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Assessing Accountability for the Right to Development

A Look at the Value of the FATF Anti- Illicit Financial Flows Framework from the Nigerian Perspective

Obot, Iberedem Udofia

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Assessing Accountability for the Right to Development: A Look at the Value of the FATF Anti- Illicit Financial Flows Framework from the Nigerian Perspective

By

Iberedem Obot

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Abstract

The Thesis conducts an enquiry on the impact that the Financial Action Taskforce (FATF) accountability mechanisms have had on the anti-illicit financial flows (IFF) and anti-corruption mechanisms in Nigeria. The goal is to conclude on whether the FATF and its accountability framework should be promoted as an international mechanism that has enhanced the goal of actualizing the right to development (RTD) in Nigeria by effectively assisting the country to combat grand corruption related IFFs.

This research applied mixed methods to evaluate the FATF's contribution to anti-IFF in Nigeria. Secondary data on FATF's evaluation of countries in the global network of FSRBs and FATF memberships, qualitative data from interviews and quantitative data from surveys were used as data for this Thesis. For this study, data from 20 interviews and 16 completed surveys by anti-money laundering (AML) experts in Nigeria were used.

The findings in the study explain the value of the FATF as a mechanism that has sought to influence compliance in Nigeria. It shows that the impact of the FATF on compliance must be assessed from the perspective of its ability to get inputs from domestic actors. The study reveals that the weaknesses of the FATF have not impeded on its value because it gives adequate clarity about its accountability process and objective to domestic actors, who are themselves afforded the opportunity to be a part of the various stages of FATF's activities. The findings indicate that the effectiveness of the FATF is associated with its ability to impact compliance without exacerbating any concerns about international influence. The study also illustrates the value in the FATF's ability to achieve and support various forms of accountability.

The study builds on development theories and the accountability concept and Guzman's theory of compliance literature by identifying some factors that amplify the effectiveness of mechanisms which may cause reputational damage for non-compliance with international law.

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List of Abbreviations

AAA	Accra Agenda for Action
AAAA	Addis Ababa Action Agenda of the Third International Conference on Financing for Development of 2015
ACHPR	African Commission on Human and People Right
AEOI	Automatic Exchange of Information
AfDB	Africa Development Bank
AML	Anti-Money Laundering
Anti-IFF	Anti-Illicit Financial Flows
APRG	AEOI Peer Review Group
BCBS	Basel Committee on Banking Supervision
CBN	Central Bank of Nigeria
CDCS	Country Development Cooperation Strategy
CDD	Customer Due Diligence
CERES	Coalition for Environmentally Responsible Economies
CFT	Criminal Financing of Terrorism
CLS	Critical Legal Studies
CP	Civil and Political
CPESC	Civil, Political, Economic, Social and Cultural
CRAs	Credit Rating Agencies
CRS	Common Reporting Standard
CSP	Company Service Providers
DAC	Development Assistance Committee
DFI	development finance institutions
DNFBPs	Designated Non-Financial Businesses and Professions
EBRD	European Bank for Reconstruction and Development
EC	European Commission
ECOSOC	UN Economic and Social Council
EDD	Enhanced Due Diligence
EFCC	Economic and Financial Crimes Commission
EFF	Extended Fund Facility
EIB Group	European Investment Bank Group
EIB	European Investment Bank
EIF	European Investment Fund
ESC	Economic, Social and Cultural
ESG	Environmental, Social and Governance Consideration
EU	European Union
FATF	Financial Action Task Force
FER	Follow-up Evaluation Report
FinCEN	Financial Crimes Enforcement Network
FIRS	Federal Inland Revenue Service
FIRST	Financial Sector Reform and Strengthening Initiative
FSB	Financial Stability Board
FSI	Financial Secrecy Index

FSRBs	FATF-Style Regional Bodies
GAL Project	Global Administrative Law Project
GAL	Global Administrative Law
GDP	Gross Domestic Product
GFI	Global Financial Integrity
GFTEITP	Global Forum on Transparency and Exchange of Information for Tax Purposes
GIABA	Inter-Governmental Action Group against Money Laundering in West Africa
GRI	Global Reporting Initiative
HLPF	High-Level Political Forum on Sustainable Development
HLTF	High-Level Taskforce on the Implementation of the RTD
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IFC	International Finance Corporation
IFIs	International Financial Institutions
ILC	International Law Commission
ILT	International Legal Theory
IMF	International Monetary Fund
IRM	Implementation Review Mechanism
ISI	Import-Substituting Industrialization
MCA	The Millennium Challenge Account
MCAA	Multilateral Competent Authority Agreement
MCC	Millennium Challenge Corporation
MDBs	Multilateral Development Banks
ME	Mutual Evaluation
MERs	Mutual Evaluation Reports
ML	Money Laundering
MVTS	Money or Value Transfer Service
NAM	Non-Aligned Movement
NCCTs	Non-Cooperative Countries and Territories
NFIU	Nigerian Financial Intelligence Unit
NGOs	Non-Government Organizations
NIA	National Intelligence Agency
NIE	New Institutional Economics
OEWG	Open-ended Working Group on the Right to Development
OEWG	Open-ended Working Group on the Right to Development
OHCHR	Office of the High Commissioner for Human Rights
PR	Public Relations
PRSP	Poverty Reduction Strategy Paper
PwC	PricewaterhouseCoopers
RCG	Recipient Country Government
RCI	Rational Choice Institutionalism

RCT	Rational Choice Theory
RCTC	Rational Choice Theory of Compliance
RMA	Relationship Management Application keys
S&P	Standard and Poor's
SAP	Structural Adjustment Program
SDGs	Sustainable Development Goals
STR	Suspicious Transaction Report
SURE-P	Subsidy Reinvestment and Empowerment Program
SWIFT	Society for Worldwide Interbank Financial Telecommunications
TI	Transparency International
UDHR	Universal Declaration on Human Rights
UK	United Kingdom
UN	United Nations
UNCAC	UN Convention against Corruption
UNCHR	UN Commission on Human Rights
UNCTAD	UN Conference on Trade and Development
UNCTOC	UN Convention against Transnational Organized Crime
UNDP	United Nations Development Program
UNDRD	UN Declaration on the Right to Development
UNEP	United Nations Environmental Program
UNGA 2030 Agenda	2030 Agenda for Sustainable Development of 2015
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Commission
US	United States of America
WB	World Bank
GAFISUD	Grupo de Accion Financiera de Sudamerica
IBRD	International Bank for Reconstruction and Development
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures
OECD	Organization for Economic Co-operation and Development
UNOHCHR	Office of the United Nations High Commissioner for Human Rights

Table of Statutes and Instruments

International Legal Instruments

1966 International Covenant on Civil and Political Rights

1966 International Covenant on Economic, Social and Cultural Rights

2000 UN Convention against Transnational Organized Crime

2003 United Nations Convention against Corruption

National Legal Instrument

Nigeria

Anti-Money Laundering Act 1995

Constitution of the Federal Republic of Nigeria 1999 (as amended)

EFCC (Establishment) Act 2004

Freedom of Information Act 2011

Money Laundering (Prohibition) Act of 2011

Money Laundering (Prohibition) (Amendment) Act 2012

United States of America

Foreign Corrupt Practices Act 1977

Regional Legal Instruments

European Union

European Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016: Supplement to Directive 2015/849 by Identifying High-Risk Third Countries with Strategic Deficiencies [2016] OJ L 254/1' (20 September 2016) L 254/1

Chapter One: Introduction

1.1 Introduction and Rationale for the Study

In the reports that were commissioned by the United Nations Human Rights Commission (UNHRC), some United Nations (UN) experts have identified the relationship between Anti-Money Laundering (AML) mechanisms and the goal of actualizing human rights, including the Right to Development (RTD).[1] In these UNHRC commissioned reports, the UN experts have illustrated or explained the relationship between the non-implementation of laws that are aligned with globally recognized best practices in AML and the extant flows of illicit funds out of developing countries.[2] For instance, in a 2011 UNHRC commissioned report, an explanation was provided for the assertion that the AML 'controls that matter more for developing countries are those that operate in the destination countries' for illicit funds.[3] In other words, in the 2011 UNHRC commissioned report, the UN expert elaborated on the idea that global application of internationally recognized AML best practices are vital to any attempt to limit the flow of illicit funds out of developing countries. The UN expert also observed that all retrievals of the proceeds of corruption are important because they allow countries to have more resources to use in promoting the actualization of rights, including the RTD.[4] Therefore, this Thesis is based on the idea that Nigeria's ability to limit or investigate the outflow of illicit funds and retrieve resources that can be used to promote RTD is enhanced by the global implementation of internationally recognized AML best practices. Furthermore, in the literature on money laundering in Nigeria, some studies have propagated the notion that the Nigerian AML regime has been influenced by the Financial Action Task Force's (FATF) activities.[5] Yet, there are no studies that have identified the relationship

[1] AML refers to the actions and mechanisms that combat money laundering, which has been defined as the processing of criminal proceeds to disguise their illegal origin. See, FATF, 'What is Money Laundering' (*FATF*) <https://www.fatf-gafi.org/faq/moneylaundering/> accessed 28 May 2021.; For examples of the relevant UN reports see, UNHRC (19th Session) 'Comprehensive Study on the Negative Impact of the Non-Repatriation of Funds of Illicit Origin to the Countries of Origin on the Enjoyment of Human Rights, in Particular Economic, Social and Cultural Rights: Report of the United Nations High Commissioner for Human Rights' (14 December 2011) UN Doc A/HRC/19/42, para 24 and 42<https://www.ohchr.org/en/documents/reports/ahrc1942-negative-impact-non-repatriation-funds-illicit-origin-report> accessed 2 January 2022; and UNHRC (36th Session) 'Research-Based Study on The Impact of Flow of Funds of Illicit Origin and the Non-Repatriation thereof to the Countries of Origin on the Enjoyment of Human Rights, Including Economic, Social and Cultural Rights: Progress Report of the Advisory Committee of the Human Rights Council' (9 August 2017) UN Doc A/HRC/36/52, para 1 and 25 -72 <https://www.right-docs.org/doc/a-hrc-36-52/> accessed 2 January 2022.

[2] UNHRC (19th Session) (n 1); and UNHRC (36th Session) (n 1).

[3] UNHRC (19th Session) (n 1).

[4] UNHRC (19th Session) (n 1) para 24 and 54.

[5] Ibrahim Abdu Abubakar, 'An Appraisal of Legal and Administrative Framework for Combating Terrorist Financing and Money Laundering in Nigeria' (2013) 19 Journal of Law, Policy and Globalization 32 and 35

between the FATF and RTD in Nigeria. Similarly, there are very few or no studies that have focused on the role that domestic factors have played in influencing FATF's impact on AML in Nigeria. Perhaps this is because RTD and the FATF are relatively unpopular in Nigeria.[6] Accordingly, this Thesis assesses the FATF's value as an instrument that should promote RTD by enhancing Nigeria's ability to use AML mechanisms to improve its development resource availability.

In some of the UN resolutions and the reports of its experts, the global anti-IFF agenda has been identified as an important part of the efforts for actualizing the RTD.[7] Furthermore, in the Addis Ababa Action Agenda of the Third International Conference on Financing for Development of 2015 (AAAA), the international community pledged to reduce IFF through actions that would increase international cooperation against corruption.[8] The international community also pledged to reduce IFF by implementing the Recommendations of the FATF.[9] Therefore, the FATF's monitoring process has become more relevant to the international development discourse because its outputs are, in essence, an evaluation of the international community's compliance with one of its pledges in the AAAA (2015) framework. Consequently, this Thesis has assessed the FATF as an accountability framework that is relevant to the actualization of RTD in Nigeria. This is because through its pledge to implement the Recommendations of the FATF and to reduce Illicit Financial Flows (IFFs), the international community has addressed an issue that is relevant to Nigeria's problem of lack of resources to tackle poverty eradication. The reason for this conclusion is that IFFs are

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<https://iiste.org/Journals/index.php/JLPG/article/view/8924/9083> accessed 2 January 2022; Abiola Idowu and Kehinde A. Obasan, 'Anti-Money Laundering Policy and Its Effects on Bank Performance in Nigeria' (2012) 5 (2) Business Intelligence Journal 369 <https://www.researchgate.net/publication/309458514_ANTI-MONEY_LAUNDERING_POLICY_AND_ITS_EFFECTS_ON_BANK_PERFORMANCE_IN_NIGERIA> accessed 2 January 2022; and Olufemi Abiodun Olaoye, 'Cosmetic versus Substantive Compliance with the Global Anti-Money Laundering and Terrorism Financing Laws: The Case of Nigeria'(LL.M thesis, University of Manitoba 2020) 52-54 <https://mspace.lib.umanitoba.ca/bitstream/handle/1993/34516/Olaoye_Olufemi.pdf?sequence=2&isAllowed=> accessed 2 January 2022.

