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## Nigeria's Crisis of Corruption—Can the U.N. Global Programme Hope to Resolve this Dilemma?

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# Nigeria's Crisis of Corruption—Can the U.N. Global Programme Hope to Resolve this Dilemma?

## ABSTRACT

*Transparency International consistently rates the levels of corruption in Nigeria among the highest in the world. Pervasive corruption appears to permeate many levels of Nigerian society. The current Nigerian government, however, has taken great steps to combat this problem through cooperation with the U.N. Global Programme.*

*This Note examines the structure and goals of the Global Programme and evaluates Nigeria's participation in the project. Part II provides a background analysis of corruption, the effects of corruption, and Nigeria's efforts to curb corruption. Part III analyzes the basic structure of the Programme, while Part IV outlines Nigeria's efforts pursuant to the Global Programme. Part V describes the areas upon which such a project needs to focus in order to effectively target the evasive causes of corruption.*

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I. INTRODUCTION

**Prayer for Nigeria in Distress**

All powerful and merciful father, you are the God of justice, love and peace. You rule over all the nations of the earth. Power and might are in your hands, and no one can withstand you.

We present our country Nigeria before you. We praise and thank you, for you are the source of all we are. We are sorry for all the sins we have committed, and for good deeds we have failed to do. In your loving forgiveness keep us safe from the punishment we deserve. Lord we are weighed down not only by uncertainties, but also by moral, economic and political problems. Listen to the cries of your people who confidently turn to you.

God of infinite goodness, our strength in adversity, our health in weakness, our comfort in sorrow, be merciful to us your people, spare this nation Nigeria from chaos, anarchy and doom.

Bless us with your kingdom of justice, love and peace.<sup>1</sup>

Corruption is a detrimental force that hinders democracy and represses individuals in many countries throughout the world. As one Nigerian official noted, “there is corruption everywhere.”<sup>2</sup> He further explained that “[t]he word ‘corruption’ is not a Nigerian word;

1. The Catholic National Episcopal Conference of Nigeria approved this prayer. G. OKA OREWA, WE ARE ALL GUILTY: THE NIGERIAN CRISIS 208 (1997).

2. BEDFORD N. UMEZ, THE TRAGEDY OF A VALUE SYSTEM IN NIGERIA: THEORIES AND SOLUTIONS 49 (1999) (quoting a Nigerian official responding to a question concerning Nigerian corruption posed by The Nigerian Foundation, Inc., and Nigerians in Houston, Texas, Dec. 21, 1996).

it is an English word.”<sup>3</sup> While “corruption” is an English word, necessarily laced with Western ideas, the concept behind corruption is found in other cultures. In fact, over the past five years there is little doubt over which country is the most corrupt: Nigeria.<sup>4</sup> “Corruption, as the name rages like a desert storm blowing from the North, has been institutionalized in Nigeria.”<sup>5</sup> Nigeria possesses the dubious honor as one of the world’s most corrupt societies according to Transparency International’s Corrupt Practices Index.<sup>6</sup> In 2002, Nigeria placed 101 out of the 102 nations where Transparency International performed the study.<sup>7</sup> According to the organization’s index, which measures the “degree of corruption as seen by business people, academics and risk analysts,” only Bangladesh scored lower.<sup>8</sup>

Corrupt practices transcend nearly “every stratum of Nigerian society.”<sup>9</sup> Thus, when seeking to mediate corruption, the Nigerian government faces a trying task. While “corruption” is an English word, it does not exist without equivalents in other languages. In Nigeria one describes similar acts as *okonjuwa*, *iri nso azu*, or *zamba*.<sup>10</sup> Therefore, the concept of corruption and its perception as a problem are certainly not foreign to Nigeria, in spite of what the aforementioned official would lead one to believe.<sup>11</sup> Major corruption scandals have crippled Nigeria over the past several decades.<sup>12</sup> Between 1983 and 1999, the Nigerian government lost more than one billion U.S. dollars annually to smuggling networks, many in

3. *Id.*

4. See Transparency International, *Corruption Perceptions Index 2002*, at [http://www.transparency.org/pressreleases\\_archive/2002/2002.08.28.cpi.en.html](http://www.transparency.org/pressreleases_archive/2002/2002.08.28.cpi.en.html) [hereinafter *Corruption Perceptions Index 2002*].

5. Luke Ezekwem, *Task Before Anti-Graft Commission*, VANGUARD DAILY, Jan. 15, 2001, at 1.

6. Sonnie Ekwowusi, *Curbing Corruption in Nigeria*, THIS DAY, Oct. 15, 2000, at 1. Transparency International is a non-governmental organization aimed at producing more transparency in governmental transactions throughout the world. See Transparency International, at <http://www.transparency.org>. Since 1996, Nigeria was labeled the most corrupt nation three times—1996, 1997, and 2000—and placed in the bottom five four more times—fourth from the bottom in 1998 and second in 1999, 2001, and 2002. Ekwowusi, *supra*; *Corruption Perceptions Index 2002*, *supra* note 4.

7. *Id.*

8. *Id.* A description of the analysis used by Transparency International and an explanation of how the survey is compiled may be found at the organization’s website. Transparency International, *Background Paper to the 2002 Corruption Perceptions Index*, at <http://www.transparency.org/cpi/2002/dnld/cpi2002/methodology.pdf>.

9. Ekwowusi, *supra* note 6.

10. UMEZ, *supra* note 2, at 49.

11. *Id.*

12. OLADIMEJI ABORISADE & ROBERT J. MUNDT, *POLITICS IN NIGERIA 199-200* (1998). During the Persian Gulf War when the country should have made enormous profits from its petroleum industry, it actually experienced a loss caused by oil profits skimming estimated at \$12.6 billion. *Id.*

collusion with the top elite of the nation.<sup>13</sup> The situation in Nigeria provides a glimpse of how corruption can destroy an entire economy in a developing nation.

As a result of the pervasive and devastating problem of third-world corruption, in 1998 the United Nations initiated a Global Programme Against Corruption (Global Programme, Programme).<sup>14</sup> The Global Programme targets countries with vulnerable developing or transitional economies by promoting anti-corruption measures and helping to make public-sector actions more transparent.<sup>15</sup> This program, initiated by the U.N. Center for International Crime Prevention (CICP),<sup>16</sup> partners with countries where corruption is prevalent to develop programs and legislation to minimize corrupt practices.<sup>17</sup>

This Note will examine the structure and goals of the Global Programme and evaluate Nigeria's participation in the project. Part II will provide a background analysis of corruption, the effects of corruption, and Nigeria's efforts to curb corruption. Part III will analyze the basic structure of the Global Programme, while Part IV will outline Nigeria's efforts pursuant to the Global Programme. Part V will then describe the areas upon which such a project needs to focus in order to effectively target the evasive causes of corruption.

## II. BACKGROUND

This Section will (A) define and examine that which comprises corruption, (B) provide a summary of the detrimental effects of widespread corruption, (C) address Nigeria's colonial history and examine the roots of the widespread graft, and (D) look at the current levels of corruption during Nigeria's involvement with the U.N. efforts to reduce corruption.

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13. *Id.* at 200. Moreover, the diversion of funds from the oil refineries led to a major fuel shortage, which detrimentally affected other parts of the economy. *Id.*

14. See U.N. Global Programme Against Corruption, at <http://www.undcp.org/corruption.html>.

15. *Id.*

16. *Id.*

17. *Id.* Five countries currently take part in the program—Hungary, Nigeria, Romania, South Africa, and Uganda. See United Nations, *Country Projects*, at [http://www.undcp.org/corruption\\_projects.html#summaries](http://www.undcp.org/corruption_projects.html#summaries). Each nation's participation in the program varies. As a result, the legislation enacted pursuant to the program's goals differs greatly from nation to nation within the Global Programme Against Corruption. *Id.*

### A. Corruption Defined

Before looking at the causes of Nigerian corruption and the new measures sought by the United Nations and the Nigerian government to remedy the problem, it is first necessary to define the term "corruption."<sup>18</sup> Formulating a definition remains vital because such an omission would raise a practical dilemma: How can one examine corruption and search for its solutions without first identifying what is being studied? This difficulty arises in large part because defining corruption can be, and has been, approached in numerous ways.

