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Corruption and Money Laundering: International Asset Recovery from Politically Exposed Persons in the UK, Nigeria, Russia & China

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Declaration

I, Siobhan Garside, declare that this thesis is a result of my research investigations and findings. Sources of information other than my own have been acknowledged and a reference list has been appended. This work has not been previously submitted to any other university for award of any type of academic degree.

Signature……**...**

Date……

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Abstract

Corruption and Money Laundering is a global problem which has devastating effects on society. The aim of this study was to research Corruption and Money Laundering in four countries - the UK, Nigeria, Russia and China. Each country was researched through secondary sources as case-studies structured by three research questions focusing on asset recovery from Politically Exposed Persons (PEPs). These case studies examined current asset recovery efforts, planned changes to legislation and international co-operation efforts.

My comparative analysis reflected on theories connected to Marxism and Critical Theory as well as theories connected to institutions, regimes and laws. The analysis found that one of the key issues connected to anti-corruption and anti-money laundering (AML) efforts is that different countries have different norms and value systems meaning that laws and regulations may be interpreted differently. The analysis also found that each of the four countries display hegemonic relationships within domestic and international anti-corruption and AML efforts.

My discussion of these efforts reflected further on the case studies and the mechanisms used in international and domestic asset recovery. Legislative developments found that one of the most useful legislative tools for international asset recovery is Mutual Legal Assistance (MLA). Institutional developments highlighted how agencies such as Financial Investigation Units (FIUs) are useful institutions which enable information sharing between the public and private sectors. Policy developments discussed the anti-corruption drives indicating that in the cases of Russia, China and to some extent Nigeria concerns have been raised surrounding the lack of transparency.

It was possible to conclude that whilst each of the four countries are adapting their laws and making attempts to work with the international community to strengthen their asset recovery regimes, the extent to which these attempts have translated into success has been varied.

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List of Abbreviations

ACWG	Anti-Corruption Working Group
AML	Anti-money laundering
APEC	Asia-Pacific Economic Cooperation
CPCDI	Communist Party's Committees for Discipline Inspection (China)
EFCC	Economic and Financial Crimes Commission (Nigeria)
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
G20	Group of 20
IMF	International Monetary Fund
MLA	Mutual Legal Assistance
NCBAF	Non-Conviction Based Asset Forfeiture
OECD	Organisation for Economic Co-operation and Development
PEPs	Politically Exposed Persons
StAR	Stolen Asset Recovery Initiative
STR	Suspicious Transaction Report
TI	Transparency International
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime
UWO	Unexplained Wealth Order

"Corruption is the cancer at the heart of so many of our problems in the world today. It destroys jobs and holds back growth, costing the world economy billions of pounds every year. It traps the poorest in the most desperate poverty as corrupt governments around the world syphon off funds and prevent hard-working people from getting the revenues and benefits of growth that are rightfully theirs"

David Cameron (2016)

1. Introduction

In the Autumn of 2016, the British newspaper The Telegraph published an article on Dmitry Zakharchenko - the acting head of the Russian anti-corruption agency. According to the newspaper, Zakharchenko was arrested "for receiving 'especially large' bribes, after police found banknotes worth more than $120 million in a raid on a Moscow flat" ("Russia's anti-corruption boss arrested with $120 million in cash," 2016, Sept 13). Finding this bulk sum of 'dirty' money implicates Zakharchenko as someone who has been abused their position of power and responsibility for personal profit. The incident also highlights how people who are entrusted with a prominent function in society - also known as Politically Exposed Persons (PEPs) - are at risk of corruption and bribery.

However, unlike Zakharchenko, PEPs often avoid detection of their illicit assets by placing funds into the international financial system and laundering their money. Moving funds (through wires and transfers) into different jurisdictions reduces transparency and creates layers, thereby reducing the chances of tracing the funds' origins. The more layers of movement, the less transparent the funds' origins, meaning the PEP can integrate their 'clean' funds back into the economy by purchasing high-value items such as property and art. The three steps of money-laundering - placing, layering and integrating – make the detection of corruption difficult, so-much-so that the United Nations Office on Drugs and Crime estimates "over 99 per cent of illicit funds flowing through major economies and offshore centres every year are not detected by law enforcement" (Suarez-Martinez, 2013, Dec, p. 1).

The implication such actions can have on broader society can be devastating. As Krishnan and Barrington (2011) write "[w]hen corruption is not checked, it creates a culture of impunity.... Once it takes hold, corruption feeds on itself, and can be extremely hard to reduce or eradicate" (p. 1). This statement has its applications world-wide, however, the effects of corruption are felt even more so in countries with weak states and weak rule of law. Krishnan and Barrington (2011) continue, for those "who cannot access health care, education or even food and water without paying bribes, corruption is a daily problem" (p. 1). Such issues are particularly important in International Relations, because the consequences of corruption and money laundering are felt unevenly in society. As Giddens (2009) writes those "who are disadvantaged by other types of socio-economic inequalities tend to suffer disproportionately" (p. 971). And while the acts are not seen as crimes between a perpetrator and a victim, collectively these actions harm society.

2. Aim of the Study

Whilst students of International Relations generally look at the interaction between states and the specific forces which impact upon these states' relations; corruption and money laundering are undoubtedly forces which have repercussions on state interactions. The aim of this study is to research Corruption and Money Laundering in four countries. These countries are Nigeria, Russia China and the UK (which comprises of four nations but for the purpose of this study, will be discussed as a single unitary country or state). The research will be guided by three questions which will structure the research on how these states, along with the international community, recover illicit assets from PEPs. The study will draw on Marxist and to some extent Institutional frameworks to discuss the findings, allowing a deeper analysis of the topic.

The topic is an ever-evolving field, and with legislation constantly changing it is important to maintain an overview of the current developments within the field. This will facilitate a pragmatic examination of the situation by researching the topic through empirical cases and the field of International Relations.

2.1 Research Questions

The research will be structured along the following lines of inquiry, in which there will be three research questions.

1. How are the UK, Nigeria, Russia and China currently recovering assets from Politically Exposed Persons (PEPs) who enrich themselves through corruption and money laundering?
2. How are these four countries adapting their laws in order to recover illicit assets from PEPs?
3. How are the above countries working with the international community in order to achieve asset recovery from PEPs?

2.2 Purpose

The purpose of this study is to compare how the UK, Nigeria, Russia, and China are adapting their laws and institutions to recover illicit assets from PEPs. These countries were chosen because, to some extent each of them are large global economies, regional hegemons and have a notorious history of corruption. Though each country has engaged in recent anti-corruption drives, the four countries have been chosen for the following reasons:

- The UK is the only European state to be examined in this study. Though it has recently set leaving the European Union on its agenda, it is still bound to European directives for at least two more years. As London is one of the oldest financial centres in the world, the government is keen to be seen at the forefront of the global fight against corruption.

- Nigeria is one of the richest economies in Africa, yet is notorious for corruption related to oil money.
- Russia is an ex-communist state and is seen by some as a mafia-state. Political situations, such as the annexation of Crimea, have strained relations between this state and Western nations.
- China is engaging in an anti-graft drive, yet with the presence of human rights issues, it is questionable whether the movement is sincere or whether it is politically motivated.

2.3 Significance

The significance of researching Corruption and Money Laundering is to highlight how different countries use domestic and international laws and regimes to recover illicit assets from PEPs. The importance of which is highlighted by the President of the World Bank - Jim Yong Kim (2016), who writes that a "comprehensive approach to tackling corruption needs to complement the domestic actions [...] with cross- country collaboration to identify and prosecute misconduct and close loopholes that promote the use of public power for private gain". What is clear from statement is that interstate cooperation is the key to ensuring that regional and global anti-corruption goals are met - especially since the nature of corruption and money laundering means that they often transcend state boundaries. The importance of global coordination is one of the key discussion points shared by the Financial Action Task Force (FATF). According to the FATF (*Annual Report 2013-2014*, 2014) "anti-corruption and anti-money laundering authorities can cooperate in the fight against corruption" (p.7). This would include inter-agency working groups and other mechanisms to share information on corruption and money laundering investigations.

An investigation into how states are dealing with these issues will highlight similarities and differences between their anti-corruption and anti-money laundering practices and laws. By doing so, it should then be possible to give a deeper analysis of current interstate collaboration in the global anti-corruption regime.

3. Background

Money laundering is often seen as a tool of criminal enterprise. Quite simply, it is a "process by which money is hidden from government oversight such that its origins and destinations are no longer clear" (Picarelli, 2010, p. 460). Turning these monies into legitimate funds involves moving the money through businesses, banks and other front companies. This process turns 'dirty' money into 'clean' money. And though this process usually occurs without businesses knowing, on many occasions there is a person on the 'inside' enabling the hidden transaction of these funds.

Yet, money laundering need not be strictly confined to those receiving funds from criminal activity. Corruption is another activity which acts as a predicate offence to money laundering. As Shehu (2014) explains, corruption "is not only a predicate offence for money laundering, but also the biggest impediment to the implementation of counter measures against money laundering – thus, *it produces and protects money laundering*" (Shehu, 2014, p. 187).

The impact this has on countries, especially developing ones is that corruption "drains resources that would have otherwise been ploughed into building basic infrastructure and other development projects" (Shehu, 2014, p. 187). Corruption also stunts economic growth, since the illicit funds are laundered through different jurisdictions and integrated into other economies.

Corruption take numerous shapes and forms and for this reason an exact definition is often difficult to define. However, Transparency International (TI), a global coalition against corruption, defines the act as "the abuse of entrusted power for private gain" ("What is Corruption?," 2016).

The illicit funds, or the 'illicit enrichment', connected to corruption is targeted in the UN Convention against Illicit Traffic of Narcotic Drugs and Psychotropic Substances (Article 5) and in the UN Convention against Transnational Organized Crime (Article 12.7) (Fagan, 2013). Illicit enrichment is also directly targeted by Article 20 of the United Nations Convention against Corruption. According to the Convention:

> Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.
>
> (*United Nations Convention Against Corruption*, 2004).

A holistic approach to tackling this problem is proposed in Goal 16 of the UN's Sustainable Developments Goals. Addressing the wider consequences of corruption, Goal 16 attempts to "[p]romote just, peaceful and inclusive societies" by reducing "corruption and bribery in all their forms", as well as promoting "effective, accountable and transparent institutions at all levels" ("Goal 16: Promote just, peaceful and inclusive societies," 2016).

In practice, addressing this issue involves a complex network of policies and regulations, not only on a global level, but also regionally between state and non-state actors. Within Europe, the Third Anti-Money Laundering (AML) Directive of the European Union came into force in 2015 with the aim to combat "money laundering and terrorism financing" through "supranational assessment of risks" (Wigand & Voin, 2015). Each member state has two years to put into force changes from the directive, including an expanded definition of 'tax crimes' and an inclusion of domestic PEPs (Hutton, 2015).

Building on the importance of the AML regime, the UK engaged in the first global anti-corruption summit in May, 2016. The summit established three goals for tackling corruption, which are to expose, to pursue and punish, and to drive out corruption amongst people in positions of power (*Global Declaration Against Corruption*, 2016).

Yet, the link between exposing, pursuing and punishing is not always so simple. As Chêne (2015, Nov. 25) comments "it is often challenging to establish that a crime has occurred, link the assets to the crime and proceed with confiscation" (p. 2). One such option to combat this problem is to reverse the burden of proof, with an Unexplained Wealth Order (UWO). A UWO is a non-conviction based asset confiscation tool, and UK proposed to adopt it with the new Criminal Finances Bill (Garside, 2016, Oct 13). As such, UWOs "do not require criminal convictions; 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" (Chêne, 2015, Nov. 25, p. 1). Whilst there are queries about the viability of this approach in states with weak rule of law, "[c]onfiscation of assets is usually regarded as an effective means of fighting against corruption" (Vlasov & Zaltser, 2016, p. 34).

Regardless of the rule of law, these changes in the legal system means that asset recovery has become a major tool in combating corruption and money laundering. As Shehu (2014) comments "[r]ecovering the proceeds of crime takes the profit out of the crime because it deprives perpetrators of their illicit gains. Asset forfeiture and asset recovery have thus, become some of the more innovative tools to combat economic and financial crimes" (p. 187)

4. Literature Review

The study will research how the UK, Nigeria, Russia and China are adapting their laws and institutions to recover assets obtained through corruption and money laundering. In addition, it will research how these four sample countries are working together with the international community to recoup illicit assets from PEPs.

This literature review will reflect on current knowledge connected to Corruption and Money Laundering. This review includes research by people other than International Relations scholars, including economists and lawyers. Whilst research on money laundering is less comprehensive than other topics in International Relations, it is possible to discuss the topic through literature, that focuses on corruption.

In their book Understanding and Preventing Corruption, Adam Graycar and Tim Prenzler (2013) categorise the different types of corruption. An overview is provided in Table 1.

Corruption Type	Examples
Bribery	May or may not involve money and can be offered to or by the PEP
Misappropriation	Taking funds from public sources
Conflict of Interest	Profiting personally from decisions made in public office
Patronage	A powerful individual promoting certain people over others better qualified
Nepotism	Provision of benefits to friends and family
Cronyism	Provision of benefits to acquaintances and associates
Rent-seeking	Gaining monopoly privileges from the relationship with the PEP

Table 1 – Overview of Corruption Types (Graycar & Prenzler, 2013)

Yet, Graycar and Prenzler (2013) also comment on the cultural context of corruption, which they believe both facilitate and impede corruption - these are "traditional, patrimonial and rational-legal" societies (p. 19). In the traditional and patrimonial societies, class and status are kept for life meaning that "the ruler does not distinguish between personal and public life, treating state resources and decisions as his or her personal affair" (Graycar & Prenzler, 2013, p. 19). For this reason, certain exploitations are not seen by the elite as being acts of corruption. An example of this is gift-giving and rent-seeking in China, whereby "[t]raditional Confucian values continue to emphasize… clearly-defined personal relationships, a unity of state and society, and a socially-

encompassing moral order" (Johnston, 2001, p. 4). *Guanxi* – a term meaning *relationship*, "is a cultural set of arrangements where connections turn into favours and obligations" (Graycar & Prenzler, 2013, p. 22). However, as per Adam Graycar and Tim Prenzler (2013), the Chinese would be "horrified" to think of *Guanxi* as a form of corruption. In contrast to these societies and their practices, rational-legal societies view economic and social affairs with different expectations. In this system "attempts to seek self-interest often involve the breaking of rules, and the behaviour that underpins this is corrupt or criminal" (Graycar & Prenzler, 2013, p. 20).