[6] Though the RTD created under ACHPR is legally enforceable in Nigeria, RTD remains unpopular in Nigeria due to lack of awareness of its existence among the Nigerian people. Furthermore, all rights in the ACHPR are legally enforceable in Nigeria, as exemplified in Gbemre v Shell Petroleum Development Company Nigeria Limited and Others (2005) AHRLR 151 (NgHC 2005) where the right to healthy environment (which was created under ACHPR) was enforced. See, Kingsley Osinachi Onu 'The Legal Status of the Right to Development in Nigeria' (*Afronomics*, 5 November 2019) <https://www.afronomicslaw.org/2019/11/05/the-legal-status-of-the-right-to-development-in-nigeria> accessed 16 April 2021.

[7] The subsection on the rationale of research, has identified the relevant reports.

[8] 'Report of the third International Conference on Financing for Development: Addis Ababa 13-16 July 2015' (UN 2015) para 23 <https://www.undocs.org/pdf?symbol=en/A/CONF.227/20> accessed 28 May 2021.

[9] Human Rights Council Working Group on the Right to Development (Nineteenth Session) 'The International Dimensions of the Right to Development: A Fresh Start Towards Improving Accountability' (23 – 27 April 2018) UN Doc A/HRC/WG.2/19/CRP 1, para 74 <https://www.ohchr.org/Documents/Issues/Development/Session19/A_HRC_WG.2_19_CRP.1.pdf> accessed 28 May 2021; and (n 8) para 23 and 24.

estimated to have cost Nigeria around $10 billion annually and a total of $217.7 billion between 1970 and 2008.[10] So, in view of the cost of IFF to Nigeria, the Nigerian government and other local stakeholders have remarked on why international assistance in addressing IFFs is necessary for the country's attempt to progressively realize all aspects of the RTD. For example, the President of Nigeria, Buhari, has asked development partners to step up the fight against corruption and guarantee a stronger international defense of RTD by returning ill-gotten financial assets and halting future IFFs to their countries.[11] This sentiment has been echoed by other officials of the Nigerian government who have remarked on how IFFs are impeding on the progressive realization of the RTD.[12] Consequentially, it is important to note that as a result of the concerns about the loss of resources through IFF, the Nigerian Legislature has carried out various related actions such as deliberating on enacting relevant laws and holding fact finding sessions.[13] The Nigerian government has also made anti-corruption interventions which aimed at reducing IFFs as part of its strategy for the Sustainable Development Goals (SDGs) implementation and resource generation.[14] Therefore, through its policy and statements, the Nigerian government has made its fight against corruption-related IFFs to be a development resource generation issue that requires

[10] Nigeria Extractive Industries Transparency Initiative, 'Averting Illicit Financial Flows in Nigeria's Extractive Industry' (Nigeria Extractive Industries Transparency Initiative 2019) 4 <https://www.proshareng.com/admin/upload/report/12059-AvertingIllicitFinancialFlowsinNigeriasExtractiveIndustry-proshare.pdf> accessed 17 March 2021.; For other estimates see, Kingsley Jeremiah, 'Nigeria, Haemorrhaging from Organised Illicit Financial Flows' (*Sunday Magazine*, 09 June 2019) <https://guardian.ng/saturday-magazine/cover/nigeria-haemorrhaging-from-organised-illicit-financial-flows/> accessed 17 March 2021.

[11] The statement was made at the high-level meeting of the United Nations General Assembly, to commemorate the 30th anniversary of the Declaration on the Right to Development. See, 'Buhari Explains Why Nigeria Is Fighting Corruption Headlong' *Channels Television* (22 September 2016) <https://www.channelstv.com/2016/09/22/buhari-explains-why-nigeria-is-fighting-corruption-headlong/> accessed 17 March 2021.

[12], 'Declaration and Conference Report' (Conference On Promoting International Co-Operation in Combating Illicit Financial Flows and Enhancing Asset Recovery to Foster Sustainable Development, Abuja, 5 to 7 June 2017) 23 and 27 <http://www.trustafrica.org/en/publications-trust/workshops-and-convenings?download=440:declaration-and-report-of-the-conference-on-promoting-international-co-operation-in-combating-illicit-financial-flows-and-enhancing-asset-recovery-to-foster-sustainable-development> accessed 17 March 2021.

[13] For instance, as of 31 May 2021, a bill seeking for the establishment of the Chartered Institute of Forensics and certified fraud examiners to tackle IFFs is currently being legislated upon at the House. See, 'Accountants Back Bill for Certified Fraud Examiners' *The Day* (23 March 2021) <https://www.thisdaylive.com/index.php/2021/03/23/accountants-back-bill-for-certified-fraud-examiners/> accessed 17 March 2021.; See also, Unini Chioma, 'House Summons Finance Minister, FIRS, Others Over Loss Of Revenue To Illicit Financial Flows' (*The Nigeria Lawyers*, 7 May 2021) <https://thenigerialawyer.com/house-summons-finance-minister-firs-others-over-loss-of-revenue-to-illicit-financial-flows/> accessed 10 March 2021.; See section 1.3 of this thesis for the definition of IFFs.

[14] 'Implementation of the SDGs: A National Voluntary Review' (Federal Republic of Nigeria 2017) 70 <https://sustainabledevelopment.un.org/content/documents/16029Nigeria.pdf> accessed 12 March 2021; and The Office of the Senior Special Assistant to the President on SDGs, 'Nigeria Integration of the SDGs into National Development Planning: A Second Voluntary National Review' (The Office of the Senior Special Assistant to the President on SDGs 2020) 66 - 67 <https://sustainabledevelopment.un.org/content/documents/26309VNR_2020_Nigeria_Report.pdf> accessed 12 March 2021.

international assistance. Consequently, this Thesis has examined the impact that the accountability framework of the FATF has had on the Nigerian anti-grand corruption related anti-Illicit Financial Flows (anti-IFF) regime. Therefore, the research question was why should the FATF accountability framework be viewed as an effective mechanism that has promoted the actualization of RTD in Nigeria by fostering transparency that is valuable to the objective of combating grand corruption related IFFs in the country? The Thesis has adopted Guzman's theory of compliance as a basis for viewing the FATF soft law instruments as a viable option for facilitating RTD in Nigeria.[15] Therefore, the FATF's accountability framework was analyzed in this Thesis to conclude on how the FATF has helped to facilitate the duty to formulate international development policies, and consequently, has promoted the actualization of RTD in the Nigerian polity. Furthermore, this Thesis has contributed to the discourse on accountability for RTD by adopting development theories, such as Sen's theory of capabilities.[16]

The relationship between accountability at the international level and the behavior of States has been and continues to be an actively researched topic for students of Global Administrative Law. The Global Administrative Law Project (GAL Project) is an example of how a concise effort is being put into the academic field of research and practice that is concerned with the study of the increased use of administrative law-type mechanisms of global governance institutions.[17] On its own, the GAL Project is responsible for the Law and Global Governance book series published by Oxford University Press and over a hundred papers, journals and symposia that have investigated these mechanisms in the regulatory institutions of global governance. Furthermore, a cursory look at the widely accessed databases such as Ingenta Connect and Brill, showed that there are over 21,601 studies on global administrative law mechanisms.[18]

As an academic endeavor, the focus on Global Administrative Law is undertaken to elucidate on the ability for the FATF to influence State behavior, in its capacity as an institution that is

[15] For Guzman's analysis of his theory see generally, Andrew Guzman, *How International Law Works: A Rational Choice Theory* (Oxford University Press 2010).
[16] For analysis of Sen's theory of capabilities see generally, Amartya Kumar Sen, *Development as Freedom* (Alfred A. Knopf 2000).
[17] 'Global Administrative Law' (*Institute for International Law and Justice*) <https://www.iilj.org/gal/> accessed 28 May 2021.
[18] 'Ingenta Connect from Ingenta is the World's Largest Resource for Scholarly Publications' (*Ingenta Connect*) <https://www.ingentaconnect.com> accessed 28 May 2021; and see also 'About' (*BRILL*) <https://brill.com/page/AboutMain/about> accessed 28 May 2021.

not recognized by the positivist school of thought in international law.[19] Accordingly, the assessment of the FATF is based on the idea that Global Administrative Law of Development is represented in the use of measurement mechanisms to assess the behavior of actors in development-related schemes.[20] In essence, the assessment of the FATF is based on the idea that its assessments appear to make States accountable for their pledge to implement AML policies, which allow their institutions to promote development resource availability by retrieving the proceeds of crime.[21] Therefore, due to the global community's development cooperation's pledge to implement the FATF Standards, there is a need to conclude on how the measurement mechanisms in the FATF is relevant to RTD in Nigeria.[22] This Thesis has undertaken a novel enquiry on the value of the FATF as a mechanism that could be adopted and promoted as an international AML and anti-IFF mechanism, which is helping to translate the RTD from concept to practice in Nigeria.[23] This Thesis has also sought to enquire on the relationship between the FATF's effectiveness in Nigeria and pro-corruption values in the country.

1.1.1 Importance and Rationale of the Research

This Thesis is an enquiry into why the goal of actualizing the RTD in Nigeria is facilitated by the impact that the FATF Accountability Framework has had on development cooperation for anti-Illicit Financial Flows (anti-IFF). This Thesis is designed to contribute to the discourse on how to make States accountable for the duty to formulate international development

[19] The positivist school of thought dictates that international law emerges from the consent of States; are distinct from natural law, morality, and politics; it uses distinctive sources and arguments unique to legal science and is a closed logical system. See José E. Alvarez, *The Impact of International Organizations on International* (Brill 2016) 18.

[20] As Dann has explained, indicators are an example of legal instruments or mechanisms that are particularly representative for the GAL of development. He has described indicators as numerical standards for measuring behavior (and situations) based on statistical data. He observes that indicators are used to measure behavior in development projects. See, Philipp Dann, 'The Global Administrative Law of development cooperation' in Sabino Cassese (ed), *Research Handbook on Global Administrative Law* (Edward Elgar 2016) 428 and 431.; With Dan's explanation in mind, note that the FATF scoring of countries compliance and the use of indicators to measure behavior in development projects are similar activities. This is because FATF's country scoring is relevant to development because it essentially measures States compliance with their pledge to implement AML policies, which allow their domestic institutions to promote development resource availability by retrieving the proceeds of crime.

[21] The value of the FATF's scoring of countries is that it appears to be making States accountable. Dann has made a similar conclusion in regard to the use of indicators. Dann has explained that indicators appear to be especially helpful in making development interventions more effective and the responsible actors more accountable. See, ibid.

[22] This pledge was made in the Addis Ababa Action Agenda of the Third International Conference on Financing for Development of 2015 (AAAA). For further analysis on how this pledge applies to RTD in Nigeria, see the subsection on rationale of research.

