Illicit Financial Flows: Getting Our Money Back From Public and Private Looters

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+ What is IFF?

- A rough definition of IFFs is –
  - "money illegally earned, transferred or used".
  - Any flow of money in violation of the laws in their origin or during their movement and or use.
- The illicit nature of "the money" arises from the way the money is created, transferred or used
- E.g. where money is legally earned but illegally transferred because it breaches established rules and norms and most particularly where it avoids legal obligations e.g. payment of taxes .
- Money may be legally earned or transferred but at some stage during its utilization if illegality comes in it changes character and may become IFF

+ Drivers of IFF

- From developing country point of view the drivers and enablers of iFFs include
  - poor governance
  - weak regulatory structures
  - Desire for foreign investment
  - Tax incentives that become counter productive e.g. pioneer status to oil and gas companies that cost Nigeria $2.1bn in 5 years
  - The acceptance and sustenance of financial secrecy jurisdictions and tax havens by developed countries
  - Weak international cooperation especially for information sharing on beneficial ownership e.g. Malabu Oil controversy on beneficial owner (Etete-Pecos-Abacha Family)
  - information sharing of tax records of big corporations
  - Absence of common rules and publicity of what companies pay to government in extractive and natural resource industry enables African governments to mismanage and steal funds on the one hand and companies to evade tax in their home countries on the other hand

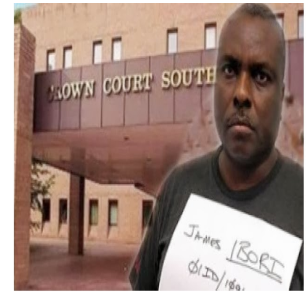
Debate

- Increasing debate and conversations around iFF and their negative impact on development aspirations of victim countries underscores its role in underdevelopment of victim countries and –
  - the need to address it;
  - enhance recovery of such illicit flows; and
  - Monitor use of recovered funds
- Nigeria is a leading voice in this conversation given the unrelenting commitment of President Buhari to fight corruption
- Public education by media is critical for a wider understanding of iFF

+ IFF 1 - Publicly Looted Funds

Sani Abacha
Over $5B

Joshua Dariye
£422,000
Returned



James
Ibori ???

Diepriye
Alamesiegha
$17.7m
Returned
More in USA

Diezanni Alison-Madueke
N34b linked local assets
forfeited. Tracing of offshore
assets on

Publicly looted funds traced and recovered become agenda of **uneding discussion** for return of asset

By Arts 54 -57 of UNCAC these may be recovered by –

- Forfeiture and confiscation through civil or criminal proceedings;
- Compensation;
- Disgorgement of Profits; and
- Criminal Fines.

+ IFF 2: Looting By Big Corporates

- Developed countries show little zeal for recovery talk less of return of other categories of IFF by their big corporates
- The origins of these category include
  - market or regulatory abuse
  - transfer pricing through inducements of national authorities;
  - lobby for lower taxes;
  - weakening of oversight provisions
  - Tax evasion
  - Mispricing of intangibles like loans, intellectual property, management fees etc.
  - Use of secret companies, secret trusts and non-disclosure agreements
  - General manipulation of cross border trade records
  - Shifting of origin of profits and global income
  - Bribery for foreign officials to get business

