion of cooperation to prevent and combat transnational organised crime more effectively (Article 1, Resolution 55/22 of 15th November, 2000). The philosophy here is that owing to the fluidity of national borders especially due to advancement in technology, it is easy for criminal elements to seamlessly mobilise partners around the world into a network with the primary objective of challenging national stability. Terrorist cells around the world are mostly products of transnational organised crimes (Obi, 2015) and general criminal networks of violent extremists. Cutting supplies to organised criminal elements therefore, would help stem the tides of corruption facilitated through organised crime. Organised criminal group is used here to refer to a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or material benefit (Article 2a). Because, of the fluid nature of

transnational organised crime, civil society organizations have been active actors in advocating for conditions that are inimical to its spread. This convention is followed by the United Nations Convention against Corruption (UNCAC) 2003 that forms the main thrust of this paper. The UNCAC is however, treated in details in the pages below. The regional anti-corruption frameworks draw inspiration from the international instruments and it is appropriate to also briefly review such regional instruments for the purpose of creating a balanced review.

African Union Convention on Preventing and Combating Corruption 2003

This regional Convention clearly draws inspiration from the UNCAC and was designed to complement global efforts in fighting corruption. Adopted on July 12, 2003 by the Heads of State and Government of African Union, the Convention empowers State parties to adopt legislative measures as may be necessary to enable its competent authorities to search, identify, trace, administer and freeze or seize the proceeds of corruption pending a final judgement (Article 23/2a-c).

Economic Commission of West African States Protocol on the Fight against Corruption

The key objective of the Protocol was to promote and strengthen the development of effective mechanisms for the prevention, suppression and eradication of corruption, ensure cooperation between State Parties with the intent of making anti-corruption more effective and efficient so as to provide guidance for the harmonization and coordination of national anti-corruption laws and policies. The various anti-graft legislations in Nigeria as briefly reviewed below are therefore, a respond to the global and regional frameworks.

Money Laundering (Prohibition) Act 2011 as Amended

The Nigerian government in 1995 enacted the first anti-money laundering legislation to fill the gaps created by the Nigerian Drug Law Enforcement Agency (NDLEA) Decree 48 of 1989 which was unable to curb the menace of money laundering. The Act was however, amended in 2003, 2004, 2011, 2012 and the bill for amendment in 2016. The objective of the various amendments is to strengthen capacity of relevant agencies of government to effectively and efficiently deal with the menace of money laundering in Nigeria. This Act provides the legal impetus for civil society organizations to hold some State and non-state actors to account for certain transactions.

Economic and Financial Crimes Commission (Establishment) Act 2004

The EFCC Act has turned out to be a critical instrument in the fight against corruption in Nigeria. The Act empowers the Commission to define, investigate and prosecute economic and financial crimes in Nigeria. Agube (2016:76) observed that even though the EFCC Act does not expressly use the term 'money laundering, it however, criminalizes acts of money laundering. The Economic and Financial Crimes Commission (EFCC) as it is known today draws its powers from this Act. It is on record, that civil society organizations play and will continue to play instructive role in supporting state and related institutions in the fight against corruption in Nigeria.

Advance Fee Fraud and other Fraud Related Offences Act 2006

This Act complements the EFCC Act as a deliberate strategy toward the creation of a robust national anti-graft framework. Its primary objective is to prohibit and punish certain offences pertaining to Advance Fee Fraud and other related offences. According to Section 7(1) of this Act, 'a person commits an offence under this Act if he knows or ought to know that the property involved in the financial transaction represents the proceeds of some form of unlawful activity.

Other supporting Laws and Regulations

In addition to the aforementioned, there are other auxiliary laws and regulations that serve as additional instruments in the fight against corruption. These include; Fiscal Responsibility Act 2010; Banks and Other Financial Institutions (Amendment) Act 1991; Failed Banks (Recovery of Debts) and Financial Malpractices in Banks (Amendment) Act 1994; Central Bank of Nigeria (Anti-Money Laundering and combating the financing of terrorism in Banks and other Financial Institutions in Nigeria) Regulation 2013 and Central Bank of Nigeria's Anti-Money Laundering/Combating the Financing of Terrorism (Aml/Cft) Risk Based Supervision (Rbs) Framework, 2011 (Agube, 2016:79).