One definition formulated by Arnold Rogow and Harold Lasswell provides a fairly accurate description of the term.<sup>19</sup> They assert that "a corrupt act violates responsibility towards at least one system of public or civic order and is in fact incompatible with (destructive of) any such system."<sup>20</sup> They further clarify this description by adding that "a public or civic order exalts common interest over special interest; violations of common interest for special advantage are corrupt."<sup>21</sup>

Like any definition, Rogow and Lasswell's is open to criticism. One potential downfall is its broad, idealistic nature, but it is this aspect that delves into the core of the nature of corruption. It obviously cannot be considered a functional legal definition; therefore, individual societies need to determine what levels of corruption are tolerable. Generalized definitions are appropriate, especially when trying to identify something as being right or wrong. When trying to address corruption and remove it from society, however, it may be necessary to find a more concrete, legal definition.

The United Nations formulated its own definition of the term while developing an Anti-Corruption Tool Kit available to those nations participating in the Global Programme, which is also available to those not involved with the project that simply want to evaluate and reduce their own levels of corruption.<sup>22</sup> The Tool Kit does not take a specific, bright-line approach to defining corruption.<sup>23</sup> In it, the United Nations articulates that attempts to define the term inevitably "encounter legal, criminological and...political issues."<sup>24</sup>

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18. Defining corruption has been an impetus for discussion by many political scientists attempting to examine this subject. See, e.g., ARNOLD A. ROGOW & HAROLD D. LASSWELL, *POWER, CORRUPTION & RECTITUDE* 132 (1963).

19. *Id.*

20. *Id.*

21. *Id.*

22. U.N. Global Programme Against Corruption, *Anti-Corruption Tool Kit*, at 3, available at <http://www.odccp.org/pdf/crime/toolkit/f1tof7.pdf>.

23. *Id.* at 6.

24. *Id.*

The Tool Kit, instead, defines differing types of corruption—grand, petty, active, and passive.<sup>25</sup>

Moreover, the Global Programme acknowledges that corruption arises in many different forms.<sup>26</sup> The U.N.'s multi-layered definition incorporates many concrete examples of how corruption manifests itself.<sup>27</sup> Nevertheless, their multiple definitions fail to do what Rogow and Lasswell did—introduce the notion that one possesses a responsibility to others while in office and appeal to how one violates this responsibility when taking part in corrupt practices.<sup>28</sup>

Therefore, a definition that combines the strengths from both the Anti-Corruption Toolkit and Rogow and Laswell would provide a broad, yet legally practicable, definition. Corruption could be defined as a misuse of public authority for private gain, leading to the violation of the civic responsibility inherent in such authority.<sup>29</sup> Any “violations of common interest for special advantage are corrupt.”<sup>30</sup> The definition could further list those specific examples mentioned in the Anti-Corruption Toolkit, but articulate that they are only examples, as opposed to a comprehensive list.

### B. *Effects of Corruption*

Corruption presents significant concerns, especially for developing countries. Evidence suggests that corruption creates major impediments to doing business in countries where it is prevalent.<sup>31</sup> As a result, the effects on development can be staggering.<sup>32</sup> Furthermore, over the course of entire regimes headed by corrupt individuals, a nation could lose billions of dollars into the pockets of the nation's leaders that would otherwise find outlets elsewhere.<sup>33</sup> Corruption exacerbates poverty and disproportionately affects those of lower incomes because it pulls resources from the

25. *Id.*

26. *See id.*

27. *Id.* at 8. Some of the examples provided are bribery, fraud, theft, and embezzlement. *Id.*

28. *See* ROGOW & LASSWELL, *supra* note 18, at 132.

29. *See id.*

30. *Id.*

31. Omar Azfar et al., *The Causes and Consequences of Corruption*, 573 ANNALS AM. ACAD. POL. & SOC. SCI. 42, 47 (2001).

32. Ernest Harsch, *Africa Mounts Drive Against Graft: International Anti-Corruption Conference Spotlights Global Malady*, 13 AFRICA RECOVERY 1, 8 (1999). In some instances a single scheme can cost a government millions of dollars. *Id.* Under former dictatorships in Nigeria the amount siphoned off to foreign bank accounts is estimated in the billions. *Id.*

33. *Id.* Studies by the World Bank suggest that countries that suffer from widespread corruption have economic growth rates that are .5% to 1% lower than they otherwise would be. *Id.*

national treasuries, placing the money into the bank accounts of a few individuals who are politically powerful.<sup>34</sup> This type of corruption exerts devastating effects on developing economies that desperately need the money.

Corruption affects nations non-economically as well.<sup>35</sup> It “debases human rights” and “destroys confidence in democracy and the legitimacy of governments.”<sup>36</sup> Some argue that it contributes to war and political instability.<sup>37</sup> South African Administrator of Education, Kader Asmal, believes that corruption and misadministration “undermine government in the eyes of the people. They lead to a pervasive cynicism about politics and politicians, which is disastrous for democracy.”<sup>38</sup> Therefore, corruption destroys a nation both economically and socially by deeply affecting the economies of developing nations and by undermining what are often already tenuous democratic institutions.

### C. Nigerian History—the Roots of Corruption

Pre-Colonial Nigeria was comprised of numerous city-states, empires, and kingdoms.<sup>39</sup> “[B]efore the advent of colonialism[,] indigenous social and political structures were equally as diverse as the many contemporary ethnic balances—language, genealogy, religious beliefs or modes of survival.”<sup>40</sup> Societies in the region existed as such until the first Europeans made their way to West Africa beginning with Ruy de Sequiers in 1472.<sup>41</sup>

34. *Id.* Bedford Umez notes one major difference between corrupt officials in Nigeria and those abroad. UMEZ, *supra* note 2, at 50. He articulates that the corrupt officials in Nigeria siphon large sums of money out of Nigeria to bank accounts and property abroad, removing the money from any use in the Nigerian economy. This removes the money from its proper recipients, the people, not just once, but twice. *Id.* Therefore, corruption forces individuals to pay bribes to cut through bureaucracy and prevents foreign aid from reaching its targeted recipients. *Id.*

35. *See id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. JULIUS O. IHONVERE & TIMOTHY SHAW, *ILLUSIONS OF POWER: NIGERIA IN TRANSITION 1* (1998).

40. *Id.*

41. *Id.* at 7. The economic motive that encompassed the slave trade and colonial rule would drastically change the course of Nigerian history, bringing numerous cultures under colonial rule and leaving them united in a post-colonial State rife with ethnic conflict and tensions. *Id.* “Whatever the several rationalizations expressed in the literature as to why the Europeans visited the coast of West Africa—political, strategic, religious and/or exploration—the major motive was economic.” *Id.* Eventually, abolitionists movements in the West made it necessary to replace the slave trade with “legitimate trade.” *Id.* at 9. The region provided an important center for the extraction and exportation of palm oil. *Id.* This shift to the “legitimate trade” of palm oil “generated a steady change in the attitude of government officials and businessmen towards the local rulers.” *Id.*



Modern Nigerian history began after the establishment of “legitimate trade” when the British took over the port of Lagos in 1861, which was followed by the British claim of southern Nigeria subsequent to the Berlin Conference in 1884-85.<sup>42</sup> In the ensuing decades, the focus of colonial rule shifted dramatically. Disputes concerning the northern region of the country finally resolved themselves by 1914 when the British asserted control over the entire nation, subjecting it to colonial rule.<sup>43</sup> Colonial rule did very little to further the interests of the Nigerian people.<sup>44</sup> Consequently, nationalist sentiment grew over the ensuing decades.<sup>45</sup>

The nationalist movements culminated in the “Ten Year Plan for Development and Welfare of Nigeria”<sup>46</sup> and in a new Constitution in 1947, providing traditional rulers with slightly more input in national governance.<sup>47</sup> Members of the nation’s elite rejected the document, leading to a new British-drafted Constitution in 1954 that divided Nigeria into three regions—Eastern, Western, and Northern, plus Lagos.<sup>48</sup> Despite this increased autonomy, on October 1, 1960 Nigeria gained independence.<sup>49</sup>

Unfortunately, “regional, religious, and ethnic differences plagued Nigeria from the outset.”<sup>50</sup> Ethnic distrust severely undermined the early years of the Nigerian state.<sup>51</sup> This was exacerbated by the regional balance that proved largely inequitable.<sup>52</sup> Politics in the First Republic were characterized by widespread corruption, largely focusing on nepotism based on ethnicity, region, and religion.<sup>53</sup> Thus, roots of the current corruption in Nigeria

42. *History*, KALEIDOSCOPE, Oct. 22, 2001, at 1.