Susan Rose-Ackerman and Bonnie J. Palifka (2016) write about corruption in their book, "Corruption and Government: Causes, Consequences, and Reform". The authors theorise corruption as three different problems - economic, cultural or political. As an economic problem, this stems from bureaucratic corruption which means "something has gone wrong in the management of the state" (Rose-Ackerman & Palifka, 2016, p. 51). Corruption opportunities can, and will, be taken by unmotivated and underpaid officials. As a cultural problem, the very definition of corruption will vary in different countries and in some societies, for example, "bestowing 'gifts' on public servants" may be seen as an expression of trust and respect (Rose-Ackerman & Palifka, 2016, p. 234). Finally, as a political problem, issues impacting corruption include 'clientelism' (a system of patronage), organised crime and international cooperation.

Several other scholars have written about corruption within politics. For example, Edward Van Roy (1970) examines various approaches for studying corruption including ethnocentrism, functionalism, evolutionalism among other alternatives. In examining corruption in Thailand, Roy (1970) believes it necessary to appreciate the "unique institutional configuration which marks indigenous Thai economy and society" (p. 92). This approach relies on understanding indigenous, cultural and institutional notions of rationality and corruption. Roy concludes that a productive methodological approach for examining corruption may involve a combination of approaches so as not to obscure or skew reality.

Alternatively, Olivier Cadot (1987) writes about "Corruption as a Gamble". Using Game Theory, Cadot creates a corruption model by testing assumptions against game theory. Game theory proposes that when two actors, are faced with two possible strategies, they are collectively faced with four possible outcomes. The Nash equilibrium "[d]enoted an equilibrium outcome where neither party has a unilateral incentive to change strategy" (Little, 2014, p. 297). Cadot's paper uses a hypothetical situation in which there is "a government official granting a permit, conditional on a test, and a candidate requesting the permit." (Cadot, 1987, p. 223). This model then examines the costs and benefits of corruption by testing the assumptions – such as there are only two types of

politicians (one honest and one corrupt) and two types of candidates (those who pass and those who fail). By using this model, Cadot examines each possible outcome.

Mehmet Bac discusses the impact hierarchy has on corruption. Bac (1996, Oct) creates a model which "allows for internal corruption, a form of collusion eliminating accountability (monitoring) in the hierarchy" (p.277). Rather than focusing on economic incentives as a variable, Bac sets this as a given assumption, and instead looks at external and internal factors as tools for monitoring corruption. After testing these factors, Bac (1996) concludes that monitoring corruption depends on the technology available and the number of subordinates who are monitored.

Writing for the International Monetary Fund (IMF), Vito Tanzi (1998, Dec) discusses the causes and consequences of "Corruption Around The World". Amongst these causes, Tanzi discusses regulations, taxation procedures, spending decisions, party financing, as well as bureaucracy, wages, penalties and institutional controls. These causes have knock-on effects such as reducing "public revenue" but increasing "public spending" (Tanzi, 1998, Dec, p. 582). Tanzi concludes that addressing corruption will involve a commitment by leadership to fight it, a change in policies to increase transparency, an increase in public sector wages and a change to how political parties are financed.

Conversely, Daniel Treisman (2000) examines the factors which lowers the chances of corruption within different states. Amongst the hypotheses tested, Treisman (2000) believes that countries "with Protestant traditions, histories of British rule, more developed economies, and (probably) higher imports were less 'corrupt'" (p.399). Though Treisman stresses the difficulty in studying corruption empirically, these factors individually appear to reduce the chances of corruption presenting in a state.

Finally, John Gerring and Strom C. Thacker (2004) specifically address political corruption in their paper "Political Institutions and Corruption: The Role of Unitarism and Parliamentarism". In their research, they discuss numerous causal explanations impacting upon political corruption. However, they separate these into three broad categories for analysis. The first category includes "societal and historical factors" such as population and geography (Gerring & Thacker, 2004, p. 295). The second category includes public policies such as regulations and expenditures. The third category includes the bureaucratic structures to enforce anti-corruption measures such as monitors and ombudsmen. By using variables in these three categories, Gerring and Thacker (2004) found that the "empirical evidence […] strongly suggests that unitarism and parliamentarism contribute to a lowering of political corruption in polities that are democratic or quasi-democratic" (pp. 311 - 312).

As a review of these examples of work show, there is no standardised method developed to analyse corruption (and money laundering). The review of this literature helps shape the parameters I will use in order to discuss my case studies. I will also broaden my research to include money laundering in the scope of my inquiry.

5. Theoretical Framework

The study will research how the UK, Nigeria, Russia and China are adapting their laws and institutions to tackle corruption and money laundering. In addition, it will research how these four countries are working together with the international community to recover illicit assets from PEPs. The research will reflect on two theories which are used in International Relations to give a framework to my line of enquiry. These two theories discuss the structures of the international system, as well as agents within the international system. By using these theories to support this study, they act as a lens through which to view the topic. As Steve Smith, Particia Owens and John Baylis (2014) comment "a theory is a kind of simplifying device that allows you to decide which facts matter and which do not" (p.3).

5.1 Marxism/Critical theory

To understand the impact corruption and money laundering have on wider society, one must also understand capitalism. As Karl Marx (2007) said "[a]ccumulation of wealth at one pole is, therefore, at the same time accumulation of misery, agony of toil, slavery, ignorance, brutality at the opposite pole" (p. 709). Marx's theory, also known as the materialist conception of history, challenges idealism – "a philosophical doctrine which says that the historical development of societies is driven by abstract ideas or ideals, like freedom and democracy" (Giddens, 2009, p. 74). Instead, Marx and his colleague Engels (1970) argued that "[t]he ideas of the ruling class are in every epoch the ruling ideas" (p. 64). By which they meant that the class who rules the material forces of society, also rule the intellectual forces within society. Though Marxism pre-dates the field of International Relations, the school of thought did give rise to other Critical theories founded in International Relations.

Immanuel Wallerstein (2004) looks at the processes of Globalisation and engages in a "fundamental protest against the ways in which we have thought that we know the world" (p.xi). Known as World-Systems theory, the modern world is described as a "complex intertwining of economies" connected through "capitalist economic relationships" (Giddens, 2009, p. 126). Drawing parallels to the proletariat and bourgeoisie, Wallerstein conceptualised the most developed countries (the core) as being the exploitative capital class, whereas less developed countries (the periphery) are the subordinated working class.

In a similar duality of power structures, Antonio Gramsci (1971) conceptualised power through the image of a centaur - "half-animal and half-human" (p.170). Gramsci (1971) described this dialectical unity as a mixture "of force and of consent, authority and hegemony, violence and civilisation, of agitation and propaganda, of tactics and of strategy" (p.124). Benno Teschke (2008)

builds on Gramsci's concept by explaining that hegemonic power is a "mutually irreducible configuration between dominant ideas, institutions, and material capacities that are widely accepted as legitimate" (p. 173).

This thinking about hegemonic power gave rise to other more contemporary theorists. For example, Robert W. Cox (1981) challenges the concept of dominant ideas by stating that "[t]heory is always *for* someone and *for* some purpose" (p.128). His reasoning is that all theories derive from perspectives and it is these perspectives which are formed by our social and political understanding of the world. By challenging these dominant viewpoints, it is equally challenging "the prevailing order, that is the inhabitants of the developed states, and in particular the ruling class" (Hobden & Jones, 2014, p. 148). By understanding there is no "simple separation between facts and values", critical theory challenges "the prevailing order by seeking out, analysing, and, where possible, assisting social processes that can potentially lead to emancipatory change" (Hobden & Jones, 2014, p. 148). For these reasons, Cox believes that International Relations can no longer be understood as purely interactions at the state level (Williams, Wright, & Evans, 1993).

Andrew Linklater offers another view on the duty of states and its citizens. Linklater (2002, April) believes that an "ethical foreign policy based on the 'no harm' principle is one way in which communities can reconcile their duties to fellow citizens and their obligations to distant strangers" (p.135). By following this morality, people would "share the same duties and obligations towards non-citizens as they do towards their fellow citizens" (Hobden & Jones, 2014, p. 151). Ultimately, this process looks at "understanding patterns of inclusion and exclusion in world politics" (Reus-Smit & Snidal, 2008, p. 13).

5.2 International Institutions, Regimes & Law

To understand how the counties in my case studies recover illicit assets, it is necessary to discuss regimes. International regimes are issue-specific institutions which are grounded in liberalism and the ideas of liberty, democracy, interdependence, as well as "open governments responsive to public opinion" (Dunne, 2014, p. 115). With the premise of uniting international procedures, regimes set "implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations" (Krasner, 1983, p. 2, as cited in Baylis, Smith, & Owens, 2014, p. 537).

The primary example of international regimes which is used in this research is that of international law. International legal instruments define "the nature of legitimate statehood, the scope of sovereign authority, and the bounds of rightful state action, international and domestic" (Reus-Smit, 2014, p. 277). As Christian Reus-Smit (2014) continues "the modern institution of

international law has developed four distinctive characteristics" which are "multilateral legislation", "consent and legal obligation", "language and practice of justification" and "the discourse of institutional autonomy" (pp.278-279).

Therefore, when discussing how the international community is working together to recoup illicit income, reflections must include international laws, regimes and institutions. Whilst International Law is predominantly rooted in liberal ideas, critical legal studies have emerged to challenge modern international legal thought. As Koskenniemi (1989) states critical legal studies questions "the rationalization of established sovereign order" and "the naive imagining that international law can civilize the world of states" (as cited in Reus-Smit, 2014, p. 286). Whilst this school of thought is worth noting at this point, this research will not reflect any more on Critical Legal Studies.

6. Methodology

Since statistics on corruption are difficult to obtain, researching corruption and its consequences can be a challenging task. For this reason, research on corruption is often dependant on measuring peoples' perceptions of corruption (Graycar & Prenzler, 2013)**.** Though measuring perceptions is not part of this research, the research still relies on a qualitative approach to comparing state practices, which will ultimately result in a subjective methodology. However, by discussing the methodology in this section, it is possible to specify the processes used to produce 'valid' knowledge (Devetak, 2012)

6.1 Philosophical Assumptions

To understand the impact a subjectivist approach has on this research, it is worth noting the philosophical assumptions. This is because differing assumptions are often contradictory to each other within International Relations (Jackson & Sørensen, 2016). The ontological assumptions refer to "the assumptions we make about what exists" and whether "an 'objective' world exists outside human experience or only a 'subjective' world constructed by human experience" (Baylis et al., 2014, p. 540; Jackson & Sørensen, 2016, p. 311). The epistemological assumptions refer to "the assumptions we make about how we can know something" or in other words "in what way can we obtain knowledge about the world?" (Baylis et al., 2014, p. 532; Jackson & Sørensen, 2016, p. 244). The ontological and epistemological assumptions connected to the Liberal school of thought is that of a positivist and objective reality, which can be tested by experiments and verification of hypotheses (Lincoln, Lynham, & Cuba, 2011). Whilst this assumption is relevant for the examination of asset recovery, this study focuses more on the prevention of corruption and money laundering. Since preventative measures ultimately rely on events which have never occurred, the ontological and epistemological assumptions in this will differ. As Yvonna S. Lincoln and her colleagues (2011) explain, the ontological approach of critical theory (Marxism) is a historical realism which is a "virtual reality shaped by social, political, cultural, economic, ethnic, and gender values: crystalised over time" (p.98). By subscribing to this understanding, Critical Theorists believe in a subjective epistemology and a dialetical methodology, which is "a method of examining and discussing opposing ideas in order to find the truth" ("dialectic," n.d.). By adopting this understanding, this research takes an ontological assumption that "[h]uman nature operates in a world that is based on a struggle for power" and an epistemological assumption that "[r]esearch is driven by the study of social structures, freedom and oppression, and power and control" (Lincoln et al., 2011, pp.102-103).

6.2 Data

As explained by Uwe Flick (2014), "researchers do not *produce* data, but instead *use* existing data for the analysis" (p.44). The data used in this research will be sourced from secondary sources and are an amalgamation of newspaper articles, journal articles, books and websites. This form of research will draw on the secondary sources as resources to investigate corruption and money laundering through the context of the research questions.

The data will be presented through the form of case studies, whereby each country will have a general introduction before a deeper presentation of findings. Case studies are a valuable form of research in the social sciences. The method allows researchers "(a) to define research topics broadly and not narrowly, (b) to cover contextual or complex multivariate conditions and not just isolated variables, and (c) to rely on multiple and not singular sources of evidence" (Yin, 2003, p. xi). Yin (2003) explains that case studies can be based on singular or multiple cases and will be either "exploratory, descriptive, or explanatory (causal)" (p. 5). The premise of the research in this study is part descriptive, part explanatory - whereby a description of the historical context of corruption in each country will be given, as well as an examination of the social structures which impact money-laundering.