Other Regulatory Frameworks

Financial Action Task Force (FATF)

The extant anti-graft laws need some form of regulations and one of such regulatory framework is the FATF. The FATF is the global coordinating body for Anti-Money Laundering and the Combating of Financing of Terrorism (AML/CFT) efforts. Its major objective is to ensure effective and efficient regulatory mechanisms for combating money laundering and terrorism and combating related financial activities.

Nigeria Financial Intelligence Unit (NFIU)

In line with Article 14 of the UNCAC, and in fulfilment of the requirements by FATF, The NFIU was established in June 2004 by the Olusegun Obasanjo's regime. The NFIU is empowered by the EFCC (Establishment) Act of 2004, Money Laundering (Prohibition) Act 2011 as Amended and the 40+9 Special Recommendations of the FATF (Agube, 2016:81). The main objective of NFIU is to receive and analyse financial disclosure of Currency Transaction Reports and Suspicious Transaction Reports from financial and designated non-financial institutions in line with Nigeria's anti-money laundering and countering the financing of terrorism (AML/CFT).

Special Control Unit against Money Laundering (SCUML)

The SCUML was established in 2005 in line with the Nigerian government's commitment to the FATF through the Presidential Inter-Agency Committee. The primary task of the SCUML is to ensure the regulation, supervision and monitoring of the Designated Non-Financial Institutions (DNFI) as regards compliance to Nigeria's Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) regime.

It is obvious from the foregoing review that the entire gamut of anti-graft laws and regulations seem to only address issues surrounding financial impropriety. It is therefore appropriate to ask in this context, if acts other than financial impropriety would not qualify as corrupt acts? This paper however, takes exception to the seeming consensus around the evidence that corrupt acts should necessarily rotate around financial and related issues to also interrogate issues that border on executive, legislative and judicial impropriety and misuse of powers. With this in mind, the conceptualization of what constitute corrupt act should be expanded to include situations where an executive, legislative or judicial officer who as a result of clannish or related sentiments bends the laws governing due process to accommodate the interest of a friend or an ethnic cousin even when such is less qualified. Evidence of related scenarios can be seen in the award of contracts, employment, appointments (in flagrant disregards of the multi-culturalism of the Nigerian State) and the siting of projects and public utilities.

Theoretical Anchorage

The analysis of civil society participation in the implementation of the UNCAC can be better explained within the context of Samuel Huntington's institutional functionalism theory which sees civil disorder as a "necessary and inescapable condition in the creation of political order and is thus intimately bound up with the process of modernization and political development" (Dudley, 1973). Political order is managed by political leadership who in most instances embarks on a spree of primitive accumulation of wealth and nepotism. The space for civil society participation is narrowed through repressive policies of political leadership. Huntington's disquisition attributes the tendency for corrupt practices to "rapid mobilization of new groups into politics coupled with the slow development of political institutions" (Huntington, 1972). The institutional functionalist perspective explains the tendency for corrupt practices by focusing on the interface between institutionalization and political participation. According to this explanatory approach, corruption is more likely to occur in societies marked by high levels of political participation but with slow or weak processes of political institutionalization as is the case in Nigeria.

The institutional functionalism draws a direct relationship between weak institutions and the tendency for corrupt practices. When state institutions including private sector institutions like civil society organizations are weak, fighting corruption becomes difficult. Corruption thrives in a system with a weak judicial system, where the judges are themselves compromised thereby giving room for the highest bidder to get judgment. Again, corruption is enabled in a system where enabling laws exist but are hardly implemented, where the civil society is not organized and the space to operate is restricted. Based on this theoretical perspective, civil society can therefore effectively participate in the implementation of the UNCAC in an environment where state institutions are functional, where enabling laws are in place and where opportunities for frequent capacity building exist. State parties to the UNCAC and international organizations should support the creation of an enabling environment to enhance civil society participation in the implementation of the UNCAC.