43. *Id.* This amalgamation of the region created the beginnings of the movement for self-governance when it brought all of contemporary Nigeria together as one unit. IHONVERE & SHAW, *supra* note 39, at 16. However, at the same time it further stratified the society by creating a “new class of Nigerians—court clerks and messengers, teachers, priests, doctors, journalists, administrators, lawyers, etc.” *Id.* In 1922 Britain established a colonial government, which included only a few African representatives with virtually no authority. *History*, *supra* note 42, at 1.

44. IHONVERE & SHAW, *supra* note 39, at 29.

45. *History*, *supra* note 42, at 1.

46. IHONVERE & SHAW, *supra* note 39, at 29.

47. *History*, *supra* note 42, at 1.

48. *Id.* This document gave each region the option of internal self-governance, a step which all three took by 1959. *Id.*

49. IHONVERE & SHAW, *supra* note 39, at 30. “In sum, Nigeria achieved political independences in 1960 severely underdeveloped and dependent.” *Id.*

50. *History*, *supra* note 42, at 1.

51. IHONVERE & SHAW, *supra* note 39, at 30.

52. *Id.*

53. *Id.* at 32. Public officials demonstrated what would later become a recurring theme of accumulating massive amounts of wealth and searching for private gain at the expense of the public at large. *Id.*

extend back decades, finding a home in every regime in the country's modern history.<sup>54</sup>

In January 1966, officers from the Ibo ethnic group overthrew the government, establishing military rule that persisted in some form or another over the next two and one half decades.<sup>55</sup> Since 1966, seven different military regimes have exercised power over Nigeria, with a brief respite of civilian rule from 1979-83.<sup>56</sup> Corruption marred each passing regime, however, with the decades of corrupt rule culminating in the seizure of power by General Sani Abacha in 1993.<sup>57</sup> Abacha suspended the Constitution and tried to suppress pro-democracy movements.<sup>58</sup>

Nevertheless, a significant shift in power occurred in 1998 when Abacha died. His successor, General Abdulsalam Abubaker, pushed the country towards democracy and a new beginning by removing restrictions to political parties and transitioning into democratic elections.<sup>59</sup> In 1999, Nigeria held elections and Olusegun Obasanjo became the state's new political leader.<sup>60</sup> As a result, Nigeria's current institutional framework often mirrors that of many other democratic republics around the globe.<sup>61</sup>

Nigeria's colonial influence, coupled with its preexisting legal structures, however, creates a diverse and complex legal system.<sup>62</sup> In

54. John Erero & Tony Oladoyin, *Tackling the Corruption Epidemic in Nigeria*, in *CORRUPTION & DEVELOPMENT IN AFRICA: LESSONS FROM COUNTRY CASE-STUDIES* 282-84 (Kempe Ronald Hope, Sr. & Bornwell C. Chikale eds., 2000). Even though subsequent military rulers cited corruption among reasons for overthrowing past regimes, corruption persisted under the new regimes. *Id.* at 282.

55. *History*, *supra* note 42, at 1.

56. IHONVBERE & SHAW, *supra* note 39, at xxii.

57. Erero & Oladoyin, *supra* note 54, at 282. Corruption was rampant during the first two military regimes following civilian rule, with Generals Aguiyi-Ironsi and Gowon doing nothing to combat the problem. *Id.*

58. *Government*, KALEIDOSCOPE, Oct. 22, 2001, 1. During his five years of rule, which ended with his death in 1998, Abacha is believed to have embezzled billions of dollars from the Nigerian government. *History*, *supra* note 42, at 2. He sentenced those who opposed the regime to long prison terms and executed numerous national leaders who spoke out against the regime. *Id.*

59. *Id.*

60. U.N. Office on Drugs and Crime, *Nigeria Project*, at [http://www.unodc.org/odccp/corruption\\_projects\\_nigeria.html](http://www.unodc.org/odccp/corruption_projects_nigeria.html). This shift has the potential to significantly impact the future of Nigeria and its reputation for corruption and most likely provided the transition necessary to allow for Nigeria's cooperation with the Global Programme Against Corruption. Also, the move was facilitated by the fact that President Obasanjo "has demonstrated the political will to tackle corruption. . . ." *Id.*

61. *Government*, *supra* note 58, at 1. Nigeria is governed by a written Constitution signed into law on May 5, 1999. *Id.* The Constitution frames the nation in a federal republic with a significant portion of power divested among the country's 36 states. *Id.*

62. NONSO OKEREAFOEZEKE, *LAW AND JUSTICE IN POST-BRITISH NIGERIA: CONFLICTS AND INTERACTIONS BETWEEN NATIVE AND FOREIGN SYSTEMS OF SOCIAL CONTROL IN IGBO* 11 (2002).

many parts of the country, the legal framework in place prior to the colonial presence stands alongside the British common law imported during colonialism.<sup>63</sup> Because of the competing legal systems and philosophies that exist and interact in many parts of Nigeria, it is necessary to understand how the Nigerian legal framework interacts to better understand how anti-corruption legislation could be implemented.<sup>64</sup> For example, in the Igbo region of southeastern Nigeria, the English justice system is the dominant system and is supported by government enforcement.<sup>65</sup> This system coexists with the native justice systems, however, which may be more widely used, especially with respect to the management of the society's grievances and disputes.<sup>66</sup> As a result, it is necessary to keep this dichotomy in mind when examining official governmental policies in Nigeria.<sup>67</sup>

Major problems have emerged as a byproduct of this pluralistic system of justice.<sup>68</sup> One major concern is that the average Nigerian does not understand the competing systems of justice.<sup>69</sup> Moreover, evidence suggests that when the two systems conflict citizens are not inclined to choose the British system "because its origin, history, experiences, and contextual roots differ from those of most Nigerians."<sup>70</sup> Still, the "repugnancy test," a policy that has been in place in Nigeria since 1900, subordinates native law to the British common-law system.<sup>71</sup>

#### D. Nigeria and the Global Programme

Upon election in 1999, President Obasanjo placed anti-corruption initiatives at the top of his political agenda.<sup>72</sup> "Much of the Nigerian government's initial work in fighting corruption has addressed the legacy of former dictator General Sani Abacha."<sup>73</sup> Through Obasanjo's work Nigeria has moved forward in its initiatives pursuant to the CICP's Global Programme Against Corruption.<sup>74</sup> Implementation, however, has not been an easy process. "While

63. *Id.* at 12.

64. *See generally id.* (describing the importance of understanding complexities of legal, political, and economic legacies of Nigerian history to policy-making for today).

65. *Id.* at 11-12.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.* at 161.

72. UNITED NATIONS, GLOBAL CORRUPTION REPORT 82 (2001), available at <http://www.globalcorruptionreport.org/gcr2001.shtml#download>.

73. *Id.*

74. *See id.*

[Obasanjo] has pushed his reform programme forward, the pace of change has been slow, which was perhaps inevitable in a country where corruption is so deeply embedded."<sup>75</sup> For example, Nigeria's Anti-Corruption Law took more than one year to pass through the legislature.<sup>76</sup> Moreover, it is questionable if this legislation will in fact provide meaningful progress toward a sustainable democracy and economy with reduced corruption.<sup>77</sup>

Some skeptics question how effective legislation will be in resolving Nigerian corruption because the changes that need to be adopted are sweeping, including "getting justice done . . . without spending money, giving fair trial to cases and accused persons in court, . . . getting things done in government without bribing relevant authorities, [and] getting big contracts without the usual 10% settlement. . . ."<sup>78</sup> Some openly wonder whether this country, which endured many years of repressive colonial rule, is capable of embracing a non-corrupt democratic society.<sup>79</sup> "Endowed with abundant natural resources and a rich cultural history, Nigeria gained independence in the modern era only to endure years of tyranny under successive military governments known for their corruption and ruthlessness."<sup>80</sup>

Indeed, corruption still reigns in Nigeria and throughout its West African neighbors. Transparency International published its first Global Corruption Report in 2001.<sup>81</sup> Though the Report indicates that widespread corruption persists throughout the country and surrounding region, it provides hope that recent efforts may work to ameliorate the situation.<sup>82</sup> The Report indicates that the government is strengthening mechanisms for accountability.<sup>83</sup> While many of the reforms consist primarily of public relations moves, anti-corruption campaigns, public sector reforms, privatization, and transparency initiatives also have made their way onto political agendas.<sup>84</sup> At the very least, these measures deserve evaluation to determine whether they will prove successful in providing some accountability to public offices in Nigeria.