[23] This enquiry is based on practice that is observable in the literature on RTD.

policies that will facilitate the full realization of the RTD in general.[24] To be specific, the Thesis is focused on whether the FATF should be endorsed as an effective international accountability tool that is facilitating the RTD in Nigeria by discouraging the level of secrecy that is required for corruption proceeds to be laundered out of the country. The principal rationale for the Thesis is the international community's pledge to implement the FATF's AML Recommendations (2012), which was made in the Third International Conference on Financing for Development of 2015.[25] Another reason for the Thesis is that in De Schutter's report to 19th Session of the Open-ended Working Group on the Right to Development (OEWG), the need for cooperation between States was identified as an unavoidable requirement for effective anti-IFF.[26] Furthermore, De Schutter elaborated on the need for the international community to fulfill its pledge to implement the FATF Recommendations (2012).[27] Accordingly, De Schutter identified the act of implementing the FATF's AML Recommendations (2012) as a part of the ant-IFF initiatives that are relevant to the international dimensions of the RTD.[28] Therefore, the enquiry, into the FATF's ability to impact anti-IFF in Nigeria through its accountability framework, is important because IFFs are a development cooperation objective in the AAAA (2015) and in the 2030 Agenda for Sustainable Development of 2015 (UNGA 2030 Agenda).[29] Furthermore, the enquiry in this Thesis is important because the idea of international cooperation against grand corruption related IFFs is addressed in UN Treaties, such as the UN Convention against Transnational

[24] This duty is provided for in Article 4(1) of the UN Declaration on the Right to Development (UNDRD). In addition to Articles 3(3) and 10, Article 4(1) is the reason why some states have push for a permanent follow-up mechanism that could be in the form of a convention, or at least a mechanism to monitor the implementation of the RTD at the international level. See, Laure-Hélène Piron, 'The Right to Development: A Review of the Current State of the Debate for the Department for International Development' (Overseas Development Institute 2002) <https://cdn.odi.org/media/documents/2317.pdf> accessed 7 October 2018; see also Joyeeta Gupta and Karin Arts, 'Achieving The 1.5 °C Objective: Just Implementation Through a Right to (Sustainable) Development Approach' (2018) 18(1) International Environmental Agreements: Politics, Law and Economics 11 <https://ideas.repec.org/a/spr/ieaple/v18y2018i1d10.1007_s10784-017-9376-7.html> accessed on 9 July 2018.

[25] (n 8) para 24.

[26] In the report it was observed that IFFs are international in nature and therefore effective anti-IFF requires cooperation between States. See, Human Rights Council Working Group on the Right to Development (Nineteenth Session) (n 9) para 75.; The OEWG is a group that was mandated by the UNCHR resolution 1998/72 and by the UNESC decision 1998/269 to promote the actualization of the RTD. See, OHCHR, 'Development is a Human Right: The Intergovernmental Working Group on the Right to Development' (*OHCHR*) <https://www.ohchr.org/EN/Issues/Development/Pages/WGRightToDevelopment.aspx> accessed 1 September 2020.; Note that in 2006 the UNCHR was replaced by the UNHRC while the HLTF continued performing its mandate up until 2010 when it completed its work.

[27] Human Rights Council Working Group on the Right to Development (Nineteenth Session) (n 9) para 74.

[28] ibid.

[29] In the UNGA 2030 Agenda (2015), the commitment to international cooperation against IFFs is inferred from the fact that the indicators for following up on the SDGs target 16.4 has required countries to report on the IFF that comes into their jurisdiction (also referred to as illicit financial inflows). This requirement creates a mechanism that incentivizes countries to not want to have a high amount of illicit financial inflows. However, the text of the AAAA (2015) is more categorical about the international community's commitment to the objective of increasing the international cooperation against IFF.

Organized Crime (UNCTOC) of 2000. For instance, the money laundering (ML) provision of UNCTOC (2000) has asked State parties to adopt measures which make the conscious conversion, concealment, disguise or transfer of proceeds of crime an offence in accordance with the principles of the applicable domestic law.[30] In Article 6 (1) (a) (i), States are obligated to make the intentional assistance of persons involved in the commission of a predicate offence to evade the legal consequences of his or her action, an offence in accordance with the principles of their domestic law. This provision of the UNCTOC (2000) has imposed an extra-territorial obligation because of its Article 6 (2), which provides more clarity to the meaning of the term 'predicate offences'. In Article 6 (2) (b), the UNCTOC (2000) stipulates that for the purpose of implementing Article 6 (1), the State Party shall include corruption, obstruction of justice and all offences punishable by a maximum of at least four years or a more serious penalty, as the applicable predicate offences. Article 6 (2) (c) then goes on to stipulate that for the purposes of sub-paragraph (b), predicate offences shall include offences committed both within and outside the jurisdiction of the State Party. In essence, the UNCTOC of 2000 is a significant binding instrument that has required State Parties to put in place measures to criminalize the conversion or transfer of property and concealment or disguise of the proceeds of applicable extra-territorial crimes. Under Article 6 of the UNCTOC (2000), there is an obligation for States to stop entities within their jurisdiction from assisting anyone who is involved in the commission of extra-territorial crimes such as a corrupt act that is committed in a foreign jurisdiction. The implication of Article 6 of the UNCTOC (2000) is that it requires States to establish measures against the entities responsible for assisting or facilitating the movement and concealment or disguise of corruption funds in jurisdictions other than where the offence had occurred. Furthermore, in Article 23 (2) (c) of the UNCAC (2003), there is a requirement for States Parties to allow for domestic legal proceedings involving a ML offence irrespective of the place in which the predicate offence had taken place. Therefore, the AML provisions in Article 23 of the UNCAC (2003) and Article 6 of the UNCTOC (2000) have imposed obligations that apply to the act of assisting the process of IFF. These provisions are relevant to the global anti-IFF regime because they require State Parties to criminalize the act of assisting by intentionally converting or transferring the criminal proceeds of money laundering offences that were committed in foreign jurisdictions (subsequently referred to as cross-border ML). Additionally, it is provided in Article 62 of the UNCAC (2003) and Article 30 of the UNCTOC (2000) that State Parties are to make concrete effort to assist anti-transnational crime and anti-corruption activities in developing countries. In other words, State Parties are

[30] For an explanation of ML see section 1.3 of this chapter, which is on definitions.

to assist developing countries to achieve development by coordinating with international organizations and other State Parties. These provisions are encouraging cooperation through anti-corruption and anti-transnational crime regimes.

Another way that the UNCTOC (2000) and UNCAC (2003) have addressed the notion of cooperation against cross-border ML is by requiring State parties to work with relevant international organizations. For instance, the provisions in Article 7 (3) of UNCTOC (2000) and Article 14 (4) of the UNCAC (2003), are phrased as a call for State Parties to use the relevant initiatives of international organizations that are mandated to fight against ML. The contents of these Articles are applicable to the UNCTOC (2000) and UNCAC (2003) objective of establishing, in all countries, a domestic AML regulatory and supervisory framework that is able to cooperate and exchange information at the international levels.[31] Hence, in establishing an AML regulatory and supervisory framework, all State Parties are called upon to use, as a guideline, the relevant initiatives of regional, interregional and multilateral organizations that are part of the international efforts against ML. Furthermore, in Article 7 (2) of UNCTOC (2000) and Article 14 (2) of the UNCAC (2003), the States parties have been asked to:

> consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital.

Therefore, through the provisions of Article 14 (2) and (3) of the UNCAC (2003) and 7 (2) and (3) UNCTOC (2000), the idea of monitoring the cross-border movement of funds and using the advice of international AML organizations was endorsed. The challenge with Article 7 of UNCTOC (2000) and Article 14 of the UNCAC (2003) is that they are not mandatory in nature. In essence, the State parties are not obligated to perform the objective of Article 7 (2) of UNCTOC (2000) and Article 14 (2) of the UNCAC (2003). On the contrary, State parties have only been asked to consider the idea of implementing the measures that are to be used in monitoring the relevant cross-border activities. In other words, after considering the measures that are to be used in monitoring and detecting the relevant cross-border activities, a State party's decision to implement them is entirely discretionary. However, in

[31] The objective is provided for in Article 7 (1) (a) of UNCTOC (2000) and Article 14 (1) (a) of the UNCAC (2003).

theory, this limitation is mitigated by the fact that in Article 7 (3) of UNCTOC (2000) and Article 14 (4) of the UNCAC (2003), State parties are called upon to use as a guideline the relevant initiatives of international AML organization. This is because if State parties are using the initiatives of international AML organizations, such as the FATF, this would mean that, among other things, there is a global ambition to implement the measures for monitoring the occurrence of ML related cross-border activities. Accordingly, it is important that there is a global compliance with the provisions of Article 7 (3) of the UNCTOC (2000) and Article 14 (4) of the UNCAC (2003). Therefore, because, in the AAAA (2015), the international community has pledged to implement the FATF Recommendations (2012), it has, in essence, created a moral commitment to perform an act that fulfills the requirement of Article 7 (3) of the UNCTOC (2000) and Article 14 (4) of the UNCAC (2003). Therefore, an assessment of the FATF monitoring process is necessary because it has provided outputs that are, basically, an evaluation of the international community's compliance with its pledge, under the AAAA (2015), to implement the FATF Recommendations (2012).

There is a need to investigate how the FATF's framework is helping Nigeria to achieve accountability for the international dimension of RTD. This enquiry is necessary because the FATF's activities and functions have put it in a position to help Nigeria actualize some of the ideas that are promoted in the UN Declaration on the Right to Development (UNDRD) of 1986. In a report to the OEWG, De Schutter has observed that it is an extra-territorial obligation for countries to take the implementation of the Recommendations by the FATF as an indicator for the extra-territorial obligation to implement partnerships for the international dimension of RTD.[32] He also noted that the FATF's processes for holding States accountable is ensuring the effective implementation of relevant legislative/regulatory reforms. The claim by De Schutter's has indicated that the FATF has fostered the goal of international cooperation, which is provided for in Article 4 (2) of the UNDRD (1986).[33] Therefore, there is a need to identify the significance and validity of the claim that the FATF has helped to facilitate the actualization of Article 4 (2) of the UNDRD.[34] This is because the choice of using a hard law instrument to actualize the international dimension of RTD is a challenge

[32] De Schutter's has observed that it is an extraterritorial obligation for countries to implementation of the recommendations by the FATF is an indicator for the extraterritorial obligation to implement partnerships for the international dimension of RTD. He also noted that the FATF's processes for holding States accountable has ensured the effective implementation of legislative/regulatory of important reforms. See, Human Rights Council Working Group on the Right to Development (Nineteenth Session) (n 9) 31 and 43.
[33] In Article 4 (2) of the UNDRD (1986), it is observed that effective international co-operation is required to give developing countries the appropriate means and facilities to foster their comprehensive development.
[34] Articles 3(3) and Article 4(1) of the UNDRD (1986) is a basis on which States can ask for a permanent follow-up mechanism that could be in the form of a convention, or at least a mechanism to monitor the implementation of the RTD at the international level. See, Piron (n 24) 19; see also Gupta and Arts (n 24) 18.

that the international community has had to contend with in the UN system. Accordingly, there have been calls for the creation of an instrument that will help to facilitate the goal of actualizing the international dimension of the RTD. As a part of Nigeria's contribution to the development discourse at the UN, it has joined other countries to ask for the actualization of accountability for the international dimension of RTD to be ensured through the creation of a binding agreement on RTD. An example of this advocacy was in the UNHRC, in May of 2019, where the Nigerian representative argued that

> a legally binding instrument on the right to development could provide a comprehensive set of standards for the realization of the right to development. Such a right was an overarching human right that deserved the international community's attention, given the impact of poverty and inequality on the enjoyment of human rights.[35]

In the same UNHRC session, Nigeria was also one of the countries that, among other things, referred to the adverse impact of all negative international extra-territorial obligations on development efforts.[36] It was argued that the adverse impact of these international extra-territorial obligations to abstain from development efforts should be reflected in a legally binding instrument on the RTD.[37] Furthermore, Nigeria underscored the importance of international solidarity in efforts to realize the RTD, given its universality and applicability.[38] Therefore, on the basis of the advocacy by its representative at the UNHRC, it is clear that Nigeria sees international cooperation as a vital part of achieving RTD. Consequently, the attempts to facilitate international cooperation for RTD through a legally binding instrument are a positive step towards achieving accountability for the right. There has been some progress in the attempt to create a binding agreement on the RTD. At the same time, the act of mainstreaming the RTD into other UN processes was adopted as an action that would promote and fulfill the right through the integrated implementation of the 2030 Agenda for Sustainable Development of 2015.[39] This decision to mainstream the RTD has, in essence,

[35] UNHRC (42nd Session) 'Report of the Working Group on the Right to Development on its twentieth session (Geneva, 29 April to 3 May 2019)' (25 June 2019) UN Doc A/HRC/42/35 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/184/39/PDF/G1918439.pdf?OpenElement> accessed 2 January 2022.
[36] Negative obligation is a concept that applies to those situations where an entity is to abstain from performing a conduct. It is, in this context, the international extraterritorial obligations to abstain from development efforts that is referred to as having had a negative effect on the applicable societies.
[37] UNHRC (42nd Session) (n 35).
[38] ibid.
[39] This refers to the mainstreaming mandate of the special rapporteur on the RTD. In the mandate of the special rapporteur on the RTD, a mainstreaming policy is established. This mainstreaming policy requires that the RTD is promoted, protected and fulfilled in the context of the integrated implementation of the 2030 Agenda for

associated the right to the implementation process of other frameworks that are helping to achieve the same or related objectives. Therefore, one of the objectives in this Thesis was to conclude on whether the mainstreaming policy has made the FATF's monitoring process an RTD related accountability mechanism. Additionally, because the Special Rapporteur on RTD has analyzed the UN's anti-IFF agenda from the perspective of RTD, this Thesis has been conducted based on this idea.[40] In other words, the Thesis has looked at the impact that the FATF has had on anti-IFFs, from the perspective of RTD in Nigeria. Consequently, this Thesis has conducted an enquiry into the FATF as an accountability framework that is important to RTD in Nigeria.

