

CORRUPTION AND TRANSPARENCY

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DEFINITION OF TERMS –

- CORRUPTION has been defined variously by different actors:

TRANSPARENCY INTERNATIONAL (TI) *“Abuse of entrusted power for private gain”*

WORLD BANK *“The Abuse of Public Office for Public Gain”*

NYE Joseph (1967) *“Behaviour which deviates from the formal duties of a public role because of private regarding interest (personal, close family, private clique), pecuniary or status gains, or violates rules against the exercise of certain types of private regarding influence”*

It is obvious that the complexity of the term and the way it changes overtime makes it difficult to define and measure.

Hough Daniel (2017) argues that while academics may not agree on a common definition, there is an agreement that we should combat corruption

TYPES OF CORRUPTION

- Corruption occurs in the public and the private sector.
- The definition of corruption must be inclusive to cover the collusion that occurs between different actors, and across countries as well as the gendered nature of corruption
- Corruption can range from petty to grand corruption and the impact on the society differs depending on the actors and the resources involved – either way we all know the debilitating impact of corruption on the health, education and social services
- Consequently, the United Nations Convention against Corruption (UNCAC, 2005) chose to provide a list of offences that can be listed by countries as corrupt acts without defining the term (Articles 15 to 27)

IS “TRANSPARENCY” A PANACEA TO CORRUPTION?

- Transparency is defined as by the Merriam Webster Dictionary as “Something that is clear, limp or translucent or “a picture or film viewed by the light is shining through it” where the opposite of transparency is “opaque”
- When a government has a governance process that is transparent, it is described as operating in a less corrupt and opaque manner. The criteria for transparency includes but are not limited to **openness, participatory, inclusive, and collaborative, governance**
- This is what led to the setting up of Open Government Partnership (OGP) initiative in 2011. The OGP was adopted by governments across the globe.
- But as noted by Transparency International, transparency is not enough - what do we do?

CORRUPTION PERCEPTION INDEX (2020 TI/CPI)

The 2020 Transparency International CPI results revealed that that top leading countries are not free from corruption as private companies perpetuate corruption

(<https://www.transparency.org/en/news/cpi-2020-trouble-at-the-top>)

- (Examples include Wirecard based in Germany, Airbus, a french company paid \$4billion in combined penalties to the UK, USA and France, Semplex, a Belgian company is under investigation for money laundering involving countries in Africa,
- Gunvor, a Swiss based company paid \$96million in penalty for bribes paid in Congo and Cote D'Ivoire, Bombardier, a Canadian company is under investigation for bribes paid to Indonesian officials, San Faustian, A Luxembourg entity is under investigation in Italy, Argentina and Brazil for foreign bribery, Fishrot Scandal in Iceland involving the payment of bribes in Namibia
- Lawyers are used to enable or fuel corruption and their role as gatekeepers have come under scrutiny leading to the **Financial Action Task Force Recommendations 22 and 24** to prevent the use of Designated Non-Financial Institution (DNFIs) and to ensure transparency in the beneficial ownership of legal arrangements

CORRUPTION PERCEPTION INDEX (2020 TI/CPI)

- In Africa, where most of the Commonwealth countries are located, the CPI shows that (<https://www.transparency.org/en/news/cpi-2020-sub-saharan-Africa>)

Out of **49 countries surveyed**, they scored an average of **32/100** (where the lower number shows high level of corruption).

The top best in the region were: **Seychelles – 66, Capo Verde – 58, Botswana, 60.**

Some of the countries in the Commonwealth that saw a decline from their earlier performance were Malawi, Nigeria, Zambia, Madagascar, and Mozambique.