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75. *Id.*

76. *Id.*

77. *Here, Corruption is King*, AFRICA NEWS, July 9, 2001, at 1, available at LEXIS, News Library, Africa News File.

78. Luke Ezekwem, *Task Before Anti-Graft Commission*, VANGUARD DAILY, Jan. 15, 2001, at 1, available at LEXIS, News Library, Africa News File.

79. *Here, Corruption is King*, *supra* note 77, at 1.

80. *History*, *supra* note 42, at 1.

81. GLOBAL CORRUPTION REPORT, *supra* note 72, at 1-2.

82. *Id.* at 93.

83. *Id.*

84. *Id.*

## III. U.N. GLOBAL PROGRAMME AGAINST CORRUPTION

This section will (A) provide the general framework, (B) basic structure, and (C) goals of the U.N. Global Programme.

A. *Background of the U.N. Involvement*

“Corruption is a major social and economic issue. And the world’s tolerance of it is fading fast.”<sup>85</sup> Realizing that corruption is a problem with international implications, the United Nations has made efforts to combat it. Because the economic and social implications affect numerous nations, the Global Programme could develop into a much larger project depending on the successes and failures of its 13 pilot nations.<sup>86</sup> The U.N. Global Programme stands as a joint venture between the U.N.’s Office for Drug Control and Crime Prevention (UNODCCP) and the government of the state seeking to eliminate corruption.<sup>87</sup> The goal of this program is to “prevent, detect and fight corruption,” along with promoting “integrity, transparency, accountability and the rule of law.”<sup>88</sup> More specifically, it attempts to “build integrity in order to curb and prevent corruption by increasing the risks and costs of abusing power for private gain.”<sup>89</sup>

Political analysts indicate that Hungary possesses the best chance of success in such a program.<sup>90</sup> Still, the Global Programme currently boasts participation by 5 other nations, while hoping to expand to include all 13 pilot countries in the near future.<sup>91</sup> The current list of nations involved comprises four nations from Africa—Benin, Nigeria, South Africa, and Uganda—and two from Eastern Europe—Hungary and Romania.<sup>92</sup> While these countries form the initial step in this massive project, it appears that still more nations could benefit from the Programme and may be added later to its

85. U.N. Global Programme Against Corruption, U.N. Crime and Justice Information Network, available at <http://www.uncjin.org/CICP/Folder/corr.htm> (quoting Pino Arlacchi, executive director for the U.N. Office for Drug Control and Crime Prevention).

86. See *Global Programme Against Corruption: An Outline for Action*, available at [http://www.unodc.org/pdf/crime/corruption\\_programme.pdf](http://www.unodc.org/pdf/crime/corruption_programme.pdf).

87. Lala Camerer, *How Do We Fight Corruption?*, AFRICA NEWS, Mar. 9, 2001, available at LEXIS, News Library, Africa News File.

88. *Id.*

89. U.N. Office on Drugs and Crime, *Country Project Summaries*, available at <http://www.unodc.org/odccp>.

90. *Hungary, Estonia Reported to Be Best in Fight Against Corruption in Region*, BBC MONITORING EUROPE—POLITICAL, Mar. 31, 2000, at 1, available at LEXIS, Europe News, BBC.

91. See *Country Project Summaries*, *supra* note 89.

92. *Id.*

ranks.<sup>93</sup> In establishing the project, the United Nations ultimately hopes to work with 13 member countries in 5 regions—Africa, the Middle East, Latin America, Eastern Europe, and Asia—for its pilot program.<sup>94</sup>

By November 2003, the project seeks to “implement, evaluate and disseminate” the Programme in Hungary, Lebanon, Nicaragua, Uganda, South Africa, Indonesia, Benin, Zimbabwe, Macedonia, Tajikistan, Nigeria, Guatemala, and Bolivia.<sup>95</sup> In doing so it anticipates funding from numerous areas, including the private sector and bilateral donor agencies.<sup>96</sup> The Netherlands, France, and the United States play significant roles in funding the project’s modest cost of implementation of USD \$6 million during the startup phase.<sup>97</sup>

### B. *Policies and Approaches Adopted by the U.N. Global Programme*

The U.N. Global Programme aims to build from the pilot projects that it establishes and learn from the successes and failures of those countries taking the first steps in combating corruption through an integrated U.N. effort.<sup>98</sup> The United Nations has worked to develop anti-corruption tool kits and hold forums to discuss the difficulties inherent in such a process.<sup>99</sup> As a result, the United Nations is working to develop an integrated approach that is based upon “six pillars”: (1) democratic reform, (2) a strong civil society with a mandate to monitor the state, (3) the rule of law, (4) a system of checks and balances, (5) partnerships facilitating advocacy of the implementation of anti-corruption policies, and (6) partnerships facilitating the development strategies for the implementation of anti-corruption policies.<sup>100</sup>

The policies underlying the Programme stress the importance of several factors for the future success of the project.<sup>101</sup> The Global Programme seeks to include as many individuals as possible to successfully reduce corruption, ranging from government officials to academics to the public.<sup>102</sup> While the extent to which the Programme

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93. *U.N. Official: Lebanon Tops Corruption-Plagued Countries*, UNITED PRESS INT'L, Jan. 26, 2001.

94. *Global Programme Against Corruption: An Outline for Action*, *supra* note 86.

95. *Id.*

96. *Id.*

97. *Id.*

98. *United Nations Manual on Anti-Corruption Policy*, at <http://www.odccp.org/pdf/crime/gpacpublications/manual.pdf>.

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

will actually use the input of the poorest and most marginalized citizens remains to be seen, on its face the project purports to address the concerns of those citizens.<sup>103</sup> Moreover, the Programme seeks to remain evidence-based, non-partisan, and transparent.<sup>104</sup>

The comprehensive nature of the Programme, however, is probably its most ambitious aspect. Understanding that corruption is present in many areas, the project accordingly looks to address each area.<sup>105</sup> Therefore, policy underlying the Global Programme favors the development of an extremely broad-based approach aimed at examining and combating corruption at a variety of levels.

### C. Structure of the Global Programme

This Programme is aimed at being a more long-term commitment by the United Nations to fight corruption—estimates of how long it will take to attain sustainable results appear to require nearly a decade of cooperation between the United Nations and the state involved.<sup>106</sup> As a result, the focus of the Programme does not center upon short-term relief efforts, but rather looks to provide sustainable results through a myriad of programs, including providing model legislation and helping to make government more transparent in its practices.<sup>107</sup>

The Programme will advise governments on drafting and revising relevant legislation and provide training for all “stakeholder” groups—including local authorities, business councils, grassroots organizations and ordinary citizens—on newly introduced anti-corruption measures. It will also develop public awareness campaigns, codes of conduct, a credible public complaints system and encourage the declaration and monitoring of assets and an increased access to information.<sup>108</sup>

Central to the Programme’s functioning is the monitoring system it hopes to establish.<sup>109</sup> The Global Trends Study examines the efficacy of anti-corruption levels not only by examining the levels themselves, but also by researching public sentiment regarding how ordinary citizens judge the effectiveness of the policies pursued.<sup>110</sup> The study attempts to do this using a variety of means. First, the Global Trends Study conducts a comprehensive Country Assessment

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103. *Id.*

104. *Id.*

105. *Id.*

106. *See U.N. Official: Lebanon Tops Corruption-Plagued Countries, supra note 93.*

107. *See United Nations Manual on Anti-Corruption Policy, supra note 98.*

108. *Id.*

109. *See id.*

110. *Id.*

for each of the pilot project nations.<sup>111</sup> It also conducts research in conjunction with non-pilot nations to develop regional assessments concerning corruption.<sup>112</sup> Moreover, the Global Trends Study conducts regional surveys by non-governmental organizations.<sup>113</sup>

The Global Programme cannot function, however, without assistance from the governments of the pilot states. Each country identified corruption as a problem within its borders and requested this assistance from the United Nations.<sup>114</sup> In addition, each has agreed to expend considerable resources in pursuance of the goal.<sup>115</sup> For example, each nation establishes an independent institution to oversee and implement the National Integrity Strategy and an Anti-Corruption Action Plan.<sup>116</sup> They conduct independent country assessments, disseminate information from the surveys, and "monitor the impact of the anti-corruption programme in a transparent manner."<sup>117</sup>

The basic structure of the program is as follows: "The Global Programme is composed of three main parts: (1) the action research (learning by doing) component, (2) the technical cooperation component and (3) the monitoring and evaluation component."<sup>118</sup> Moreover, "The Programme will take place at (1) the international level, (2) the national and at (3) the subnational or municipal level."<sup>119</sup> All of these levels work together to maximize the success of the program as a whole.