Snapshots of the UN Convention against Corruption 2003

The UNCAC represents the first international consensus on the importance of developing a framework for tackling global corruption. The UNCAC is a product of series of conventions. Its roots can be traced to the UN General Assembly Resolution¹ 55/61 of 4 December 2000 which constituted an ad hoc committee to negotiate an effective international instrument that will provide guidance in the fight against corruption. This was followed by resolution 55/188 of December 20, 2000 in which it invited the intergovernmental open-ended expert group to be convened pursuant to resolution 55/61 to examine the question of illegally transferred funds and the return of such funds to the countries of origin; resolutions 56/186 of 21 December 2001 and 57/244 of 20 December 2002

¹ Resolutions cited in this work are as contained in the UN Convention against Corruption and its annexes (2004)

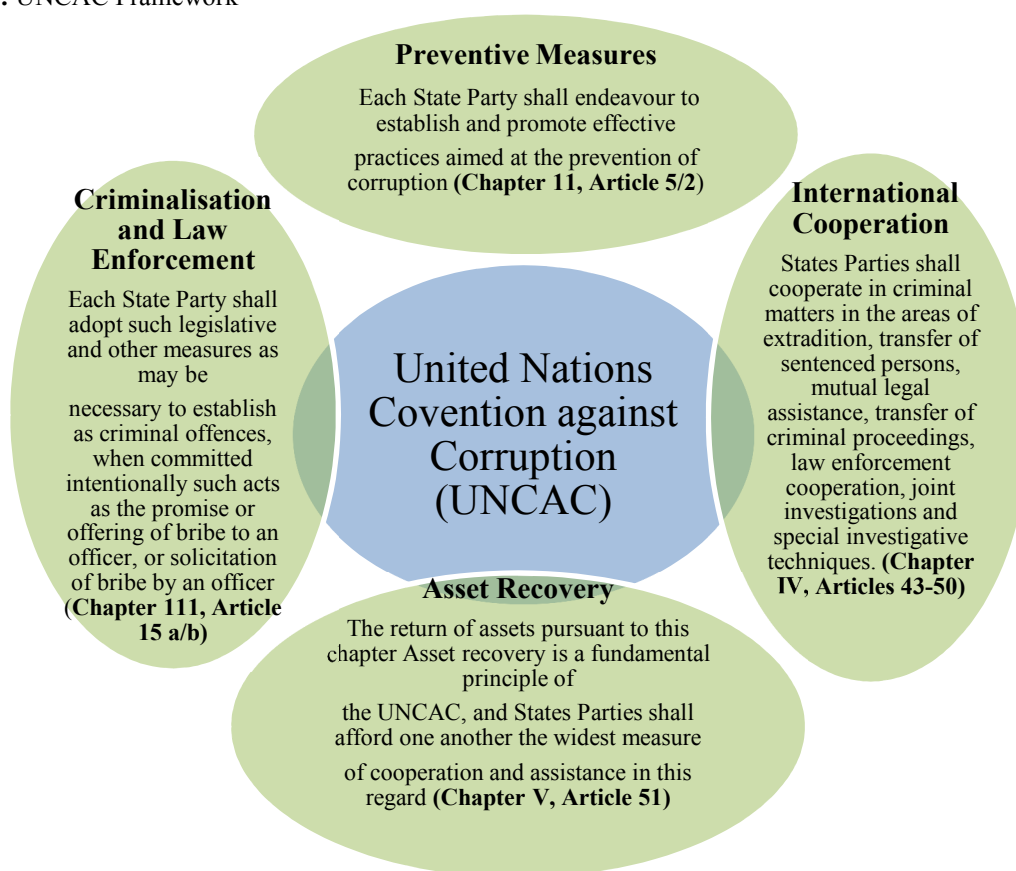
which dwelt on preventing and combating corrupt practices and transfer of funds of illicit origin and returning of such funds to the countries of origin, resolution 56/260 of 31 January 2002, which requested the Ad Hoc Committee for the Negotiation of a Convention against Corruption to complete its work by the end of 2003; to resolution 57/169 of 18 December 2002, which accepted the Government of Mexico to host a high-level political conference in Merida for the purpose of signing the UNCAC. The Convention approved by the Ad Hoc Committee was adopted by the General Assembly by resolution 58/4 of 31 October 2003. In accordance with article 68 (1) of resolution 58/4, the United Nations Convention against Corruption¹ entered into force on 14 December 2005 with a Conference of the States Parties established to review implementation and facilitate activities required by the Convention.