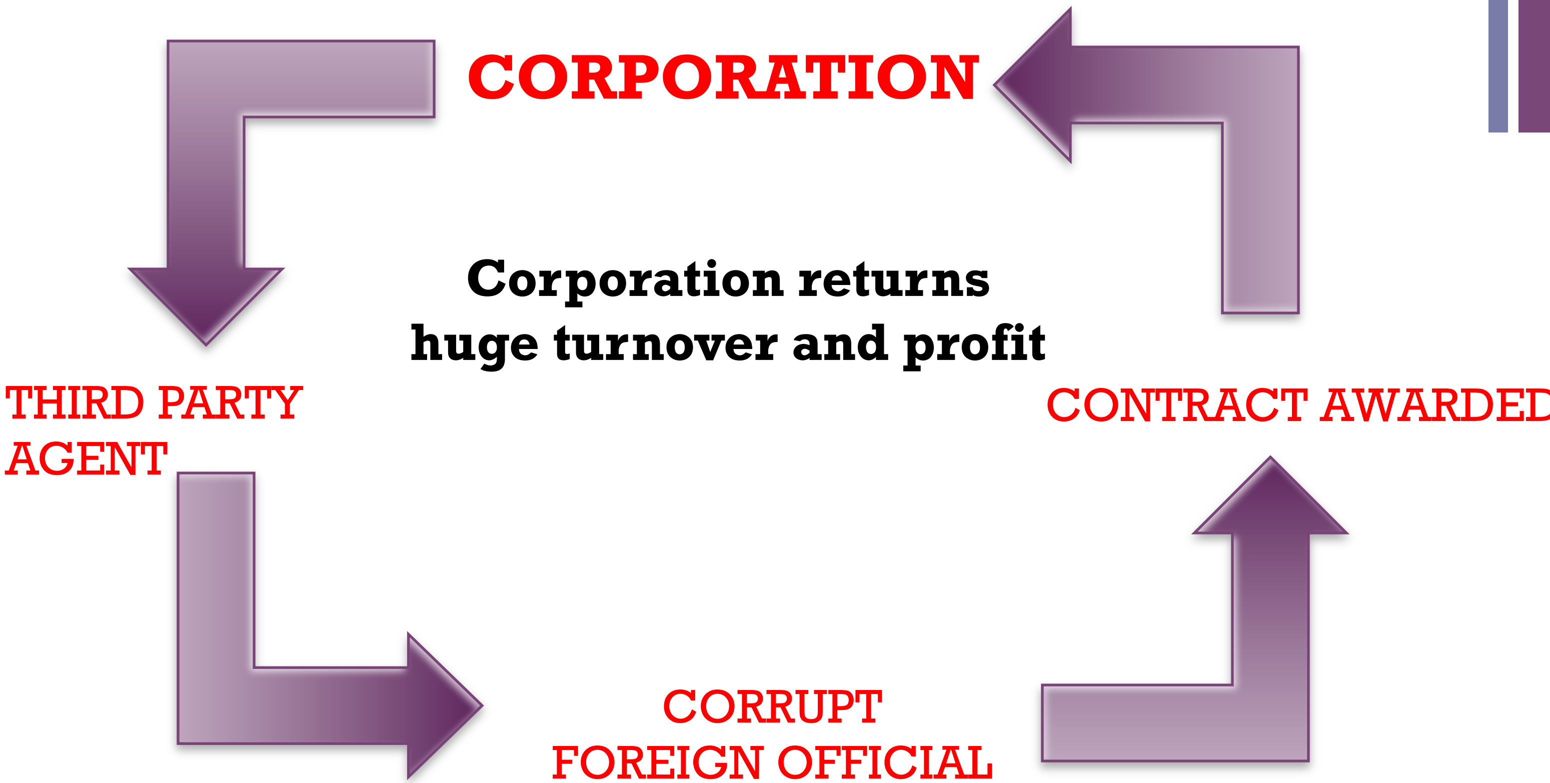
Profit Shifting

- In Nigeria, corporate income tax rate is 30%, assessed on a preceding year basis (i.e. tax is charged on profits for the accounting year ending in the year preceding assessment).
- Since residency is the basis of taxation, resident companies are liable for CIT on their worldwide income while non-residents are subject to CIT on their Nigeria-source income.
- It is the Nigeria source income that is shifted elsewhere (to a jurisdiction with lower tax obligation) in the books of the company.
- E.g. Recent research on global income of MTN which is diverted to tax havens of Mauritius and Dubai
- Companies and individuals currently hold estimated $20trillion of undeclared assets in offshore tax havens.
- This is largely made up of unpaid taxes for profits made or money stolen from developing countries.
- This money cannot be accessed without information exchange between the developing countries and the tax havens

IFF 3: Punitive Fines/Disgorged Profits

- Developed countries punish errant corporates for corruption and IFF by **settlement**, plea bargain or deferred prosecution agreements
- This process falls short of full court trial under FCPA
- Companies agree to pay heavy fines or disgorge the profits for corruption or IFF against victim countries
- Developed countries however ignore Art. 53(b) and (c) of UNCAC to return proceeds to victims of crime
- 395 cases settled between 1999-2012 raised about \$6.9 billion as fines. Only 3.3% or \$197m returned to victim states.
- FCPA investigations do not oblige USDOJ to inform victim countries or publish names of complicit PEPS in victim countries except victim country requests info