6.3 Analysis

Qualitative analysis is seen as being both a "science and an art", "structured but flexible" and a process of "calculated chaos" (Hennink, Hutter, & Bailey, 2011, p. 205). This is because whilst it "refers to developing evidence-based interpretations of data", it also "refers to the interpretive nature of analysis" (Hennink et al., 2011, p. 205). However, this research attempts to reduce the risk of this occurring by performing a comparative analysis. Alan Bryman (2014) explains the validity of such an analysis:

> when individuals or teams set out to examine particular issues or phenomena in two or more countries with the express intention of comparing their manifestations in different socio-cultural settings (institutions, customs, traditions, value systems, life styles, language, thought patterns), using the same research instruments either to carry secondary analysis of national data or to conduct new empirical work. The aim may be to seek explanations for similarities and differences or to gain a greater awareness and a deeper understanding of social reality in different national contexts. (p.72)

In context to this research, the phenomena being examined is corruption and money-laundering. By using theories connected to Marxism/Critical Theory and International Regimes/Laws, the theoretical framework will create a structure to the analysis. The analysis can

then examine the different forces impacting upon domestic and international asset recovery efforts among each of the four countries.

By using a comparative analysis in such a way, I will be using analytic induction - meaning that the observations made on these specific cases, will result in inferences based on generalisations (Brymann, 2012). Though the analysis does not aim to establish causality between these inferences, it is possible these inferences will establish commonalities between the four case studies.

6.4 Discussion

Reflecting on the case studies, I will divide the discussion into three separate sections. These are:

- Policy developments – which include the "demonstrated and credible intent of political actors, civil servants and organs of the state to combat corruption and recover and return stolen assets" (*Tracking Anti-Corruption and Asset Recovery Commitments: A Progress Report and Recommendations for Action*, 2015). The mechanism connected to these policies need to be understood from both input (making) and output (implementing) processes.
- Legislative developments – which includes legislation proposed by regimes and adopted by governments in order to tackle corruption, tax evasion and money laundering.
- Institutional developments – which include the changes made to "recover the proceeds of corruption" (*Tracking Anti-Corruption and Asset Recovery Commitments: A Progress Report and Recommendations for Action*, 2015).

6.5 Challenges and Limitations

Though thus-far there has been an explicit statement about the methodology I will use in this research, there are also certain issues which need consideration.

6.5.1 Subjectivity

Though the nature of this research is subjective in its ontological assumptions, it must be noted that because of the dependency on secondary data sources, the research may "rely too much on the researcher's often unsystematic views about what is significant and important" (Brymann, 2012, p. 405). This is often the nature of qualitative research meaning that my research and discussion might be difficult to test and replicate.

6.5.2 Triangulation

Triangulation is a model for research which uses "multiple data-gathering techniques (usually three) to investigate the same phenomenon" (Berg & Lune, 2012, p. 6). By using this technique, there is a means to confirm measures and findings in the collated data. The research in this study relies on Case Study analysis, and whilst this is a valid research tool, there are risks the

analysis will miss certain factors. The original intent of this study was to avoid this issue by conducting primary research to triangulate my desk-based findings. However, attempts at contacting the British, Nigerian, Russian and Chinese authorities yielded little response. One response was received by the British Home Office, please see appendix for details.

6.5.3 Ethical Considerations

When conducting qualitative research, researchers must be aware of ethical considerations such as “invasion of privacy”, “lack of informed consent”, “harm to participants”, and “deception”. (Brymann, 2012, pp. 135-143). Though the research in this study is desk-based and does not involve direct contact with the studied subjects, there are other ethical considerations worth reflecting on. When sourcing data one should be aware of the authenticity and credibility of the sources as well the representativeness and meaning of the documents which are examined.

7. The International Community - Institutions, Conventions and Treaties

Working with the international community is important in addressing domestic corruption and anti-money laundering efforts. As Gerry Ferguson (2015) explains “the assets may be held in one jurisdiction and then laundered to another jurisdiction, with the offence committed in a third jurisdiction and the company responsible for paying bribes headquartered in a fourth jurisdiction” (p. 22, Chapter 5). Recovery is a lengthy process, starting with the “Collection of Intelligence and Evidence and Tracing Assets” to “Enforcement of Orders” and “Asset Return” (Brun, Gray, Scott, & Stephenson, 2011, pp. 5-7). This means that international cooperation is vital for facilitating asset recovery efforts. An overview of the UN and Mutual Legal Assistance treaties will give a foundation as to how Institutions, Conventions and Treaties address corruption, money laundering and asset recovery efforts. As such, these provide a foundation for understanding how the four countries address these issues.

7.1 United Nations (UN)

The United Nations has used numerous measures for dealing with corruption and money laundering. These have been achieved through agreements and agencies affiliated with the institution which strengthen international frameworks and institutions.

Though the 1988 UN Convention against the Illicit Traffic of Narcotic Drugs and Psychotropic Substances (also known as the Vienna Convention) addressed the issue of money laundering, the convention confined confiscations to laundered funds gained from drug trafficking (Article 5 of the conventions). According to Abdullahi Y. Shehu (2014), the convention did set the agenda on asset recovery “by prescribing confiscation of crime proceeds… Article 7 provides for mutual legal assistance, while articles 8 and 10 make provisions for transfer of proceedings in criminal matters” (p. 188). However, whilst these provisions are “pertinent to the recovery of the proceeds of crime, [they] are not sufficient for the recovery of the proceeds of illicit enrichment” (Shehu, 2014, p. 188). The United Kingdom, Nigeria, Russia and China are all signatories to the convention ("United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances," 1988).

In 2000, the UN adopted General Assembly Resolution 55/25 and in 2003 The United Nations Convention against Transnational Organized Crime entered force. This convention broadened the scope of laundering illicit funds requiring those UN members who have ratified it “to criminalise the laundering of the proceeds of crime, to institute measures to counteract money laundering, and to adopt measures for the confiscation of the proceeds of crime ("Money laundering

and the financing of terrorism - European Union Committee Contents," 2009). The UK, Nigeria, Russia and China have all ratified this convention ("United Nations Convention against Transnational Organized Crime," 2016).

The primary tool used by the UN to ensure global consistency in the 'fight' against corruption is the 2005 UN Convention against Corruption (UNCAC) which stresses that "international cooperation is vital for asset recovery to happen" (Uyanik, 2014, March 04) The convention is divided into eight chapters, each one dealing with a specific issue. Abdullahi Y. Shehu (2014) believes the four main points of the convention are "(1) prevention; (2) criminalization and law enforcement; (3) asset recovery; and (4) international cooperation" (p. 188). Shehu (2014) also believes that asset recovery (Chapter V) is the primary goal of the Convention by inviting States to strengthen their domestic frameworks on money laundering prevention. Under Chapter V various Articles provide a framework to enable international asset recovery efforts. As such, "Article 51 makes cooperation and assistance mandatory"; Article 53 involves "facilitating civil and administrative actions", Articles 54 and 55 involve "recognizing and taking action on the basis of foreign confiscation orders" and Article 57 involves "returning property to requesting States in cases of embezzled public funds or other corruption offences and returning property to its legitimate owners" (Ferguson, 2015, p. 22, Chapter 5; *United Nations Convention Against Corruption*, 2004). The convention highlights the importance of international cooperation for asset recovery (Uyanik, 2014, March 04). It has been ratified by the governments of the UK, Nigeria, Russia and China. By ratifying the convention, states are required to "criminalize the offence of bribery, embezzlement, misappropriation or other diversion of property by a public official, and laundering of the proceeds of crime" (Shehu, 2014, pp. 188-189). Yet, Shehu (2014) continues, "criminalization of illicit enrichment, is left to the discretion of the States" (p.189).

The UN has also set up StAR (the Stolen Asset Recovery Initiative) - a partnership between the United Nations Office on Drugs and Crime (UNODC) and the World Bank Group. StAR "supports international efforts to end safe havens for corrupt funds", by working with "developing countries and financial centers to prevent the laundering of the proceeds of corruption and to facilitate more systematic and timely return of stolen assets" ("The Stolen Asset Recovery Initiative (StAR)," 2015). These goals of strengthening legal frameworks are achieved through assistance in capacity building, policies and case assistance.

7.2 Financial Action Task Force (FAFT)

The FATF was set up in 1989 by the G7 countries to "combat the growing threat of money laundering" ("Money laundering and the financing of terrorism - European Union Committee

Contents," 2009). The FAFT is the inter-governmental body which sets recommendations for the anti-money laundering (AML) regime. Drawing from UNCAC, these recommendations "provide effective tools for combating money laundering and reforming a culture of corruption by establishing a robust framework for asset recovery" (Shehu, 2014, p. 190).

Section B of the recommendations addresses Money Laundering (recommendation 3) and Confiscation (recommendation 4). Recommendation 4 advises countries to "consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction (non-conviction based confiscation)" ("International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation," 2016, Oct, p. 12). Recommendation 37 advises that states should "rapidly, constructively and effectively provide the widest possible range of mutual legal assistance in relation to money laundering, associated predicate offences..., prosecutions, and related proceedings" ("International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation," 2016, Oct, p. 27)

The UK, Russia and China are FAFT members and "are required to report suspected money laundering to that body" ("FATF members," 2016; Lubman, 2015, July 15).

7.3 Organisation for Economic Co-operation and Development - OECD

Though not as globally inclusive as the UN Conventions, the Organisation for Economic Co-operation and Development (OECD) established "legally binding standards to criminalise bribery of foreign public officials in international business transactions" ("OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions," 2016). The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions also addresses money laundering, whereby if the state has made bribery a predicate offence for domestic public officials, so too should it be made an offence for foreign public officials ("Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and Related Documents," 2011). In addition, the convention recommends that member countries should "co-operate with competent authorities in other countries" to recover "the proceeds of bribery of foreign public officials" ("Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and Related Documents," 2011, p. 26). As of May 2014, the UK and Russia have ratified the convention.

7.4 Group of 20 (G20)

The G20 is a collective forum for 19 countries plus the European Union. Having recognised the "significant negative impact of corruption on economic growth, trade and development", the G20 established its Anti-Corruption Working Group (ACWG) in 2010 ("2015-16 G20 Anti-

Corruption Action Plan," 2014). The ACWG works alongside FATF, the World Bank group, the OECD and the UNODC. The 2015/16 plan looks to prioritise transparency of public sector, private sector and beneficial ownership, as well as focusing on international cooperation, bribery and reducing the corruption risks of the extractive industries ("2015-16 G20 Anti-Corruption Action Plan," 2014). The upcoming 2017/18 plan continues to focus on these goals, however it also includes practical cooperation and capacity building ("G20 Anti-Corruption Action Plan 2017-2018," 2016). The UK, Russia and China are members of this group.

7.5 Mutual Legal Assistance (MLA)

Given that illicit assets can move beyond national borders, international "cooperation is critical for their return" and "includes 'informal assistance,' mutual legal assistance (MLA) requests, and extradition" (Brun et al., 2011, p. 6). Requests for "assistance is usually premised on promises of reciprocity. Reciprocity is a promise between states that the requesting State will provide the requested State with the same assistance in the future" (Ferguson, 2015, pp. 70-71, Chapter 5). Whilst MLAs are covered in both UNCAC and the OECD Anti-Bribery Convention, without a unilateral or bilateral treaty, the promises of reciprocity are not bound by international law (Ferguson, 2015).

The MLA enables "countries to acquire crucial evidence or other forms of legal assistance to enable them prosecute or recover illicitly acquired asset" (Shehu, 2014, p. 196). According to StAR, MLA requests should be part of an effective legal framework as well as Non-Criminal Based (NCB) confiscations and private civil actions.

8. Case Studies – Country Specific Overview

Providing a full history of the corruption in the four case study countries is beyond the scope of this research, however, a brief introduction for each country is needed in order to provide a foundation to the case studies. My research questions will be used to structure how each county is examined.

8.1 UK – Introduction

Acknowledging the importance of Britain as a global financial centre, Home Secretary Theresa May, said that the laundering of money "through UK institutions is not only a financial crime, it fuels political instability around the world, supports terrorists and extremism and poses a direct and immediate threat to our domestic security and our overseas interests" (Home Office, HM Treasury, & May, 2016, Apr, 16). However, as Transparency International (TI) UK noted, though less apparent than in other countries, corruption in the UK has its victims too. This is because corruption excludes "marginalised communities from the benefits of growth and opportunities for advancement" ("UK Corruption," n.d.).

Corruption, to some extent, has its place in UK history - be it in sport, media or politics. Even in the 18th and 19th centuries "a seat in Parliament could easily be bought or given as a gift" (Krishnan & Barrington, 2011, p. 1). Today the UK would fair better and in the 2015 TI corruption perception index, the UK scored 81 out of 100 (where 100 is seen as 'very clean'), ranking it in the relative position of tenth place out of 168 countries and territories ("Corruptions Perceptions Index 2015," 2016).

The UK has addressed corruption by passing numerous acts (or laws). These laws include the Bribery Act 2010 – which covers general bribery offenses as well as "bribery of foreign public officials" ("The Bribery Act 2010," 2012, Feb 11), and the Anti-terrorism, Crime and Security Act 2001 – which also targets bribery and corruption, as well as "forfeiture of terrorist cash" ("Anti-terrorism, Crime and Security Act 2001," 2001). These acts take note that corruption and money laundering can not be isolated to solely domestic persons or entities. As one of the leading financial centres in the world, international PEPs use the UK as a safe haven for their illicit assets. These assets can be held as cash or as "property, sporting clubs, gambling, expensive cars, jewellery, art,... stock market, or… private education for relatives", parked in the financial system (Suarez-Martinez, 2013, Dec, p. 1).

The UK is not only a final destination for significant amounts of corrupt funds; banks based in London, one of the worlds most influential financial centres, also facilitate the movement of

corrupt funds through “intermediary services” (Suarez-Martinez, 2013, Dec, p. 6). Acting as a potential haven for corrupt funds, this emphasises the need for the state to strengthen its institutions and legislation connected to asset recovery, and the need for it to work with the international community whilst doing so.

8.1.1 How is the UK currently recovering assets from Politically Exposed Persons (PEPs) who enrich themselves through corruption and money laundering?

The UK has over 12 agencies and 40 police forces which deal, in part, with anti-corruption activities (Krishnan & Barrington, 2011, p. 2). Strategically, the government aims to respond to corruption by adopting four goals. According to the UK Anti-Corruption Plan (2014), these goals are to:

- Pursue and prosecute people who engage in corrupt activities;
- Prevent and impede people “from engaging in corruption”;
- Protect and help those who need protection from corruption, and
- Prepare for when corruption does happen, to help reduce the impact of corrupt events (p. 8).