The action-research component is a self-evaluating mechanism to learn from the successes and failures of the project.<sup>120</sup> It evaluates the efficacy of the implementing project and the Programme itself, the donor, and the executing agency.<sup>121</sup> "Through this systematic learning process the most successful tools will be identified by the monitoring and evaluation process and refined, while less successful or promising tools might be modified or eliminated."<sup>122</sup>

The technical cooperation component ensures that the program maintains a balance between preventative measures and enforcement.<sup>123</sup> The technical cooperation is provided at all three

111. *Research: Global Trends in Corruption*, at [http://www.undcp.org/corruption\\_research.html](http://www.undcp.org/corruption_research.html).

112. *Id.*

113. *Id.*

114. *Country Projects*, *supra* note 17.

115. *Id.*

116. *Id.*

117. *Id.*

118. *Global Program Against Corruption: An Outline for Action*, *supra* note 86.

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*



levels—international, national, and subnational.<sup>124</sup> The international level involves promoting the creation of transparency and the adoption of a coherent strategy to fight corruption.<sup>125</sup> The national level involves assessment of existing measures fighting corruption, providing advice concerning strengthening legislation and anti-corruption bodies, and offering training at that level.<sup>126</sup> At the subnational level, the technical support provided by the United Nations encompasses evaluation of existing measures and aid in implementation of the newly-adopted anti-corruption measures.<sup>127</sup>

The monitoring and evaluation component of the Global Programme is undertaken by the U.N. Interregional Crime and Justice Research Institute (UNICRI) with the assistance of an international expert group.<sup>128</sup> It provides an independent source of monitoring in all of the pilot countries.<sup>129</sup> UNICRI evaluates corruption in public administration, business, politics, and finance.<sup>130</sup> The results are available through databases available on UNICRI and the Centre for International Crime Prevention's (CICP) websites.<sup>131</sup> Moreover, the results are also disseminated in meetings with member countries and in U.N. documents.<sup>132</sup>

The United Nations implements the entire program, working closely with the International Steering Committee.<sup>133</sup> These two groups coordinate the numerous international and governmental organizations involved in this sweeping project.<sup>134</sup> They hope to create a "forum to share information and experiences from the CICP's 13 pilot projects and to discuss future measures."<sup>135</sup>

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124. *Id.*  
 125. *Id.*  
 126. *Id.*  
 127. *Id.*  
 128. *Id.*  
 129. *Id.*  
 130. *Id.*  
 131. *Id.*  
 132. *Id.*  
 133. *Id.*  
 134. *Id.*  
 135. *Id.*

## IV. NIGERIAN ANTI-CORRUPTION LEGISLATION AND INITIATIVES

The fourth portion of this Note will delve into Nigeria's legal framework and initiatives by examining four areas—(A) legal framework prior to Nigeria's involvement in the Global Programme, (B) legislation and initiatives developed pursuant to the Programme, (C) successes of the recent legislation, and (D) potential future legislation.

A. *Existing Legal Framework*

It is necessary to note that Nigeria did not enter the Programme without a legislative means already in place to combat corruption or a broadly-defined legal framework to provide for justice against corrupt practices.<sup>136</sup> Prior to Nigeria's involvement in the CICP's Global Programme, the state did possess legal means to decrease levels of corruption.<sup>137</sup> These measures failed to reduce corruption in any meaningful way, and Nigeria proceeded to the top of Transparency International's Corrupt Practices Index despite the aims of both the Criminal Code (1990) and the Code of Conduct Bureau and Tribunal Act.<sup>138</sup> These statutes possessed strong anti-corruption features, and the Constitution also provided for protection of individual liberties.<sup>139</sup>

The preamble to the 1999 Nigerian Constitution demonstrates the sweeping aims of the country's system of justice.<sup>140</sup> The Constitution aims to promote "good government and welfare of all persons in . . . [Nigeria], on the principles of freedom, equality and justice. . . ." <sup>141</sup> The 1999 Constitution also provides a means for connecting the state's goals to an institutional framework.<sup>142</sup> Section 14.1 proclaims that the "Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice."<sup>143</sup> Moreover, the Constitution places the "security and welfare" of the people and notions of democracy at its heart.<sup>144</sup>

The language of the Nigerian Constitution also places a premium on the integrity of public officials by providing the language for the

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136. See Timothy Martin, *Corruption and Improper Payments: Global Trends and Applicable Laws*, 36 ALBERTA L. REV. 416, 441-42 (1998).

137. See *id.*

138. See *Corruption Perceptions Index 2002*, *supra* note 4, tbl. 1.

139. See Martin, *supra* note 136, at 441-42.

140. NIG. CONST. pmbl.

141. *Id.*

142. See NIG. CONST. ch. II, § 14.1.

143. *Id.*

144. NIG. CONST. ch. II, § 14.2(b).

oaths offered by the President and the judiciary.<sup>145</sup> The oath of office of the President speaks of discharging the duty in a manner that does not permit “personal interest to influence [the President’s] official conduct or official decisions.”<sup>146</sup> Also, the judicial oath references similar goals by providing that the position will be performed honestly and in accordance with the laws of Nigeria.<sup>147</sup> While the Constitution provides no means for attaching criminal sanctions for noncompliance with these oaths of office, it does establish a rhetoric promoting the ideals of a just and equitable state.

The institutional protections of individual rights against corrupt practices existing prior to the U.N. Global Programme do not end with the 1999 Constitution. Section 98 of the Criminal Code, for example, proscribed persons from giving, or promising to give, payment to a public official in order to obtain “contract, license or permit” or face a seven-year prison sentence.<sup>148</sup> While this measure addressed only individuals offering bribes and did not allow for redress against the persons forcing the use of payments, it nonetheless provided some measure to combat corruption.<sup>149</sup>

Moreover, the Code of Conduct Bureau and Tribunal Act supplied a more stringent standard, also designed to punish individuals offering bribes. This Act moved further by prohibiting such payments to induce a public official to do her duty.<sup>150</sup> The Act contained a loophole, however, by providing that a public official may receive gifts from relatives and personal friends to the extent allowed by custom.<sup>151</sup> In a state where bribery is commonplace, it is not difficult to imagine that many gifts could be considered “customary.” Nevertheless, Nigeria has not been devoid of the framework needed to combat corruption, and the state did not initiate its efforts pursuant to the Global Programme without existing legislation designed to target at least some levels of corruption.

#### *B. Implementation of Initiatives Pursuant to the Global Programme Against Corruption*

Nigeria has implemented a significant framework in pursuance of the U.N.’s Global Programme.<sup>152</sup> In June 2000, the Nigerian legislature passed the Anti-Corruption Law, which stands as the

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145. NIG. CONST. 7th sched. (Oaths).

146. *See id.*

147. *Id.*

148. Criminal Code Act, § 98 (1990) (Nig).

149. *See id.*

150. Martin, *supra* note 136, at 442.

151. *Id.* at 442.

