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# **The era of corruption and unexpected wealth in the state of Kuwait**

**Aminah Al Wehaib**

# PRESENTATION STRUCTURE



## KEY QUESTIONS

- How effective are the laws to deal with corruption and unexpected wealth in the state of Kuwait?
- What legal instruments can be used to deal with corruption in Kuwait?



## LAW/ CASE STUDIES

- **The Kuwait Investment Authority (KIA) Case**
- **The Kuwait Oil Tanker Company (KOTC)**
- **Recent case: Rajaan Case**



## PROPOSED STRATEGY/ INSTRUMENTS

- highlighting instruments
- Legal action can be taken under the civil regime
- Enable the victim state to gain legal access in order to discover all accused assets (visibility)



# HISTORY OF KUWAIT

# HISTORY OF LAWS COMBATING CORRUPTION

- **Protection of Public Funds Act I/1993**

introduced interim measures which were designed to ensure that state funds were protected and not dissipated or hidden away.

- **Anti-Money Laundering and Combating Finance of Terrorism Act 106/2013**

deems money laundering offences as corruption crimes and provides for **strict measures**, under which the **authorities have the power to attempt to restrain the proceeds of crime.**

- **Anti-Corruption Authority Act 2016**

contains **modern provisions** designed to address the issue of corruption, including the requirement on public officials, politicians and their spouses to make financial disclosures to identify any unexplained wealth.

## COMBATING CORRUPTION

- Corruption can be seen through bribe, illicit gain, money laundering... Etc.
- Most common type of corruption in the recent years in Kuwait
  - **unexpected wealth**

# STOP CORRUPTION



# THE KUWAIT INVESTMENT AUTHORITY (KIA) CASE



الهيئة العامة للاستثمار  
Kuwait Investment Authority

- public officials and trustees, including members of the royal family, had been involved in the theft of **\$6 billion**
- civil action took place in the UK in 1999 - awarded damages to the value of \$687 million due to the value of the funds that had been stolen.

# THE KUWAIT OIL TANKER COMPANY (KOTC) CASE



- four public officials had been involved in an embezzlement, for which Kuwait was awarded **\$137 million in damages.**

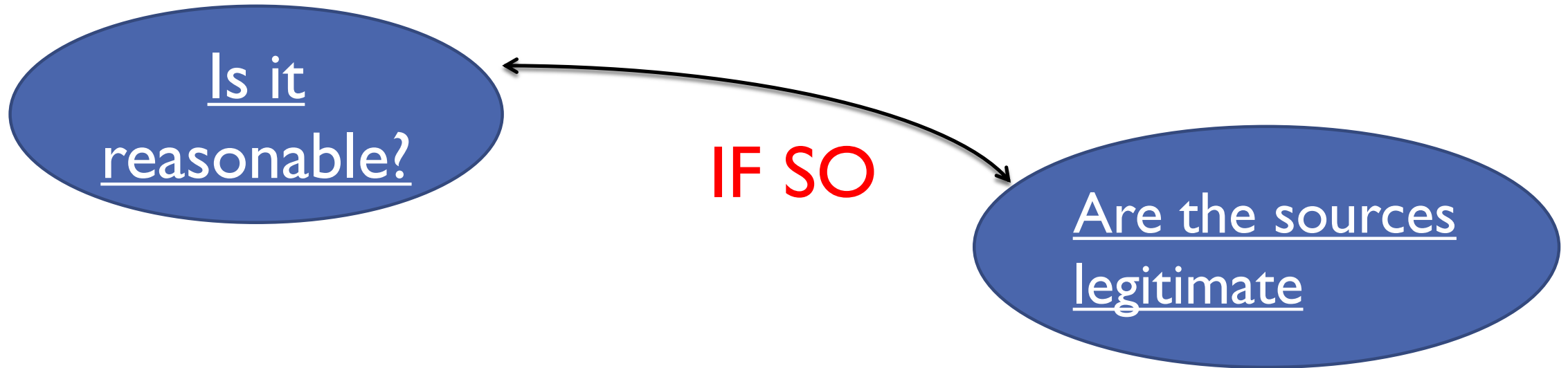
# AL-RAJAAN CASE



- Fahad Al Rajaan who is a former head of Kuwait's national pension fund is now living as a fugitive in London
- He has been accused of stealing nearly **\$850 million** from **Kuwait's Public Institution for Social Security (PIFSS)** by securing secret commissions from banks in return for investing funds with them fund, which he headed for three decades.
- **His case is still being held in court**

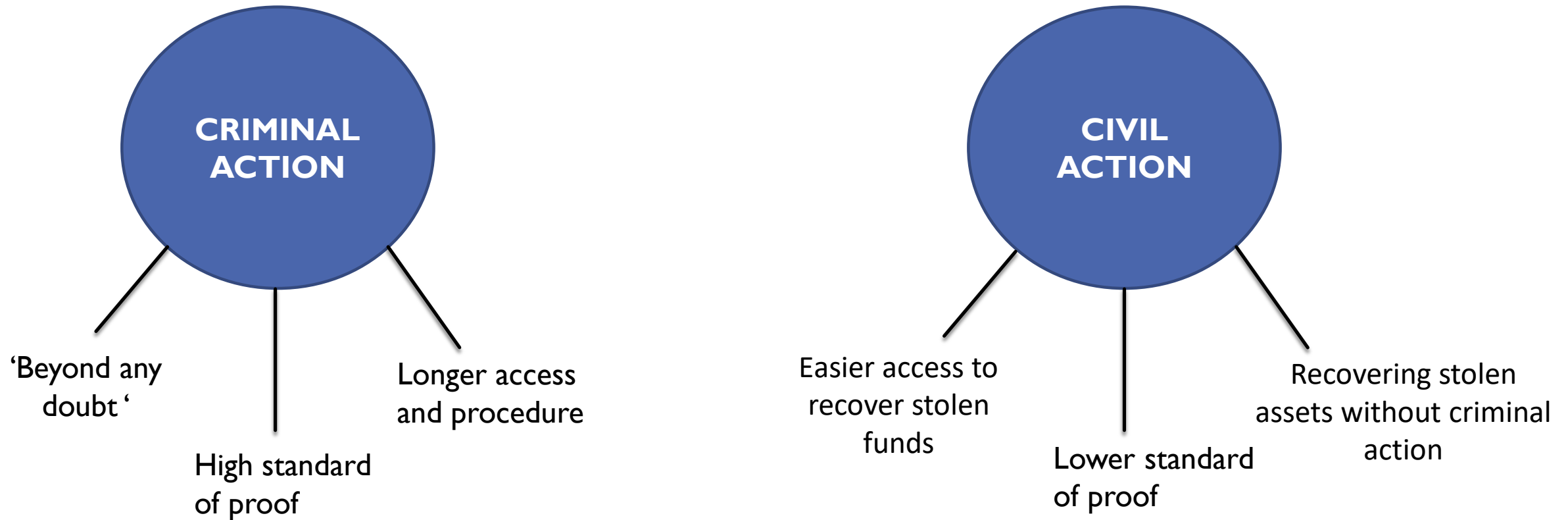


## 2 QUESTIONS TO BE CONSIDERED



If, a failure to answer = **unexpected wealth occur.**

# CRIMINAL **VS** CIVIL



# PROSECUTION

- limited prosecution for matters such as corruption.
- the criminal regime that had been adopted by Kuwait has largely failed to address the issues of concern.
- There is therefore a need for an effective civil regime to deal with such issues.
- Kuwaiti legal system does not have provisions for civil forfeiture and unexplained wealth orders
- Unexplained wealth orders were introduced in the UK by section 1 of the Criminal Finances Act 2017. It is a mechanism, under which, proceeds of crime can be confiscated through civil powers instead of criminal ones.
- It requires a person to state the nature and extent of their interest in property and where this cannot be explained, the property is confiscated. It has been argued that this provides an effective means to address the issue of corruption. It is necessary to consider whether these two mechanisms provide for an effective addition to Kuwait's arsenal to deal with corruption.



Stolen Asset Recovery Initiative

The World Bank • UNODC

[star.worldbank.org](http://star.worldbank.org)

## STAR INITIATIVE

- Stolen Asset Recovery Initiative (**StAR**), which has been adopted by, civil forfeiture and unexplained wealth orders, which are absent from Kuwait's legal framework.
- This initiative has led to the recovery of over half a billion dollars in the case involving the Kuwait Investment Organization.

# OTHER JURISDICTIONS



- **Mereva injunction**
- **Norwich Pharmacal injunctions.**



- Innovative solutions, by highlighting instruments of Anti-Corruption under the regime of the civil law/



- Legal action can be taken under the civil regime **without** the need for a criminal conviction



- enable the victim state to gain legal access in order to discover all accused assets in banks and financial institutions. (visibility)

# PROPOSED STRATEGY/INSTRUMENTS

THANKYOU FOR LISTENING!

# Does the Economic Crime (Transparency and Enforcement) Act 2022 go far enough?

**Professor Nicholas Ryder**

**UNEXPLAINED WEALTH: A GLOBAL PERSPECTIVE**

**Wednesday 29th June 2022**

**11.10 am - 11.25 am**



**UWE  
Bristol**



# Research Funding

- This work has been conducted under funding provided by Royal United Services Institute (Collaboration, Research and Analysis Against the Financing of Terrorism), InnovateUK (Activist Financing and Organised Crime and Fraud) and Synalogik.



Innovate UK



# Abstract

- This presentation highlights the association between the United Kingdom (UK) and financial crime and challenges the rating provided by the Financial Action Task Force (FATF) in its 2018 Mutual Evaluation Report (MER)
- The presentation presents two case studies to support this contention:
  - Corporate financial crime and
  - Terrorism financing and fraud
- The paper concludes that the Economic Crime (Transparency and Enforcement) Act 2022 does not go far enough and the UK continues to form a disjointed financial crime strategy.