Summarising these goals into one statement, the aim is “to make the UK a more hostile place for those seeking to move, hide or use the proceeds of crime or corruption” (Home Office et al., 2016, Apr, 16).

Whilst corruption is targeted in the UK Anti-Corruption Plan in a strategic manner, PEPs and asset recovery is targeted through legislation based on EU Directive 2005/60/EC - the third directive on Money Laundering regulations. The first EU directive on money laundering was introduced in 1991 and targeted drug trafficking offences which were seen to be where most money laundering occurred. The second directive in 2001 was replaced in 2005 by the third directive. Unlike the first two directives, the third directive dealt with, amongst other things, terrorist financing ("Money laundering and the financing of terrorism - European Union Committee Contents," 2009). Yet the changes in regulations also included enhanced due diligence and monitoring of PEPs living in other member states. This also included the “scrutiny of the PEP's source of wealth and source of funds.” ("The UK’s risk-based approach to the “Politically Exposed Persons” regime – section 30 of the Bank of England and Financial Services Act 2016," 2016, May 25). Because of this scrutiny, financial institutions and regulatory authorities are required to record suspicious activity in special reports called ‘suspicious activity reports’ (SARs) that are filed with “law enforcement Financial Intelligence Units (FIUs)” (Suarez-Martinez, 2013, Dec, p. 11). SARs can ultimately be a valuable tool used by FIUs to trace illicit assets which may result in criminal investigations.

The EU's Fourth Anti- Money Laundering Directive is due to be implemented by member-state governments by the middle of 2017. The greatest change from previous directives is that "the definition of a PEP is no longer limited to non-UK PEPs but also includes UK domestic PEPs" ("The UK's risk-based approach to the "Politically Exposed Persons" regime – section 30 of the Bank of England and Financial Services Act 2016," 2016, May 25). This means that enhanced due diligence and monitoring will become a "legislative requirement rather than (as currently) accepted good practice" ("The UK's risk-based approach to the "Politically Exposed Persons" regime – section 30 of the Bank of England and Financial Services Act 2016," 2016, May 25)

Criminal investigations that are undertaken in the UK can result in confiscations by the Crown Count, as enabled by the The Proceeds of Crime Act (POCA) 2002. Under POCA 2002, there is an option to "restrain assets through a money laundering offence without explicitly identifying a predicate offence" (Suarez-Martinez, 2013, Dec, p. 8). Thus the "defendant must pay a sum equal to the value of the benefits accrued through criminal conduct", as well as potential compensation to the victims (Ferguson, 2015, p. 39, Chapter 5).

Whilst the tools to deal with asset recovery from PEPs have been in place for some time, a 2011 review by The Financial Service Authority "revealed systemic failings in AML compliance by financial institutions with high risk customers and PEPs" (Suarez-Martinez, 2013, Dec, p. 11). However, in early 2016, 'The Bank of England and Financial Services Act 2016' was introduced to help define and categorise PEPs. In doing so, the act "paves the way for a more risk-based approach to the Politically Exposed Persons ("PEPs") regime in the UK" ("The UK's risk-based approach to the "Politically Exposed Persons" regime – section 30 of the Bank of England and Financial Services Act 2016," 2016, May 25). Specifically addressing the UK AML regime, Section 30 requires enhanced due diligence and monitoring to "which regulated firms are subject when providing services to customers who are politically exposed persons". ("The UK's risk-based approach to the "Politically Exposed Persons" regime – section 30 of the Bank of England and Financial Services Act 2016," 2016, May 25). This definition of PEPs encompasses those who are close relatives and associates of PEPs.

8.1.2 How is the UK adapting its laws in order to recover illicit assets from PEPs?

In the 2016 Queen's Speech, the British monarch announced the Criminal Finances Bill – new legislation to tackle corruption and money laundering. This bill not only impacts upon those within the UK, it intends to "cement the UK's leading role in the fight against international corruption" (*Queen's Speech 2016: what it means for you*, 2016).

And at the 2016 Anti-Corruption Summit held in London, the UK set three objectives as goals for fighting corruption. These goals are aimed at exposing corruption, punishing those who

are corrupt whilst supporting those who have suffered from the act, and driving out “the culture of corruption, wherever it exists” ("UK Country Statement," 2016)

Following the summit, the then home-secretary Theresa May proposed three tools to facilitate the fight against corruption. The aim of these tools is to expose those suspected of money laundering by:

- creating new powers such as unexplained wealth orders (UWO);
- questioning unsatisfactory responses on the PEPs source of wealth, and
- creating an illicit enrichment offense when assets remain inexplicable (Home Office et al., 2016, Apr, 16).

By using these steps, the combination of UWOs and illicit enrichment offences “force suspected money launderers to declare their wealth, and those who fail to satisfy authorities will face having their property and cash seized” ("Money laundering: New law planned to target corrupt officials," 2016, Apr. 16). UWOs avoid the need for criminal convictions and instead the burden of proof is shifted onto the individual who must prove their assets came from a legitimate source of wealth (Chêne, 2015, Nov. 25).

The summit also aimed to set a precedent internationally, by defining how the government will create barriers for entities attempting to place the proceeds of corruption into the UK’s financial system. This includes targeting a wider group than just PEPs by including “the promise of a public register of the ownership of foreign companies buying UK property, a move that would make money laundering more difficult” (Lusher, 2016, May 31).

The summit also acknowledged how targeting corruption is broader than just focusing on individuals within the UK. Even in the UK Anti-Corruption plan (2014), the intent is to look at bribery, “the use of corruption by criminals to enable their crimes, the abuse of position by individuals for personal gain; and the systems and processes which corruptors exploit to achieve a gain for themselves or others” (p.9).

Yet, the changes in legislation is not without commentary. Lusher (2016) notes, the Anti-Corruption summit “failed to act against the anonymity provided by offshore companies”. Others have commented that due to emphasis on the government’s sovereignty in dealing with corruption, “there is no basis for civil society to bring private civil proceedings in the UK.” (Suarez-Martinez, 2013, Dec, p. 19). Suarez-Martinez (2013, Dec) continue to comment that “[c]onsideration needs to be given to how civil society or citizens can be provided with a direct right of action against corrupt assets, also including how their rights under statute in their home country can provide for this” (p.19).

8.1.3 How is the UK working with the international community in order to achieve asset recovery from PEPs?

Since 1998, the UK has ratified numerous international conventions on anti-corruption. This includes the OECD Anti-Bribery Convention, the EU Criminal Law Convention on Corruption and the UN Anti-Corruption Convention ("Profiles: United Kingdom," 2016). As part of the European Union much of the UK domestic laws and strategies have been influenced by the wider political community. In particular, the Council of Europe has facilitated cooperation in criminal justice matters amongst EU member states. The European Convention on Mutual Legal Assistance in Criminal Matters, which the UK ratified in 1991, is one such tool which facilitates inter-state cooperation in the investigation and prosecution of criminal matters ("Chart of signatures and ratifications of Treaty 030," 2016). The second tool is the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, also known as the Warsaw Convention, which the UK ratified in 2015 ("Chart of signatures and ratifications of Treaty 198," 2016). This treaty "addresses the fact that quick access to financial information, or information on assets held by criminal organisations, including terrorist groups, is the key to successful anti-money laundering systems" ("Money laundering and the financing of terrorism - European Union Committee Contents," 2009). Using this convention, access can be made to data such as bank account information.

However, the scope of multilateral agreements extends further than just the EU member states. The UK also offers "provisions on mutual legal assistance" through the Merida, Vienna, and Palermo conventions, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and the Protocol to the Convention on Mutual Assistance in Criminal Matters between Member States of the European Union (Ferguson, 2015, p. 40 Chapter 5). There is also a provision to help Commonwealth Member States in MLA through the Harare Scheme. As of 2016, the UK has entered 39 bilateral MLA agreements (see appendix). However, the UK can also provide MLA to another state without an international treaty in place.

Yet, the process of asset recovery from PEPs has been facilitated internationally by another powerful legal tool - the Non-Conviction Based Asset Forfeiture (NCBAF). Under NCBAF, "the standard of proof is on the balance of probabilities – lower than the 'beyond reasonable doubt' standard for criminal proceedings – and the issue of PEP immunity can be avoided as the proceedings are brought against the asset rather than an individual" (Suarez-Martinez, 2013, Dec, p. 8). However, there is little use of NCBAFs internationally.

With the UK's move towards UWOs and illicit enrichment offenses, the reliance on cooperation with other states may change in due course.

8.2 Nigeria – Introduction

According to Odusote (2013), "[c]orruption in Nigeria is endemic, systemic, pervasive and multi-dimensional" (p.123). It is also institutionalised with the most common manifestations including embezzlement, bribery, abuse of office, over-invoicing and movement of illicit funds abroad (Shehu, 2014, p. 186). Per a report by Global Financial Integrity, there were about $854 billion of illicit financial outflows in Africa between 1970 and 2008 and Nigeria had the biggest share of that sum (Shehu, 2014, p. 187)

The proceeds of this corruption, also known as illicit enrichment, "constitutes the main predicate for money laundering in Africa" (Shehu, 2014, p. 186). Money laundering is now seen as "[o]ne of the most pervasive economic crimes in Nigeria today" (Okogbule, 2007, p. 156).

Until the late 1980's, money laundering was little heard of in Nigeria. Yet it is believed that beginning in the 1950s – "when Nigerian elites began to replace British colonial officials – corruption, especially the misappropriation of public funds, was widely practised" (Falola, 1998 as cited in Enweremadu, 2013, p. 53). This began institutionalising corruption.

Following Nigeria's independence from the UK in 1960, politicians from the First Republic (1960 -1966) were known as the 'ten percenters', whereby "they demanded 10 per cent of the value of contracts they awarded" (Akinola, 2015, Jan. 14). The succeeding military governments of Major General J.T.U. Aguiyi-Ironsi and General Yakubu Gowon were more modest by comparison, though several of Gowon's administration were eventually "indicted for corruption and self-enrichment" (Akinola, 2015, Jan. 14). The ensuing democratic and military administrations continued to address corruption. However, each one was plagued with their own inefficiencies and inadequacies in addressing the issue.

It was General Sani Abacha who gained the notoriety for transforming "Nigeria into a family company in which every member was a shareholder" (Akinola, 2015, Jan. 14). Between 1993 and 1998, General Sani Abacha governed Nigeria, looting an estimated "$3 billion to $5 billion over the five years of his rule" ("Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan," 2007, p. 18). According to the StAR initiative (2007) "Abacha is alleged to have used four methods for plundering public assets: outright theft from the public treasury through the central bank; inflation of the value of public contracts; extortion of bribes from contractors; and fraudulent transactions" (p.18). These funds were then laundered through numerous banks and countries worldwide (Shehu, 2014).

Following Abacha's death in 1998, the ensuing President General Abubakar created a special investigation panel "to trace and recover money that had been advanced for contracts which

had not been executed, advanced for contracts whose prices were over-inflated, and withdrawn for whatever purposes but was misapplied" (Enweremadu, 2013, p. 55). By the time General Abubakar left office, in May 1999, he "had overseen the retrieval of 825 million USD from the Abacha family, while 1.3 billion USD had been frozen in Switzerland, Luxembourg and Liechtenstein" (Daniel, 2003, p.102 as cited in Enweremadu, 2013, p. 56).

In 1999, Nigeria returned to democratic rule. President Olusegun Obasanjo launched a campaign to repatriate illicit funds held in banks around the world, and by the time he left office in May 2007, "had secured the recovery of approximately 2 billion USD in assets and triggered some vital international initiatives against money laundering" (Enweremadu, 2013, p. 51). During his eight years in office, Obasanjo had reformed public services, set up anti-corruption agencies and initiated "a campaign directed at identifying and recovering corruptly acquired assets held abroad" (Enweremadu, 2013, p. 52). This created much-needed global awareness about the issues Nigeria faced.

Since Obasanjo, Nigeria has had three more presidents, and money laundering continues to be a "critical problem affecting the socio-economic structure of the Nigerian society" (Okogbule, 2007, p. 164). More specifically, official corruption "is now seen as the norm rather than the exception in the country" (Okogbule, 2007, p. 164). And with an "estimated 170 billion USD in foreign private assets, Nigeria ranks as the country most damaged by capital flight in Africa" (Enweremadu, 2013, p. 52). Not only does this 'flight' syphon funds for development projects, it also "discourages private sector investment, thereby reducing economic growth" (Uyanik, 2014, March 04).

Indeed, in Transparency International's 2015 Corruption Perceptions Index, Nigeria ranked 136th place out of the 168 countries and territories rated; and on a scale from zero (most corrupt) to one hundred (very clean), Nigeria scored 26 ("Corruption Perceptions Index 2015," 2015).

8.2.1 How is Nigeria currently recovering assets from Politically Exposed Persons (PEPs) who enrich themselves through corruption and money laundering?

Understanding how successful Nigeria has been in illicit recovery efforts is a challenging task, since "it is difficult to ascertain the completeness of records of assets… due to poor records [*sic*] keeping and the use of proxies to acquire properties and maintain businesses" (Shehu, 2014, p. 199).

Nigeria has numerous laws tackling corruption, including the Independent Corrupt Practices & Other Related Offences Act 2000, and the Advance Fee Fraud and Other Related Offences Act 2006. Even the 1989 Code of Conduct Bureau and Tribunal Act – deals "with complaints of corruption by public servants" ("Code of Conduct Bureau and Tribunal Act (No. 1 of 1989)

(Chapter 56)," 2014). The EFCC Act 2004, followed on from the establishment of the Economic and Financial Crimes Commission (EFCC). This was a "response to pressure from the Financial Action Task Force on Money Laundering (FATF), which named Nigeria as one of 23 countries non-cooperative in the international community's efforts to fight money laundering" ("About CSDP - Overview," n.d.). Section 7(1) (b) of the EFCC Act 2004 specifically addresses unexplained wealth, whereby the Commission has the power to investigate "whether any person has committed an offence under this Act", as well as "cause investigations to be conducted into the properties of any person if it appears to the Commission that the person's life style and extent of the properties are not justified by his source of income" ("Economic and Financial Crimes Commission (Establishment) Act," 2002). Shehu (2014) does not believe this provision criminalises illicit enrichment, however it does permit investigations "on virtually any persons that appear to be 'living beyond their means' particularly politically exposed persons" (p. 190).