The UNCAC under Article 1 (Chapter 1) declared that the general purpose of the convention is:

- a. To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- b. To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
- c. To promote integrity, accountability and proper management of public affairs and public property.

The convention is built around a four-pronged framework as shown below.

Figure 1: UNCAC Framework



Source: Generated by authors

This four-pronged UNCAC framework is further explained below.

Prevention

The UNCAC was first conceived from the perspective of prevention. This is predicated on the fact that the best way to fight corruption is to prevent its occurrence. The Convention dedicates a whole chapter to preventive measures directed at both the public and private sectors. Preventive measures as contained in the Convention are identified to include establishment of anti-corruption agencies, transparency in financing elections and political parties, transparent recruitment process and establishment of codes of conduct, declaration of assets, enhanced

¹The UNCAC was informed by the seriousness of problems and threats posed by corruption to the stability and security of societies, which undermine the institutions and values of democracy, erode ethical values and justice and jeopardize sustainable development and the rule of law. This resolve was further strengthened by the links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering, coupled to the fact that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international co-operation to prevent and control it essential

transparency in procurement and judicial processes. The Convention under Article 13 highlights the importance of civil society by declaring that preventing public corruption also requires an effort from all members of society at large. For these reasons, the Convention calls on countries to promote actively the involvement of non-governmental and community-based organizations, as well as other elements of civil society, and to raise public awareness of corruption. Article 5 of the Convention enjoins each State Party to establish and promote effective practices aimed at the prevention of corruption. At the sphere of prevention, international, regional and national frameworks have been put in place. These are identified to include; the United Nations Convention against Corruption (UNCAC), United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (the Vienna Convention), the United Nations Convention against Transnational Organized Crimes (2000), African Union Convention on Preventing and Combating Corruption (2003), Economic Community of West African States Protocol on the Fight against Corruption (2001), Money Laundering (Prohibition) Act 2011 as amended, Economic and Financial Crimes Commission (Establishment) Act 2004, Advance Fee Fraud and other Fraud Related Offences Act 2006. These frameworks which draw inspiration from the UNCAC serve as preventive instruments in the fight against corruption and addresses issues of corruption when they occur. A critical element in the area of prevention however, is the incorporation of anti-corruption studies in the curricula of secondary and tertiary institutions and the delivery of anti-corruption education in a conflict sensitive manner (Obi, 2016:382-383)

Criminalization and Law Enforcement

The Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption including the promise of offering of bribe to an officer, soliciting any form of inducement by an officer with the intent of influencing due process as well as the diversion of funds earmarked for public goods to private ends or by exporting such funds to a safe haven anywhere in the world. The Convention criminalizes not only basic forms of corruption such as bribery and the embezzlement of public funds, but also private sector corruption and trading in influence and the concealment and laundering of the proceeds of corruption. The Money Laundering (Prohibition) Act 2011 as amended, the Economic and Financial Crimes Commission (Establishment) Act 2004 and the Advance Fee Fraud and other Related Offences Act 2006 are some instruments that criminalizes and ensure enforcement of corruption related acts.

International cooperation

The Convention is a global mechanism for tackling corruption. International cooperation is therefore central to delivering the objective of the Convention. Countries are bound by the Convention to cooperate with one another in every aspect of the fight against corruption, including prevention, investigation, and the prosecution of offenders. It also covers rendering specific forms of mutual legal assistance in gathering and transferring evidence for use in court, to extradite offenders, transfer of criminal proceedings, law enforcement cooperation, joint investigations and special investigative techniques. Countries are also required to undertake measures which will support the tracing, freezing, seizure and confiscation of the proceeds of corruption¹. Inspiration for international cooperation in the fight against corruption is located in international and regional instruments such as, the United Nations Convention against Corruption (UNCAC), the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the United Nations Convention against Transnational Organized Crimes (2000), African Union Convention on Preventing and Combating Corruption (2003) and Economic Community of West African States Protocol on the Fight against Corruption (2001).