# Contents

- Mutual Evaluation Report (2007)
- Mutual Evaluation Report (2018)
- Questionable Findings?
- Case Study 1: Corporate Economic Crime
- Case Study 2: Terrorism Financing and Fraud
- Economic Crime Act (2022)
- Final thoughts

# MER – what has happened since 2007?

- Money laundering regime strengthened,
- Deficiencies in fraud legislation addressed,
- Bribery Act ([2010](#)),
- Financial Services Act ([2012](#)),
- Financial Services (Banking Reform) Act ([2013](#)),
- The Criminal Finances Act ([2017](#)),
- Law Commission SARs report ([2019](#)),
- Law Commission Asset Recovery ([2020](#)),
- National Risk Assessments ([2015](#), [2017](#) and [2020](#)),
- Economic Crime Plan ([2019](#)),
- Law Commission Corporate Economic Crime ([2020](#)),
- Economic Crime (Transparency and Enforcement) Act 2022 and
- Law Commission Corporate Criminal Liability Options Paper ([2022](#))

# Mutual Evaluation Report (2018)

John Glen MP, Economic Secretary to  
the Treasury and City Minister



Ben Wallace MP, then Minister for  
Security and Economic Crime



# Questionable Findings?

- Royal United Services Institute ([2018](#))
- United States Department of State Bureau of International Narcotics and Law Enforcement Affairs *International Narcotics Control Strategy Report Volume II Money Laundering* ([2021](#))
- House of Commons Foreign Affairs Committee *Moscow's Gold: Russian Corruption in the UK Eighth Report of Session 2017–19* (House of Commons Foreign Affairs Committee: [2018](#))
- HM Treasury Select Committee *Economic Crime – Anti-money laundering supervision and sanctions implementation* ([2019](#))
- HM Treasury Select Committee *Crypto-assets* ([2018](#))
- HM Treasury Select Committee *Economic Crime: Consumer View* ([2019](#))
- Intelligence, Security Committee of Parliament *Russia* (Intelligence and Security Committee of Parliament: [2020](#))
- Nice ([2020](#))
- House of Commons Treasury Select Committee *Economic crime* ([2022](#))
- Transparency International ([2022](#))

# Case Study 1: Corporate Financial Crime

- Offshore Leaks ([2013](#))
- LuxLeaks ([2014](#))
- FIFA Leaks ([2015](#))
- Swiss Leaks ([2015](#))
- Bahamas Leaks ([2015](#))
- Panama Papers ([2016](#))
- Paradise Papers ([2017](#))
- FinCEN Papers ([2020](#))



# Corporate Financial Crime: Enforcement

- Prosecutions
  - *R v NatWest Bank* (2021) Southwark Crown Court, 13 December 2021
  - *Serious Fraud Office v Barclays plc* [2018] EWHC 3055 (QB).
- Failure to prevent
  - Deferred Prosecution Agreements:
    - 12 under the Bribery Act (2010)
    - 0 under the Criminal Finances Act (2017)
  - Law Commission ([2022](#))
    - Economic Crime
- Financial Penalties:
  - Financial Conduct Authority
  - Financial Services and Markets Act 2000 (s. 206(1))
- Asset Recovery
  - Proceeds of Crime Act 2002
  - *Crown Prosecution Service (Appellant) v Aquila Advisory Ltd (Respondent)* [2021] UKSC 49



# Case Study 2: Terrorism Financing and Fraud

- Irish Republican Army ([IMF](#), n/d),
- Believed to have accrued over £1m per year ([Woodford and Smith](#), 2018),
- Fraud Review ([2006](#), 74, 135),
- al Qaeda partly funded by fraud (FATF, [2008](#); 9/11 Commission, [2004](#)),
- Hezbollah ([United States Department of Treasury](#), 2015),
- EUROPOL ([2015](#), 2),
- ISIL ([United States Department of Treasury](#), 2018) and
- HM Inspectorate of Constabulary and Fire and Rescue Services ([2019](#), 29).

# Terrorism Financing and Fraud – Disjointed Policies

## **Counter Fraud Strategy**

- Criminal Justice Act 1987
- Serious Fraud Office
- Fraud Review (2006)
- National Fraud Authority
- National Fraud Reporting Centre
- National Fraud Intelligence Bureau
- Action Fraud
- National Crime Agency

## **Counter Terrorism Financing Strategy**

- Prevention of Terrorism (Temporary Provisions) Act 1989
- Terrorism Act 2000
- The Anti-terrorism, Crime and Security Act 2001
- CONTEST
- National Risk Assessments

# Terrorism Financing and Fraud: Typology

- Passport Fraud
- Immigration fraud
- Identity theft
- Credit card, personal loan fraud and bank fraud
- Tax fraud
- Benefit fraud
- Student loan fraud,
- Insurance fraud,
- Non-profit organisation fraud,
- Mortgage fraud,
- Counterfeiting and
- Trade based fraud (Ryder, 2022)

# Terrorism Financing and Fraud

- Fraud is the funding mechanism of choice for terrorism financiers:
  - it is convenient,
  - low key and
  - frequently avoids detection
- Terrorists have created a 'fraud dossier' or 'black book'
- Disjointed policies
- No fraud strategy

# The Economic Crime Act 2022

- What does the Act cover?
  - Register of Overseas Entities
  - Unexplained Wealth Order
  - Sanctions Reforms

# The Economic Crime Act 2022

- Register of Overseas Entities
  - A new register of overseas entities, which includes information about overseas entities that own UK property and their beneficial owners
  - Where there is no registration, entities face sanctions including restrictions and possible criminal sanctions (daily fine £500 and prison sentences up to 5 years)

# The Economic Crime Act 2022

- Unexplained Wealth Orders:
  - Law Enforcement Agencies can apply to High Court for UWO
  - Costs rules are reformed to limit the costs to authorities that unsuccessfully seek to obtain a UWO
  - LEA are given more time to review material provided in a response to an UWO

# The Economic Crime Act 2022

- Sanctions:
  - The Act could result in more sanctions enforcement by the Office for Financial Sanctions Implementation (OFSI)
  - The OFSI can impose monetary penalties on a person who breaches financial sanctions if it is satisfied that they knew or had 'reasonable cause to suspect' that they were in breach
  - This requirement is replaced by strict liability
  - The OFSI can adopt a name and shame policy



# Final Thoughts

- The Economic Crime Act (2022) is a welcomed addition to the UKs financial crime armoury
- Why the eight year delay?
- Apathy?
- Would the Act have been introduced if Russia did not invade Ukraine?



# Illicit Enrichment

Andrew Dornbierer





 BASEL INSTITUTE ON  
GOVERNANCE

Andrew Dornbierer

# Illicit Enrichment

A GUIDE TO LAWS TARGETING  
UNEXPLAINED WEALTH

# What are illicit enrichment laws?

Laws under which a court can:

- Impose a final **sanction** against a person if...
  - they are satisfied that a person has **enjoyed an amount of wealth** of some kind...that has **not been justified** through reference to that person's **lawful income**

These laws **do not** require proof of any separate or underlying criminal activity

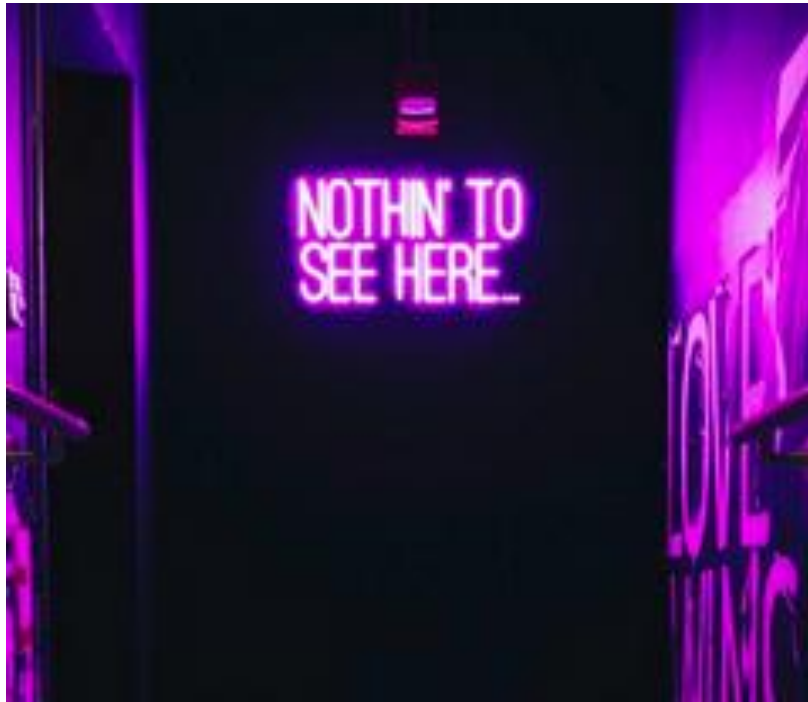
# The Presumption of Innocence

## **Prevailing view:**

The presumption of innocence is not absolute...and it is acceptable to deviate from it in special circumstances



# The Presumption of Innocence



## **Alternative view:**

The burden of proof is never reversed onto the person, therefore the presumption of innocence is never infringed upon

# The Right to Silence/ Privilege against Self-Incrimination

- Similar arguments to the presumption of innocence
- Still somewhat untested





# Retroactivity







# INTERNATIONAL CONFERENCE BY GLOBAL SOUTH DIALOGUE ON ECONOMIC CRIME

*Theme: Unexplained Wealth: A Global  
Perspective*

**TOPIC:** ASSESSING THE CHALLENGES OF THE LEGAL FRAMEWORK ON  
UNEXPLAINED WEALTH IN AFRICA: A PERSPECTIVE ON GHANA



Presented by: Francis Kofi Korankye-Sakyi & Joyce Anastasia  
Sam, University of Cape Coast, Ghana.

# Outline

- Introduction
- Research question
- Objectives
- Key definitions
- Relevant legal environment on unexplained wealth in Ghana
- Analysis
- Conclusions/Recommendations



# INTRODUCTION



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graph TD; A[INTRODUCTION] --> B[The threat and risk posed by financial crime to the global economy has manifested in recent financial crisis due to market manipulation and abuse of the financial system. (Malakoutikhar,2020;Rider, 2019;Ryder,2018;Ashford,2002;Mariono, et al.2002).]; A --> C[Unexplained wealth and financial crime (a twin problem) are emerging phenomena in Africa.]; A --> D[The fight against this twin problem has internal dimension.];
```

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**Unexplained wealth and financial crime** (a twin problem) are emerging phenomena in Africa.

The fight against this twin problem has internal dimension.



# Introduction



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graph TD; A[Introduction] --> B[Global perspectives on unexplained wealth as a form of financial and economic crime are well captured in literature.]; A --> C[While we can point to vast literature on the situation outside Africa, the regulatory consequences in winning the battle has not been explored adequately as far as the fight against unexplained wealth is concerned.]; A --> D[Institutional and legal accountability has become the focus.];
```

Global perspectives on unexplained wealth as a form of financial and economic crime are well captured in literature.

While we can point to vast literature on the situation outside Africa, the regulatory consequences in winning the battle has not been explored adequately as far as the fight against unexplained wealth is concerned.

Institutional and legal accountability has become the focus.

# Introduction

Majority of the current instruments adopted by the EU in the area of the suppression against financial crimes have been enacted on the basis and justification that there is a need for increased regulatory response to financial crises. (**E. Herlin-Karnell, 2018. p.96**)

Corruption and Crime Commissions are established to identify and follow the trails of individuals and corporations who benefit from these crimes as well as their modus operandi for arrest and prosecutions.