The EFCC is the state's Financial Intelligence Unit (FIU) responsible for the coordination of "various institutions involved in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes in Nigeria" ("Profiles: Nigeria," 2016). However, Odusote (2013) notes that the "Commission began with fervency by recovering assets derived from crime worth over 700 million (USD) between 2003 and 2004" (p.130). The commission has since been accused of under-performing in such ventures. Odusote (2013) believes this inefficiency among the judiciary is a result of a "weak, over-burdened and... decrepit system due to physical and legal infrastructure that is extremely slow and inefficient" (p. 125).

One potential explanation for this, is that anti-corruption campaigns provoke "anger and frustration amongst Nigeria's political class with vested interest in the status quo" (Enweremadu, 2013, p. 57). Thus, those cases which do make it to court result in few convictions.

Yet, there are other laws which may circumvent the need for court proceedings. In order to track the movement of money and reduce the states' cash-based economy, the Money Laundering (Prohibition) (Amendment) Act 2012 targets the maximum amount in cash transactions which individuals and organisations can make. By introducing this act, any transactions above this stipulated amount must occur through a financial institution, thereby making the source of funds more transparent (Okogbule, 2007).

By introducing these laws, Nigeria has recorded improvements in the Transparency International Corruption perceptions index. Out of 175 countries/territories, Nigeria moved from 144th in 2013 to 136th in 2014 – an improvement of 8 places (Chima, 2014, Dec. 04).

8.2.2 How is Nigeria adapting it's laws in order to recover illicit assets from PEPs?

According to Okogbule (2007), the public must be continually enlightened about the "dangers posed to the economic health of the nation by money laundering and related activities" (p. 164). Indeed, doing so, will underline the sincerity behind anti-corruption efforts. However, there is still much more which needs to be done.

Following an Anti-Corruption Summit in London, a statement was released by Nigeria listing the key focal points in its fight against corruption. According to President Buhari (2016, May 12), continued efforts must occur in ownership transparency, as well as in the:

- prevention of corruption whereby information will be shared amongst numerous agencies such as the financial sector and regulators so that it is possible to "detect, prevent and disrupt money laundering linked to corruption" (p.2). This coordination between private-public sector will happen both nationally and internationally;
- fiscal and public procurement transparency whereby the state will "undertake IMF Fiscal Transparency Evaluation" (p.2); and
- tax transparency whereby penalties will be given to those to enable tax evasion (Buhari, 2016, May 12).

In addition, President Buhari (2016) made a pledge to "punish the corrupt" and support victims of corruption (p.3). This, he proposes, will be achieved by:

- preventing "corrupt bidders from winning contracts" through international information sharing (p.3);
- recovering assets and managing the repatriation of those assets through strengthened "asset recovery legislation, including non-conviction based confiscation powers and the introduction of unexplained wealth orders" (p.4);
- drafting a Proceeds of Crime Bill which allows for transparent management of seized assets (both nationally and internationally) and a non-conviction based approach to asset recovery (p.4); and
- improving the use of technology to facilitate new approaches in tackling corruption (Buhari, 2016, May 12).

By implementing more robust changes to addressing corruption, as well as supporting international asset recovery efforts, it is hoped that provisions will be in place to commit to UNCAC and the various articles in the convention. This includes Article 31, "which obligates States parties to take necessary measures to enable confiscation", Article 53, which "enjoins jurisdictions to permit another state to initiate civil action in its courts to establish… ownership of

property" and Article 54, (1) (c) which "encourages States Parties to give consideration to measures that would allow confiscation of the proceeds of corruption without a conviction" (Shehu, 2014, p. 190).

8.2.3 How is Nigeria working with the international community in order to achieve asset recovery from PEPs?

In the 2008 mutual evaluation report by FATF, Nigeria was recognised as being only 'Partially Compliant (PC)' in confiscations and forfeitures. This was a result of "[i]nsufficient legal protection for bona fide third parties" and an "[a]bsence of rules to manage and dispose of confiscated properties." (Shehu, 2014, p. 194). Yet, at the 2016 Anti-Corruption summit, President Buhari pledged to "support the establishment of an International Anti-Corruption Coordination Center to be managed by National Crimes Agency, UK" (Buhari, 2016, May 12, p. 5).

This does not mean that Nigeria and its former leaders have made no attempts to work with the international community before. In the late 1990s and early 2000s, President Obasanjo contacted leaders from numerous financial centres around the world. Whilst it did receive positive consideration and increased frozen assets from $1.3 billion USD to $1.93 billion USD, in "subsequent years, however, limited success was recorded in the actual repatriation of funds." (Enweremadu, 2013, p. 58).

This highlights the importance of international cooperation in recovering illicit assets. Enweremadu (2013) explains that "[t]wo lessons can be drawn from Nigeria's recent endeavours to retrieve national resources diverted abroad by its corrupt leaders" (p.66). The first lesson is that "Nigeria's asset recovery initiatives were heavily influenced by Nigeria's endless intra-elite conflict" meaning that anti-corruption campaigns were used to damage political opposition (Enweremadu, 2013, p. 66). The second lesson is that international asset recovery is complex and demanding. The manifestation of this complex and demanding exercise is that Nigeria's efforts are restrained "by several factors: inefficient judicial systems; insufficient domestic political will; and limited international cooperation, especially from countries holding Nigerian assets" (Enweremadu, 2013, p. 66).

However, there has been some success in working with the international community in recovering illicit assets and on strengthening the international asset recovery regime. With much of Nigeria's illicit funds placed into Western financial centres (such as Switzerland and the UK), Nigeria has faced increased diplomatic pressure to reform laws and banking practices. These reforms mean that banks are obliged to check the origin of funds and report suspicious activity. Yet, these reforms only became law in Switzerland after the Abacha scandal, meaning that the Swiss agreed to release the funds only if certain conditions were met. These conditions were to "(i) first

begin prosecution of the accused at home, (ii) confirm the criminal origin of the funds and (iii) sign an undertaking guaranteeing "transparent use" of any repatriated funds" (Enweremadu, 2013, p. 61).

In 2005, Nigeria received $500 million of the funds stolen by Abacha from Switzerland and the monies were used to meet UN Millenium Development Goals, such as health and infrastructure ("Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan," 2007, p. 25). An international review of the repatriated funds deemed they had been used transparently.

Though international cooperation often comes with conditions, there can be some success seen in working with the international community. As Abdullahi Y. Shehu (2014) comments "[t]he weight of Article 53 and 54 of the UNCAC is well illustrated in the case of Sani Abacha" (p.191). Article 54 of the convention addresses "Mechanisms for recovery of property through international cooperation in confiscation" (*United Nations Convention Against Corruption*, 2004). Mechanisms such as MLA requests help with such matters. In the case of the Abacha assets, "Nigeria was able to take part in proceedings through the partie civile procedure. This allowed Nigeria to persuade the court that the Abacha family was a criminal organization, thereby shifting the burden of proof to the Abachas to show their funds were legitimate" (Ferguson, 2015, p. 82, Chapter 5). As a result of the Abachas inability to prove their funds were legitimate, Nigeria recovered $500 million.

MLA was also used in the case of James Ibori - "a former governor of Delta State in Nigeria who allegedly stole somewhere between US$300 million and US$3.4 billion while in public office" (Ferguson, 2015, p. 81, Chapter 5). Investigations instigated by Nigeria's EFCC (Economic and Financial Crimes Commission) resulted in Ibori receiving a thirteen-year sentence from a British court for "money laundering and associated crimes" (J. Campbell, 2012, Apr 19).

8.3 Russia – Introduction

During the Soviet era, corruption was seen as systemic, reaching far and wide across the vast state. Orrtung (2006) explains the magnitude of the issue: "[t]he absolute size of the state matters in facilitating corruption because the more bureaucrats there are, the more opportunities there are for corrupt transactions to take place" (p. 2). As a result, "Soviet citizens were, by necessity, participants in the system, and, therefore, victims of the system" (Anderson, 2016, p. 81).

During the mid-1980s, the General Secretary of the Communist Party of the Soviet Union - Mikhail Gorbachev - did make efforts to address systemic corruption, however with little success. Both economic and political systems were dominated by 'nomenklatura' – a term used about the Soviet political elite (about 1.5 percent of the population) who were "engaged in ceaseless political maneuvering [*sic*] among themselves while maintaining total power" (J. C. Campbell, 2016, Oct.

22). The nomenklatura “had very little to gain and everything to lose in the reform process” (Anderson, 2016, p. 81).

After the collapse of the Soviet Union in 1991, the economic transition from socialism to a market economy and political transition from a one-state party to democracy, should have reduced much of the corruption. However, “the transitions themselves were so ineptly handled that their major impact was to escalate the scale of corruption to unprecedented levels” (Anderson, 2016, p. 81). As a result, over half of the Russian population descended into poverty.

The first elected president of Russia, Boris Yeltsin, was supported by Western governments in his attempt to “create democracy in a country which had known centuries of authoritarianism” (Steele, 2007, Apr. 23). Though his efforts did avert civil war and hunger, “Yeltsin's compromises allowed authoritarianism to revive” and he “missed his chance to dismantle the KGB” letting “corruption and nepotism thrive” ("Boris Yeltsin," 2007, Apr. 26).

Instead of challenging the corrupt, the “botched privatization process enabled a handful of oligarchs to strip Russia of its most productive assets” (Anderson, 2016, p. 71). Anderson (2016) believes that the failure in Yeltsin’s crackdown on corruption was a result of a weak state. More specifically, the state “lacked the support of a clear, coherent and overarching legal framework; thus, the boundaries between legality and illegality were hopelessly blurred” (Ansfield & Buckley, 2013, Dec. 15). With weak rule of law, the “inability of the Russian state to fulfill its most basic obligation—providing for the security of its citizens—left a vacuum that was filled increasingly by organized crime” (Anderson, 2016, p. 71) .

For over a decade, systemic corruption prevailed in Russia and though attempts were made to address the issue, little progress was made, so much so that by 2006, “Russian President Vladimir Putin declared that an inability to make much progress in the battle against corruption was one of his administration’s greatest failures” (Orttung, 2006, Dec, p. 1). It was during Putin’s second presidential term (2004 - 2008), the leader made a renewed attempt at addressing corruption - firstly by ratifying the UN Convention against Corruption in 2006 and secondly by supporting Dmitry Medvedev’s ‘National Plan of Corruption Resistance’ in 2008 (Manaev, 2013, July 15).

Medvedev, who was Putin’s successor in 2008, “declared war on corruption” (Makarova, 2010, Aug. 13). Within two years of his presidential term, Medvedev “approved the National Anti-Corruption Strategy and the National Anti-Corruption Plan for 2010-2011” (Minkh & Kabyhev, 2011, Jan. 25, p. 413).

The objective of the National Anti-Corruption Strategy is to eradicate “the causes and conditions that serve as a breeding ground for corruption in Russian society” (Minkh & Kabyhev, 2011, Jan. 25, p. 413). This is to be achieved through anti-corruption legislative frameworks, as

well as enforcements and compliance of these provisions. The strategy is seen as a tool to define the future of anti-corruption policies; however, the National Anti-Corruption Plan is seen to bring these ideas to life (Makarova, 2010, Aug. 13). The Plan is renewed every two years.

Upon Putin's return to the presidential office for his third term (2012), Putin redeclared a "war on corrupt officials in the central governing apparatus and in the regions" (Manaev, 2013, July 15). This included targeting the oligarchs. By doing so, Putin "sent a clear message about who really ruled Russia; but this was an [*sic*] demonstration of power rather than an assertion of the primacy of the rule of law" (Anderson, 2016, p. 87). Anderson (2016) continues by stating, the "intent was not to establish a rule of law that applied equally to all regardless of wealth and standing, but to use the law as an instrument to crush those who challenged the strength of the state" (p.87).

In recent years, the perceived state of corruption in Russia has been ranked by Transparency International (TI). In the 2015 TI Corruption Perceptions Index, Russia ranked 119 out of 168 countries and territories and received 29 out of 100 (where zero is very corrupt and one hundred is very clean) ("Corruption Perceptions Index 2015," 2015).

8.3.1 How is Russia currently recovering assets from Politically Exposed Persons (PEPs) who enrich themselves through corruption and money laundering

Until 2003, confiscation of assets was included in the Criminal Code of the Russian Federation, though legislators did not find it enough of a deterrent, so it was eliminated from legislative acts (Vlasov & Zaltser, 2016). However, criminal sanctioned confiscations returned in 2006 "as part of Russia's implementation of the Council of Europe Convention on the Prevention of Terrorism (Warsaw, 2005) primarily for the purposes of fighting against terrorism" (Vlasov & Zaltser, 2016, p. 34).

Several articles of the Russian Criminal Code address confiscation. Article 104.1 is a measure which can "only be applied by courts" and defines confiscation of property as "forced gratuitous withdrawal of property without compensation" (Vlasov & Zaltser, 2016, p. 35). This article targets assets (such as money) gained through illegal activities. Article 104.2 specifies that if confiscation of a specific asset is not possible, then "the court shall issue a decision on confiscation of the amount of money corresponding to the value of the item" (Vlasov & Zaltser, 2016, p. 35). Alternatively, the court can confiscate an asset which is of equal value, which means that offenders cannot escape criminal proceedings simply by moving money beyond the remit of national borders. If there is in fact no other property, then "property that is subject to confiscation has to be used for compensation purposes" for victims of that crime (Vlasov & Zaltser, 2016).