152. *Country Projects, supra* note 17.

most significant step achieved thus far in pursuance of the Programme's institutional goals.<sup>153</sup> The Anti-Corruption law established the Anti-Corruption Commission as its independent institution to monitor and implement its plans, and numerous initiatives have been pursued.<sup>154</sup> Most significantly, the CACP is currently working with Chief Justice M. L. Uwais and Justice A. O. Obaseki, Administrator of the National Judicial Institute, to improve the integrity of Nigeria's judiciary in order to effectively implement anti-corruption legislation.<sup>155</sup>

The "Corruption and Organized Crime: Challenges for a New Millennium" Conference (Conference) was held May 7-11, 2000 in Abuja, Nigeria.<sup>156</sup> There, experts, public officials, and citizens discussed corruption and formulated a 17-point action plan designed specifically to combat Nigerian corruption.<sup>157</sup> The Nigerian government organized the Conference in conjunction with the U.N. Office of Drug Control and Crime Prevention.<sup>158</sup> This Conference focused specifically on Nigeria and how the government and its citizens could best focus anti-corruption efforts.<sup>159</sup> Topics included defining corruption, evaluating its relation to globalization, and examining strategies for implementation of anti-corruption legislation.<sup>160</sup> Furthermore, those persons in attendance helped to formulate recommendations for future action pursuant to the Global Programme.<sup>161</sup>

The recommendations varied greatly with respect to subject and specificity. Among the more ambiguous in terms of implementation, the Conference suggested raising public awareness, avoiding politicization of the Anti-Corruption commission, and leading Nigeria's youth away from "crime and cultism" to more constructive ends.<sup>162</sup> Still, many specific recommendations flowed from the gathering. Re-screening public officials to purge offices of corrupt officials, increasing access to public information, establishing special anti-corruption courts, and providing for electronic monitoring in the Central Bank and the Securities and Exchange Commission

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153. See Remi Oyo, *Politics-Nigeria: New Anti-Corruption Law Nets First Offenders*, INTER PRESS SERV., June 7, 2001, at 1.

154. *Country Reports*, *supra* note 17.

155. *Id.*

156. *Nigeria Project*, *supra* note 60.

157. *Id.*

158. U.N. Office on Drugs and Crime, *Corruption and Organized Crime: Challenges for a New Millenium*, available at [http://www.odccp.org/odccp/corruption\\_challenges.html](http://www.odccp.org/odccp/corruption_challenges.html).

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

highlighted the conference's resolutions.<sup>163</sup> While the recommendations were just that and did not possess the effect of law, the event helped to refocus Nigerian efforts by recognizing that corruption renders negative impacts and that Nigeria's current laws and institutions could not adequately remedy the situation.<sup>164</sup>

The Anti-Corruption Law rests at the center of Nigeria's implementation of the U.N. Global Programme. The law criminalizes many facets of corruption by defining the offense broadly: "fraud, bribery, extortion, hoarding, smuggling, . . . influence peddling, illegal custody of public records or documents, and preferential dispensation of patronage."<sup>165</sup> Moreover, the Anti-Corruption Law applies to both Nigerian citizens and foreign citizens residing in Nigeria who commit offenses both in Nigeria and abroad by criminalizing corrupt practices that already took place, as opposed to preventing acts from occurring.<sup>166</sup> Prosecution of already-committed transgressions would hopefully prevent future crimes from taking place.

The most important aspect of the Anti-Corruption Law is that it does not provide immunity from prosecution to anyone, not even the President.<sup>167</sup> By attempting to prevent bribery and corruption at *all* levels, the law applies to every Nigerian.<sup>168</sup> The law apparently conflicts with provisions of the Nigerian Constitution, however, drafted during the previous military regime and enacted under the current democracy, that grant immunity to the President, Vice President, and governors while they are in office.<sup>169</sup> Therefore, it is unlikely with enforcement against one of those individuals that the Act could withstand a constitutional challenge.

Subsequent to the Anti-Corruption Law's enactment in 2000, the Nigerian government moved forward by providing for better enforcement of the legislation. In September 2001, the government approved the establishment of anti-corruption units in all federal ministries and state agencies.<sup>170</sup> The units "operate with full autonomy monitoring adherence to all transparency codes stipulated by the anti-corruption law. . . ." Furthermore, the government established the Independent Corrupt Practices and Other Related

163. *Id.*

164. *Nigeria Project*, *supra* note 60.

165. *Oyo*, *supra* note 153, at 1.

166. *Nigeria: Anti-Corruption, Transparency Units Set Up in Ministries*, PANA, Sept. 20, 2001; Ola Awoniyi, *Nigeria Starts Corruption Hearings, Official Pleads Not Guilty*, AGENCE FRANCE-PRESSE, May 28, 2001, at 1.

167. *Oyo*, *supra* note 153, at 2.

168. *Id.*

169. *Id.*

170. *Nigeria: Anti-Corruption, Transparency Units Set Up in Ministries*, *supra* note 166.

Offenses Commission when it enacted the Anti-Corruption Law.<sup>171</sup> The Commission investigates corruption, brings charges concerning allegations, and prosecutes those cases.<sup>172</sup>

Unfortunately, not all of President Obasanjo's legislation has met with success, and the Nigerian legislature has threatened repeal of the Anti-Corruption Law, the centerpiece of Nigeria's anti-corruption measures.<sup>173</sup> The upper house of parliament has already voted to overturn the legislation, while the lower house continues to debate its removal.<sup>174</sup> Legislators cite use of anti-corruption legislation against opposition to the regime as a factor in pushing for repeal.<sup>175</sup> Specifically, they argue for taking the power to appoint members to the Anti-Corruption Commission out of the President's hands.<sup>176</sup>

Moreover, in the years preceding and following the Conference, many anti-corruption initiatives have met considerable resistance or found their ultimate demise in the legislature.<sup>177</sup> This has not prevented the President from continuing to support the already-enacted legislation and further measures as well.<sup>178</sup>

Another key aspect of the Nigerian project, and the Programme generally, centers around the judiciary.<sup>179</sup> Without measures to curb corruption in the judiciary, the project would be meaningless because the institutional and legal framework would exist devoid of a means of effective enforcement.<sup>180</sup> As a result, the Global Programme provides for methods of ridding the judiciary of corruption, including designing approaches to achieve better judicial control, defining accountability within the judiciary, facilitating the process, and raising awareness publicly of the amount of judicial corruption.<sup>181</sup>

Chief Justice Uwais participated in the anti-corruption efforts and has worked to provide for a less-corrupt judiciary.<sup>182</sup> For example, Uwais participated in a workshop in April 2000 that

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171. Awoniyi, *supra* note 166, at 1.

172. *Id.*

173. Dan Isaacs, *Threat to Nigeria Anti-Graft Law*, BBC NEWS, Mar. 11, 2003, at 1, available at <http://news.bbc.co.uk>.

174. *Id.*

175. *Id.*

176. *Id.*

177. *Politics: Nigeria Country Forecast, Comment & Analysis*, PRS GROUP/POLITICAL RISK SERVICES, Nov. 1, 2001, at 1.

178. *Id.*

179. See U.N. Office on Drugs and Crime, *Strengthening the Integrity of the Judiciary*, available at [http://www.odccp.org/corruption\\_judiciary.html](http://www.odccp.org/corruption_judiciary.html).

180. *Id.*

181. *Id.*

182. GLOBAL PROGRAMME AGAINST CORRUPTION, JUDICIAL GROUP ON STRENGTHENING JUDICIAL INTEGRITY, RECORD OF FIRST MEETING (Working Paper, Vienna, Austria, 2000), available at [http://www.odccp.org/pdf/crime/corruption\\_judicprocd.pdf](http://www.odccp.org/pdf/crime/corruption_judicprocd.pdf).

addressed the topic of strengthening integrity in the judiciary.<sup>183</sup> In addition, Uwais and members of the judiciary of seven other African and Asian nations met to create a pilot project for judicial reform.<sup>184</sup> They discussed judicial corruption, public perception of it, its indicators and causes, and processes for remediation.<sup>185</sup>

Pursuant to the two-day meeting, the participants provided numerous recommendations to their respective legislatures. They suggested action concerning a variety of issues—data collection, remuneration, monitoring, revision or establishment of codes of conduct, transparency, computerization of records, providing peer pressure, and involving bar associations, to name a few.<sup>186</sup> While the topic of the conversations and recommendations may result in no immediate change legislatively in Nigeria, Uwais' presence at the conference undoubtedly established support for the measures sought by President Obasanjo and aided in the increased visibility of Nigeria's anti-corruption project.