Ghana has a couple of laws dealing with financial crimes and laundering of proceeds of crime.

## Research Question

- Does Ghana, like other African countries, boasts of the **effectiveness** of laws and institutions to deal with unexplained wealth?

# Objectives

- The study investigates the framework for understanding regulatory environment on the fight against unexplained wealth in Africa by zooming on Ghana.
- Assess the challenges inherent in existing legal frameworks unexplained wealth in Ghana.
- Assess the institutional regime of unexplained wealth in the area of criminal and administrative jurisprudence of Ghana.

# Definitions

## Money Laundering

- Conventionally refers to the cleansing or concealment of resources linked to criminal activity (**Gallant, 2018. 115**)
- It covers almost any handling of property knowing or believing that the property was obtained directly, or indirectly, from a criminal offence (**Canadian Criminal Code, 1985, ss 462.31 (1).**)
- Money laundering is known as a source of unexplained wealth. The problem of money laundering is recognised as a specific offence in Ghana.





## Unexplained wealth

- Unexplained wealth is when a person's value of wealth is greater than the value of his lawfully acquired wealth. (**Criminal Property Confiscation Act, 2000,s.144(1)**)
- A person's wealth is an amount equal to the sum of the values of all items of property, services rendered, advantages and benefits, and allowances.

## A Ghanaian perspective

- “If we are to place unexplained wealth in proper context, I will say that if the person cannot reasonably explain as matched against his lawful income the amount of money in question, then that aspect, in my opinion, should be criminalised. But if you can reasonably explain how you came by that amount of money, then that should be acceptable.
- “If I were to place the burden on you; matched against your lawful income, and you cannot reasonably explain the shortfall as to how your lawful income falls short of your wealth, then I will be asking you questions and calling you in,” (**Kissi Adjabin, SP, Ghana**).



**Unexplained wealth** = value of a  
person's wealth – value of a  
person's lawfully acquired wealth.



## Financial Crime

- Financial crime can be said to include “any offence involving fraud or dishonesty; misconduct in, or misuse of information relating to, a financial market; or handling the proceeds of crime” (**Financial Services and Markets Act 2000, s 6(3).**)
- The Federal Bureau of Investigation defines financial crime as including the criminal activities of corporate fraud, commodities and securities fraud, mortgage fraud, healthcare fraud, financial institution fraud, insurance fraud, mass marketing fraud and money laundering.
- “economic crime” and “illicit finance”



**Unexplained wealth may  
be gotten through unlawful  
means:**

Trafficking in illicit  
drugs or  
substances

Corruption/Bribery

Money  
laundering/terrorist  
financing



Theft or  
fraud

Blackmail  
or  
extortion

Collusion  
or  
kickbacks



Tax evasion

Insider  
dealing/insid  
er trading

Market abuse  
and  
manipulation.  
(Kempa, 2010)

# The Ghanaian Situation

“A new Ghanaian law modelled after the UK’s Unexplained Wealth Order (UWOs) could correct the defects in our current laws. Instead of relying on citizens to report omissions to CHRAJ, a Ghanaian UWO law would place the burden on public officials and private individuals to explain the sources of their wealth; failure to do so would lead to prosecution to prove that their assets were acquired using legitimate sources of wealth. These measures would complement Ghana’s existing asset disclosure regime, which is difficult to enforce,” (**Amidu, Former AG & SP, 2021**)

**Unexplained wealth must be criminalised in Ghana (Haruna Iddrisu, Minority Leader).**

- “There are still some major legislative gaps. I sincerely believe that Ghana should pass a new law on criminalizing unexplained wealth as part of our collective quest to deal with white-collar criminality, graft and economic crime.” (**Haruna Iddrisu, 2021**).



# Relevant Legal Environment



1992  
Constitution

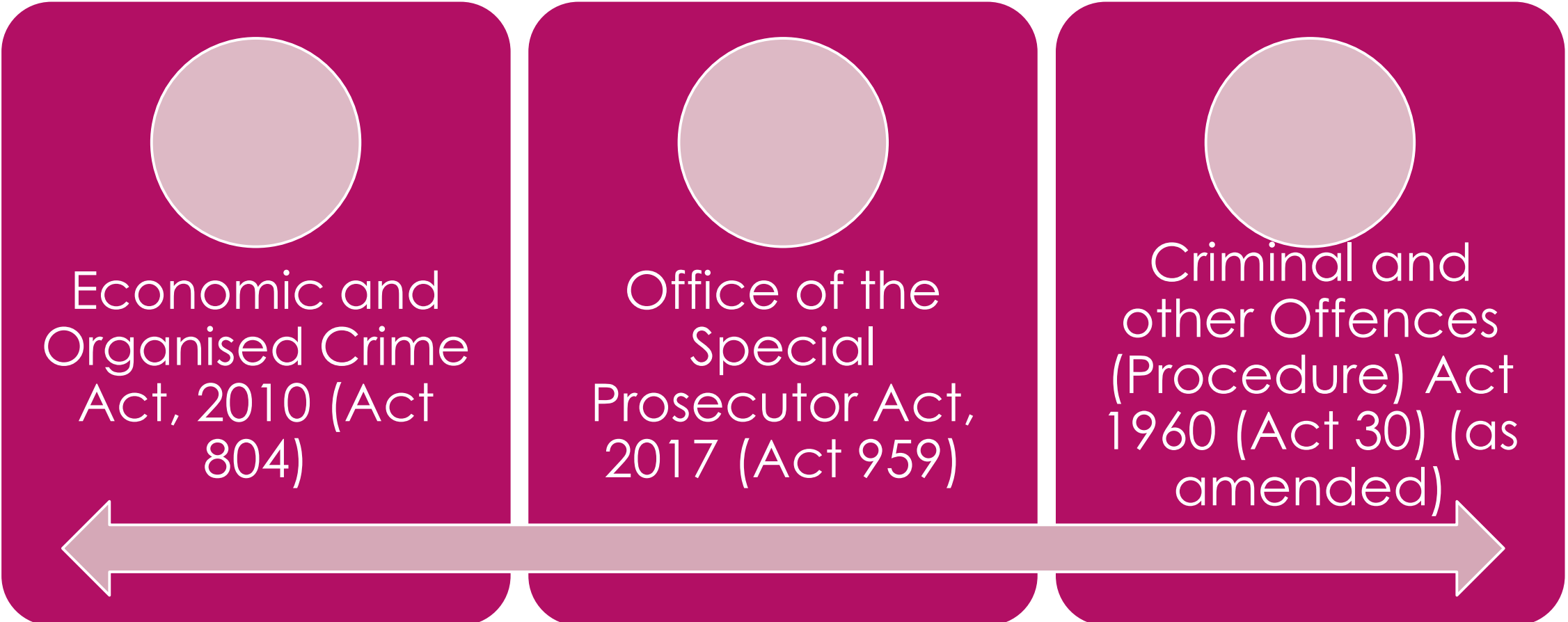
Public Financial  
Management  
Act, 2016 (Act  
921)

Anti-Money  
Laundering  
Act, 2020 (Act  
1044)

Commission on Human  
Rights and  
Administrative Act 1993  
(Act 456)

The diagram features a dark purple header bar at the top. Below it, two magenta rounded rectangular boxes are positioned side-by-side. Each box contains a light pink circle at the top and a text label below it. A long, light pink double-headed arrow spans the width of both boxes, positioned below the text labels. The left box is labeled 'Commission on Human Rights and Administrative Act 1993 (Act 456)' and the right box is labeled 'Whistleblower Act, 2006 (Act 720)'.

Whistleblower Act,  
2006 (Act 720)



Economic and  
Organised Crime  
Act, 2010 (Act  
804)

Office of the  
Special  
Prosecutor Act,  
2017 (Act 959)

Criminal and  
other Offences  
(Procedure) Act  
1960 (Act 30) (as  
amended)

# Analysis

## 1992 Constitution

Laws of  
Ghana  
(Article 11)

Judicial  
Power  
(Article 125  
(3); 126 (1))

The Audit  
Service  
(Article 188-  
189)

CHRAJ  
(Article  
218).

Assets  
Declaration  
for public  
officers (Article 286)

# Commission on Human Rights and Administrative Act 1993 (Act 456)



## Mandate

- **Human Rights Mandate**-The National Human Rights Institution of Ghana'
- **Administrative Justice Mandate**-The Ombudsman of Ghana.
- **Anti-corruption Mandate**-An Anti-Corruption Agency & Ethics Office for the Public Service of Ghana.



## Anti-Corruption Mandate

Has the power to promote integrity in the public service and combat corruption in Ghana.

Investigates allegations of corruption and conflicts of interest, abuse of power, and misuse of public money in the public service.

Investigates disclosures of impropriety under the **Whistleblowers Act** (Act 720) and complaints of the victimization of whistleblowers in both the public and private sectors.



## Anti-Corruption Mandate

Provides free advice  
and services on  
corruption prevention  
in Ghana.

Works to reduce opportunities for  
corruption in corruption-prone  
sectors by assisting to implement  
the corruption prevention measures  
and putting in place robust systems  
for checking corruption.

Sensitises the general public  
about corruption and enlist public  
support to fight corruption at all  
levels of society.



## **Powers of CHRAJ**

- To require an institution or person to submit information, documents, records or other materials that will assist in its investigations.
- To require any institution or person to appear before it to assist in its investigations.
- To go to court to seek remedies, including compliance with its recommendations.



# Practical Cases

## ***Appiah Ampofo v CHRAJ*** ***[2005-2006] SCGLR 227:***

In this case, the Commission found (supported by Court) that, the USD96,500 that the respondent received was a bribe and not a gift because;

- of the source of the payment (from a company in the UK)
- the timing of the payments (after facilitating a contract)

## Con'td

- the continued denial by the respondent that no payments were received and
- lack of transparency in the payment of the money (secret lodgments into the account of the respondent in the UK).

(See *Crusading Guide v Appiah Ampofo*, Case No. CHRAJ/195/2001/1319).

## The AB Adjei Case

- In August 2019, President of Ghana suspended Mr Adjenim Boateng Adjei and referred him to the CHRAJ and the OSP to investigate his conduct following the “Contracts for Sale” investigative documentary by The Fourth Estate’s Editor-In-Chief, Manasseh Azure Awuni.
- This was followed with a petition from the Ghana Integrity Initiative, Ghana’s chapter of Transparency International, to investigate the activities of the PPA CEO under same circumstances.
- During the investigation, Talent Discovery Limited (TDL), a company owned by Mr Adjei, was found to be getting government contracts through restricted tendering and selling those contracts to others for profit.



Con'td.