Asset Recovery²

This is a very important element in the fight against corruption. This is so, because corruption trend shows that corrupt officials particularly in developing countries often use proceeds from corrupt acts to buy assets and stash stolen funds in developed countries which are considered safe havens. To strengthen this objective, countries are therefore bound by the Convention to render assistance in funds and asset recovery. In the case of embezzlement of public funds, the confiscated property would be returned to the state requesting it; in the case of proceeds of any other offence covered by the Convention, the property would be returned providing the proof of ownership or recognition of the damage caused to a requesting state; in all other cases, priority consideration would be given to the return of confiscated property to the requesting state, to the return of such property to the prior legitimate owners or to compensation of the victims. Effective asset-recovery provisions will support the efforts of countries to redress the worst effects of corruption while sending at the same time, a message to corrupt officials that there will be no place to hide their illicit assets. Accordingly, article 51 provides for the return of assets to countries of origin as a fundamental principle of this Convention. Article 43 obliges state parties to

¹ Details of this can be accessed at: <https://www.unodc.org/unodc/en/treaties/CAC/convention-highlights.html>

²This is as extracted from <https://www.unodc.org/unodc/en/treaties/CAC/convention-highlights.html>

extend the widest possible cooperation to each other in the investigation and prosecution of offences defined in the Convention.

The civil society is by Article 13 of the Convention required to actively support the implementation of the UNCAC with a call on member states¹ to create requisite space for civil society participation (Article 13/1). Nigeria is a signatory to the UN Convention against Corruption and has worked toward domesticating it. But how well has this been done and what has been the place of civil society in the fight against corruption in Nigeria?

Civil Society Participation in the Implementation of the UNCAC in Nigeria

Attempts at domesticating the implementation of the UNCAC are obvious in Nigeria. Article 6/1 of the Convention states that “each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate that prevent corruption”. The establishment of the Economic and Financial Crimes Commission (EFCC²) and the Independent Corrupt Practices and other Related Offences Commission (ICPC) are both attempts at domesticating this international instrument. Although these anti-corruption institutions have been repeatedly accused of selective corruption investigations and prosecutions, there however, set a domestic framework in the fight against corruption. Although the Nigerian state has demonstrated commitment to the implementation of the UNCAC by the establishment of anti-corruption agencies, it cannot be said that the state has been able to create an enabling environment for effective civil society participation in the implementation of the UNCAC. The UNCAC explicitly recognises that civil society needs to be free to seek, receive, publish and disseminate information about corruption. In practice, this means that civil society should have access to information laws and should protect the rights of citizens to blow the whistle against corruption.

Despite the signing of the Freedom of Information Bill in Nigeria, information is not readily made available to civil society actors. This has undermined efforts at supporting the implementation of the UNCAC. Right to information will enable civil society to access documents from the government proving public corruption in welfare distribution, access to basic public services and the award of infrastructure contracts. Civil society organisations have been in the forefront of fighting corruption in Nigeria. The Civil Society Network against Corruption (CSNAC)³, for instance have repeatedly exposed corrupt practices and called for the prosecution of offenders. The group in the month of July 2016 alone took the following actions in the fight against corruption.

- Called on the Nigeria Judicial Council to investigate Hon. Justice NFN Ntong of High Court of Akwa Ibom State, Ikot Ekpene Judicial Division for abuse of powers in a case involving the Akwa Ibom State government.
- Called on the EFCC to immediately commence investigation into an alleged corrupt practices perpetrated by Monitoba Hydro – International Nigeria limited managing the Transmission Company of Nigeria (TCN) in shortchanging Nigeria in its activities.
- Called on the EFCC to investigate the Chief of Army Staff, Major General Buratai, over alleged diversion of funds to purchase properties in Dubai, United Arab Emirates (UAE).
- In January 2016, CSNAC urged the EFCC to investigate a Central Bank of Nigeria (CBN) soft loan of \$7 billion granted to a consortium of bankers in 2006.