1.2 Objectives of the Study

The key research question of this thesis is: Has the FATF's Recommendations and processes for holding States accountable for weak implementation of AML policies been effective mechanisms for strengthening Nigeria's ability to combat grand corruption related IFFs and promote the actualization of the RTD? The goal of investigating the relationship between the FATF's anti-IFF accountability framework and the target of achieving accountability that will facilitate RTD in Nigeria, was the objective of the research. One of the important aims of the research was to use Guzman's ILT of compliance and Sen's theory of capabilities to examine the FATF as an accountability framework that is relevant to the goal of achieving RTD in Nigeria. Another aim of the Thesis was to conclude on whether it is justified to associate the accountability framework of the FATF with the RTD and Nigeria's involvement in the global cooperation against corruption related IFF. Consequently, the research looked at the FATF's role in ensuring that, as a unitary actor, Nigeria has worked towards the goal of having an effective anti-grand corruption related anti-IFF regime. Accordingly, the objectives of the research are presented below.

1. Evaluate the importance of the FATF's processes for holding States accountable and promoting the global implementation of AML policies as mechanisms that are helping

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Sustainable Development and other internationally agreed outcomes of 2015. see, UNHRC (33rd Session) 'China, Venezuela (Bolivarian Republic of): Draft Resolution' (27 September 2016) UN Doc A/HRC/33/L.29 para 14, 15 and 16 citing UNGA Res 69/283 (23 June 2015) UN Doc A/RES/69/283, annex II; and UNGA Res 69/313 (17 August 2015) UN Doc A/RES/69/313, annex.; Note also that the Resolution (A/HRC/33/L.29) on the right to development was adopted by the UNHRC on 29 September 2016. See, UNHRC, '33rd session of the Human Rights Council (13 to 30 September 2016)' (*UNHRC*) <https://www.ohchr.org/en/hrbodies/hrc/regularsessions/session33/pages/resdecstat.aspx> accessed 17 March 2021.

[40] He canvassed for improvements to SDGs indicator 16 from the perspective of the RTD.

to enhance Nigeria's ability to combat grand corruption related IFFs and promote RTD.

The related sub-research question is:
How effective have the FATF's Recommendations and processes for holding States accountable, been in helping the Nigerian AML regime to achieve improved information availability that enhances the country's ability to promote RTD by combating grand corruption related IFFs?

Rationale for this objective:
This enquiry is useful for assessing Guzman's Theory of Compliance from a practical perspective. This objective enables this Thesis to provide a novel contribution to knowledge by testing Guzman's Theory to see if its proposition on the impact of soft law mechanisms has explained the accountability role of the FATF, in the context of Nigerian anti-corruption and RTD discourse. Furthermore, this objective also identifies the relationship between the FATF's anti-IFF function and the global RTD agenda.

2. Critically examine the role that domestic values regarding international influence have had on development cooperation in Nigeria; and conduct an enquiry on their relevance to the FATF's ability to assist and positively impact the Nigerian mechanisms for promoting development through the fight against grand corruption related IFFs.

   The related sub-research question:
   Why has the FATF been a suitable mechanism for promoting the development process in Nigeria?

   Rationale for this objective:
   To examine development cooperation in Nigeria is valuable because the findings provide insight on whether domestic values have affected Nigeria's compliance behavior, and whether they are a factor that is impacting on the FATFs effectiveness in the Nigerian context. In other words, this objective allows the Thesis to conclude on whether domestic values in Nigeria have impacted on the FATF's ability to influence compliance in the country in the same way that it has impacted on Nigeria's

relationship with other international institutions. The objective of analyzing development cooperation in Nigeria is also useful because it provides the context in which FATF's impact on Nigeria is evaluated. This objective is necessary because Guzman's Theory recognizes the value of a general explanation on how internal factors impact on countries' preference for compliance, but it does not provide information on the parameters for conducting internal analysis on compliance.[41] Guzman's Theory only adopts the 'institutionalist assumption' that countries' preferences are known and fixed. Therefore, in this Thesis, the notion of domestic values, which is derived from Sen's theory of capabilities (development), is used to expatiate on whether Guzman's theory has explained the effectiveness of the FATF, in the context of the Nigerian anti-corruption and RTD discourse. This is because Sen has observed that domestic values are an unavoidable part of the development discourse. Accordingly, this Thesis analyzes the value of Guzman's theory in the RTD discuss by relying on desk-based analysis of development cooperation and interview and survey data on experts' opinion about the FATF and the domestic attitude towards anti-grand corruption related IFFs in Nigeria.

How has the anti-IFF accountability framework of the FATF been useful for ensuring that Nigeria, as a unitary actor, can encourage RTD by improving transparency through its anti-grand corruption related IFF regime? The objective here was to explore how the accountability framework of the FATF is relevant for ensuring that Nigeria is a part of a RTD related global cooperation against IFF. As part of this objective, a contribution to international law scholarship was made by assessing rational choice theory of international law from a practical perspective. Furthermore, this objective also involved an enquiry into the relationship between the FATF anti-IFF function and the global RTD agenda.

1.3 Definitions

	Definitions
IFFs	There is no universally agreed-upon definition for IFFs. The term can be understood as financial flows of illicit origin,

[41] Guzman has, for instance, spoken on the potential value of complimenting the institutionalist approach in his theory with an approach that identifies the role of domestic factors that determine compliance. See, Guzman (n 15) 18-19.

	transfer or use that reflect an exchange of value; and cross-country borders.[42] This definition has been adopted at the UN level for the purpose of reviewing countries' progress towards performing the global development objective of significantly reducing IFFs by 2030.[43] It is, in essence, a definition that is informed by current attempts at monitoring the development objective of significantly reducing IFFs at a global level.
ML	ML is the processing of criminal proceeds to disguise their illegal origin.[44] Under Nigerian law, ML occurs when any person or corporate institutions, in or outside Nigeria, > directly or indirectly conceals or disguises the origin of, converts or transfers, removes from the jurisdiction, acquires, uses, retains or takes possession or control of any fund or property, knowingly or reasonably ought to have known that such fund or property is, or forms part of the proceeds of an unlawful act.[45] Section 15 (6) of the Nigerian Money Laundering (Prohibition) (Amendment) Act, 2012, provides the list of unlawful acts that are the source of funds or the other gains, which are the subject of ML.
Corruption	This is the abuse of entrusted power for private gain. The term corruption includes those offenses outlined in Articles 15-22 of UNCAC (2003).[46]
Petty corruption	This is a small-scale criminal activity. It is the small-scale form

[42] UNCTAD and UNODC, 'Conceptual Framework for The Statistical Measurement of Illicit Financial Flows' (UNCTAD and UNODC 2020) 12 <https://www.unodc.org/documents/data-and-analysis/statistics/IFF/IFF_Conceptual_Framework_for_publication_FINAL_16Oct_print.pdf> accessed 28 May 2021.
[43] UNCTAD, 'Recent Conceptual and Methodological Developments on Measuring Illicit Financial Flows for Policy Action' (*SDG Pulse*) <https://sdgpulse.unctad.org/illicit-financial-flows/#> accessed 28 May 2021.
[44] FATF, 'What is Money Laundering' (n 1).
[45] Section 15 (2) of Money Laundering (Prohibition) (Amendment) Act, 2012.
[46] Theodore S. Greenberg and others, *Politically Exposed Persons: Preventive Measures for the Banking Sector* (The International Bank for Reconstruction and Development / The World Bank 2010) 3.

	of corruption that is faced by citizens and the private sector daily as they try to receive basic services such as connections to utilities, passports, admissions to school and dealing with trade-related customs' formalities.[47]
Grand corruption	It is defined as the abuse of high-level power that benefits the few at the expense of the many and causes serious and widespread harm to individuals and society.[48] At the international level, grand corruption has been defined as the commission of any of the offences in UNCAC (2003) Articles 15 – 25, which is carried out as part of a scheme that involves a high-level public official, and > results in or is intended to result in a gross misappropriation of public funds or resources, or gross violations of the human rights of a substantial part of the population or of a vulnerable group.[49] According to Transparency International (TI), this type of corruption often goes unpunished.[50] Another author has associated grand corruption with public assets that are stolen or extorted by prominent public office holders.[51] Therefore, from these definitions, grand corruption is herein deemed to involve the exploitation of high level of power by those with the requisite access, which causes widespread harm to the society at

[47] Indira Carr and Robert Jago, 'Petty Corruption, Development and Information Technology as an Antidote' (2014) 103(5) The Commonwealth Journal of International Affairs 465 - 482 <https://www.tandfonline.com/doi/abs/10.1080/00358533.2014.966495?scroll=top&needAccess=true&journalCode=ctrt20> accessed 1 September 2020.
[48] Transparency International, 'What is Grand Corruption and How Can We Stop It' (*Transparency International*, 21 September 2016) <https://www.transparency.org/en/news/what-is-grand-corruption-and-how-can-we-stop-it> accessed 1 September 2020.
[49] Nyman Gibson Miralis, 'What is the Difference Between 'Grand Corruption' and 'Petty Corruption': Shifting the Focus to Where it Matters Most' (*Lexology*, 23 July 2020) <https://www.lexology.com/library/detail.aspx?g=2ba58d82-eaa4-4d94-bde5-493dac6fd40f> accessed 1 September 2020.
[50] Transparency International (n 48).
[51] Greenberg (n 46) xiii.

	large.
Economic growth	It is the increase, from period to period, of the real value of an economy's production of goods and services, commonly expressed as increase in Gross Domestic Product (GDP).[52] The real value of an economy's production of goods and services is ascertained by calculating and removing the effects of inflation from the measurement of economic growth.[53]
Gross Domestic Product (GDP)	It is the market value of goods and services produced by labour and property in a country.[54] GDP is ascertained by measuring the market value of finished products, and not the components that are manufactured to make a product.[55]
Inflation	It is the rise in the prices of goods and services that happens when spending increases relative to the supply of goods in the market. In other words, too much money chasing too few goods.[56]

1.4 Structure of the Thesis

This work is ultimately designed to focus on the idea of mainstreaming the RTD into the FATF's framework. The objective in this work is to identify why it is appropriate to mainstream and implement the RTD through the FATF's framework. To achieve its objective, the Thesis presents the research setting in chapter 2 where the background information on the RTD, FATF and development cooperation in Nigeria is presented. An analysis of relevant literature and the theories used in the Thesis is presented in chapter 3. Analysis of the relationship between the FATF's work and several forms of accountability is presented in chapter 4. In chapter 5, the research methodology adopted in the Thesis is expatiated upon. Chapter 6 presents the findings of the survey of AML experts in Nigeria that was conducted to get their perspective on the value of the FATF, as an accountability framework for RTD. Subsequently, the findings of a statistical analysis on the impact of

[52] Jack P. Friedman (ed), *Dictionary of Business and Economics Terms* (5th edn, Barron's Educational Series Inc. 2012) 225.
[53] Kimberly Amadeo, 'What Is Economic Growth?' (*The Balance*, 24 October 2021) <https://www.thebalance.com/what-is-economic-growth-3306014> accessed 2 January 2022; Samy Nehru, *Economic Reforms in India: Achievements and Challenges* (MJP Publishers 2017) 318-319.
[54] Friedman (n 52) 315.
[55] Amadeo (n 53).
[56] Friedman (n 52) 355.

FATF's accountability framework is conducted in chapter 7 and an analysis of data from interviews of Nigeria AML experts is presented in chapter 8. The concluding remarks for the Thesis are in chapter 9.