The specific targeting of public servants and their families came in 2008 with a law requiring PEPs to submit income declarations. In 2011, this law was amended to include "top managers of the Central Bank, State Pension Fund, mandatory health and social insurance funds, as well as state-controlled corporations' bosses and members of parliament" (Doronina, 2013, Apr. 08). In addition to income declaration, these officials now need to report large expenses and outgoings.

The results have been tangible. According to data from the Supreme Court of the Russian Federation, "there has been a gradual growth in the number of confiscations imposed by Russian courts" (Vlasov & Zaltser, 2016, p. 34). Confiscations have risen from around 700 cases per year in 2008 to over 1800 cases in 2015. In 2014, Rosfinmonitoring - the governmental agency targeting money laundering and terrorist financing in Russia - "helped the investigative authorities to confiscate more than 3 billion roubles" (Vlasov & Zaltser, 2016, p. 34).

8.3.2 How is Russia adapting it's laws in order to recover illicit assets from PEPs?

Though asset recovery and PEPs have each been targeted by different legislations, there are those who believe that "[t]he state has made little progress in reforming Russia's financial institutions, and the formal ownership and activities of many Russian banks remains opaque" (Orttung, 2006, Dec, p. 4). Writing for the civil society organisation, Transparency International, Denis Primakov (2015, Oct. 30) confirms this statement by writing that "Russia does not keep official statistics on the recovery of assets, which undermines efforts to evaluate the success of asset recovery efforts, the work of investigators in the field, and the effectiveness of changes in legislation" (Primakov, 2015, Oct. 30).

However, at the 2016 Anti-Corruption summit in London, the Russian Federation reinvigorated its pledge to the National Anti-Corruption Plan. This pledge focuses on three goals which will ultimately impact upon the states asset recovery activities. According to the country statement, the goals are:

- exposing corrupt activities by "ensuring that national law enforcement agencies and financial intelligence unit have full and effective access to beneficial ownership information for companies and other legal entities registered within their jurisdiction", as well as "transparency of the beneficial ownership of all companies involved in public contracting";
- driving out cultural norms of corruption by improving "legal framework and organisational mechanisms of detecting and preventing conflict of interest in relation to public officials", strengthening "the impact of ethical and moral standards... established for the purposes of

corruption prevention, by public officials", establishing an "atmosphere of zero-tolerance to corruption in the society", and

- increasing international cooperation by supporting UN anti-corruption resolutions, working with civil society and other international organisations, as well as using "international cooperation mechanisms for detection, seizure and return of corrupt assets from foreign jurisdictions" ("Russian Federation Country Statement," 2016, pp. 1-2).

8.3.3 How is Russia working with the international community in order to achieve asset recovery from PEPs?

In 2006, Russia ratified the UN Convention against Corruption, thus aligning the country with international standards for "effective measures against illicit profits and tax fraud" (Manaev, 2013, July 15). However, Russia has been party to numerous multilateral treaties preceding this, including:

- "the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, 1990)" - which Russia adopted in 2001,
- "the Criminal Law Convention on Corruption (Strasbourg, 1999)", and
- "the United Nations Convention against Transnational Organized Crime (adopted by General Assembly resolution 55/25 of 15 November 2000)" (Vlasov & Zaltser, 2016, p. 36).

Addressing international cooperation, Article 3 of The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, 1990), Russia adopted "legislative and other measures as may be necessary to enable it to identify and trace property which is liable to confiscation, and to prevent any dealing in, transfer or disposal of such property" (Vlasov & Zaltser, 2016, p. 34).

Russia has joined the "OECD Anti-Bribery Convention in 2012, and in 2013, Russia's Federal Anti-Corruption Law No. 273 introduced requirements for companies to set up compliance programmes containing anti-corruption measures" (Philippsohn, 2014). Under the Federal Law No. 115 on Countering the Legalisation of Illegal Earnings (Money Laundering) and the Financing of Terrorism, several articles have been included to assist with the provision of asset recovery from PEPs. This includes article Article 10 on "Information Exchange and Legal Assistance", Article 11 on "Recognition of a Verdict (Decision) of a Court of a Foreign State" and Article 12 on "Extradition and Transit Transportation" ("Russian Federation," 2011, Sept 28, pp. 19-20).

For those states which are party to the same conventions as Russia, legal assistance is offered on the terms of those treaties. As noted by the StAR Initiative, any request for "legal assistance is a procedural document, the status of which is established in Chapter 53 of the Criminal

Procedure Code of the Russian Federation and international treaties defining the scope, terms and conditions of mutual legal assistance between the Russian Federation and foreign states" ("Asset Recovery: Practical step-by-step guide by Russian Federation," 2013, p. 3).

Aside from these treaties, Russia has "special bilateral and multilateral international treaties governing the provision of legal assistance with more than 70 countries" ("Asset Recovery: Practical step-by-step guide by Russian Federation," 2013, p. 3). In the absence of mutual legal agreements, assistance is offered on the principle of reciprocity, meaning that the seeking state provides "a guarantee letter that it would act reciprocally towards a request of the Russian authorities" (Vlasov & Zaltser, 2016, p. 36; Yan, 2012, June 29)

8.4 China - Introduction

A Transparency International article on corruption and asset recovery in China, noted that "[t]rillions of dollars of illicit wealth are pushed through the financial system annually" whereby the money funds "the luxury lifestyle of the corrupt, many of whom have fled their home countries" ("G20, China, corruption and asset recovery," 2016, Sept. 02). According to Minxin Pei (2007, October 09), approximately "10 percent of government spending, contracts, and transactions is estimated to be used as kickbacks and bribes, or simply stolen". This, he states, is a result of "partial economic reforms, lax enforcement efforts, and reluctance by the Communist Party to adopt political reforms".

Yet a reform has occurred in the past decade, championed by the General Secretary of the Communist Party of China – Xi Jinping. The Chinese leader pledged to address corruption through an anti-graft drive by targeting both 'tigers and flies'- a term used to address both powerful political and military figures, as well as lower-level bureaucrats (Branigan, 2013, Jan. 22). By 2015, authorities believed that around 100,000 officials had been punished to date (Branigan, 2015, Feb. 14).

It was the targeting of the 'tigers' - high-level officials who were previously untouchable from such allegations, which came to symbolise the extent of Xi Jinping's anti-corruption campaign. The tigers included:

- Xu Caihou,"the former Central Military Commission vice chairman and Politburo member" who was the highest ranking officer in the People's Liberation Army to be charged with corruption since 1949 (Zhiyue, 2015, Mar. 18). It is alleged that after his charge, it took 14 truckloads to detain luxury commodities from his private villa (Branigan, 2015, Feb. 14).

- Ling Jihua who was an aid to former president Hu Jintao. Jihua "has been sentenced to life in prison for taking more than 77 million yuan (HK$89 million) in bribes, illegally obtaining state secrets and abuse of power" (Chi-yuk, 2016, July 05)
- Jiang Jiemin, "once headed China's biggest oil company" as well as overseeing "China State-Owned Assets Supervision and Administration Commission" (Spegele & Chin, 2015, Oct. 12). He was brought to court on bribery charges.
- Liu Tienan, the "deputy director of the top economic planning agency, was sentenced to life for bribery in December after his mistress gave incriminating information to a well-known journalist" (Branigan, 2015, Feb. 14)
- Zhou Yongkang, a former security chief, who "was found guilty of bribery, abuse of power" and disclosure of state secrets ("China corruption: Life term for ex-security chief Zhou," 2015, June 11). The official newspaper of the Chinese Communist Party – the People's Daily, branded Yongkang, a traitor (Branigan, 2015, Feb. 14). Zhou was seen as the biggest catch of all the 'tigers' and the investigation into Zhou's corruption allegations is widely seen as the first time an official of such high ranking has been the focus of a formal corruption investigation (Ansfield & Buckley, 2013, Dec. 15).

However, after years of hunting 'tigers and flies', China is still perceived as having a serious problem with corruption – something that has changed little since the start of the campaign. Transparency International's 2014 Corruption Perceptions Index saw China's score falling "from 40 to 36 out of 100 on a scale in which zero is 'perceived to be very corrupt'" (Welsh, 2015, June 11).

According to research by the International Narcotics Strategy Report (2015), money laundering has conversely increased in China, so-much-so that China is one of the global leaders in "illicit capital flows" (as cited in Lubman, 2015, July 15). The report also notes that China and its institutions are failing to co-operate with other states in addressing illegal movements of funds.

Concern has also been expressed about the methods used in the anti-corruption campaign. Of utmost concern is the "forced confessions and a lack of an independent judiciary, which means that it is not possible to know if those arrested are political targets" (Xinzhu, 2015, June 29)("G20, China, corruption and asset recovery," 2016, Sept. 02). One agency which has received a "fearsome reputation" is the Communist Party's Committees for Discipline Inspection (CPCDI) (X. Li, 2014). The CPCDI has many resources and has the authority to "access intelligence, gather evidence, make arrests, interrogate suspects and educate and penalise corrupt officials in line with the Party rules" (X. Li, 2014). Yet, Xuebin Li (2014) believes this agency too is open to vulnerabilities since corrupt officials within this "department may be the ultimate arbitrators of other corruptive deeds".

This raises concerns surrounding Xi's anti-corruption campaign and whether it is as effective as intended. Indeed, in the Transparency International 2015 Corruption Perceptions Index, China ranked 83 out of 168 countries and territories with a perceived level of public sector corruption of 37 (where zero is very corrupt and one hundred is very 'clean') ("Corruption Perceptions Index 2015," 2015).

Of concern, is whether China's anti-corruption campaign is about more than just reducing corruption in the short-term but also about strengthening institutions to improve governance on mass (C. Li & McElveen, 2014, July 17).

8.4.1 How is China currently recovering assets from Politically Exposed Persons (PEPs) who enrich themselves through corruption and money laundering?

China has previously addressed corruption among PEPs by focusing on those who accept, rather than those who offer bribes. In theory though, it was possible to avoid punishment for accepting bribes, by voluntary disclosing one had accepted them (Munro & Yang, 2015, Sept 15). This changed with the Ninth Amendment to the Criminal Law of the PRC, which included a new offence for offering bribes to family or close acquaintances of "state functionaries, for the purpose of obtaining illegitimate benefits" (Munro & Yang, 2015, Sept 15).

In a bid to deter money laundering and illicit enrichment, China implemented the Anti-Money Laundering Law of the People's Republic of China, which came into effect in 2006. This allowed for an enhanced "internal control system to increase transparency of officials' accounts, to monitor their financial transactions and to identify anonymous or accounts under false names and beneficial owners of suspicious transactions" (X. Li, 2014). It also required that senior officials "honestly report their incomes, housing and investments owned or made by themselves, their spouses and children living with them, as well as the employment status of their spouses and children" (X. Li, 2014).

Individuals are also monitored through their banking activity. Should a bank discover suspicious activity, "they are required to report to the China Anti-Money Laundering & Analysis Center which, if it finds evidence of money laundering, is required to report to the China Anti-Money Laundering Bureau" (Lubman, 2015, July 15). However, the strengthening of such regulations has resulted in an increase of 'naked officials' - a term referring to officials who live in China, but with families who secretly reside abroad. In order to protect and financial support their family abroad, these officials are "prepared to sacrifice themselves with imprisonment or the death penalty (the price paid for their corruption)" (X. Li, 2014).

8.4.2 How is China adapting its laws in order to recover illicit assets from PEPs?

In the Anti-Corruption Summit hosted in London (2016), China issued a statement on how it would continue combating corruption both legally and politically. This included:

- adapting domestic legislation to include “non-conviction based forfeiture orders”;
- denying a safe haven to those engaged in corruption by working with the international community to recover illicit assets through extradition, bilateral treaties and mutual legal assistance; and
- strengthening the use of "existing international legal instruments such as the United Nations Convention Against Corruption (UNCAC) and the United Nations Convention on Transnational Organized Crime (UNTOC), and relevant initiatives of international cooperation under the framework of G20 and APEC.” ("China Country Statement," 2016).

Holding the 2016 G20 presidency, China also re-affirmed its commitment to the G20 framework which is based upon FATF recommendations. The G20 High-Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery (2016, Sept 27) states that “fighting corruption requires a strong foundation, which includes respect for international law, a commitment to respecting human rights and the rule of law as well as a commitment to respect the sovereignty of each country and their international commitments and domestic legal systems”.

8.4.3 How is China working with the international community in order to achieve asset recovery from PEPs?

Asset recovery is one of the key objectives China set in its leadership of the Asia-Pacific Economic Cooperation (APEC) Anti-Corruption and Transparency Working Group (Uyanik, 2014, March 04). As a result, the 2014 APEC Ministerial Meeting in Beijing resulted in APEC members adopting the “Beijing Declaration on Fighting Corruption and set up a cross-border law enforcement network to strengthen transnational anti-corruption cooperation” (Xinzhu, 2015, June 29). The proposal was especially relevant in Sino-American relations given that the US “is a major destination of fleeing corrupt Chinese officials” (Xinzhu, 2015, June 29).

The other key objective of China’s international anti-corruption drive is the extradition of corrupt officials who flee abroad. These PEPs escape with “a tourist visa and seek refugee status due to legal system differences and a lack of bilateral extradition treaties” (Yan, 2012, June 29). Working with the international community is seen as being of the utmost importance in order to “locate and extradite Chinese officials who have fled abroad to escape punishment for corruption” (Lubman, 2015, July 15). China signed its first extradition agreement with Canada in 2013, and by November 2014, it had concluded “39 extradition treaties... and 52 criminal judicial assistance treaties” (Xinzhu, 2015, June 29). These treaties were of particular importance during Operation

Foxhunt – “the overseas counterpart to President Xi Jinping’s sweeping anti-corruption campaign” (Mitchell & Shepherd, 2016, Jan 28). The campaign also included the repatriation of “corrupt officials now residing in a number of countries overseas” ("G20, China, corruption and asset recovery," 2016, Sept. 02).