The Socio-Economic Right Accountability Project (SERAP) is another CSO that is very visible in the fight against corruption in Nigeria. Part of its strategy of supporting the UNCAC is through persistent advocacy against corrupt acts and calls for investigation and prosecution of those found to have been involved in acts of corruption. The SERAP, for instance, sued the Federal Government over failure to name suspected looters⁴ involved in the arms deal. This was especially informed by the fact that the Freedom of Information grants any interested stakeholder unrestricted access to public information. In a similar development, SERAP in a letter⁵ dated 29 July 2016 and signed by its executive director Adetokunbo Mumuni requested the Speaker of the House of Representatives Mr Dogara Yakubu and other principal officers “suspected to be involved in the alleged budget padding to step aside pending the outcome of investigation by the Economic and Financial Crimes Commission (EFCC) and other agencies.”

Civil society organisations have demonstrated some level of consistency in the fight against corruption especially, in the area of advocacy. This is evidence in the Save Nigeria Group (SNG) which mobilized the

¹ There are now 177 signatories to the UNCAC.

² This is in spite of the fact that the EFCC and ICPC are now seen as political instruments in the hands of the ruling party at any given time to perpetrate injustice by embarking on selective investigations and prosecution of perceived political enemies.

³ CSNAC is a coalition of anti-corruption CSOs committed to exposing corrupt practices and calling on relevant agencies to investigate and prosecute offenders. Details of their activities as highlighted above can be accessed on the website at: <http://csnacng.org/>

⁴ This is as contained in the originating summons with suit number FHC/CS/964/2016 which was brought pursuant to section 4(a) of the Freedom of Information Act, and signed by SERAP executive director Adetokunbo Mumuni. Details can be accessed at: <http://allafrica.com/stories/201607170042.html>

⁵ Details at: <http://saharareporters.com/2016/07/31/serap-asks-nigerian-house-reps-speaker-dogara-and-principal-officers-resign>

masses against the corrupt practices associated with the fuel subsidy removal by the President Goodluck Jonathan regime. This mass movement of citizens against a policy that was considered corrupt clearly shows the strength of civil society in supporting the anti-corruption crusade. The arena of anti-corruption in Nigeria is populated by organisations including; Zero Corruption Coalition (ZCC) which according to Akinyemi¹ (2006) work with legislators and government anti-corruption agencies on the need to domesticate and implement both the United Nations Convention on Anti- Corruption and the African Union Convention on Preventing and Combating Corruption, Integrity CSO is working to empower and inform civil society in order to tackle corruption in Nigeria and to coordinate efforts between public and private institutions in a national fight against corruption. Convention on Business Integrity (CBI), was originally adopted in 1998 to ensure that members sign the Code of Business Integrity and goes through an accreditation process as well as adhere to values of corporate integrity and transparency. Its signatories are both foreign and local companies operating in Nigeria. Independent Advocacy Project (IAP), is working to promote transparency, accountability, and good governance in Nigeria by building partnerships between individuals and organisations through information sharing. The IAP issues a monthly electronic newsletter, an in-depth quarterly and specialized report. It also produces the Nigerian Corruption Index (NCI) in order to empirically determine the degree of corruption in Nigeria. The African Parliamentarians Network Against Corruption (APNAC) is an all-party parliamentary anti-corruption network in Africa. Its main work is to promote good governance and to strengthen parliamentary capacity to fight corruption.

At the individual level, people have often engaged in whistleblowing as part of civic actions directed toward supporting the implementation of UNCAC in Nigeria. Prominent amongst individual whistle-blowers is the Lagos-based radical rights lawyer Femi Falana (SAN). Falana for instance, has severally called for the investigation and prosecution of alleged corrupt officers. In one of his anti-corruption stance, he declared that it was illegal for former governors², who have been placed on life pension in their states, to earn salaries and allowances in the National Assembly. This according to his perspective was an act of ‘double payment’ that negatively impacts the development process in Nigeria. The additional payment (beside pension) would have been redirected toward provision of public utilities. In furtherance of the implementation of the UNCAC in Nigeria, Falana advocated for the establishment of a “special anti-corruption court³”. He declared that “thorough investigations conducted by the Economic and Financial Crimes Commission and the Presidential Panel on Arms Procurement have exposed mind-boggling revelations of criminal diversion of public funds. However, not a single corruption case has been concluded by any of the courts”. This he noted means that “there is no indication, that a substantial number of the cases will be concluded before 2019 as the anti-corruption battle cannot be won through the regular courts”.