Chapter Two: Research Setting: Towards Actualizing RTD and the Role of FATF

2.1 Introduction

This chapter outlines the context of the study by providing information on the challenges of actualizing the RTD through the UN system, the impact of ownership on development cooperation in Nigeria and the structure and function of the FATF's framework. It is important to understand the institutional setup of the FATF, the scale of the challenge of actualizing the RTD through the UN system and the issues that have impacted on the effectiveness of development cooperation in Nigeria.

Knowledge on how negotiations among UN Member States have evolved is useful for understanding the extent of progress that has been made in the UN level discourse on RTD. An understanding of the dynamics of UN level negotiations is also useful for making conclusions on the practicality of the objective of actualizing the RTD through UN processes. So, the chapter starts with a background information on the scale of the challenge of actualizing the RTD through the UN by depicting the dynamics of the UN member States' negotiations and the attempts to get the required support for a binding RTD instrument.[57] In this chapter, the connection between anti-IFF and the UN level RTD discourse is also shown, and thereafter, information on the background and developments in Nigeria's interaction with international institutions and other donors are provided. The final part of this chapter provides information on the FATF.

2.2 Background on the Dynamics of UN RTD Negotiations and the Related Anti-IFF Discuss

[57] The chapter provides a depiction of some of the challenges that have characterized the attempts to develop instruments that can be used to evaluate countries' contribution to the goal of actualizing the RTD.

It has been said that despite the copious academic commentary on RTD, there has been limited practical efficacy in the global effort to actualize the UN recognized right.[58] Yet, Marks has observed there has been little progress in the international attempt to implement the UNDRD of 1986 or in the attempts to ensure that the RTD is mainstreamed into development policies and the operational activities of States and international institutions.[59] Consequently, the questions about the parameters and urgency of the RTD have continued to remain relevant and policy makers have had to work on alternative solutions, rather than to wait for the international community to agree on a treaty that implements the RTD.[60] These alternative solutions include the use of RTD based criteria that can be used to evaluate global development partnerships.[61] This concept is a product of the work done by the high-level taskforce on the implementation of the RTD (HLTF). During its active years, the HLTF was composed of fourteen experts from different parts of the world and its Chairpersons were Ms. Ellen Johnson-Sirleaf from Liberia in 2004 and Mr. Stephen Marks from the United States of America in 2005-2010.[62] The HLTF derives the authority to carry out its function within the framework of the Open-ended Working Group on the Right to Development (OEWG) from the UN Commission on Human Rights (UNCHR) Resolution 2004/7 and the UN Economic and Social Council (ECOSOC) Decision 2004/249.[63] The HLTF began promoting the concept of using the criteria for implementing the RTD, as part of its duty to assist the OEWG achieve its mandate to, among other things, present reports for the consideration of the UN Human Rights Council (UNHRC).[64] By itself, the OEWG, which got its authority to function from the UNCHR Resolution 1998/72 and by the ECOSOC Decision 1998/269, was an open-ended framework.[65] So, due to its status as an open ended framework, all UN

[58] Olajumoke O. Oduwole, '25 Africa's Contribution to the Advancement of the Right to Development in International Law' in Charles Chernor Jalloh and Olufemi Elias (eds), *Shielding Humanity* (Brill 2015) 566.
[59] Stephen P. Marks, 'The Right to Development: Ethical Development as a Human Right' in Jay Drydyk and Lori W. Keleher (eds), *Routledge Handbook of Development Ethics* (Routledge 2019) 277.
[60] Isabella D. Bunn, 'The Right to Development: Implications for International Economic Law' (2000) 15(6) American University International Law Review 1425 -1467 1427 <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1291&context=auilr> accessed 28 May 2021.
[61] These alternative solutions also involve the use of indicators, the MDGs, national experiences, the African Charter on Human and Peoples' Rights, and the Task Force's assessment criteria. See, Stephen P. Marks, 'Integrating a Human Rights-Based Approach to Development and the Right to Development into Global Governance for Health' in Benjamin Mason Meier and Lawrence Ogalthorpe Gostin (eds), *Human Rights in Global Health: Rights-based Governance for a Globalizing World* (Oxford University Press 2018) 346.
[62] OHCHR, 'Development is a Human Right: High-Level Task Force on the implementation of the right to development' (*OHCHR*) <https://www.ohchr.org/EN/Issues/Development/Pages/HighLevelTaskForce.aspx> accessed 1 September 2020.
[63] ibid.; Note that in 2006 the UNCHR was replaced by the UNHRC while the HLTF continued performing its mandate up until 2010 when it completed its work.
[64] See, ibid.; See also, OHCHR 'The Right to Development at a Glance' (*UNOHCHR)* <http://www.un.org/en/events/righttodevelopment/pdf/rtd_at_a_glance.pdf>accessed 28 October 2017.
[65] OHCHR, 'Development is a Human Right: The Intergovernmental Working Group on the Right to Development' (*OHCHR*)

Member and Observer States, intergovernmental organizations and non-governmental organizations with ECOSOC consultative status were allowed to attend its public meetings.[66] The mandate of the OEWG is, amongst other things, to first monitor and review the progress of international and national attempts to promote and implement the UNDRD; and to also analyze the obstacles to the full enjoyment of RTD at the national and international levels.[67] The OEWG is also mandated to present an annual report to the UN Commission on Human Rights, but it subsequently made recommendations to the Human Rights Council (UNHRC) and UN General Assembly because in 2006, the UNCHR was replaced by the UNHRC.[68] Consequently, before the HLTF completed its work in 2010, it urged the OEWG on the importance of converting the criteria for implementing the RTD into reporting templates that are adapted according to the particular characteristics of reporting countries or institutions.[69] The HLTF made this recommendation because of the risk that the bases for determining what may or may not contribute to the RTD could be motivated by speculation or political bias.[70] However, 10 years after the HLTF completed its work, the criteria for implementing the RTD was still regarded as a highly contested issue. In other words, the OEWG was not able to gain support for the criteria for implementing the RTD.[71] So, justifiably, Marks, who was the Chairperson of the HLTF, observed that despite the recommendations of the HLTF, there was very little to show for the nearly 40 years of effort by stakeholders that have tried to implement the RTD.[72] Rather, there was a lack of sufficient momentum in the intergovernmental debate at relevant UN forums such as the UNGA, UNHRC and the OEWG.[73] This lack of sufficient momentum was, at least, partly attributed to the

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<https://www.ohchr.org/EN/Issues/Development/Pages/WGRightToDevelopment.aspx> accessed 1 September 2020.

[66] , 'Open-Ended Working Group on an Optional Protocol to the Convention on the Rights of the Child' (*United Nations Human Rights Council*) <https://www.ohchr.org/EN/HRBodies/HRC/WGCRC/Pages/OpenEndedWorkingGroupSession1.aspx> accessed 1 September 2020.

[67] For more on its mandate and the OEWG in general see, 'Development is a Human Right: Documents on Development and Human Rights' (*UNOHCHR*) <https://www.ohchr.org/EN/Issues/Development/Pages/Documents.aspx> accessed 1 September 2020.

[68] OHCHR, 'The Right to Development at a Glance' (n 64).

[69] This need was identified by the high-level taskforce on the implementation of the RTD (HLTF). See, Working Group on the Right to Development (11th session) 'Report of the High-Level Task Force on the Implementation of the Right to Development on its Sixth Session (Geneva, 14–22 January 2010)' (24 February 2010) UN Doc A/HRC/15/WG.2/TF/2 para 73 <https://digitallibrary.un.org/record/679359?ln=en> accessed 28 May 2021.

[70] ibid.

[71] UNHRC Working Group on the Right to Development (21st Session) 'Draft Convention on the Right to Development, with Commentaries' (20 January 2020) UN Doc A/HRC/WG.2/21/2/Add.1, para 6 <https://www.ohchr.org/Documents/Issues/Development/Session21/4_A_HRC_WG.2_21_2_Add.1_RegisteredVersion.pdf> accessed 28 May 2021.

[72] Marks (n 59) 277; and OHCHR (n 62).

[73] Saad Alfarargi, 'United Nations Special Rapporteur on the Right to Development: An Introduction to the Mandate' (*OHCHR* 2017)

disagreement about the emphasis that has been placed on the international dimension of RTD.[74] Consequently, the disagreements on the international dimension of RTD is, at least, partly based on a fundamental challenge that was identified shortly after the first effort was made to formulate a distinct right on development. In 1977, the UN Commission on Human Rights (UNCHR) (which was succeeded in 2006 by the UNHRC) requested a study on

> the international dimensions of the right to development as a human right in relation with other human rights based on international cooperation, including the right to peace, taking into account the requirements of the New International Economic Order and fundamental human needs.[75]

This request led the UN Secretariat to produce a 161-page study (hereinafter known as the 1978 study) which recognized the difficulty in translating the RTD into a mechanism that was

> capable of providing practical guidance and inspiration, based on international human rights standards, in the context of development activities.[76]

Therefore, as soon as the UNCHR began to develop a document on RTD in 1981, the challenge of translating the concept of RTD into a notion that can provide practical guidance became apparent. For instance, under the moniker of Non-Aligned Movement (NAM), developing countries, began to support Senegal's initiative to have the UN declare development as a human right.[77] It is said that the NAM's intention was to use the declaration on the RTD to oblige wealthy countries to accept a:

> greater responsibility to eliminate the structural causes of poverty, larger payments for raw materials extracted from developing countries, additional aid, and improvements to the terms of trade in favor of developing countries.[78]

<https://www.ohchr.org/Documents/Issues/Development/SR/SRRightDevelpment_IntroductiontoMandate.pdf> accessed 18 June 2017.

[74] ibid.

[75] Note that at the time of this request the UNCHR was chaired by Senegal. See, Marks (n 61) 338.

[76] ibid.

[77] ibid 339.

[78] ibid.

Consequently, the North American and European delegations are said to have pressured the UNCHR's Drafting Committee to agreed that:

> while a general moral commitment to development was acceptable, the text would neither affirm any legal obligation to transfer resources from North to South nor codify any specific obligations regarding any of the issues contained in the declaration.[79]

Subsequently, from the onset, the efforts to produce a UN document on RTD were always contentious. Unfortunately, the subsequent attempts to create a binding document on RTD did not become an un-contentious issue, either. For example, in the eighteenth session of the Working Group on the RTD that held in April 2017, the representatives of the European Union (EU), United Kingdom (UK) and Japan were the ones that raised reservations against the idea of a binding RTD instrument.[80] The reservations of the EU, UK and Japan were raised in opposition to an unwavering request, by delegates representing the NAM and other groups, that deliberations should be aimed at developing a binding instrument on RTD.[81] Furthermore, in a UN deliberation on the RTD and other human rights, the US was dismissive towards the use of terminologies that would impose any economic obligations of a global nature.[82] Accordingly, in response to a draft resolution, which was presented on behalf of the NAM, the US representatives said that they would call for a vote if consensus was reached.[83] Similarly, the US was opposed to the suggestions of economic global obligations that were contained in the draft document on RTD criteria and operational sub-criteria.[84] Thus, as time has gone by, the international community was embroiled in a stagnant debate

[79] ibid.
[80] UNHRC (36th Session) 'Report of the Working Group on the Right to Development on its eighteenth session (Geneva, 3- 7 April 2017)' (31 May 2017) UN Doc A/HRC/36/35 para 7, 27 and 64 <https://digitallibrary.un.org/record/1304081?ln=ru> accessed 8 July 2018.
[81] The other groups are Organization of Islamic Cooperation and the African Group.
[82] Fifty-seventh General Assembly Third Committee, 'Need for Compliance with Human Rights Obligations in Fight Against Terrorism Stressed, As Third Committee Approves Six Draft Resolutions' (*UN*, 21 November 2002) <https://www.un.org/press/en/2002/GASHC3729.doc.htm> Accessed 7 January 2017.
[83] ibid.
[84] UNHRC Working Group on the Right to Development (18th Session) 'The Draft Right to Development Criteria and Operational Sub-Criteria Following its Second Reading, and the Comments and Views Submitted at the Sessions by Governments, Groups of Governments, Regional Groups, and Stakeholders' (24 February 2017) UN Doc A/HRC/WG.2/18/CRP.1 <https://www.ohchr.org/documents/Issues/development/Session18/A.HRC.WG.2.18.CRP.1.docx.> accessed 17 March 2021.

on how to achieve the RTD.[85] In a 2016 resolution of the UNHRC, the idea of mainstreaming the RTD into the activities of international institutions was adopted as part of the mandate of the Special Rapporteur on the RTD.[86] The Special Rapporteur on the RTD was asked to work towards mainstreaming the right into various United Nations bodies, development agencies, international development, financial and trade institutions.[87] In essence, the Special Rapporteur was being asked to mainstream the right into institutions that were already engaged in development related activities. Furthermore, in the UNHRC process that led to the establishment of the mandate of the Special Rapporteur's on RTD, there were no objections to the idea of mainstreaming the right into other UN mechanisms. So, the Special Rapporteur's mandate to mainstream the RTD was not a controversial issue. The next section describes the importance of the mainstreaming policy that was instituted through the Special Rapporteur's mandate.