- “Mr Adjei received huge cash deposits into his Universal Merchant Bank Cedi account between August 2017 and August 2019 amounting to GHS 5,697,530.00, whilst he was holding public office as CEO of PPA. Although he was given every opportunity to rebut the presumption that those assets were not illegally acquired contrary to section 5 of Act 550, he was unable to show that those monies were reasonably attributable to income, gift, loan, inheritance or any other reasonable source, and therefore deemed to have acquired illegally in contravention of the Constitution.”
- CHRAJ Held: “Having abused public office to illicitly enrich himself, Mr Adjenim Boateng Adjei has demonstrated that he can no longer be entrusted with public office. Consequently, the Commission hereby disqualifies him from holding public office for a period not less than 10 years, to run concurrently with the earlier disqualification in the decision of the Commission in the case of OOP V CEO of PPA.”



Con'td

- The report also directed Mr AB Adjei to declare his assets within three months. The Commission said Mr A.B. Adjei ignored article 286 of the Constitution and section 5 of Act 550 despite warnings by the Auditor-General.
- It directed: “However, having been removed from office and disqualified from holding public office for a period of not less than 5 years in the case of the OOP V CEO of PPA, after serving his term of disqualification. He has 3 months from the date of this decision within which to provide evidence before the Commission that he has complied with Article 286(1)(c),”



## Challenges

- Inability to initiate investigations on its own.
- Inadequate funding.
- Lack of logistics and the untimely release of funds.
- Over politicisation of corruption and crime.
- Low reporting of corruption by the public.

# Anti-Money Laundering Act, 2020 (Act 1044)

## Objects

consolidate the laws relating to the prohibition of money laundering

provide for the establishment of the Financial Intelligence Centre

for related matters.

## Financial Intelligence Centre (s.6)

assist in the identification of proceeds of unlawful activity;

assist in the combat of (i) money laundering; (ii) financing of terrorism; (iii) financing of the proliferation of weapons of mass destruction; (iv) tax evasion



# Economic and Organised Crime Act, 2010 (Act 804)

## The objects:

```
graph TD; A[The objects:] --> B["(a) prevent and detect organised crime,"]; A --> C["(b) generally to facilitate the confiscation of the proceeds of crime"]
```

(a) prevent and  
detect organised  
crime,

(b) generally to  
facilitate the  
confiscation of the  
proceeds of crime



# The functions

(a) investigate and on the authority of the Attorney-General prosecute serious offences that involve (i) financial or economic loss to the Republic or any State entity or institution in which the State has financial interest, (ii) money laundering, (iii) human trafficking, (iv) prohibited cyber activity, (v) tax fraud, and (vi) other serious offences;

(b) recover the proceeds of crime

# Application and pre-emptive measures

## **Seizure and detention of currency suspected to be proceeds of crime (S.23(1)).**

- ▶ An authorised officer of the Office or any other public officer authorised by the Executive Director, shall seize currency
  - (a) that exceeds the amount prescribed by the Bank of Ghana being imported into or exported from the country,
  - (b) if the officer has reasonable grounds to suspect that (i) the currency is the proceeds of crime, or (ii) the currency is intended by the person for use in the commission of a serious offence, or (c) if the holder of the currency is unable to provide satisfactory explanation for the source of the currency.

# Implications

No power to prosecute

Under perceived political direction

Under resourced

Not much heard of it seizure and  
confiscation mandate.

# Office of the Special Prosecutor Act, 2017 (Act 959); OSP Regulation, 2018 (L.I. 2373)

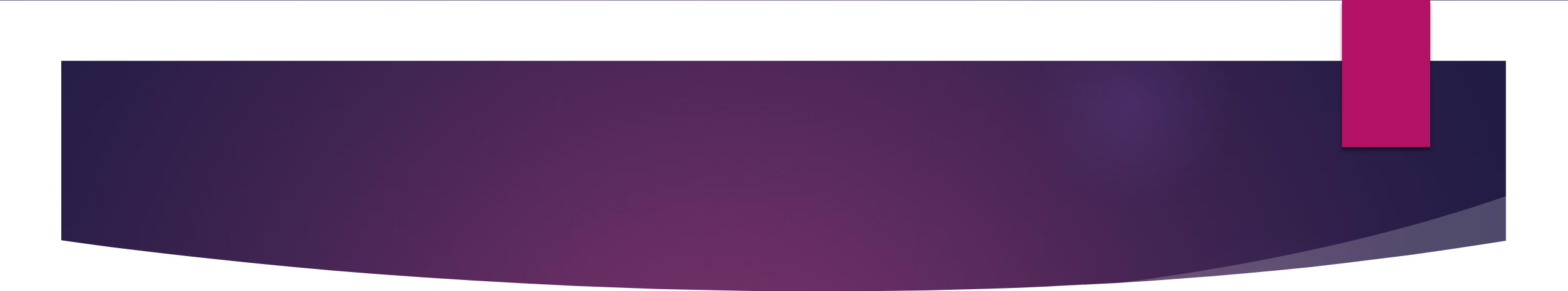
## Object of the Office (S. 2)

The object of  
the Office is to;

(a) investigate and  
prosecute specific  
cases of alleged or  
suspected  
corruption and  
corruption-related  
offences;

(b) recover the  
proceeds of  
corruption and  
corruption-related  
offences, and

(c) take steps to  
prevent  
corruption.



## Functions (s. 3)

Investigates corruption and corruption-related offences under the Public Procurement Act, 2003 (Act 663);

Investigates corruption and corruption-related offences under the Criminal Offences Act, 1960 (Act 29)

recover and manage the proceeds of corruption.

## Con'td



```
graph LR; A[Con'td] --- B[receive and investigate complaints from a person on a matter that involves or may involve corruption and corruption-related offences;]; A --- C[receive and act on referrals of investigations of alleged corruption and corruption-related offences by Parliament, the Auditor-General's Office, CHRAJ, EOCO and any other public body];
```

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# Implications



```
graph TD; A[Implications] --> B[It is yet the most acceptable legislation on graft and corruption in Ghana]; A --> C[Though it relates to corruption and corruption-related offences, it falls short of dealing specifically with unexplained wealth.]; A --> D[It has so far suffered major setbacks.];
```

It is yet the most acceptable legislation on graft and corruption in Ghana

Though it relates to corruption and corruption-related offences, it falls short of dealing specifically with unexplained wealth.

It has so far suffered major setbacks.





AB Adjei

- The Special Prosecutor has charged the former chief executive officer of the Public Procurement Authority (PPA), Adjenim Boateng Adjei, and his brother-in-law, Francis Kwaku Arhin, with 18 counts of offences relating to their roles in “The Contracts for Sale” scandal.
- The charges center on “Using public office for profit, contrary to section 179C(a) of the Criminal Offences Act, 1960 (Act 29) and “Directly and indirectly influencing the procurement process to obtain an unfair advantage in the award of a procurement contract, contrary to section 92(2)(b) of the Public Procurement Act, 2003 (Act 663).



Con'td

- The case was filed at the Criminal Division of the High Court in Accra on Wednesday, May 18, 2022.
- Adjenim Boateng Adjei was busted in the “Contracts for Sale” investigative documentary produced by Manasseh Azure Awuni in 2019.

# Public Financial Management Act, 2016 (Act 921)

## The objects

- to regulate the financial management of the public sector within a macroeconomic and fiscal framework;
- **to define responsibilities of persons entrusted with the management and control of public funds**, assets, liabilities and resources,
- to ensure that public funds are sustainable and consistent with the level of public debt;
- **to provide for accounting and audit of public funds**; and
- to provide for related matters.



## The Act applies to

- a covered entity; and
- a public officer responsible for receiving, using, or managing public funds. [**S. 2(1)**].



# Implications



```
graph TD; A[Implications] --> B[Administrative responsibility]; A --> C[Fiscal responsibility]
```

Administrative  
responsibility

Fiscal  
responsibility

# Conclusions

There are number of legislative instruments on financial crimes in Ghana, but with ineffective mandate to comprehensively deal with the emerging phenomenon of unexplained wealth.

The powers of the specialised bodies on financial crimes are limited by internal factors and political controls.

## Con'td

Administrative sanctions have always formed a crucial part of the enforcement strategy in developed countries.

Criminal law, as a policy tool for financial regulation, is used to increase confidence and the enhancement of market integrity. (**Ryder, 2018**).

## Con'td

Apart from the loopholes in existing laws, the lack of state support for crime commissions, and the lack of an effective competition regime among others are the most frontal issues affecting the fight against unexplained wealth, and enforcement regime in Ghana.

Criminalisation of unexplained wealth and confiscation regimes is non-negotiable.





# Recommendations



```
graph TD; A[Recommendations] --> B[Strengthening of legal architecture for confronting financial crimes in Ghana as a mirror of the African situation.]; A --> C[Ghana criminalises unexplained wealth as an imposition of criminal law because existing legislation lacks legislative competence.]; A --> D[A Single Legal framework for where anti-fraud rules on unexplained wealth is imperative and demanded.];
```

Strengthening of legal architecture for confronting financial crimes in Ghana as a mirror of the African situation.

Ghana criminalises unexplained wealth as an imposition of criminal law because existing legislation lacks legislative competence.

A Single Legal framework for where anti-fraud rules on unexplained wealth is imperative and demanded.



## Recommendations



Both administrative and criminal sanctions must be considered in any legal architecture towards tackling unexplained wealth. Sanctions must not be blurred in any way.

Laws must provide clear surveillance and monitoring mechanisms of financial activities to dismantle financial secrecy. (Ryder, 2018). The means of tackling criminals in such enterprises relies on intelligence, surveillance, and monitoring.



# Public Procurement and Unexplained Wealth in Nigeria: An Ecosystem Approach

# Definition of Terms: Public Procurement, Unexplained Wealth 1/2

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- Public procurement refers to the purchase by governments and state-owned enterprises of goods, services and works – OECD.
- A person has unexplained wealth if the value of their wealth is greater than the value of their lawfully acquired wealth – Australian Criminal Property Confiscation Act (CPCA) 2000, s 144(1).



# The Problem of Unexplained Wealth In Nigeria

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- The value of a **person's wealth** is the amount equal to the sum of the values of all the items of property, and all the services, advantages and benefits, that together constitute the person's wealth – CPC Act s 144(2).
- The value of the **person's lawfully acquired wealth** is the amount equal to the sum of the values of each item of property, and each service, advantage and benefit that both is a constituent of the person's wealth and was **lawfully acquired** – CPCA s 144(3).