Although UNCAC Article 13 explicitly calls for civil society participation in anti-corruption, there is disagreement⁴ over whether or not civil society has a part to play in monitoring how UNCAC is implemented. Enabling laws and institutions of anti-corruption in line with Article 6/1 exist but the space for civil society participation is often restricted. Civil society actors are exposed to risk without a sustained and sincere mechanism to ensure the protection of whistle-blowers against unwarranted harassment, persecution and assassination.

Rethinking CSOs participation in the implementation of the UNCAC in Nigeria requires increased protection for whistle-blowers. Anti-corruption activists must be protected and respected if both their rights and the rights of those for whom they are fighting are to be safeguarded and entrenched. Unfortunately, we do not see this happening. Official resistance to civil society’s involvement in anti-corruption efforts by governments continues despite the efforts of civil society. As a show of commitment, the Nigerian government will have to implement the Transparency Pledge. The Pledge is part of Transparency International’s advocacy agenda and was developed by the UNCAC Coalition, a partnership of more than 300 civil society organisations for which Transparency International acts as the secretariat. The pledge outlines six principles for better cooperation between civil society and governments. These principles are:

- We will publish updated review schedules for our country review
- We will share information about the review institution with civil society
- We will announce the completion of the country review indicating where the report can be found

¹Akinyemi in his disquisition, declares that anti-corruption arena in Nigeria is populated by such CSOs as Zero Corruption Coalition (ZCC), Integrity CSO, Convention on Business Integrity (CBI), Independent Advocacy Project (IAP) and the African Parliamentarians Network against Corruption (APNAC). SCNAC and SERAP are also other critical and very visible CSOs that are committed to exposing and calling for the investigation and prosecution of offenders of corrupt acts.

²Details can be accessed at: <https://www.today.ng/news/national/157858/illegal-pay-governors-senators-falana>

³Access details at: <https://www.360nobs.com/2016/04/nigeria-urgently-needs-special-anti-corruption-court-femi-falana/>

⁴At the plenary session of the UN Conference of States Parties to discuss the implementation of UNCAC in St. Petersburg, Russia, some countries (including Finland, Switzerland, UK, and US) spoke in favour of civil society involvement in the implementation review of UNCAC, and some pledged to support the UNCAC Coalition/Transparency International Transparency Pledge, a number of countries (including, Bolivia, China, Cuba, and Ecuador) believe UNCAC relates only to governments and civil society should not be involved.

- We will promptly post online the self-assessment and the full country report in a UN language, together with the executive summary in local languages
- We will organise civil society briefings and public debates about the findings of the report
- We will publicly support participation of civil society observers in UNCAC subsidiary bodies

Civil society anti-corruption organisations cannot carry out their role effectively when they are subject to constraints that negate the rights to freedom of expression, information, association and assembly. Governments should therefore provide effective protections for civil society actors. Beyond mere non-interference, they should also actively consult and engage civil society across all areas of corruption policy development, implementation and monitoring. Nigeria should commit itself to publicly name the owners of companies as a way of sending a signal to those indulging in corrupt practices that there is no hiding place for stolen funds. Generally, the UN system should recommit to the systematic inclusion of CSOs in Conference of State Parties (CoSP) subsidiary bodies and ensure that CSOs effectively engage with the key UNCAC review and implementation mechanisms.

Concluding Remarks: Filling the gaps in policy and implementation

Almost everyone knows or at least claims to know what corruption is, but, it is also easy to agree that it is one of the few words that suffer from definitional inexactitude. In spite of the international, regional and national anti-graft frameworks, reaching a consensus on its definition has not been easy. In this context, when a government official diverts task payers' money for private gain, it is easy to describe it as corruption. What happens if executive, legislative or judicial officer gave preferential treatment to his clan's man? What happens if an officer lobby's to attract a project to his constituency? What if in the Ministries, Departments and Agencies of government you buy a drink for the officer in charge to facilitate the movement of your file? What if you appreciate a police officer with little money to enable you pass a checkpoint unchecked? This clearly indicates that corruption exists at many different levels. And, some would argue that a common definition of corruption is impossible because it is a concept that is culturally determined and varies from one society to another. Corruption creates a system whereby money and connection determines who has access to public services and who receives preferential treatment.