China has also signed Mutual Legal Assistance treaties with over 50 countries ("G20 Asset Recovery Guide China 2014 ", 2014). Working with the international community is one of the ways by which China is looking to address corruption. As Zhang Yan (2012, June 29) comments, the state looks to “strengthen the measures it uses to recover corrupt officials' illicit assets transferred abroad and demand other countries freeze such assets to cut off the officials' means for living overseas” (Yan, 2012, June 29). This process relies on international collaboration, not only in asset recovery but also in freezing those illicit assets.

In return, aiding China in asset recovery is incentivised by sharing those recovered assets. In order to ensure mutual benefit, China offers “up to 80 per cent of forfeited assets with the countries that help China recover wealth illegally transferred overseas” (Suarez-Martinez, 2013, Dec, p. 12).

9. Comparative Analysis

The comparative analysis will reflect on the cases studies and discuss key issues in relation to theories and previous work as identified in the theoretical frameworks and literature review.

Drawing on the liberal understanding of institutions, regimes and laws, these structures help "states to operate in an anarchic international system" by promoting the common good and the basis for co-operation (Little, 2014, p. 290). The case studies show that all four countries are engaged in institutions on Corruption and Money Laundering at different levels of the international system. On the supranational level, each of the four countries has ratified the United Nations Convention against Transnational Organized Crime, as well as the UN Convention against Corruption. Regionally, they have entered different agreements. The UK has the EU directives on money laundering, China has engaged in the APEC Anti-Corruption and Transparency Working Group and Russia works alongside the latter two countries in the G20 Anti-Corruption Working Group. At the domestic level, all four countries have national agencies and institutions in place to deal with corruption and money laundering. These include the National Crime Agency in the UK, the EFCC in Nigeria, the Rosfinmonitoring in Russia, and the Communist Party's Committees for Discipline Inspection in China. These institutions and agencies enforce both national and international laws on corruption. These laws include the UK Proceeds of Crime Act (POCA) 2002, Money Laundering (Prohibition) (Amendment) Act 2012 in Nigeria, Federal Law No. 115 on Countering the Legalisation of Illegal Earnings (Money Laundering) and the Financing of Terrorism in Russia and the Anti-Money Laundering Law of the People's Republic of China.

Whilst the case studies highlight the importance of co-operation in the battle against corruption, they also highlight certain issues within the national and international domain. These issues can be split into two broad categories as specified by the Theoretical Framework.

9.1 Institutions, Regimes & Laws

One of the issues hindering international cooperation is that international institutions and laws rely on norms. These norms include the norm of sovereignty and the norm of human rights. In countries, such as the UK, which are formed by rational-legal societies, these liberal norms are in line with the country's value system. However, the case studies highlight that traditional and patrimonial societies such as China and Nigeria rely on different values systems which are often the antithesis of those values held in rational-legal societies. In these societies, rent-seeking is not seen as a form of corruption. As exemplified by the practice of *Guanxi* in China, relationships are used to "get things done and provide favours through social connections gained from family, workmates, school friends, business acquaintances and so on" (Graycar & Prenzler, 2013, p. 22).

Another issue connected to institutions, regimes and laws, is the agency these structures give to those in power to apply their use unilaterally. As feared in both China and Russia, the anti-corruption campaigns have been used as tools to demonstrate power. Also with both these states, "the strengthening of the institutions of state in fewer hands inevitably means fewer rival centers of power within the society and, therefore, fewer opportunities to check and balance the center" (Anderson, 2016, p. 92). Though the leaders of these countries believe this creates a 'strong' state, without civil society and other non-governmental organisations, there is a risk that the very agencies used to fight corruption will themselves become corrupt (Anderson, 2016). An example of this is Dmitry Zakharchenko, the acting head of the Russian anti-corruption agency, who was arrested in September 2016 for bribery and corruption. As is the case for Russia "[c]orruption clearly flourishes when there is too much state involvement in the economy (as in Soviet times), but also when there is too little (as was the case during the 1990s)" (Anderson, 2016, pp. 71-72).

9.2 Marxism/Critical Theory

Moving on from a comparison of the institutions, it is also possible to compare and analyse corruption in these countries through a Marxist framework. In recent history, each of the four countries has its own version of 'elites'. In the UK - it was the upper classes who could afford seats in the House of Lords. In Nigeria - it was the colonists who were then replaced by the 'ten-percenters'. In Russia – it was the Nomenklatura and later the oligarchs. In China – it was the officials who held high positions in the people's party. Whilst these groups were not necessarily 'exploitative' of other groups in terms of means and relation of production, each of them did hold hegemonic power over other groups in that society. This idea was discussed by Antonio Gramsci who believed hegemony "allows the moral, political, and cultural values of the dominant group to become widely dispersed throughout society and to be accepted by subordinate groups and classes as their own" (Hobden & Jones, 2014, p. 147). Therefore, whilst the elites in these countries benefited from obtaining assets they felt entitled to, this came at the cost and loss of those who subordinated them.

In the modern age, the manifestations of the proletariat/bourgeoisie relationship may not be so apparent, because it is not so simple to identify who the victim is. However, this does not mean it is not there. Within any country, funds syphoned away from public spending can come at the cost of those who are already marginalised within a society. Corruption thus reduces marginalised peoples' chances of escaping the cycle and emancipating themselves from this cycle. Internationally, the countries at the periphery of the world system can also suffer for the benefit of those at the core. For example, in asset recovery cases, the need to cooperate is vital, and whilst there are numerous treaties in place to help countries cooperate, this does not always occur. For example, Russia has received little assistance from the UK (Vlasov & Zaltser, 2016). In the case of recovering illicit

funds held in Switzerland, there was a condition that Nigeria must agree to a 'trust fund' (Shehu, 2014). Whilst this could be seen as safeguarding the funds, it is also possible to note the hegemonic relationship within these terms. Robert Cox believes hegemonic ideas such as 'free trade', or in this case 'asset recovery', serve the interests of the hegemon but less so for the peripheral state (Hobden & Jones, 2014).

On a domestic level, there are also exploitations of the institutional and legal systems. In Nigeria, Shehu (2014) notes that the EFCC acts have "been effective in respect of fraud cases involving ordinary citizens but less so in respect of cases involving Politically Exposed Persons" (p. 194). As this example shows, the privilege and connections of the elite again comes at the cost of ordinary citizen. The four countries also indicated that the anti-corruption campaigns both confused and provoked frustration and anger among PEPs, - the very people who have a "vested interest in [maintaining] the status quo" (Enweremadu, 2013, p. 57).

Maintaining the status quo is the prerogative of the elite, but undermines the state and the contract it has with its citizens. By viewing the four cases though this framework, it is then possible to understand how "well society is performing in terms of a government's contract with its citizens" as well as understanding how corrupt events, such as money laundering by PEP's, are being prevented (Graycar & Prenzler, 2013, p. 34). This will be discussed further in the next section.

10. Discussion

The aim of this study was to research Corruption and Money Laundering in the UK, Nigeria, Russia and China and explore how these countries recover illicit fund from PEPs. Three questions were used to structure the case studies, which used secondary data sources to research how these states were addressing the problem domestically and internationally.

The discussion will reflect on the four countries in the case studies and will be structured along three lines of enquiry as outlined in the methodology. These are the:

- legislative developments which looks at how the legislation adopted by the different governments tackles corruption and money laundering;
- institutional developments which looks at how domestic and international institutions have changed to enable asset recovery, and
- policy developments which looks at how the proposed and adopted changes in the actions target corruption and money laundering, as well as facilitate illicit asset recovery.

10.1 Legislative developments

Legislative developments look at how the legislation adopted by different governments tackles corruption and money laundering and faciliates asset recovery. As exemplified by the cases, one of the greatest asset recovery tools used in International Law is Mutual Legal Assistance (MLA). MLA is a comprehensive law which helps provide states the "tracing, freezing, seizing and forfeiture of funds or other assets derived from corruption" (Shehu, 2014, p. 196). MLAs draw on international regimes such as UN Conventions that stipulate legal assistance in such matters. For this reason, MLAs also ensures that states without unilateral or bilateral treaties get "timely and effective collaboration with third countries and prevent dissipation of funds" (Shehu, 2014, p. 196). This is a useful legislative tool in targeting the financial gains of corruption and ultimately takes the profit out of crime.

However, as highlighted by the Nigerian case study, MLAs are dependent on criminal investigations and proceedings, which are a lengthier and more expensive process than civil claims (Suarez-Martinez, 2013, Dec). Whilst "[c]riminal courts have no jurisdiction to investigate and prosecute offences committed abroad in most countries... [c]ivil courts, however, have powers to hear cases involving offences that took place in another jurisdiction" (Shehu, 2014, p. 197). While criminal proceedings rely of the burden of proof being beyond reasonable doubt; civil proceedings rely "merely on the balance of probabilities" (Shehu, 2014, p. 197).

This 'balance of probabilities' in civil proceedings is supported legally by the offence of illicit enrichment. Specified in Article 20 of UNCAC, prosecutors need only "to prove that that [sic] a defendant cannot justify their illicit funds through legitimate income sources" (Ferguson, 2015, p.

68, Chapter 5). Similarly, the UK's proposal to create Unexplained Wealth Orders removes the onus on criminal convictions as a prerequisite to seize assets. However, UWOs have received some criticism because they are seen to violate "basic constitutional principles and guarantees, such as presumption of innocence and due process" (Chêne, 2015, Nov. 25, p. 2). Of concern is that the presumption of innocence is a key element of international law and could be open to abuse in states with weak governance and rule of law (Ferguson, 2015). One way to circumnavigate these potential violations is to ensure PEPs disclose their finances and assets. By doing so, *failure* to disclose could be deemed a predicate offence which would support criminal procedures for asset recovery (Ferguson, 2015).

Issues have also been identified with MLAs. General mistrust within the international system means that "competent authorities can create unnecessary hurdles to mutual cooperation. In particular, this can manifest in the repatriation of assets and the potential conditions that may be imposed by a requested state – such as the UK – on their return" (Suarez-Martinez, 2013, Dec, p. 14). As such Ferguson (2015) explains that MLAs are complex and challenging to weak or failing states. In addition, the "MLA process is time-consuming and often hindered by the difficulty of tracing the location and ownership of assets" (Ferguson, 2015, p. 81, Chapter 5). This is something Russia has experienced in the state's requests for international legal assistance. Whilst Russia is party to numerous bilateral and multilateral treaties, the "Russian Federation actively assists and cooperates with other countries (eg, France, Germany, Switzerland) with international requests for legal assistance" (Vlasov & Zaltser, 2016, p. 36). However, Vlasov and Zaltser (2016) continue "there are difficulties in mutual legal assistance with the United Kingdom and the US insofar as these countries do not always provide information to the Russian authorities for asset tracing and confiscation purposes" (p.36).

The apparent reluctance of certain countries to assist others highlights the importance of asset management. Shehu (2014) comments that in many states, including the UK and Nigeria, "confiscated assets are the property of the government" which seizes them (p.197). Whilst there is an idea of developing an international 'trust fund' to oversee these confiscations, this has yet to be established. An international trust fund would ensure recovered assets are managed correctly and do not "get stolen again by yet another group of 'kleptocrats' (Shehu, 2014, p. 199).

10.2 Institutional developments

Whilst the legal reforms are addressing the need to look for inventive solutions to facilitate asset recovery, so too are the institutions which work both in preventative and corrective measures. Institutional developments look at how domestic and international institutions and regimes have adapted to better facilitate asset recovery.

In the case of UNCAC, the primary institutional goal in fighting corruption and money laundering is prevention. Prevention aims to "strengthen national mechanisms designed to prevent the diversion of funds through corrupt practices" (Shehu, 2014, p. 199). By strengthening national mechanisms, not only do these improvements protect the state and its citizens from any future corrupt leaders, it also adds credibility and legitimacy to international asset recovery efforts.

As is the case in the UK, it generally prefers to work with active states which are willing to collaborate in their asset recovery efforts. This is because any delays in investigations mean that "former corrupt officials and politicians will have concealed and layered corrupt assets, likely in multiple jurisdictions, mixing illegitimate income with legitimate income" (Suarez-Martinez, 2013, Dec, p. 12). However, as Primakov (2015, Oct. 30) expresses "[p]eople who work in asset recovery – tax authorities, investigative bodies, financial intelligence and customs authorities – need to be able to exchange information easily".

Information sharing platforms have been improved through the creation of Financial Intelligence Units (FUIs). FIUs serve "as a national centre for the receiving (and, as permitted, requesting), analysis and dissemination of STR [Suspicious Transaction Reports] and other information regarding potential money laundering or terrorist financing" (Hewitt, 2016, Mar 22).

China has engaged in the use of procuratorates, who are responsible for investigations and prosecutions of corruption and money laundering. Procuratorates "can also apply to the courts to confiscate illicit assets overseas. After making a ruling of confiscation, the courts can require other countries to recognize and implement China's judgment" (Yan, 2012, June 29). However, procuratorates can only freeze illicit assets "involving crimes committed while working for the public for a limited period of time, instead of permanently confiscating them, if the suspects are still at large or have escaped custody" (Yan, 2012, June 29).

In Nigeria, the EFCC is seen as being the most promising agency in confronting corruption. However, as Shehu (2014) comments "[r]ecovering the proceeds of crime is premised on evidence; that is, the existence of assets. Thus, to conduct a successful recovery of criminal proceeds, assets must be followed not only to their final hiding place, but causality must be established between the asset and the criminal activity" (p. 194). This creates a complex and expensive process in countries such as Nigeria which have a cash-based society. A useful tool in monitoring the movements of cash is to engage the private sector "including banks, lawyers and accountants" to work as allies in asset recovery (Suarez-Martinez, 2013, Dec, p. 2).

Yet, questions have also been raised about the methods used by the institutions targeting corruption. In China, the practice of *shuanggui* is used, which involves detaining people accused of corruption, up to periods of a month. The process includes various interrogations methods which is

“a secretive, extralegal process that… deprives citizens of their fundamental rights” (Jacobs & Buckley, 2014, Oct. 19).