2.2.1 The Importance of the UN RTD Mainstreaming Approach

At the UN, there is a formal rejection of hierarchy of countries through Article 2.1 of the UN Charter which entrenches sovereign equality as a universal principle.[88] Yet, some observers, such as Sargent, have promoted, instead of dismissing the idea that there has been hierarchical relationships between UN Member States.[89] Eurich has implied that the UN has been influenced by a section of countries when he noted that it has particularly promoted the ideas and values that are commonly assigned to the western world.[90] Clapton has given an explanation of hierarchy among countries by stating that western States do not advocate for the UN to institute a formal hierarchy that favors some Member States, but they do engage in informal hierarchical relationships with non-western countries.[91] Scharioth has elucidated that the dynamics of power relations among UN member States have been explainable

[85] The attempts to develop a monitoring platform that uses criteria and indicators to measure progress towards implementing the RTD was also a source of controversy. See, Alfarargi (n 73) 8; and UNHRC Working Group on the Right to Development (21st Session) (n 71).
[86] OHCHR, 'Human Rights Council Adopts 18 Texts, Creates Mandate on the Right to Development' (UN*OHCHR*, 2016) <https://www.ohchr.org/en/newsevents/pages/displaynews.aspx?newsid=20616&langid=e> accessed 2 July 2018.
[87] ibid.
[88] Article 2.1 of the UN Charter has marked the formal rejection of hierarchy of states by embedding sovereign equality as a universal principle. See, Aidan Hehir, *Humanitarian Intervention: An Introduction* (2nd edn, Macmillan International Higher Education 2013) 48.
[89] Wendy M. Sargent, *Civilizing Peace Building: Twenty-first Century Global Politics*, vol 5 (Routledge 2007) 126 citing Kelly-Kate S. Pease, *International Organizations: Perspectives on Governance in the Twenty-First Century* (2nd edn, Prentice Hall 2003).
[90] See, Hanja Eurich, *Factors of Success in UN Mission Communication Strategies in Post-conflict Settings: A Critical Assessment of the UN Missions in East Timor and Nepal* (Logos Verlag Berlin GmbH 2010) 211.
[91] Clapton William, 'Risk and Hierarchy within International Society: Liberal Interventionism in the Post-Cold War Era' (PhD thesis, Murdoch University 2010).

through the adoption of conceptual perspectives such as institutionalism.[92] Scharioth observed that from the institutionalist perspective, the hierarchy of countries has been a situation specific issue because dissimilar factors have determined what is important in different settings. For instance, the unequal economic power of states has been a determinant of the leverage that member states have had in UN deliberations.[93] Therefore, the perception that some countries have been more influential than others have been justifiable because some member states have had the capacity or assets that have been required to execute international objectives of the UN. Consequently, there has been a need to dispel the notion that wealthy and influential countries, such as the US, have shaped the actions of UN organs. For reference, Freedman has shown that some events in the UNHRC have disproved the perception that the US is always a dominant voice in UN organs.[94] Subedi, has observed that the UN human rights agenda is no longer being allowed to operate as a western dominated endeavour.[95] In some instances, countries have grouped together and become influential, as a result. In an analysis by Freedman, she has described the instance where, due to its limited influence in the UNHRC, the US tried to be a mediator between one member State and its detractors that were members of an influential group of States.[96] Freedman has also opined that observers with little understanding of the composition of some organs of the UN have often falsely assumed that all organs of the UN have replicated the UN Security Council's power structure, where a few countries can influence its decisions.[97] In other words, Freedman has indicated that influential countries are wrongly assumed to be capable of always influencing the decisions of UN organs. On the contrary, the US or other western States have not been dominant voices that can always influence the human right related decisions of the UN.[98] However, at the international level, the importance of the views of influential countries such as the US have not been dismissible because they have had leverage in some multilateral deliberations. As Pouliot has observed, it is not contentious that there is an uneven leverage in international negotiations processes, where there is inequality

[92] Nicolas Scharioth, *Western Democracies in the UN: Who Gets Elected and Why - A Quantitative Examination of Elections to United Nations Councils and Committees* (Nomos Verl-Ges, 2010) 15.
[93] ibid.
[94] Rosa Freedman, *The United Nations Human Rights Council: A Critique and Early Assessment* (Routledge 2013) 164.
[95] Subedi P. Surya, *The Effectiveness of the UN Human Rights System: Reform and the Judicialisation of Human Rights* (1st edn, Routledge 2017).
[96] Rosa Freedman, 'The United Nations Human Rights Council: A Critique and Early Assessment' (PhD Thesis, School of Law, Queen Mary University of London 2011) 220.
[97] Freedman (n 94) 164.
[98] The perception that the US and other western states have dominant voices in the UN can be linked to the concern that there is propensity for UN policies to be in line with western convictions. Eurich, for instance, observes that the UN particularly promotes ideas and values that are commonly assigned to the western world. See, Eurich (n 90).

in the amount and importance of assets that one or a section of States must contribute to any intended collaboration.[99] In essence, there has always been a possibility that international objectives are not achievable because influential states, such as the US, are not willing to contribute their assets. Moreover, in some instances, the cost of not striking a deal has been less of an issue, for influential countries.[100] The countries that have had the important and most amount of asset for the actualization of any collective objective have therefore had the option of choosing not to collaborate, in situations where they are not legally obligated to make contributions. All UN Member States have also had the option of not honoring decisions that are not binding. Consequently, the discourse on how to actualize the RTD is always going to be challenging as influential and wealthy states continue to resist the attempts to create a binding instrument on RTD. This is because it is apparent that a failure to strike a deal in the UNRTD deliberations is costlier for poor countries. The UNRTD deliberations provide an avenue for poor countries to negotiate for a remedy to the backwash effect that has contributed to a situation where they fall behind in achieving development goals because of factors such as the attractiveness and influence of wealthy countries.[101] So for poor countries, the cost of not striking a deal in the UN discussions on the creation of a RTD treaty is that a positive act to correct a status quo, where the interdependence of the advantage and disadvantage that exist under the conditions of globalization, is not realized.[102] For wealthy and influential countries, the cost of conceding to the demands for a RTD treaty is that they could have self-denying obligations to perform because the right is deemed to demand for changes to the system of structural disadvantage that characterizes the current international structure.[103] Therefore, the UN deliberations on RTD have been essential because they have been a platform for poor and wealthy countries to provide information on the extent to which they support or are opposed to any RTD related UN action. As proponents of the RTD have continued to support the idea of a convention on RTD, there has

[99] See, Vincent Pouliot 'Hierarchy in Practice: Multilateral Diplomacy and the Governance of International Security' (2016) 1(1) European Journal of International Security 10 <https://search.proquest.com/docview/1951146840>accessed 8 January 2018.
[100] The costs incurred from not striking a deal, in international deliberations, is referred to as the outside options. See, ibid 11.
[101] Margot E. Salomon, 'Poverty, Privilege and International Law: The Millennium Development Goals and the Guise of Humanitarianism' in *German Yearbook of International Law* (Duncker & Humblot 2009) 41 <http://www.gyil.org/?page_id=25> Accessed 6 January 2018 citing, Richard Jolly, 'Global Inequality' in David Alexander Clark (ed.), *The Elgar Companion to Development Studies* (Edward Elgar Publishing 2006) 196, 199.
[102] ibid 41.
[103] Salomon has spoken on the relationship between the need for changes to the international system of structural disadvantage and the RTD discourse. See, Margot E. Salomon, 'Legal Cosmopolitanism and the Normative Contribution of the Right to Development' (2008) LSE Law, Society and Economy Working Papers 16/2008, 11 <http://www.lse.ac.uk/law/working-paper-series/2007-08/WPS2008-16-Salomon.pdf> accessed 5 February 2018.

been a risk that some wealthy nations will vote against or abstain from the treaty making process. There has also been a less probable risk that wealthy nations, which are opposed to a convention on RTD, may choose to show their displeasure by withdrawing their support for UN processes. The possibility that wealthy countries could pull their support for UN processes has been one of the risks that should be avoided because they, especially the US, have provided a substantial amount of the primary funding for UN and its organs such as the UNHRC.[104] In the past, the US has withdrawn funding from the UNHRC because it did not support some of the body's actions.[105] So, the mainstreaming duty of the Special Rapporteur on the RTD, has continued to be important because it was not opposed by wealthy nations, and accordingly, there has been no reason to expect that it will make some countries to show their displeasure against any UN processes. Up to now, this chapter has provided background information on the UN level attempts to promote international cooperation for the actualization of the RTD. The next section provides information on the relationship between the discourse on RTD and the international community's anti-IFF commitment at the international level.

2.2.2 Anti-IFF in the RTD Discuss at the UN

The only global instrument on the RTD is the non-binding agreement that is referred to as the UNDRD (1986). The RTD has been reaffirmed in other international human rights instruments such as the 1993 Vienna Declaration and Program of Action.[106] Although the UNDRD (1986) is a not an instrument that is legally binding on the international community, the principles it promotes are anchored in legally binding instruments, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966.[107]

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[104] The Human Rights Council is funded primarily through the U.N. regular budget, of which the United States is assessed 22%. The Council also receives extra-budgetary (voluntary) funding from the US. See, Luisa Blanchfield and Michael A. Weber, *The United Nations Human Rights Council: Background and Policy Issues* (Congressional Research Service Report RL33608, 2020) 6-7 <https://fas.org/sgp/crs/row/RL33608.pdf > Accessed 28 December 2020.; The UNGA resolution outlining the percentage of member state contributions for the 2016 to 2018 UN regular budget, earmarks China, France, Germany, Japan and the US to provide more than 50 % of the total annual budget that was to be funded by its 193 member states. For a list of UN member States and their contribution to the regular budget, see UNGA Res 70/245 (23 December 2015) UN Doc A/RES/70/245 <https://digitallibrary.un.org/record/820886> Accessed 27 September 2017.

[105] Blanchfield and Weber (n 104) 7.

[106] Arjun Sengupta, 'On the Theory and Practice of the Right to Development' (2002) 24(4) Human Rights Quarterly 841 <https://www.jstor.org/stable/20069637> accessed 17 May 2021.

[107] OHCHR, 'Frequently Asked Questions on the Right to Development: Fact Sheet No. 37' (OHCHR 2016) 5-7 <https://www.ohchr.org/Documents/Publications/FSheet37_RtD_EN.pdf> accessed 28 September 2021; and see, International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 933 UNTS 3 (ICESCR) Article 2 <https://treaties.un.org/doc/Publication/UNTS/Volume%20993/volume-993-I-14531-English.pdf> accessed 19 May 2021.