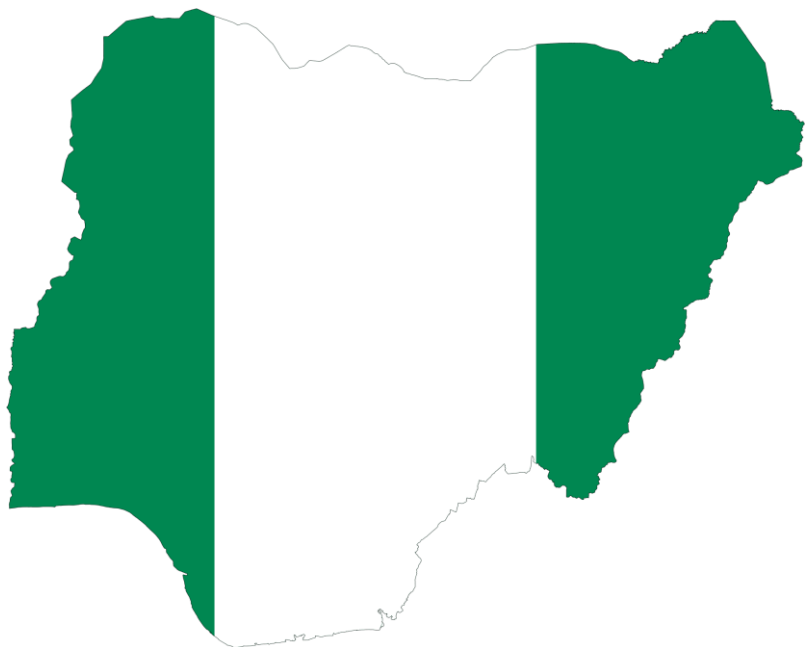
# The Problem of Unexplained Wealth

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- In countries with a history of colonization, unexplained wealth has historical precedent in the unquestioned exploitation of imperial states.
- While colonial regimes might have been internally accountable, they were unaccountable to the people of the colonies.

# The Problem of Unexplained Wealth

Nigeria has been grappling with the problem of unexplained wealth since independence with very much revenue and potential for progress wasted.



- Results of a PwC study show that corruption could cost up to 37% of Gross Domestic Products (GDP) by 2030. This cost is equated to around \$1,000 per person in 2014 and nearly \$2,000 per person by 2030 – Uyi Akpata et al, 'Impact of Corruption on Nigeria's Economy' (PriceWaterhouse Coopers Nigeria 2019)

<https://www.pwc.com/ng/en/assets/pdf/impact-of-corruption-on-nigerias-economy.pdf> accessed 26 June 2022.

# Public Procurement and Unexplained Wealth in Nigeria



# Public Procurement and Unexplained Wealth in Nigeria

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## Much Unexplained Wealth in Nigeria originates from Procurement Crime

- The cost of contract/project in Nigeria is about 35% higher than what obtains in other West African countries – Rasheedat Okoduwa ‘Aspect of Corrupt Practices in Public Sector Procurement’ (2011).
- A World Bank Country Assessment survey conducted in 2000 suggested that ₦60 out of every ₦100 spent by the government was lost to procurement fraud. This survey inspired the Public Procurement Act of 2007.
- The Independent Corrupt Practices Commission announced in 2016 that 60% of corruption cases in Nigeria were procurement related.

# Types of Procurement Crime in Nigeria

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These are the types of procurement crime according to Section 58(4) of the Public Procurement Act

- Collusion to inflate prices
- Unlawful influence
- Bribery
- Bid rigging
- Splitting of tenders
- Procurement of forgery
- Forgery
- Obstructing investigation of procurement records – section 58(4) Public Procurement Act.

# Due Process and Accountability Frameworks Governing Public Procurement in Nigeria

# Public Procurement Act/Bureau of Public Procurement

Parastatal and ministerial tenders boards are the procurement approving authorities – s 17 PPA.

Procuring entities are to work through procurement planning committees – s 18 PPA.

Procuring entities must advertise and solicit for bids..

Procurement processes must be observed by private sector professional whose expertise is relevant to the type of procurement and an NGO competent in transparency and anti-corruption issues.

Procuring entity must evaluate bids and award contracts after approval by approving authorities – s 19.



Debrief bid losers at their request – s 19.

Tender boards' decisions are communicated to Ministers

Obtain a “Certificate of ‘No Objection’ to Contract Award” from the Bureau of Public Procurement within the prior review threshold as stipulated in Section 3(a) of this Act – s 19.

Procuring authority must execute all contract agreements – s 19.

Procuring entity must announce and publicize the award as required – s 19.

# Procurement Methods



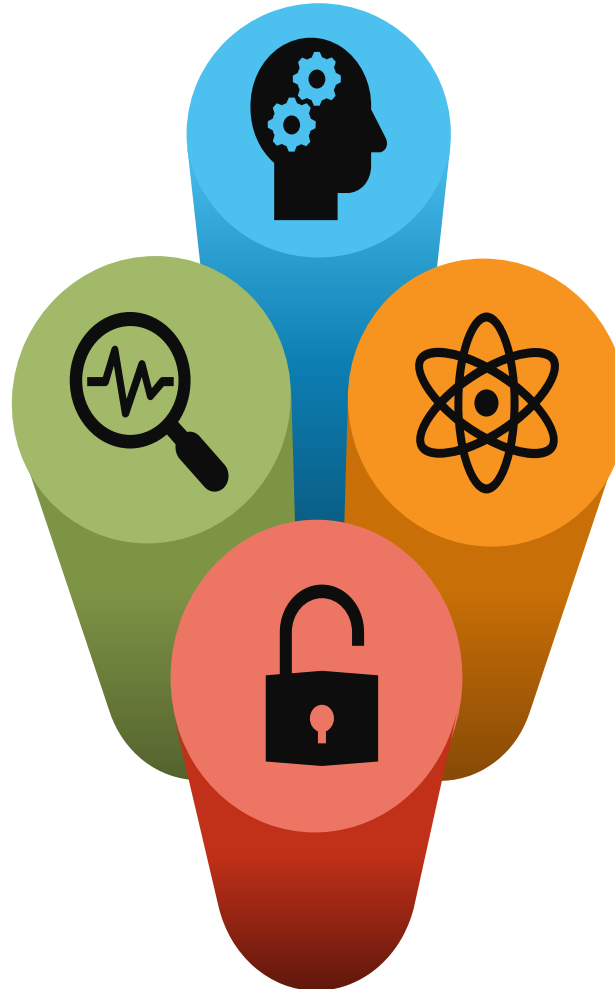
## Bidding Process

All procurement is to be by open competitive bidding except otherwise expressly provided – s 24 PPA.



## 2-Stage and Restricted Tendering

In permitted circumstances procurement may be by two-stage tendering or restricted tendering – s 39 and 40 PPA.



## Direct & Emergency Procurement



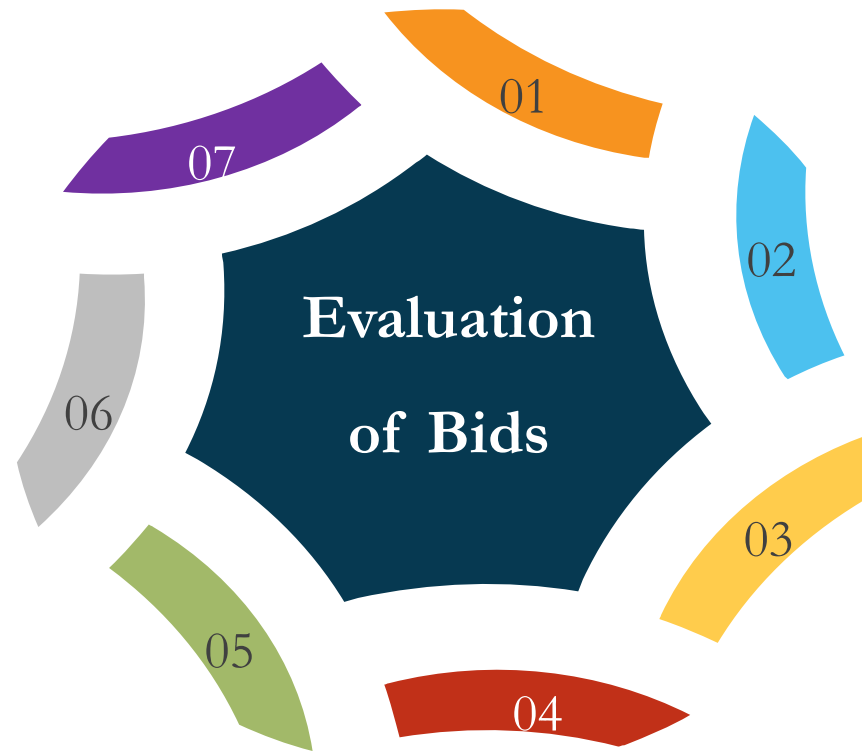
Direct procurement and emergency procurement may also be used in appropriate circumstances – s 42 and 43 PPA.

## Communication



No communication shall take place between procuring entities and any supplier or contractor after the publication of a bid solicitation other than as provided in the PPA – s 27(6) PPA.

# Evaluation of Bids



7

The BPP may investigate any procurement process – s 53 PPA.

6

Every procuring entity shall maintain a record of the comprehensive procurement proceedings which shall be made available on request – s 38(1) – (2) PPA.

5

Notice of the acceptance of the bid shall immediately be given to the successful bidder – s 33(3).

1

No other method or criteria shall be used except those stipulated in the solicitation documents.

2

The objective of bid evaluation shall be to determine and select the lowest evaluated responsive bid.

3

The successful bid shall be that submitted by the lowest cost bidder from among all the responsive bids – s 33(1) PPA.

4

The selected bid may not be the lowest if the decision can be justified – s 33(2) PPA.

## Procurement Requirements for Privatization

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- Section 55 of PPA makes the procurement requirements contained in the Act applicable to asset disposals under the Public Enterprises (Privatization and Commercialization Act).

# Conflict of Interest

- Every public officer involved directly or indirectly in matters of public procurement and disposal of assets shall :
  - divest himself of any interest or relationships which are actually or potentially inimical or detrimental to the best interest of government and the underlining principles of this Act; and
  - not engage or participate in any commercial transaction involving the federal government, its ministries, extra-ministerial departments, corporations where his capacity as public officer is likely to confer any unfair advantage - pecuniary or otherwise on him or any person directly related to him – s 57(9).
- Any person engaged in the public procurement and disposal of assets who has assumed or is about to assume, a financial or other business outside business relationship that might involve a conflict of interest, must immediately declare to the authorities any actual or potential interest – s 57(10) PPA.