### C. *Successes of Recent Nigerian Efforts*

Two high profile prosecutions under the Anti-Corruption Law demonstrate that the law possesses at least some teeth and that authorities can prosecute in a meaningful manner.<sup>187</sup> In May 2001, the first charges were brought under the recently-enacted law against a member of a presidentially-appointed panel to investigate the state-run airline, Nigeria Airways.<sup>188</sup> The official was accused of receiving 3.5 million naira, or USD \$30,000, in order to influence the outcome of the panel's decision.<sup>189</sup>

The success of the government's efforts against corruption moved forward a second time when a sitting judge, Justice Garba Abdullahi, was arraigned on charges of bribery in the course of judicial duties by the Independent Corrupt Practices Commission.<sup>190</sup> Whether this is a trend indicative of prosecutions yet to come or whether the recent cases are simply an empty display with no enforcement, remains unclear. Nevertheless, these cases clearly provide the critical initial step toward the enforcement of the Anti-Corruption Law and the furthering of Nigeria's efforts pursuant to the Programme.

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183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. Awoniyi, *supra* note 166, at 1.

188. *Id.*

189. *Id.*

190. *Nigeria: Anti-Graft Panel Arraigns Judge Over Bribery*, GUARDIAN, Feb. 14, 2002, at 2.

#### D. Model Legislation Proposed by the United Nations

While Nigerian efforts to curb corruption move forward, both with signs of progress and with great setbacks, we should remember that the Nigerian Project has only existed for three years.<sup>191</sup> If meaningful, sustainable progress hopes to advance from this endeavor, further legislation is in need of implementation. Part of the Global Programme involves developing anti-corruption legislation proposals.<sup>192</sup> This proposed legislation provides a glimpse of what one may expect of future Nigerian legislation. These proposals are found in the Anti-Corruption Tool Kit and touch upon numerous topics.<sup>193</sup>

For example, one suggestion involves regulating financial institutions to enable governments to create transparency and prevent money laundering.<sup>194</sup> By creating a paper trail, it is far more difficult for public officials to hide and launder the money obtained through bribery.<sup>195</sup> Revised regulations in the financial sector would help target the most egregious cases of corruption.<sup>196</sup> Also, broadening the scope of this legislation beyond that of financial institutions to other businesses would greatly expand the benefit of money laundering laws.<sup>197</sup>

Proposed anti-corruption laws also focus on the revision of corporate law.<sup>198</sup> Again, this proposal focuses on institutional transparency and suggests allowing the identification of corporate beneficiaries.<sup>199</sup> This suggestion, however, overlaps with the proposed financial sector regulation and is, admittedly, unnecessary in light of other proposals and other international standards already in place.<sup>200</sup>

Other proposals are directed at procedural, rather than substantive, law.<sup>201</sup> Increasing the significance of circumstantial evidence in corruption cases may provide for more effective prosecution of anti-corruption measures.<sup>202</sup> At the same time, it could also result in misuse of anti-corruption laws by allowing for political paybacks. With the increase in complexity of bribe techniques, such a

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191. *Country Projects, supra* note 17.

192. *Anti-Corruption Tool Kit, supra* note 22, at 231.

193. *See id.* at 231-32

194. *Id.* at 231.

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.* at 232.

199. *Id.*

200. *Id.* These provisions already apply to FATF Member Countries and indirectly apply through the U.N. and OAS model codes. *Id.*

201. *See id.* at 244.

202. *Id.*



tool would aid in all aspects of the prosecution—from investigation to conviction.<sup>203</sup> Other legislatures have achieved this result through numerous means, but central to them all is a focus on the results of the criminal act, rather than the practice itself.<sup>204</sup> One means of achieving this involves criminalizing and confiscating inexplicable wealth.<sup>205</sup>

A final provision in the proposed legislation provided by the United Nations involves protection for whistleblowers, the purpose of which is to facilitate the reporting of crimes and safeguard against reprisal of those who make reports of corruption.<sup>206</sup> This legislation would allow those who are in the best position to know about the practices, but are too frightened to report them, to come forward.<sup>207</sup> The proposal explains what is needed for an effective whistleblower statute—prevention against victimization, deterrence against retaliatory action, compensation for those victimized, coordination with other employment laws, explanation of to whom to address the information, and clear implementation.<sup>208</sup> The proposed legislation also advocates laws deterring false allegations to prevent the false and malicious use of whistleblower protections.<sup>209</sup>

Also, the United Nations frequently revises model legislation and attempts to further the goals of the Global Programme by reassessing what is and is not working within the individual country projects. Most recently, the Ad Hoc Committee for the Negotiation of a Convention against Corruption met in Vienna from January 21 through February 1, 2002.<sup>210</sup> The Committee addressed legislative concerns, but instead of providing proposal-oriented legislation, it drafted actual legislation that individual legislatures could fully implement.<sup>211</sup>

The model legislation merged draft legislation submitted by various governments into one organized piece of legislation covering all of the provisions of a criminal statute concerning corruption: “criminalization, sanctions and remedies, confiscation and seizure, jurisdiction, liability of legal persons, protection of witnesses and victims and law enforcement.”<sup>212</sup> This legislation goes beyond

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.* at 248.

207. *Id.*

208. *Id.* at 248-49.

209. *Id.* at 249-50.

210. U.N. Office on Drugs and Crime, Draft United Nations Convention Against Corruption, U.N. GAOR, 1st Sess., U.N. Doc. A/AC261/3 (2001), available at [http://www.odccp.org/crime\\_cicp\\_committee\\_corruption\\_session\\_1.html](http://www.odccp.org/crime_cicp_committee_corruption_session_1.html).

211. *Id.* at 1-22.

212. *Id.* at 1.

previous model legislation by providing states with a substantive guide to erect their own anti-corruption measures.

## V. EVALUATION OF THE PROGRAMME AND NIGERIA'S IMPLEMENTATION

Part V of this Note will examine the reasons why the U.N. Global Programme will not result in complete success without significant revision. It will examine the causes of corruption and how the Global Programme fails to address them all. This Part will then discuss the lack of adequate incentives supplied by the Global Programme and conclude with an analysis of the overwhelming cost of remediating the actual causes of corruption.

The Global Programme appears to have provided some successes. Groundbreaking legislation geared specifically toward the reduction of corruption has been passed.<sup>213</sup> Nevertheless, it is difficult to assert that corruption has actually decreased with the introduction of the recent anti-corruption measures.<sup>214</sup> Nigeria is firmly entrenched at the bottom of Transparency International's Corrupt Practices Index, and it does not appear that there will be a significant shift any time in the near future.<sup>215</sup>

### A. Failure to Address the Causes of Corruption

There are numerous hypotheses concerning why such measures cannot be successful. Upon further elucidation of Nigerian history, the origins of corruption in Nigeria are identifiable in a cultural context. The high levels of corruption that have infiltrated both the public and private sectors are not caused by the institutions themselves. Political leaders have exploited conditions and broken down the democratic system that would otherwise limit the extent of these troubling conditions. Moreover, as history explicates, corruption has pervaded the upper-echelons of Nigerian society for many decades and through nearly a dozen different regimes. Undoubtedly, the current institutional framework works to combat corruption on some level, but as some political scientists argue, the terminal point is cultural.<sup>216</sup>

One scholar illustrates this cultural argument by likening corruption to a house infested with termites,

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213. See Oyo, *supra* note 153, at 1.

214. Ekwowusi, *supra* note 6, at 1.

215. Transparency International, *Corruption Protection Index 2002*, available at <http://www.transparency.org>.

216. See KIVUTHA KIBWANA, ANATOMY OF CORRUPTION IN KENYA: LEGAL, POLITICAL, AND SOCIO-ECONOMIC PERSPECTIVES 87 (1996).

The structure of the dwelling conditions the life of the occupants, but the occupants can change the structure if they wish. If the structure begins to leak and all the occupants resign themselves to it, blaming it on the structure, the structure will continue to leak. In this case the explanation still lies with the occupants who do not wish to repair the structure. Something non-human cannot be held responsible for something human. The structuralist explanation for corruption shifts the focus of responsibility from the human actor to factors external to the actor. These external factors are significant in understanding the extent and manifestation of the phenomenon, but they are not the terminal point of the explanation. The terminal point is the nature of man.<sup>217</sup>

Robert Putnam also elucidated the belief that corruption may not be a structural dilemma.<sup>218</sup> In his work, Putnam explores the true causes of anti-democratic ideals by performing an empirical study of the levels of anti-democratic sentiment and amount of civic reliance in different portions of modern Italy.<sup>219</sup> His studies found that while northern and southern Italy possess similar institutional structures, civic traditions and affinities for traditions rank much lower in the south than in the north.<sup>220</sup> He concludes that institutional success does not lie merely in the institutions themselves, but in the communities' ability to rely on those institutions and the faith they will place in political structures, which can vary greatly even within the same country.<sup>221</sup> As a result, southern Italy faces greater difficulties in combating corruption and promoting the use of the political institutions in place to establish an effective democracy.<sup>222</sup>

Putnam's studies of Italian political institutions provide a background with which to study legal and political structures throughout the world. His findings present a significant dilemma for projects like the Global Programme. Under such an analysis, merely creating a legal structure to combat a problem with causal roots at a much more social level will inevitably prove ineffective. Creating model laws encouraging transparency and forcing cooperation by the judiciary and law enforcement officials will not achieve the desired results if the legal framework does not target the root of corruption—the cultural framework which has been eroded by decades of colonial and military rule.