However, by themselves, the provisions of the UNDRD (1986) have only impose moral obligations because they represent an international non-binding agreement on the idea that there is need to actualize the RTD. Therefore, the conversation on how to make States accountable for the RTD is a challenge that is part of the wider discourse on global development cooperation. This issue of accountability has become more important as different views on law and development arise and a range of non-market values such as the rule of law are incorporated as objectives of development, rather than just a means to achieving development.[108] More importantly, the need for accountability has been associated with the goal of collective development at the international level. The goal of achieving accountability for the concept of collective prosperity has been promoted in the UNGA 2030 Agenda and the UNDRD of 1986.[109] In both instruments, there is an emphasis on the need for international cooperation to implement policies that will encourage development on a global scale.[110] It is this common goal that has inextricably linked the UNGA 2030 Agenda of 2015 and the UNDRD of 1986. Moreover, in the text of the UNGA 2030 Agenda (2015), the need for societies to be based on respect for RTD has been identified as one of the objectives for the global community. The international community has also pledged to respect the RTD in the AAAA (2015). This pledge to respect the RTD, in the AAAA (2015), is one of the actions that have connected the RTD to the UNGA 2030 Agenda of 2015. This is because in paragraph 62 of the UNGA 2030 Agenda (2015), the AAAA (2015) is adopted as an instrument that is an integral part of the UN approach to achieving sustainable development. In the paragraph 62 of the UNGA 2030 Agenda (2015), there was a reference to the importance of the AAAA (2015) as an instrument that is supporting, complementing and helping to contextualize the objectives of the UNGA 2030 Agenda (2015). The paragraph also referred to the idea that the concrete policies and actions outlined in the AAAA (2015) are an integral part of the UNGA 2030 Agenda (2015). Therefore, it was clear that the pledge to implement the RTD and other commitments in the AAAA (2015) are an integral part of the UNGA 2030 Agenda (2015). Furthermore, the text of the UNGA 2030 Agenda (2015) was clear about the fact that its objectives are informed by the UNDRD of 1986. Therefore, through the content of the UNGA 2030 Agenda (2015), a clear link between the UN platform for sustainable development and the UNDRD of 1986 was being established and promoted at the international level. This link was further emphasized in the UN Human Rights Council

[108] Yong-Shik Lee, 'General Theory of Law and Development' (2017) 50(3) Cornell International Law Journal 415, 422-423 <https://scholarship.law.cornell.edu/cilj/vol50/iss3/2> accessed 27 May 2019
[109] Imme Scholz, 'Reflecting on the Right to Development from the Perspective of Global Environmental Change and the 2030 Agenda for Sustainable Development' in Markus Kaltenborn, Markus Krajewski and Heike Kuhn (eds), *Sustainable Development Goals and Human Rights* (Springer 2020) 192.
[110] ibid 193.

(UNHRC) resolution to appoint an independent expert (referred to as Special Rapporteur) on the RTD. In the UNHRC Resolution of 27th September, 2016, the Special Rapporteur on RTD was mandated to contribute to the objective of promoting, protecting and fulfilling the RTD in the context of a coherent and integrated implementation of the UNGA 2030 Agenda. This objective that the UNHRC gave to the Special Rapporteur on RTD was both ambitious and instructive about the relation between RTD and the UNGA 2030 Agenda of 2015. At the very least, it was an international attempt to actualize the RTD through the implementation of the UNGA 2030 Agenda (2015). It was also instructive of how the UNHRC had recognized and ensured that the UNGA 2030 Agenda (2015) was being used to implement the RTD at the global level. The UNHRC Resolution of 27th September, 2016 has ensured that the task of following up on the objective of fulfilling the RTD in the context of a coherent and integrated implementation of the UNGA 2030 Agenda is both identifiable and easy to accomplish. To satisfy the mandate of his appointment, the Special Rapporteur on RTD must submit an annual report to the UNHRC and to the General Assembly (UNGA). One of the things that is to be included in the annual report by the Special Rapporteur on RTD is all the activities, which relate to the objective of using the UNGA 2030 Agenda to fulfill the RTD. Consequently, it is important to note that in Articles 4(1) of the UNDRD (1986) the duty of States to formulate international development policies for all has been promoted. The challenge for the international community has been on how to get countries to be committed to the objective of formulating the necessary policies to actualize the extra-territorial duty that is promoted in Article 4(1) of the UNDRD (1986). One approach that has been adopted is to work towards a hard law or binding instruments such as a treaty framework that will provide for a set of international development policies. Another adopted approach is to use alternative solutions such as a soft law or a non-binding instrument that will have a normative impact on the regulatory and supervisory framework of the various countries of the world. The use of international instruments that are not classed as a treaty or binding framework on RTD has been an invaluable approach for getting countries to commit themselves to the objective of formulating the required extra-territorial development policies at the domestic level. The potential for using a non-binding instrument to achieve an international commitment to RTD related extra-territorial obligations is illustrated in the UNHRC Resolution of 27th September, 2016. A total of 47 UNHRC member States had the option of voting for or against the Resolution of 27 September 2016, which itemizes, among other things, the mandate of the Special Rapporteur on the RTD. With a vote tally of 34 in favor, two against and 11 abstentions, the UNHRC was able to adopt a resolution that has established a follow-up framework for the objective of using the UNGA 2030 Agenda (2015)

to actualize the RTD at the global level.[111] As a result of the adoption of the Resolution of 27 September 2016, the UNHRC was able to stipulate that the duty of the Special Rapporteur on RTD is to include the production of an annual report on the activities relating to the mandate of the office. Furthermore, in the Resolution of 27th September, 2016, the Special Rapporteur on RTD has been mandated to submit any specific study that is requested by the UNHRC or the working group on the RTD. It is therefore noteworthy that, in conformity with the provisions of the Resolution of 27 September 2016, the UNHRC asked the Special Rapporteur on RTD, in a resolution adopted on 27 September 2019,

> to provide advice to States, international financial and economic institutions and other relevant entities, the corporate sector and civil society on measures to achieve the goals and targets relating to the means of implementation of the 2030 Agenda for the full realization of the right to development.

This UNHRC request for the Special Rapporteur on RTD to advice States and other international entities is therefore another example of how the objective of using the UNGA 2030 Agenda (2015) to actualize the RTD has been implemented at the international level. Essentially, in two of its resolutions, the UNHRC has asked the Special Rapporteur on RTD to see and promote the UNGA 2030 Agenda (2015) as an instrument that is relevant to the goal of actualizing the RTD at the global level.[112] In essence, under its resolutions, the UNHRC has, by a majority vote, rather than by consensus, also accepted that the RTD is to be actualized through the implementation of the UNGA 2030 Agenda (2015).[113] Therefore, through the UNGA 2030 Agenda (2015), the international community has pledged to significantly reduce IFFs in all parts of the world. Accordingly, the Special Rapporteur on RTD, Saad Alfarargi, has in his report on the international dimensions of financing for development, made an effort to emphasize the role of IFFs in international resource mobilization agenda.[114] The Special Rapporteur on RTD's report concludes that IFFs,

[111] Apart from the annual report that is to be made to the UN bodies such as the UNGA, the Special Rapporteur on RTD is also mandated to submit any specific study requested by the UNHRC and the Working Group on the RTD. Note that in a UNHRC Resolution of 27 September 2019, the Special Rapporteur on RTD was asked to advice States, international financial and economic institutions and other relevant entities, the corporate sector and civil society on measures to achieve the goals and targets relating to the means of implementation of the 2030 Agenda for the full realization of the RTD.
[112] Reference here is being made to the UNHRC Resolutions of 27 September 2016 and 27 September 2019.
[113] The UNHRC Resolutions of 27 September 2016 and 27 September 2019 are, in the first place, a political expression of the fact that a majority of its members have agreed to the idea of using the UNGA 2030 Agenda (2015) to actualizing the RTD in its entirety.
[114] UNGA (75th Session) 'Report of the Special Rapporteur on the right to development, Saad Alfarargi' (16 July 2020) UN Doc A/75/167, 9- 11 and 15

including IFF related to corruption, are a significant obstacle to the mobilization of domestic resources for finance sustainable development, as well as to the enjoyment of human rights, including the RTD.[115] The observation by the Special Rapporteur on RTD is important because he is mandated to work towards mainstreaming the right into various UN bodies, development agencies and international development, financial and trade institutions.[116] Furthermore, his conclusion on the relationship between IFF and the RTD is part of a growing trend that can be observed in the UN system. This trend of associating the impact of IFF to the global ambition to actualize the RTD is presented in the reports of other experts in the UN system.[117] The UNHRC has also acknowledged the relationship between the impact of IFF and the actualization of RTD at the national and global level.[118] In its Resolution 31/22, the UNHRC instructed its Advisory Committee to conduct a comprehensive research-based study on the impact of IFFs on the enjoyment of human rights, including the RTD.[119] In the ensuing study by the UNHRC Advisory Committee, it is observed that the realization of the RTD is hindered by non-repatriation of IFFs to the country of their origin.[120] There has therefore been a significant amount of international support for the idea of using anti-IFF as a part of the global approach to actualizing the RTD. Owing to the UNHRC decisions and conclusions of the UN experts identified herein, it is clear that there has been some support for the idea of adopting all relevant UN initiatives on anti-IFF as part of the global approach to actualizing the RTD in various parts of the world.[121] From the whole analysis so far, it is clear that the anti-IFF provisions in the AAAA (2015) and the UNGA 2030 Agenda (2015),

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<https://sustainabledevelopment.un.org/content/documents/26309VNR_2020_Nigeria_Report.pdf> accessed 12 March 2021.

[115] ibid para 26 and 27.

[116] The Special Rapporteur on RTD is mandated by the UNHRC to mainstream the right. See, 'Human Rights Council Adopts 18 Texts, Creates Mandate on the Right to Development' (*OHCHR* 2016) <https://www.ohchr.org/en/newsevents/pages/displaynews.aspx?newsid=20616&langid=e> accessed 2 July 2018.

[117] For instance, the connection between IFF and RTD is emphasized in a report presented at the nineteenth session of the Working Group on the RTD. See, UNHRC Working Group on the Right to Development (19th Session) 'The Right to Development and Illicit Financial Flows: Realizing the Sustainable Development Goals and Financing for Development' (18 April 2018) UN Doc A/HRC/WG.2/19/CRP.3 <https://www.ohchr.org/Documents/Issues/Development/Session19/A_HRC_WG.2_19_CRP_3.docx> accessed 12 March 2021.

[118] UNHRC Res 31/22 (24 March 2016) UN Doc A/HRC/RES/31/22, 2 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/082/63/PDF/G1608263.pdf?OpenElement> accessed 12 March 2021.

[119] ibid para 30.

[120] UNHRC Advisory Committee (18th Session) 'Research-Based Study on the Impact of Flow of Funds of Illicit Origin and the Non-Repatriation thereof to the Countries of Origin on the Enjoyment of Human Rights, Including Economic, Social and Cultural Rights: Progress Report of the Advisory Committee of the Human Rights Council' (13 February 2017) UN Doc A/HRC/AC/18/CRP.3 para 53-57 <https://digitallibrary.un.org/record/1304883?ln=ar> accessed 12 March 2021.

[121] The principles of RTD are seen as a fundamental part of the 2030 Agenda for Sustainable Development. See, OHCHR, 'Statement marking 33rd anniversary of UN Declaration on Right to Development' (*OHCHR*, 4 December 2019) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25383&LangID=E> accessed 12 March 2021.

are indicative of the international community's intention to inadvertently or categorical adopted a set of RTD related international obligations.[122] Consequently, it should be noted that the anti-IFF obligation of the UNGA 2030 Agenda (2015) is provided for in SDGs targets 16.4. Therefore, the anti-IFF obligation that is provided for in SDGs targets 16.4 is relevant to Nigeria's request for assistance in addressing IFF to fully actualize RTD in the Nigerian polity. This is because the SDGs target 16.4 is representative of the international community's moral commitment to the goal of significantly reducing the global occurrence of IFFs. The next section was designed to provide background information on Nigeria's inadvertently engagement in international cooperation for the RTD of its citizens. Consequently, the idea of ownership of development was introduced as a factor that had an impact on the cooperation between Nigeria and international development institutions, such as the World Bank.

2.3 Analysis of Development Assistance in Nigeria

In analyzing development cooperation in Nigeria, it was understood that the notion of country ownership has been criticized for being complex and difficult to define or monitor.[123] Yet, the UN Conference on Trade and Development (UNCTAD) Secretariat has emphasized the importance of country ownership by observing that most policy analysts have agreed with the idea of viewing it as one of the requirements for achieving effective aid.[124] Moreover, the concept of country ownership has been identified as a requirement for effective aid by reputable international institutions such as the World Bank.[125] Additionally, the goal of achieving ownership of development is also a challenge that has been raised in strategy

[122] According to the 9th edition of the Black's Law Dictionary, the meaning of obligation is a legal or moral duty to do or not do something. The Black's Law Dictionary defines a moral duty as a duty, the breach of which would be a moral wrong. Therefore, as an obligation that is separate from a legal duty, a moral duty is a non-binding obligation to do or not do something. This concept of a non-binding obligation is applicable to the global effort that has been put into significantly reducing IFFs in all countries of the world. See, Bryan A. Garner (ed), *Black's Law Dictionary* (9th edn, Thomson Reuters 2009) 580 and 1179.