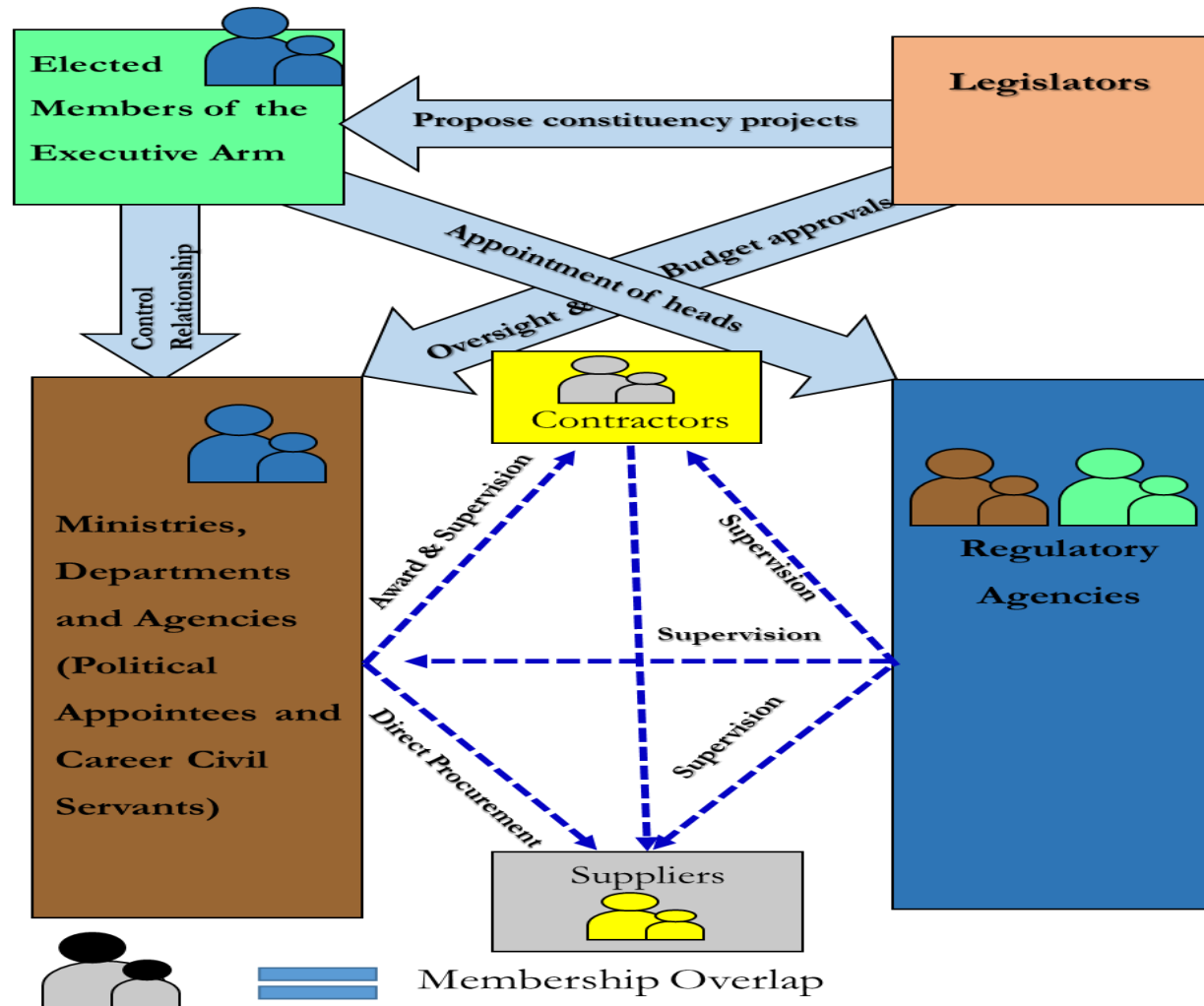
# **FIGHT AGAINST UNEXPLAINED WEALTH/CODE OF CONDUCT BUREAU**

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- Declaration of asset is mandated under paragraph 11 of the 5th Schedule to the Nigerian Constitution.
- Penalties for non-compliance include:
  - Removal from office;
  - Vacation of official seat in any legislative house, as the case may be;
  - Imposition of fine;
  - Disqualification from membership of a legislative house and from holding of any public office for a period not exceeding ten (10) years; and
  - Seizure and forfeiture of the state of any property(ies) acquired in abuse or corruption of office.

# Loopholes in Due Process and Accountability Frameworks

# Loopholes in the Public Procurement Landscape



**MEMBERSHIP OVERLAPS:**

**NCP/BPP CASE**

# NATIONAL COUNCIL ON PUBLIC PROCUREMENT

- The Council consists of:
  - ❑ Minister of Finance as Chairman;
  - ❑ Attorney-General and Minister of Justice of the Federation;
  - ❑ Secretary to the Government of the Federation;
  - ❑ Head of Service of the Federation;
  - ❑ Economic Adviser to the President;
  - ❑ the Director-General of the Bureau who shall be the Secretary of the Council.
  - ❑ Six part-time members to represent;
    - ❖ Nigeria Institute of Purchasing and Supply Management;
    - ❖ Nigeria Bar Association;
    - ❖ Nigeria Association of Chambers of Commerce, Industry, Mines and Agriculture;
    - ❖ Nigeria Society of Engineers
    - ❖ Civil Society;
    - ❖ the Media

## FEDERAL EXECUTIVE COUNCIL

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- The National Council on Public Procurement has not been set up as required under the Public Procurement Act.
- The Federal Executive Council performs the job of the National Council on Public Procurement which creates an even more dangerous overlap than would have been if the National Council on Privatisation was in place.

# BUREAU OF PUBLIC PROCUREMENT

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- Director-General who shall be appointed by the President, on the recommendation of the Council after competitive selections – s 7(1) PPA.
- The Council shall appoint the principal officers for the Bureau after competitive selection process – s 8(1) PPA.
- The Council may appoint such officers and other employees as may, from time to time, deem necessary for the purposes of the Bureau – s 9(1).
- Without prejudice to the generality of sub-section of this Section, the Council shall have power to appoint either on transfer or on secondment from any public service in the Federation, such number of employees as may, be required to assist the Bureau in the discharge of any of its functions under the Act and persons so employed, shall be remunerated (including allowances) as the Council may consider appropriate – s 9(3) PPA.

## Proposed Reform

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- Restructuring to create truly independent regulatory bodies
- Restructuring to create truly independent anti-corruption bodies.
- Implementation of open contracting and open contracting data standards.
- Implementation of the unexplained wealth order.



# Unexplained Wealth: A Global Perspective

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Stelios Andreadakis and Theo Nyrreröd

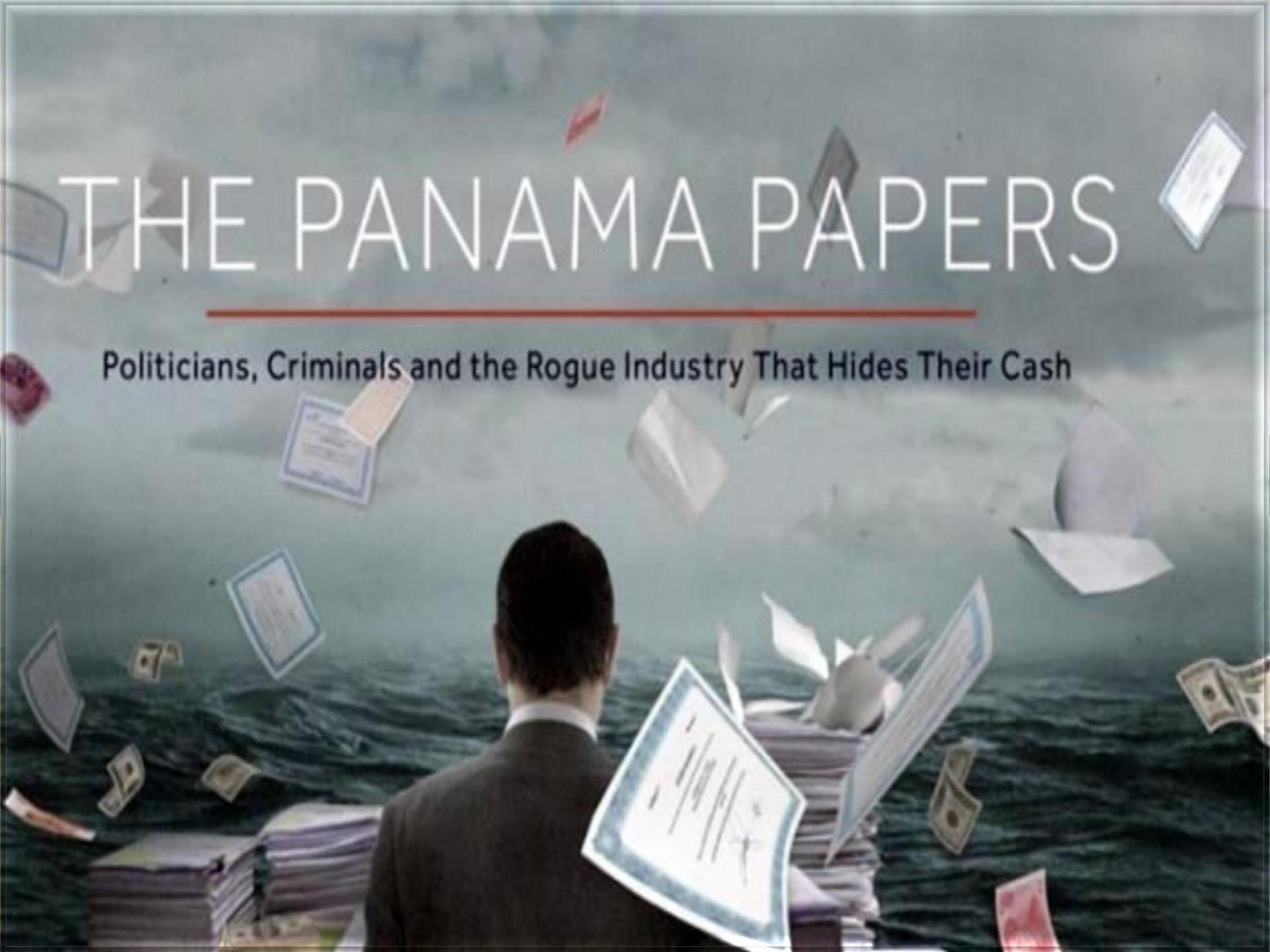
Brunel University London



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**Unexplained  
Wealth and  
Tax Havens:  
Doing  
Business  
Offshore**





# THE PANAMA PAPERS

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Politicians, Criminals and the Rogue Industry That Hides Their Cash

**The Panama Papers** is the largest financial data leak in **history**. It covers nearly 40 years, from the late 1970s through the end of 2015.