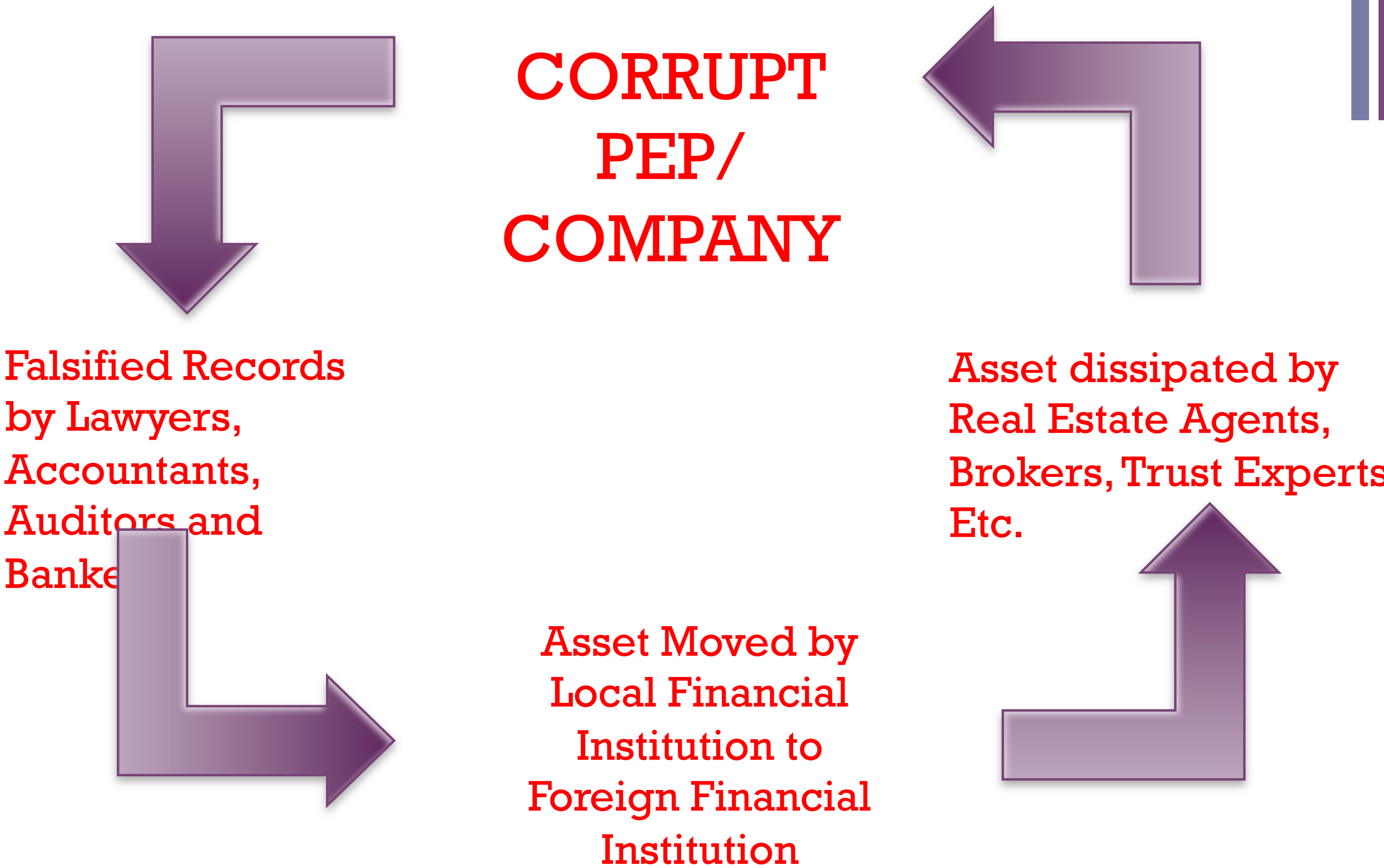
Bribery of Foreign PEPs



Top 10 FCPA settlements 1999-2012 are -

1. **Siemens** (Germany): $800m 2008.
2. **KBR / Halliburton** (USA): $579m 2009
3. **BAE** (UK): $400m 2010.
4. **Snamprogetti Netherlands B.V. / ENI S.p.A** (Holland/Italy): $365 2010.
5. **Technip SA** (France): $338m 2010.
6. **JGC Corporation** (Japan) $218.8m 2011.
7. **Total SA** (France) $398m 2013.
8. **Alcoa** (U.S.) $384m 2014.
9. **Alstom** (France): $772m 2014.
10. **VimpelCom** (Holland) $397.6m 2016.

Facilitators and Middlemen



+ Asset Recovery vs. Asset Return

- Of these 3 broad categories of IFF only category 1 is often discussed
- Categories 2 and 3 are hardly put on the agenda
- Role of Middlemen and Facilitators underlayed
- Developed countries undermine UNCAC in asset return vs. asset recovery
- UNCAC Art. 51 says *"The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard."*
- Article 57(3)(c) mandates State Parties to return confiscated property to requesting State Party; return property to prior legitimate owners; or compensate the victims of crime.
- Art.2(d) says- "Property shall mean assets of every kind, whether corporeal or incorporeal, movable or immoveable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such cases." while Art. 2(e) says "Proceeds of crime shall mean any property derived from or obtained, <u>directly</u> or <u>indirectly</u> through the commission of an offence."
- Despite these provisions developed country zeal for asset return is not matched by zeal used in asset recovery

IFF Asset Recovery and SDG

- Corruption and IFF generally delay the attainment of development goals and worsen practically all human development indices
- Consequently there is justification to treat it as as a crime against humanity
- This is of course not a proposition of attraction to developed countries
- Undoubtedly, blocking IFF and enhancing return of stolen funds from all categories of IFF will enhance aspiration to meet SDG.
- Without guarantee of finance African countries in particular will remain in a cycle of misery where public funds are looted by corrupt PEPS and private resources are illegally exported by big multinational corporations.
- The destination of all categories of stolen money is the same – North

Recommendations

- Block all forms of IFF by victim country action and cooperation of international community –
  - More transparency in international financial transactions
  - outlaw of secrecy jurisdictions.
  - Hold financial intermediaries like financial institutions, accountants and auditors more accountable with higher punishment
  - Hold countries hosting global financial centres, and other usually targeted destinations of IFF more accountable
  - ensure transparency of beneficial ownership and control of assets
  - Outlaw secret trusts and other legal contrivances often used to camouflage transfer and ownership of assets
  - Promote open contracting and information systems
  - Improve legal framework for tracing, freezing and return of stolen assets
  - Reduce the cost of recovery imposed by developed countries

Thank You

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