Although Article 13 of the UNCAC makes provision for the active participation of the civil society in monitoring how it is implemented, there is no commensurate strategy in ensuring the effective participation of the civil society. Within this context, it is pertinent for the United Nations to develop and deploy a global, regional and national strategy that will create conditions conducive to the effective participation of the civil society in the implementation of the UNCAC. Beyond the participation of relevant State and Non-State actors in the implementation of the UNCAC, a deliberate implementation framework by the United Nations would help monitor and report on the compliance level of stakeholders with the provision of the UNCAC. There are however, several laws, regulations and institutions that can be established to fight corruption, but some of the most effective interventions are citizens' driven-civic campaigns at the local level. This paper has demonstrated that there are institutional approaches to combating corruption but emerging perspective suggest that institutional and government-centred approach to anti-corruption will hardly achieve desired results. It is therefore; appropriate for civil society organizations to be actively involved in the anti-graft war. In doing that, citizens must be able to trust their governing institutions, and governing institutions should provide the security and services that citizens' need.

At the national level, the fight against corruption should be institutionalised and the leadership of anti-graft agencies like the EFCC, ICPC and even the judiciary should not be appointees of the President. The Freedom of Information (FoI) law should be fully implemented and civil society and other interested parties should have unhindered access to documents that would strengthen its participation in the implementation of the UNCAC in Nigeria. The names of all those who own companies and businesses in Nigeria should be made public. To fight corruption, countries need to implement effective laws and mechanisms which enable them to provide a wide range of mutual legal assistance (MLA), execute extradition requests and otherwise facilitate international co-operation. Many governments around the world have anti-corruption laws on their books, but if they are not enforced, they may have little impact on reducing corruption. Those indicted for corrupt practices must be prosecuted in line with the provision of the law. Anti-corruption campaigns are likely to be more successful when they are backed by strong leadership at the highest levels of government. The Mohammadu Buhari led government must resist the temptation of selective anti-graft prosecution and ensure good governance that makes it more difficult for corruption to take root. This would be possible when participation, accountability, transparency, and rule of law are strengthened. Good governance is the combination of the principles that can help stem corruption and build a stable society. And, in a system where rule of law prevails, citizens have an equal standing under the law regardless of their political affiliation, social status, economic power, or ethnic background.

For enhanced participation in the implementation of the UNCAC, civil society sector should encourage and sustain partnership with other civil society actors for healthy information sharing. This is because civil society

plays a multifaceted role in countering corruption, including preventive and enforcement efforts. These roles include cooperation with governments on anti-corruption initiatives, proposing reforms, monitoring implementation of laws and policies, providing advice to whistle-blowers, initiating remedial action and raising public awareness. Based on the peculiarity of our context, civil society should look at corruption beyond embezzlement of public funds for private ends to such other areas like the unjust distribution of contracts and appointments in favour of a particular region, religion, political party or gender. The UNCAC recognises the vital role that partnerships can play in tackling corruption. These include partnerships between the government and civil society, as well as between civil society and accountability institutions, such as EFCC and ICPC as well as the judiciary. In fact, national and international civil society have long been active in the fight against corruption, undertaking a range of advocacy, awareness-raising, education and implementation of activities that have made an important contribution to building national accountability capacities. It is imperative that the UNCAC regime including the Nigerian state harness this capacity rather than resist it. Difficulties associated with anti-corruption will be diminished if a public registry of those who really own companies (beneficial owners) is made public.

It is however, safe to conclude by restating the UN Secretary-General (Ban Ki-moon's) remarks¹ on 23 September 2013 at the High-level Event on Supporting Civil Society where he declared that "If leaders do not listen to their people, they will hear from them – in the streets, the squares, or, as we see far too often, on the battlefield. There is a better way, more participation, more democracy, and more engagement and openness. That means maximum space for civil society".

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