**2.6TB**

of data from Mossack  
Fonseca's database



**11.5M**

documents  
exposed



**214,488**

offshore accounts revealed  
across 200+ countries



DESIGNED BY > STINSON



# The scale of the leak

Volume of data compared to previous leaks

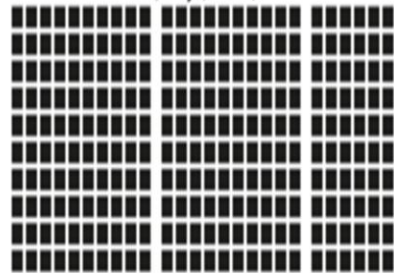
1,7 GB

Cablegate/Wikileaks (2010)



260 GB

Offshore Leaks/ICIJ (2013)



4 GB

Luxemburg Leaks/ICIJ (2014)



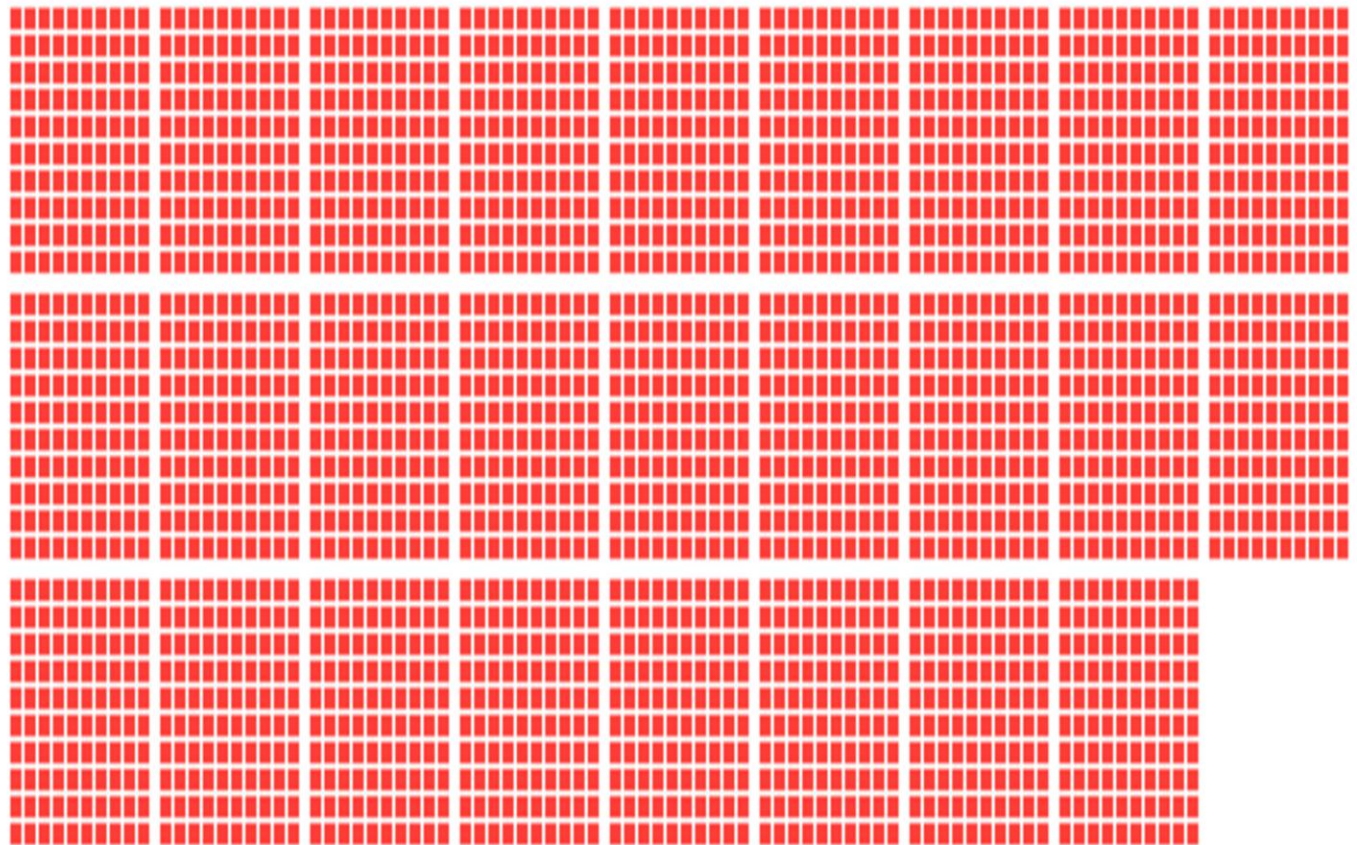
3,3 GB

Swiss Leaks/ICIJ (2015)

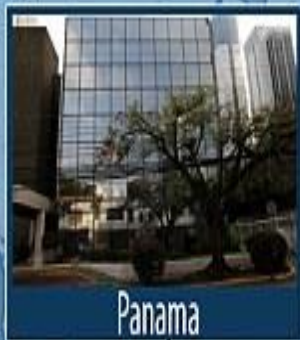


≈ 2,6 TB

Panama Papers/ICIJ (2016)



■ = 1GB



Panama



Amsterdam



Hong Kong

Isle of Man

London

Jersey

Gibraltar

The Bahamas

British Anguilla

British Virgin Islands

Venezuela

Lichtenstein

Czech Rep

Lugano

Zurich

Malta

Geneva

Israel

UAE

Jinan

Hangzhou

Shenzhen

Thailand

Singapore

Seychelles

Da Lian

Qingdao

Shanghai

Ningbo

Samoa

Guatamala

Colombia

Quito

Guayaquil

Peru

Uruguay





In the Caribbean



In Europe



In Asia and Oceania

# Tax Havens

---

A country that offers foreign individuals and businesses little or no tax liability in a politically and economically stable environment.

provides little or no financial information to foreign tax authorities.

Tax havens do not require that an individual reside in or a business operate out of that country in order to benefit from its tax policies.





# So, what did we find out?

- how wealthy individuals and public officials are able to keep personal financial information private
- how many different ways through which the rich can exploit secretive offshore tax regimes.
- how banks, law firms and offshore companies have often failed to follow legal requirements
- how they make sure their clients are not involved in criminal enterprises, tax dodging or political corruption.





## **Benefits of offshore companies**

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**Reduced administration**

**Little information when  
doing business**

**Minimum taxes**

**Lower capital  
requirement**

**Multi - currency bank  
accounts**

**Confidentiality**

## Seychelles Offshore Company Services

- ✓ Application of Company Name
- ✓ Preparation of Incorporation Documents
- ✓ Registering your Company
- ✓ Provision of Business Profile
- ✓ Provision of Company Registers
- ✓ Provision of Nominee Shareholders
- ✓ Provision of Nominee Directors
- ✓ Provision of Company Secretary
- ✓ Assistance with Bank Account Opening
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email [enquiry@valoncorp.com](mailto:enquiry@valoncorp.com)**



# Offshore company

Without physical presence - Tax exemption - No accounting - Privacy



ebay®



Google  
UK

amazon.co.uk®



Multinationals in Ireland employ over 220,000 people - nearly a quarter of the entire Irish workforce.

Those 220,000 people pay high income tax every year. The average wage of a person working for a multinational company is close to €85K per year. vs €40K the average yearly salary in Ireland.

Multinationals also have an indirect impact on the Irish economy - they purchase goods and services, they hire agencies and pay construction companies to build offices and factories. Irish transport and shipping companies export their goods.

In 2019, U.S. companies alone contributed over €20 billion to the Irish economy on a yearly basis.

Between 2008 and 2012, multinational companies paid about €15 billion in corporation tax (roughly 75% of all corporation tax paid in Ireland).

In 2017, Ireland received €6 billion in corporation tax. By multinational companies

# Is it Really Unexplained?

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**Cayman Islands** is home to roughly 100,000 companies, even though its population is only about 65,000.

Individuals pay no capital gains taxes while corporations and hedge funds are free from taxes on income and profit gains.

**But**

22% and 27% in import duties on most goods

**Bermuda**

charges duties up to 22.25% on goods based on their total value.

The government charges people 25% if they arrive in the country with personal goods by sea or air



# How much money is there in offshore tax havens?

---

**\$7.6 trillion**

That's upward of **8%**  
of the world's financial  
wealth.

# An issue that causes public outrage

- Offshore Leaks (2013), Luxemburg Leaks (2014), Swiss Leaks (2015), Panama Papers (2016), Paradise Papers (2017) – causes outrage, unfair, etc. Leads to calls for change – often joined by politicians.
- As for the UK, David Cameron attacked tax avoidance as unethical in 2012, and numerous times in 2013. Simultaneously, several of Britain's Crown Dependencies and Overseas Territories are considered tax havens until this day.
- The problem of opaque incorporation structures in UK jurisdictions goes back a long time, a 2000 Cabinet Office Report noted that “U.K. shell companies have been involved in almost all complex UK money laundering schemes.”



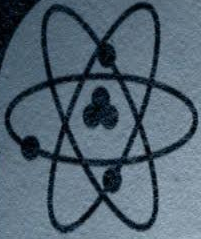
# Proclaimed political will, but not much in terms of action

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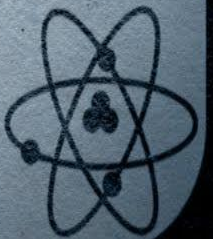
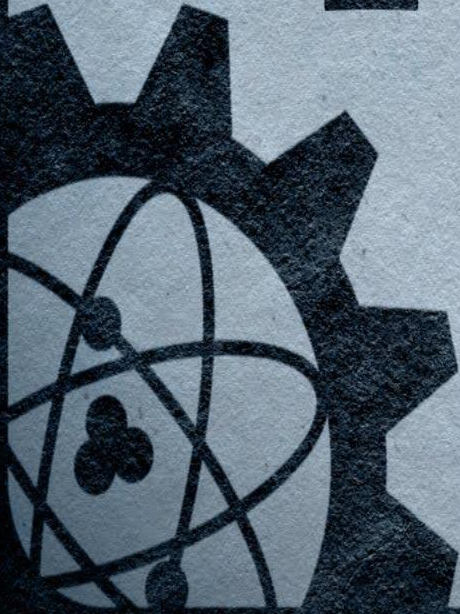
- President Joe Biden comes from Delaware, where he was a Senator between 1973 to 2009 – having ample time to improve corporate transparency in a state that is widely considered a tax shelter.
- The UK has full control over its Overseas Territories and Crown Dependencies.
- Possible explanations for lack of action: economically beneficial to compete on tax, political funding, effective lobbying, “if we don’t do it, someone else will” logic.







Thank you!



# Adoption and Implementation of Unexplained Wealth Orders in the Nigerian Criminal Justice System

Uchechukwu Nwoke  
Chinwe M Ekwelem  
Henrietta Agbowo-Egbo



# Introduction

- The importance of confiscating proceeds of crime has long been recognized as an effective tool in disrupting the activities of organized crime.
- The underlying reason is that profit or financial gain is the main motive for criminals to engage in criminal activities.
- This profit is used to fund lavish lifestyles as well as invest in future criminal activities.
- The strategy of hitting criminals where it hurts most – their pockets – is regarded as an effective strategy by law enforcement agents for organized crime.
- In this context, confiscation of criminal proceeds is embarked upon by many countries through conviction and non-conviction based confiscation mechanisms.