**MORE THAN 78 COUNTRIES AND 76 JURISDICTIONS
HAVE JOINED THE OGP NETWORK TO PROMOTE
PARTNERSHIP ON ANTI-CORRUPTION MEASURES
WITH BUSINESSES AND CIVIL SOCIETY
ORGANIZAITONS.**

GLOBAL EFFORTS TO COMBAT CORRUPTION AND IMPROVE TRANSPARENCY IN GOVERNANCE

- The efforts to improve transparent governance in governments, businesses and to hold government accountable are led by international, and non-governmental actors:
- United Nations
- The Commonwealth Secretariat
- World Bank
- Transparency International
- G20
- Financial Action Task Force
- Others

AT THE CONFERENCE ON
TACKLING CORRUPTION
TOGETHER IN 2016, NIGERIA
AND THE COMMONWEALTH
SECRETARIAT AS WELL AS
OTHER COMMONWEALTH
COUNTRIES COMMITTED TO
END IMPUNITY, PREVENT
CORRUPTION, EMPOWER
VICTIMS, BOLSTER GOOD
GOVERNANCE, TRANSPARENCY
AND SUSTAINABLE
DEVELOPMENT

[HTTPS://THECOMMONWEALTH.
ORG/TACKLINGCORRUPTIONT
OGETHER](https://thecommonwealth.org/tacklingcorruptiontogether)



LONDON SUMMIT ON ANTI- CORRUPTION, 2016

Organized by the UK government in 2016

643 commitments and declarations made by 43 countries and six international organizations

Promoted Collective actions – government collaboration with businesses and non-governmental organizations to raise awareness and to tackle corruption in an inclusive manner

COMMITMENTS AND DECLARATIONS - I

I. Corruption should be exposed ensuring that there is nowhere to hide

Commitments

- End the mis (use) of anonymous companies to hide the proceeds of corruption
- Driving out those lawyers, real estate agents and accountants who facilitate or are complicit in corruption and denying the use legitimate business channels
- Increase transparency of government budgets, tax information and procurement to deter tax evasion and expose the theft or misuse of taxpayers' money
- Making it easier for people to report corruption without fear or reprisal

COMMITMENTS AND DECLARATIONS - II

2. The Corrupt should be pursued and punished and those who have suffered from corruption fully supported:

COMMITMENTS

- Actively enforcing anti-corruption laws and working together to pursue the corrupt, prosecute and punish them
- Tracking down stolen assets and returning them safely to their legitimate owners
- Sending a clear message to the corrupt; there will be no impunity. Their ability to operate in other countries will be restricted

COMMITMENTS AND DECLARATIONS - III

3. Corruption should be driven out wherever it may exist

COMMITMENTS

Targeting entrenched corruption, linking up institutions and professions around the world to build capacity and foster a shared culture of integrity

Ensuring transparency and governance in key areas including sport, extractives and the security sector

Encouraging and supporting the international organizations to increase their focus on fighting corruption and to coordinate their work more effectively

PROGRESS SINCE 2016 ANTI- CORRUPTION SUMMIT

Transparency International is tracking the progress made by countries and organizations since the 2016. The findings show some progress in some countries (<https://www.transparency.org/en/blog/clusters-of-progress-in-anti-corruption-reforms>)

OUTCOMES:

- Establishment of the Global Asset Recovery Forum (GFAR) – So far the UK AND USA has worked with Nigeria, Ukraine, Tunisia, Sri-lanka and there has been successful return of stolen assets.
- Increased number of countries with beneficial ownership registers – driven by open data.
- Swiss government working with the Basel Institute on Governance, World Bank/UNODC STAR project developed the Lausanne Guidelines for the Efficient Recovery of Stolen Assets in 2017

(<https://learn.baselgovernance.org/course/view.php?id=20>)

- Many countries have developed Open Contracting Platforms including Nigeria and Ghana

PROGRESS SINCE 2016 ANTI- CORRUPTION SUMMIT

The Innovation Hub has led to new and innovative approaches to anti-corruption working with businesses, NGOs, and law enforcement in the UK

International Sports Integrity Partnership –Improving transparency in sports management

International Anti-Corruption Coordination Center (IACC) – Set up in the UK to bring together law enforcement, financial intelligence units and prosecutors to tackle g=cross-border corruption and return assts

Members of OGP were encouraged to integrate the Summit Declarations into the National Action Plans

PROGRESS SINCE 2016 ANTI- CORRUPTION SUMMIT

- UK-Transparency International Chapter Findings from 2016 to 2019 (<https://www.anticorruptionpledgetracker.com>)
- Commitments Monitored **162**
- **Six Thematic Areas: Asset Recovery, Beneficial Ownership, Law Enforcement. Open Data, Public Procurement and Whistleblowing**

Findings as at 2021 show that most of the commitments remain uncompleted.