While laws can provide an effective means of ordering a society, they cannot provide all of the answers to remedying a society. Bedford Umez recognized the "systemic root of the leadership

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217. *Id.*

218. ROBERT D. PUTNAM, MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY 181-82 (1993).

219. *Id.*

220. *Id.*

221. *Id.* at 184-85.

222. *Id.* at 185.

corruption, namely, the prevailing Nigerian value system (which glorifies and endorses corrupt and illegal behaviors and actions as necessary means to ends).<sup>223</sup> It is possible that corruption has embedded itself in the fabric of Nigerian society, and policies have to be adopted to target the social aspects of widespread corruption. Perhaps Nigeria is "a nation founded by imperialist fraudulence, a country established by colonialist fiat with the sole aim of exploiting its natural and human resources . . . [a place where] dishonesty has germinated, grown, and metamorphosed into a giant tree of corruption. . . ."<sup>224</sup>

This factor will play a significant role in the shortcomings of the U.N. efforts. The United Nations itself admits the causes of corruption vary from one state to the next.<sup>225</sup> This variance complicates the matter further and necessitates extremely tailored research and policies concerning each state. Thus, even if effective results are achieved in some of the pilot programs, it is not clear whether those positive results could be used to formulate a general guide to fight corruption.

Furthermore, if the corruption is a cultural problem, providing institutional frameworks to combat the problem will do little to redress it. Laws that carry no force and have no support at a broad level will fail to do more than provide a superficial remedy for a much deeper problem. One cannot redress cultural ailments with a structural remedy. Instead, the United Nations needs to provide more significant training and educational tools to combat the problem. Only when the Programme specifically addresses Nigerian culture can the laws being adopted meet an effective end.

When corruption is as pervasive in a society as it is in Nigeria, more efforts should be directed at developing an understanding of how the Nigerian culture understands corruption. Moreover, individuals need to understand that corruption has negative effects beyond the punishment that the state exacts for a violation of an anti-corruption law. For Nigeria's efforts truly to be effective in the long-term, more attention should focus on helping people to understand that engaging in corrupt practices violates a deeper sense of right versus wrong. Therefore, the Global Programme may provide a sufficient institutional framework to deal with corruption. If the causes of corruption are rooted more at a specific cultural level, however, then the Programme will prove completely ineffective. One only needs to look at the Obasanjo regime to elucidate such a hypothesis. No amount of legislation and proposed legislation will

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223. UMEZ, *supra* note 2, at 4.

224. *Here, Corruption is King*, *supra* note 77, at 1.

225. U.N. Office on Drugs and Crime, *Corruption*, at <http://www.undcp.org/corruption.html#what>; *See How Do We Fight Corruption?*, AFRICA NEWS, Mar. 9, 2001, available at LEXIS, News Library, Africa News File.

render effective results in combating corruption if most of the government officials refuse to remediate their behavior. As such, initiatives need to be aimed at addressing cultural ideas that perpetuate corrupt practices, rather than patching the problem with a structural remedy that fails to address the cause.

B. *Failure to Provide Effective Incentives to Comply with the Programme's Measures*

The Global Programme could be furthered through other, more external, means even if measures are not fully targeted at the roots of corruption. The most significant problem for combating corruption in Nigeria is the pervasiveness of the problem. There are areas that such a project will have difficulty redressing. For example, only six countries have joined the Programme, which speaks to concerns regarding countries where corruption invades even the uppermost levels of government. Such a solution will not be effective because it requires the full cooperation of the states involved. Nigeria consistently faces the problem of corrupt law enforcement officials and corrupt practices in the judiciary. Thus, the Programme needs more significant external measures for forcing compliance at the upper-most levels of government.

In an article entitled *Curbing Corruption in Nigeria*, Sonnie Ekwowusi elucidates questions of legitimacy that surround a regime that comes to power in such a corrupt environment.<sup>226</sup> She pointedly articulates that “[a] government that bulldozed itself to power through corruption cannot suddenly metamorphose into an anti-corruption crusader.”<sup>227</sup> Ekwowusi develops the idea that in some places corruption does not simply isolate itself to private individuals bribing those in the public sector.<sup>228</sup> When the upper-most public officials are the ones doing the bribing to win elections or when they are embezzling billions of dollars, the problem of eradicating corruption becomes much more complicated.<sup>229</sup>

In Nigeria, corruption persists despite the efforts of Global Programme.<sup>230</sup> Aborisade and Mundt lament that no regime has effectively combated corruption, including the current one.<sup>231</sup> They criticize President Obasanjo’s efforts to present anticorruption legislation, but acknowledge that the National Assembly prevented

226. Ekwowusi, *supra* note 6, at 2.

227. *Id.*

228. *Id.*

229. *Id.*

230. OLADIMEJI ABORISADE & ROBERT J. MUNDT, *POLITICS IN NIGERIA* 190-91 (2002).

231. *Id.* at 239.

the positive effects that the President sought.<sup>232</sup> They note that "[t]his nation's legislative body has been tainted with charges of bribery and misappropriation of funds from the first days of its existence. . . ."<sup>233</sup> A select few well-intentioned politicians cannot hope to reform an entire nation.

Therefore, strongly relying on the use of legislation and individual efforts by the nations is not enough. The international community needs to exert pressure on these regimes to limit corruption by, for example, better monitoring the foreign aid traveling to countries like Nigeria. If the states around the world, the World Bank, and the International Monetary Fund combined to threaten to withhold aid unless noticeable effects result from anti-corruption measures, then it would provide more incentives for Member Nations. This change in incentives could force countries to comply by making it much more costly to continue corrupt practices.

### C. *Costs of Remediation*

The cultural analysis of this dilemma also raises significant issues of cost. A wide variation in cause means that with each country entering the Global Programme the United Nations needs to expend considerable resources to develop country-specific plans and to implement those measures. While this appears practical when considering the most corrupt states, it may not provide a useful solution to target corruption in all economically and politically vulnerable nations. The USD \$6 million implementation cost appears as a vast underestimation when thinking of tailoring programs to each country. Questions arise concerning who will pay the costs of such projects and what incentives they possess to do so.

Instituting a legal framework would not prove too costly. Putting in place widespread educational projects to combat the cultural roots of corruption, however, in conjunction with legislative measures, would cost a great deal more. Therefore, the costs of the U.N. Global Programme could prove too significant in the coming years if the legislative and enforcement measures do not demonstrate their efficacy.

## VI. CONCLUSION

The U.N.'s Global Programme provides a significant stride by recognizing corruption as a significant international problem with sweeping consequences. Simply by having such a program the United

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232. *Id.*

233. *Id.*

Nations makes a considerable gain in the way of demonstrating that this is a concern that will not be tolerated within the international community. The fact that Nigeria, a state that arguably faces the most pervasive amounts of corruption in the world, is involved in the program speaks volumes of it. It demonstrates that the Programme does not back away from the most difficult subjects.

The Programme possesses many shortcomings that its Nigerian project may elucidate, however. While it does provide effective legislative tools for willing countries and brings this problem to the forefront of the international community, it still depends heavily on structure and underestimates the costs of significant recovery. The Programme does not adequately address all of the causes of corruption. A social problem cannot remedy itself by adding more structure. Nigeria demonstrates this because it already had anti-corruption laws in place before its involvement in the Global Programme. Therefore, more of the resources and programs within such a project should be geared toward education and social remediation.

Moreover, the Programme could strengthen itself by providing more economic incentives for full compliance by Member States. This could lessen the burden of fully remediating the problem from within, which could prove to be costly and ineffective. Still, the Global Programme supplies a key first step in this process—yet one should only view it as a first step in a very long journey.

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