Beside the human rights issues surrounding these detentions, one of the broader concerns about this process is that “[i]n many other countries, independent trade and professional associations help limit corruption by promulgating codes of ethics and imposing limited penalties quickly” (Johnston, 2001, p. 3). Yet in China, as well as in Russia, these groups generally do not exist and the power of the state-party remains unchallenged meaning that it is difficult to know whether “corruption is being systematically addressed in ways that reflect its growing scope and complexity” (Johnston, 2001, p. 3)

10.3 Policy developments

Policy developments look at the proposed and adopted changes in the actions targeting corruption and money laundering, as well as how these changes facilitate illicit asset recovery.

Chinas anti-corruption campaign has targeted corrupt public officials in an unprecedented way. However, one concern surrounding the anti-graft drive is whether the policies are fair and effective. As Xuebin Li (2014) comments, “considering the nation’s total losses to corruption, it has yet to be demonstrated how fruitful – as retribution, recovery or deterrence – asset recovery is there”. The Chinese campaigns have led “some observers to conclude that under Xi the leadership is focused above all on political and ideological issues at a time when many see broader economic challenges as the most urgent priority” (Hewitt, 2016, Mar 22). In an article published by The Economist, it was stated that “[t]hese days the alleged sins of the losers involve money and sex rather than ideology or loyalty to the leader; and the disgraced get their day in court” ("Tiger in the net," 2014, Dec. 14). And as Jacob and Buckley (2014, Oct. 19) comment “[g]iven the endemic corruption among Chinese officials and the opacity of the legal system, it remains unclear whether those targeted by party investigators are the most corrupt, or just the ones unlucky enough to have chosen the wrong side in an unseen factional battle”.

This lack of transparency results in anxiety in foreign investors, and with the changes in the rules of engagement has come unease (Hewitt, 2016, Mar 22). On the one hand, the anti-corruption campaign “has increased pressure on officials to open up the bidding for [...] projects to anyone who is interested, rather than just choosing their favorite companies, as was often the case in the past” (Hewitt, 2016, Mar 22). On the other hand, the approval process has become much slower, meaning these changes can potentially damage “China’s much-vaunted ability to implement projects rapidly” (Hewitt, 2016, Mar 22).

For Russia, Robert Orttung (2006) believes there are four “components [which] would define an effective anti-corruption policy” (p. 5). The first would be to reform current bureaucratic practices; the second would be to give civil society the opportunity to question the government and

its actions, the third would be to decentralise power "from the federal level to regional and local levels, providing for a system of checks and balances between the three levels of government" and the fourth would be an attempt to address inequality (Orttung, 2006, Dec, p. 5).

Others propose that raising bureaucrats salaries would reduce the chances of corruption however, in most cases "higher salaries would not provide enough income to replace what bureaucrats are receiving illegally" (Orttung, 2006, Dec, p. 2). Whilst government officials do have to report some financial activities, there are no regulations on opening bank accounts, including those who have been dismissed from public office for links to corruption. It is worth nothing that "public officials and politicians already face enhanced money laundering monitoring, on account of FATF AML recommendation relating to PEPs" (Suarez-Martinez, 2013, Dec, p. 18). These enhanced regulations are not a far cry from current AML regulations which experts believe should be restricted solely to PEPs rather than the broader public (Suarez-Martinez, 2013, Dec).

Developing policies which support transparency in the public and the private sector are seen as key to fighting corruption and helping asset recovery efforts. These policies include opening "publicly available registries, including company registries, land registries, registries of non-profit organisations and trusts... Ideally, the registries should be published as shared data in an electronic and real-time format" (Suarez-Martinez, 2013, Dec, p. 11).

Though the UK has not had the clearest policies on asset recovery, this has begun to change in recent years. Antonio Suarez-Martinez (2013) believes there are three principles which should guide UK policy on asset recovery. These are to be proactive and not depend "on a conviction in the origin state", to be de-politicised and "rely on intelligent and effective private sector reporting of suspicious transactions" (instead of political will) and to be unrestricted in asset recovery investigations by pursuing "cases where there is reasonable suspicion and should no longer be subject to geographical restrictions" (Suarez-Martinez, 2013, Dec, p. 2). In addition, as a way of leading the international community, "[t]he UK should provide greater clarity about the expectations for repatriation through both conviction and non-conviction based forfeiture" (Suarez-Martinez, 2013, Dec, p. 21).

Policy issues which have hindered global efforts until now include the lack of political will, as well as political immunity, adding numerous layers of difficulty to successful asset recovery. As Ferguson (2015) comments the fear, "breakdown of political systems, or the corruption of current leaders in victim countries can easily frustrate UNCAC's asset recovery goals by preventing requests from victim countries" (p. 24, Chapter 5). Further compounding the problem is that "in nearly all recent cases of grand corruption, the detection and investigation of the criminal activity of heads of government occurred only after there was a change of government, specific corrupt individuals fell out of favour, or there was widespread public outcry after wrongdoing was publicly

exposed" (Suarez-Martinez, 2013, Dec, p. 12). This means that whilst the PEPs were in power there was little opportunity to investigate any financial crimes.

Whilst the international community viewed these cases of domestic corruption as a problem for sovereign states, over time "an increased awareness of the negative effects of corruption on poverty and global security turned the fight against corruption into a global challenge" (Enweremadu, 2013, p. 54). In Nigeria, like other African states, "the worst effects of corruption are felt where the proceeds are held or invested outside of the economy from which they are obtained" (Sindzingre, 1997, as cited in Enweremadu, 2013, p. 54).

However, these crackdowns have come at a cost, since people are left unsure "what the new rules of the game are" (Branigan, 2015, Feb. 14). As with many other nations, "where a government does succeed in establishing... legitimacy, its efforts may be limited by the need not to hurt some of the economic elites who may have contributed in the political reconstruction and reconciliation process" (Shehu, 2014, p. 192). By reducing the burden of proof in asset recovery cases from criminal to non-conviction based confiscations, it is possible to circumnavigate these issues. As Chêne (2015) states "a criminal conviction is not a precedent condition, [and] the confiscation of assets through civil forfeiture cannot be frustrated by immunities" (p.2). This creates opportunities for states to use their policies in a creative and adaptive manner.

11. Conclusion

The aim of this study was to research Corruption and Money Laundering in the UK, Nigeria, Russia and China, as well as look at asset recovery efforts targeting PEPs. The case studies used three research questions to structure the findings, which was followed by a comparative analysis. The comparative analysis drew on the liberal understanding of institutions, regimes and laws, noting that one of the key issues connected to anti-corruption and AML efforts, is that different countries have different value systems. Much of international efforts are in line with rational-legal norms, which at times can act as the antithesis of norms in traditional and patrimonial societies. In order to align institutions, regimes and laws with varying values and social practices, there will need to be policies in place to prevent the corrupt events from happening, rather than just a reaction to the events. Without this prevention, institutions, regimes and laws can be used as a tool to punish political opposition, which the research highlighted had occurred in China and Russia.

The analysis also drew on theories connected to Marxism and Critical theory. The analysis found that each of the four countries has a history of political elites who abuse their power to subordinate other groups. Whilst there have been societal changes addressing this, the extent to which elites continue to abuse their power is ultimately unknown. In addition, the analysis found that although each of the countries in the case studies have strong economies, each state itself may be subject to subordination depending on whether it shares the same values as the countries at the core of the World System. For example, Russia has received little assistance from the UK in its asset recovery regime. Similarly, Switzerland stipulated that Nigeria set up a 'trust fund' for their repatriated funds. These examples highlight the hegemonic relationships among the AML regime.

Following on from the analysis it was possible to discuss how policies, institutions and legislation developments in each of the four countries target Corruption and Money Laundering. These three forms of development emphasised the constraints and opportunities of current practices within anti-corruption and anti-money laundering efforts. The legislative developments looked at how the legislation adopted by the different governments tackles corruption and money laundering. The case studies found one of the most useful legislative tool for international asset recovery efforts is Mutual Legal Assistance (MLA). Institutional developments look at how domestic and international institutions have changed to enable asset recovery. The case studies highlighted how agencies such as Financial Investigation Units (FIUs) are useful institutions which enable information sharing between public and private sectors. Policy developments discussed how the proposed changes are adopted and facilitated. The case-studies indicated that each country has engaged in some form of anti-corruption drives. However, in the cases of Russia, China and to some extent Nigeria, the case studies indicated that concerns have been raised surrounding the lack

of transparency in the anti-corruption campaigns. The discussion also highlighted concerns about whether the anti-corruption drives are politically motivated.

The research conducted within this study has achieved a broad understanding of the key issues connected to corruption and money laundering, as well as issues connected to asset recovery in four different countries. This approach allowed for a comparative analysis and discussion reflecting on those comparisons. However, one reflection on the overall process is that by choosing four countries, it was beyond the scope of the study to research each one depth. Any recommendations for future research would be to choose one of these case studies instead which would allow a deeper and more thorough analysis of the country. By doing so, it would allow time to engage in primary research, thereby supporting the desk-based secondary research with empirical data. It is likely that primary research would also involve travel to the specific country of research.

However to conclude, the research found that the fight against corruption and money-laundering is a complex arena. Each of the four countries in this research have made attempts to address corruption and money-laundering on both domestic and international arenas. The extent to which these attempts have translated into success has been varied. The research indicates these efforts are only as strong as the collective effort, and given the global nature of money flows, without the full support of global financial centres, the asset recovery process is arduous. Similarly, the research found that implementing initiatives and strengthening laws does not immediately deter corruption and money-laundering among PEPs.

However, the research found that the UK, Nigeria, Russia and China have made attempts to deter corruption and money-laundering and are attempting to work with the international community in asset recovery. And it can be said that for the most part, the anti-money laundering and corruption regimes are strengthening, meaning that all four countries have shown improvement and progress.

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13. Appendix

Email to H.M.Treasury: public.enquiries@hmtreasury.gsi.gov.uk
Sun 04/09, 22:08

Dear Sir/Madam,

I am a Masters student of International Relations based at the Norwegian University of Life Sciences. I am looking to write my thesis paper on International Asset Recovery from Politically Exposed Persons. For this reason, I was wondering whether you would be able to help me deepen my understanding and analysis of my three research questions. These are:

1. How is the UK currently recovering assets from Politically Exposed Persons (PEPs) who enrich themselves through corruption and money laundering?

2. How is the UK adapting its laws in order to recover illicit assets from PEPs?

3. How is the UK working with the international community in order to achieve asset recovery from PEPs?

For each of the questions, I will be looking to discuss the Policy, Legislative and Institutional factors connected to analysing the questions in full. I will also be writing about China, Nigeria and Russia and will be hoping to perform some form of comparative analysis.

If you could provide me with any literature relevant to answering my three questions, I would be very grateful. Alternatively, if you could advise me on who to contact for further details, it would be appreciated. Should you need additional details, I am happy to provide a copy of my research proposal for clarification.

Thank you in advance for your time.

Kind Regards,
Siobhán Garside

Email from H.M.Treasury: Public.Enquiries@homeoffice.gsi.gov.uk
Tue 11/10, 14:54

Home Office

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Siobhán Garside

siobhan.michelle.garside@nmbu.no

11 October 2016

Reference number: T10201/ 16

Dear Siobhán Garside,

Thank you for your email dated 04 September 2016, with regards to the UK response to recovering assets from Politically Exposed Persons (PEPs).

In 2003, the UK implemented the Proceeds of Crime Act (POCA) 2002 which directly deals with asset recovery. POCA is used to deprive all offenders, including PEPs of criminally obtained benefit or assets. It is used as a tool to recover the proceeds obtained from any kind of criminal activity (including money laundering and corruption) of any amount. POCA also prevents criminals from hiding assets in other people's names, and giving gifts purchased with criminal assets.

As a member state of the United Nations the UK ratified the UN Convention Against Corruption (UNCAC) in 2006. The UK has a strong track record of implementing the Convention and continuously works with international partners to improve global standards.

A clear example of how the Convention has worked in practice is the Macao case. The Macao authorities asked the UK government under UNCAC to restrain the assets of Mr. Ao Man Long, a public servant who had been found guilty of misappropriating assets in Macao, enforce their confiscation order and repatriate these assets. As a result £28,835,861 was returned to Macao.

The UK is part of a number of global initiatives to fight corruption and to recover illicit assets, including the Financial Action Task Force (FATF). The UK works with overseas territories to recover the proceeds of crime through the use of Mutual Legal Assistance. We currently have 39 bilateral Mutual Legal Assistance agreements in place with a range of countries. As a member of the European Union the UK is subject to both the Third and Fourth Anti-money laundering Directives.

Earlier this year Prime Minister David Cameron held the first Global Anti-corruption summit in London where he announced that any foreign company that wants to buy UK property or bid for central government contracts here will have to join a new public register of beneficial ownership information before they can do so. This is the first register of its kind anywhere in the world.

To coincide with the Anti-Corruption Summit the government published a progress update on the commitments made in the UK Anti-Corruption Plan. It reflects the good progress made across government on anti-corruption activity including measures to reduce vulnerability to corrupt Politically Exposed Persons (PEPs).

The UK has since created the world's first ever International Anti-Corruption Coordination Centre, in partnership with the US, Canada, Australia, New Zealand, Germany, Switzerland and Interpol. Experts will provide international co-ordination and support to help law enforcement agencies and prosecutors work together across borders to investigate and punish corrupt elites and recover stolen assets.

Criminality and corruption impacts upon people from all walks of life and stopping it is a key priority of this Government. We are currently in the process of developing the Criminal Finances Bill as outlined in the Queen's Speech in May 2016. The Bill will allow more criminal assets to be recouped by reforming the law on proceeds of crime, including provisions to strengthen enforcement powers, to protect members of the public and to seize even more proceeds of corruption.

I hope this letter provides you with the information you need and I wish you all the success with your thesis.

Yours sincerely,

Raie Wilkins
Criminal Finances Team

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