The extent to which the tracker is able to generate information is not very clear. The commitment on the development of asset recovery guideline reported as inactive in Nigeria has already been implemented as at 2019 through the issuance of a Regulation on Asset Recovery and Management and the setting up of a specialised asset recovery unit in the Federal Ministry of Justice

PROGRESS SINCE 2016 ANTI- CORRUPTION SUMMIT

Completed Commitments 21.7%

Ongoing Implementation of Commitments – 52.8%

Underway – 3.7%

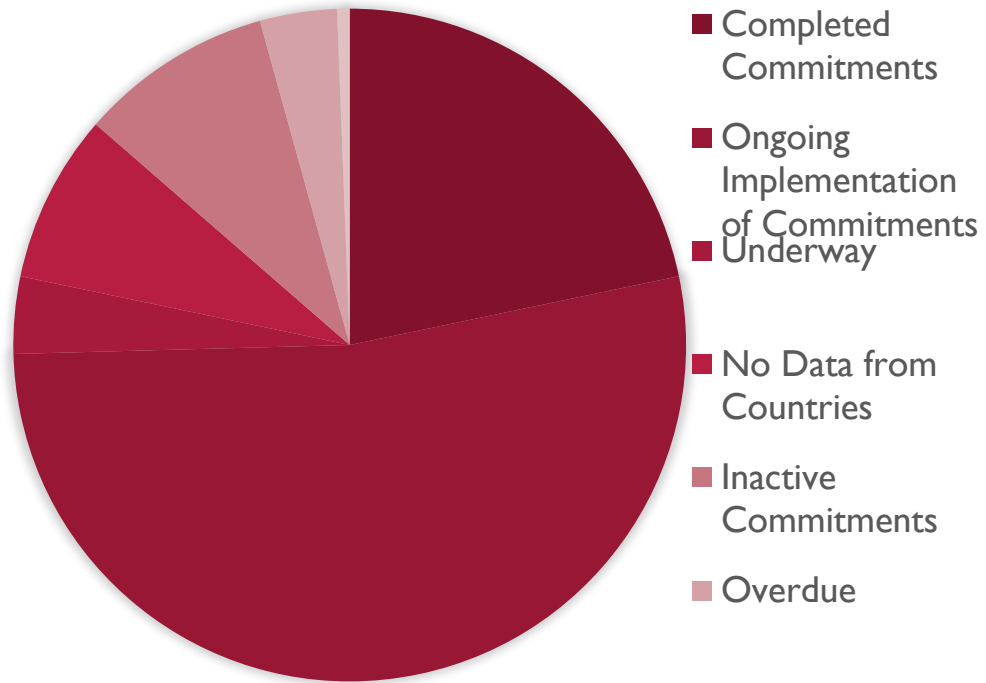
No Data from Countries – 8.1%

Inactive Commitments – 9.3%

Overdue – 3.7%

Dropped 0.6%

PROGRESS SINCE 2016 ANTI- CORRUPTION SUMMIT



ROLE OF LAWYERS IN ENFORCING TRANSPARENCY MEASURES

There is no doubt that the 2016 AC Summit brought together political, businesses and civil society leaders to address corruption and that it led to proposals on innovative and ambitious ways to tackle corruption.

- The role of the lawyers in the Commonwealth countries is to continue to encourage their governments to implement the commitments related to open government, transparency in the beneficial ownership of corporate bodies, addressing impunity of political leaders, prosecution of the corrupt, and return of stolen assets to fund development and compensate victims.
- The Commonwealth Secretariat is leading efforts towards supporting member countries to develop implementation benchmark.
- Lawyers can play an active role by using the benchmarks in their respective countries to assess progress against the commitments.

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