# Unexplained Wealth

- Unexplained wealth refers to valuable assets belonging to officials — or others in positions of power and influence — that are clearly incommensurate with their publicly-declared earnings or known business interests.
- The Australian Criminal Property Confiscation Act 2000 (the CPC Act) s 144(1) states that a person has unexplained wealth if the value of their wealth is greater than the value of their lawfully acquired wealth.
- The value of a **person's wealth** is the amount equal to the sum of the values of all the items of property, and all the services, advantages and benefits, that together constitute the person's wealth (CPC Act s 144(2)).



## Unexplained Wealth (Cont.)

- Unexplained wealth law requires a person who lives beyond their apparent means to justify the legitimacy of their financial circumstances.
- Unexplained wealth law seeks to deter crime, particularly organised crime, by reducing the profitability of illegal activities.

# Unexplained Wealth Laws/Orders

- Unexplained Wealth Order (UWO) laws, a relatively recent development in confiscation and forfeiture jurisprudence, target the proceeds derived from criminal activities.
- They are designed to further strengthen the fight against organized crime, by enhancing the powers of the state in depriving criminal enterprise of their illicit wealth, particularly those individuals for whom insufficient evidence exists for criminal conviction.
- Like traditional *in personam* and *in rem* forfeiture, their primary objective is to deprive criminals from acquiring or benefiting from unlawful activities.
- However by using UWOs the state does not have to first prove a criminal charge, as is the case with conviction based forfeiture.

# Unexplained Wealth Laws/Orders

- Likewise, the state does not have to first prove that the property in question is the instrument or proceed of a crime, as is generally the case in *in rem* asset forfeiture.
- UWO laws differ from traditional forfeiture laws in another important respect: they shift the burden of proof to the property owner who must prove a legitimate source for his wealth and the forfeiture proceeding is instituted against a person rather than against the property.
- These seemingly radical features of UWO laws (no proof of the property being connected to a crime and a reversed burden of proof) have, in practice, been tempered by courts, prosecutors and police, but still are a powerful, and controversial, tool for seizing assets where traditional methods likely would have been ineffective.

# Unexplained Wealth in Nigeria

- Despite the efforts of many administrations to fight corruption, Nigeria remains one of the countries that constantly top the world's corruption rankings.
- Transparency International (TI) revealed that Nigeria came 146th in the rank of 2019 Transparency International's Corruption Perception Index.
- In the index released by the Civil Society Legislative Advocacy Centre (CISLAC), it was revealed that Nigeria scored 26 out of 100 points in the 2019 Corruption Perception Index (CPI)
- Nigeria slipped further down 3 points in the 2020 index which is the lowest point on Corruption index since 2013 (Transparency International: Corruption Perceptions Index 2019' [23 January 2020)
- In Nigeria, corruption includes various financial crimes including bribery, which involves taking funds from public coffers and putting them into private pockets.
- After being laundered within the country or abroad through offshore companies, for example, those stolen funds resurface as unexplained wealth.

# Regulating Unexplained Wealth in Nigeria

- **Instruments regulating unexplained wealth**

- 1999 Constitution (as amended)
- The Nigerian Financial Intelligence Unit (Establishment) Act 2018, which established the NFIU;
- The Code of Conduct Bureau and Tribunal Act 1991 which set up the CCB;
- The Economic and Financial Crime Commission (EFCC) Act which created the EFCC;
- The Independent Corrupt Practices and other Related Offences Act which the ICPC;
- The Money Laundering (Prohibition) Act 2012 (now amended by the Money Laundering (Prevention and Prohibition) Act 2022);
- The Recovery of Public Property (Special Provision) Act 1984.

# Regulating Unexplained Wealth in Nigeria (Cont.)

- 1999 Constitution
- - Section 44 (1) affirms the fundamental right to property (movable & immovable) and, then enumerates legitimate circumstances when the enjoyment of that right can be validly interrupted by law with or without compensation.
- Specifically Section 44(2) (b) establishes by reference to subsection 2 that the fundamental right to property in subsection 1 will not operate to divest or undermine or prevent any legislation intended to impose penalties; impose forfeiture for breach of any law **(codified civil or criminal laws)** whether under civil process or after conviction for an offence.

# Regulating Unexplained Wealth in Nigeria (Cont.)

- Section 28 & 29 EFCC Act establishes what is understood and described as Forfeiture upon conviction or Criminal Forfeiture or Criminal Confiscation or Confiscation simpliciter or Conviction based Forfeiture. It is the very opposite of a civil forfeiture.
- Section 17 Advanced Fee Fraud Act establishes 3 circumstances where non-conviction based forfeiture (NCBF) can occur, to wit:
  - (a) Unclaimed property coming into the provision of the EFCC
  - (b) Unclaimed property found by officer of the EFCC to be in possession of another person, body corporate or financial institution
  - (c) Properties in the possession of any person, body corporate, and financial institution
  - In all these circumstances, the property is reasonably suspected to be proceeds of some unlawful activity under the AFF Act, Money Laundering Act, EFCC Act and any other law enforceable by the Commission.

# Some Nigerian Cases on Forfeiture

- *FRN v Nwaigwe* ((2009) 16 NWLR PT.1166 169)- The CA Division in Lagos State unanimously struck down the relevant sections (28 and 29) of the EFCC Act as unconstitutional despite the clear justificatory grounds presented by the law.
- In 2012 the Court of Appeal in *Akingbola v Chairman EFCC* ((2012) 9 NWLR PT.1306 475) realized its error in *FRN v Nwaigwe* and proceeded upon an exhaustive scrutiny of the Advanced Fee Fraud (AFF) Act, to set aside the earlier case.
- *Felimont Enterprise v Chairman EFCC* ((2013)1 BFLR 94); *FRN v Ikedinwa* ((2013) LPLER-21120 CA); *Esai Dangabar v FRN* ((2014) 12 NWLR PT. 1422 575) – have upheld the validity of the AFF Act provision.
- In *Patience Jonathan v FRN* ((2018)LPLER – 43505 CA), the trial court made forfeiture order as money in Mrs. Jonathan's accounts were seen as proceeds of some unspecified unlawful activity. This decision was affirmed by the Court of Appeal.



# Regulating Unexplained Wealth in Nigeria (cont.)

- In May 2022, the Nigerian President signed into law, the Proceeds of Crime (Recovery and Management) Bill, 2022.
- The Proceeds of Crime (recovery and Management) Act, 2022 makes provisions for the seizure, confiscation, forfeiture and management of properties derived from unlawful activity.
- Section (1) of the Act spells out its objectives.
  - (a) provide for an effective legal and institutional framework for the recovery and management of the proceeds of crime, benefits derived therein, **instrumentality of unlawful activities**, and unclaimed properties reasonably suspected to be proceeds of crime;
  - (b) make provisions for the restraint, seizure, confiscation and forfeiture of property derived from **unlawful activities** and any instrumentalities used or intended to be used in the commission of such unlawful activities;
  - (c) make provisions for non-conviction based procedure for the recovery of proceeds of crime;

# Proceeds of Crime (Recovery and Management) Act, 2022

- (d) strengthen the criminal confiscation procedure by ensuring that the total benefit from a person's criminal activity is calculated and an equivalent amount, where recoverable, is confiscated on behalf of the Federal Government ;
- (e) ensure that the relevant organisations establish the Proceeds of Crime (Management) Directorate to carry out the functions conferred on it under this Act;
- (f ) strengthen collaboration among the relevant organisations in tracing and forfeiting properties reasonably suspected to be proceeds of unlawful activity through non-conviction based forfeiture proceedings ; and
- (g) make provisions for the handover, management and disposal of properties forfeited to the Federal Republic of Nigeria

# Proceeds of Crime (Recovery and Management) Act, 2022 (Cont.)

- Under section 2, the provisions of the Act apply to—
  - (a) detection, identification, investigation, and recovery of realisable assets and the proceeds and instrumentalities of unlawful activity by relevant organisations;
  - (b) orders and directives by the Court to support the detection, recovery and preservation of the proceeds and instrumentalities of unlawful activity and realisable properties by relevant organisations ;
  - (c) confiscation orders to recover a sum equivalent to the amount a convicted person has acquired from the offences charged and related offences, including accrued benefits ;

## Proceeds of Crime (Recovery and Management) Act, 2022 (Cont.)

- Part IV : NON–CONVICTION BASED RECOVERY OF THE PROCEEDS OF CRIME
- Section 7. This Part applies to the recovery and forfeiture of proceeds of crime, instrumentality of unlawful activity, abandoned properties or unclaimed properties reasonably suspected to be proceeds of unlawful activity, without conviction.
- Under section 8 (1), subject to the provisions of this Act—
  - (a) proceedings under this Part shall be civil proceedings;
  - (b) the standard of proof required in proceedings under this Part shall be on a balance of probabilities.
- (2) The rules or practice relating to hearsay evidence, given in furtherance of the proceeding is admissible.

# Concluding Thoughts

- It is arguable that unexplained wealth order (UWO) law, a relatively recent development in confiscation and forfeiture jurisprudence, which target the proceeds derived from criminal activities, is now present in Nigeria.
- The Proceeds of Crime (Recovery and Management) Act, 2022 now has provisions which allow for the making of unexplained wealth orders.
- It is hoped that the Nigerian state will rely on these provisions to confiscate unexplained wealth and help reduce/eliminate criminal activities in the country.

Thank you!

# Unexplained Wealth Orders: Lessons from the UK

Áine Clancy, PhD candidate, QMUL  
a.clancy@qmul.ac.uk

## UWOs in practice

- Reflects the relative ease (in theory) of property owners explaining the lawfully obtained provenance of their assets
- Available against PEPs and those suspected of involvement with serious crime, their families and close associates
- Evidential / investigative tool: raise a presumption of 'recoverable property'
- Recently updated by the Economic Crime (Transparency and Enforcement) Act 2022



# How to obtain an UWO

- - **Enforcement authorities** may apply to the **High Court** and must establish:
  - A respondent is a PEP or is, or is connected to someone, reasonably suspected of involvement in serious crime;
  - The respondent holds the property;
  - The relevant property is worth at least £50,000; and
  - Reasonable grounds for suspecting that:
    - the respondent's ownership of the assets is incommensurate with their lawful income; or
    - the property has been obtained through unlawful conduct.

# Key criticisms

- Rights criticisms of civil recovery more generally
- Definition of 'PEPs'
- Poor quality evidence acceptable for purposes of rebutting a presumption of 'recoverable property'
- The 'lawfully obtained' defence
- UWOs are **not** a panacea as an anti-corruption measure
- The main criticism: funding, enforcement and expertise