[123] UNCTAD Secretariat, '*The Least Developed Countries Report 2008: Growth, Poverty and the Terms of Development Partnership*' (United Nations 2008) 93 < https://unctad.org/system/files/official-document/ldc2008_en.pdf> accessed 28 May 2021.

[124] ibid.

[125] Gideon Rabinowitz, 'Literature Review on Aid Ownership and Participation' (Oxfam America and Save the Children USA 2015) 9-16 <https://www.powerofownership.org/wp-content/uploads/2017/06/ODI-Literature-Review-aid-ownership-and-participation-formated-for-web.pdf> accessed 29 May 2021.

documents on development cooperation with Nigeria.[126] So, an analysis of ownership of development in Nigeria was conducted because weak country ownership has been observed to be a factor that has negatively impacted the goal of integrating development strategies into the policies of countries in need of assistance.[127] Accordingly, in conducting an analysis on ownership of development in Nigeria, it was determined that it is beneficial to highlight some useful explanations for the concept. Consequently, it was identified that ownership of development has been defined as

> the full and effective participation of a country's population via legislative bodies, civil society, the private sector, and local, regional and national government in conceptualizing, implementing, monitoring and evaluating development policies, programs and processes.[128]

Similarly, Dunning and McGillem have defined ownership as a concept that embodies a set of principles and approaches by which local actors – governments, civil society, and the private sector – have a greater voice and hand in development activities.[129] They also highlighted three broad ways to categorize the varying approaches to ownership of development.[130] The first approach that was identified by Dunning and McGillem is the ownership of priorities, which is understood as the ability for local actors to determine what development activities are undertaken in their community. The second approach is ownership of implementation, which is all about the ability for local actors to determine the entities that are accountable for a set of development results. Finally, the third approach is on ownership of resources, which is understood as the need to ensure that the source of funding for all development projects is partly or totally gotten from domestic sources. So, in the afore mentioned definitions, the notion of public participation has been identified as an important

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[126] USAID, 'Nigeria: Country Development Cooperation Strategy (CDCS) August 11, 2020 – August 10, 2025' (USAID) 23 and 26 <https://www.usaid.gov/sites/default/files/documents/CDCS-Nigeria-August-2025.pdf> accessed 28 May 2021.

[127] Policies for trade and the various domestic sectors, such as energy, production and education, have been referred to here as policies of countries in need of assistance. See, UNCTAD Secretariat, *Least Developed Countries Report, 2008: Growth, Poverty and The Terms of Development Partnership* (United Nations Publication 2008) 31 and 118-119.

[128] InterAction, 'Country Ownership: Moving from Rhetoric to Action' (InterAction 2011) 2 <http://modernizeaid.net/wp-content/uploads/2012/01/InterAction-Country-Ownership.pdf> accessed 28 May 2021.

[129] Casey Dunning and Claire McGillem, 'Country Ownership: Rhetoric or Reality? Let's Find Out' (*Centre for Global Development*, 11 March 2016) <https://www.cgdev.org/blog/country-ownership-rhetoric-or-reality-lets-find-out> accessed 28 May 2021.

[130] For a detailed explanation of the approaches to ownership of development that have been highlighted by Dunning and McGillem, see Modernizing Foreign Assistance Network 'The Way Forward: A Reform Agenda for 2014 and Beyond' (Modernizing Foreign Assistance Network 2014) 6-7 <https://modernizeaid.net/wp-content/uploads/2015/12/The-Way-Forward-A-Reform-Agenda-for-2014-and-Beyond.pdf> accessed 28 May 2021.

part of country ownership of development. Yet, the idea of public participation in the development process has been criticized because the public interests and views on the development process in a country are usually varied and often conflicting.[131] Therefore, there has been a need to answer the question of why has ownership been relevant in societies with varied and often conflicting views on how development processes or initiatives should be conducted? One viewpoint on ownership of development, which has provided validation for the use of the concept, is that a focus on specific institutional partners of development cooperation has been valuable. According to Jerve, the concept of ownership has only been "useful when strictly linked to the main institutional partners in the aid relationship - the donor agency; and the recipient organization, specifically, or the government involved, more generally".[132] The focus on specific institutional partners in aid relationships has not been accepted as a perfect approach.[133] However, the approach of focusing on specific institutional partners has provided the starting point that was used to assess ownership of development initiatives. Furthermore, as Tomlinson has stated, ownership of development has implied for most people that the national government is the leader of all aspects of development policies and strategies.[134] Tomlinson has also opined on how ownership of development has been seen as implying that the national government's role in development processes must be done in a democratic way and in consultation with key stakeholders.[135] The explanation provided by Tomlinson has been adopted here because it has allowed for a focused and inclusive approach to ownership. Consequently, the notion of development cooperation has been analyzed by focusing on the role of the Nigerian government as the leader of development processes. Additionally, it has also been accepted herein that there is a need for stakeholder, such as the civil service, to be included in the various stages of development initiatives. It was therefore based on this understanding, that a historical analysis was conducted, in this

[131] Willem H. Buiter, ''Country Ownership': A Term Whose Time Has Gone' (2007) 17 (4-5) Development in Practice 648 <https://doi.org/10.1080/09614520701469856> accessed 29 May 2021.
[132] Alf Morten Jerve, 'Ownership and Partnership: Does the New Rhetoric Solve the Incentive Problems in Aid?' (2002) 29 (2) Forum for Development Studies 394 <https://doi.org/10.1080/08039410.2002.9666216> accessed 28 May 2021.
[133] One of the criticisms of this approach is that if the goal is to achieve country ownership, then there is need for ownership that involves the entire country, rather than only ownership by the institution or government, involved in development partnership. For a similar explanation see, ibid.
[134] Brian Tomlinson, 'Promoting Ownership and Gender Equality' in Judith Randel, Tony German and Deborah Ewing (eds), *The Reality of Aid 2002* (IBON Foundation, Inc. 2002) 116.
[135] ibid.; This explanation by Tomlinson is aligned with the concept of democratic ownership. Consequently, it should be noted that democratic ownership is value-laden concept, which is inspired by both technocratic perspectives – that seek as broad a participation as possible of stakeholders in any development activity; and political perspectives – that seek democratic representation in policy-making processes to make development effective and the norms and values of democratic society stronger. See, See, Volker Hauck and Tony Land, 'Fostering Democratic Ownership: A Capacity Development Perspective' (Discussion Paper No 103, European Centre for Development Policy Management, February 2011) 2 <https://ecdpm.org/wp-content/uploads/2013/11/DP-103-Fostering-Democratic-Ownership-Capacity-Development-Perspective.pdf > accessed 10 February 2020.

section, to identify the relationship between pro-corruption values and ownership in the discussion on development cooperation in Nigeria.

2.3.1 Ownership in Nigeria: Pre-Oil Boom and Post Oil Boom

It is observed that after World War II ended in 1945, the approach to development was mostly, if not always, in support of using the State as an agent of economic development and positive social transformation.[136] The popularity of State led development was because of the belief that the market's predisposition to favor the interest of privileged people was less appropriate than the collective will that is embodied in the State.[137] The popularity of State led development created a situation where developing countries were the beneficiaries of cooperation with foreign donors who were providing the financial aid for them to use in implementing development related projects.[138] In giving out aid, the donors are observed to have expected the governments of developing countries to use the funds given to them to modernize their countries and increase their income. According to Degnbol-Martinussen and Engberg-Pedersen, the development thought, at the time, was that the increased income of a country would spread out and trickle down to every section of the populace.[139] So, it is useful to note that in their development cooperation relationships with countries, including Nigeria, donors are observed to have introduced ideas, which had already been implemented in developed countries.[140] Some of the donors favored policies and development thought were the result of academic debates on development. For example, the dominance and use of Keynesian economic theory,[141] in the development discourse, is an example that shows the

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[136] John Rapley, *Understanding Development: Theory and Practice in the Third World* (Routledge 2003) 1.
[137] ibid 2.
[138] Richard Batley and George Larbi, *The Changing Role of Government: The Reform of Public Services in Developing Countries* (Palgrave Macmillan 2004) 2, 31, 208 and 210.
[139] John Degnbol-Martinussen and Poul Engberg-Pedersen, *Aid: Understanding International Development Cooperation* (Bille Marie tr, Zed Books 2003) 26.
[140] For example, Dibua are said that Nigeria and other African countries imported Keynesian economic theory into its development planning because of the encouragement by western countries and international financial institutions. Before its adoption in Nigeria, the Keynesian economic theory was used to stimulate the economies of western countries through initiatives such as the Marshall Plan. See, Jeremiah I. Dibua 'The Post-Colonial State and Development Planning in Nigeria, 1962-1985' (1994) 24 Journal of Eastern African Research and Development 224 <https://www.jstor.org/stable/24326321> accessed 28 May 2021; see also, Jean-Philippe Thérien and Carolyn Lloyd, 'Development Assistance on the Brink' (2000) 21(1) Third World Quarterly 22 <http://www.jstor.org/stable/3993522> accessed 5 July 2018; and Alan S. Milward, 'Was the Marshall Plan Necessary?' (1989) 13(2) Diplomatic History 233 <https://www.jstor.org/stable/24911817> accessed 28 May 2021.
[141] Keynesian economic theory is designed to predict the cause and prevent economic failure. In summary, requires increased government spending to serve as fiscal stimulus for the economy. See generally, Geoff Tily, *Keynes's General Theory, The Rate of Interest And "Keynesian" Economics* (1st edn, Palgrave Macmillan 2007).; See also, David Edmund Allen and others, 'Understanding the Regulation Impact: US Funds of Hedge Funds After the Crisis' in Greg N. Gregoriou (ed), *Reconsidering Funds of Hedge Funds: The Financial Crisis*

academic influences on donor countries and institutions.[142] In some countries that had independence after 1945, which includes Nigeria, the popularity of Keynesian economic theory in developed countries, is observed to have influenced them to have confidence in the ability of the government to manage resources.[143] Furthermore, donors began to send funds to developing countries so that they could set their own growth process in motion.[144] Consequently, some of the newly dependent States are observed to have been inspired by economists to look inwards and to develop self-reliant economies.[145] In Latin American States, especially, it is observed that much value was placed on the contributions of economists such as Raul Prebisch who is known to have argued against the inequities of the terms of trade for developing nations.[146] As Dosman observes, Prebisch spoke of the persistent decline in terms of trade that he noticed in countries that primarily export agricultural produce (which is herein referred to as primary commodity economies).[147] Accordingly, Prebisch is known to have discredited the idea postulated by western liberal economists that market mechanisms are beneficial to both industrial nations and primary commodity economies.[148] His prescription for developing countries was for them to work towards having autonomous economies through State involvement in local manufacturing industry.[149] For Prebisch and other likeminded economists such as Hirschman, the only way for developing countries to transition into industrialized and autonomous economies was if

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and Best Practices in UCITS, Tail Risk, Performance, and Due Diligence (Academic Press 2013) 504; and Tony Caporale and Marc Poitras 'The Trouble with Keynesian Stimulus Spending' (2017) Government Spending Working Paper 3 <https://www.mercatus.org/system/files/caporale-keynesian-stimulus-wp-mercatus-v3.pdf> accessed 5 July 2018.

[142] Although the Keynesian economic theory was venerated during the post-World War 2 era, some authors have explained that some of the ideas and practices, promoted at the time, did not align with all the objective and nature of the theory. As Davidson has explained, the version of Keynes economic theory that was implemented by the early post-World War 2 economists was not a true representation of the theory that was developed by John Maynard Keynes. See, Paul Davidson, *The Keynes Solution: The Path to Global Economic Prosperity* (1st edn, Palgrave Macmillan 2009) 18.; See also generally, Geoff Tily, *Keynes's General Theory, The Rate of Interest And "Keynesian" Economics* (Palgrave Macmillan 2007).

[143] Rapley (n 136) 2; and Dibua (n 140).

[144] Degnbol-Martinussen and Engberg-Pedersen (n 139) 26.

[145] Rapley (n 136) 2-3; See also, Edgar Dosman, 'Markets and the State in the Evolution of the "Prebisch Manifesto"' (2001) (75) CEPAL Review 88-92 <https://www.cepal.org/en/publications/10838-markets-and-state-evolution-prebisch-manifesto>accessed 27 January 2018.

[146] Celestin Monga, 'Growth Identification and Facilitation: The Role of the State in the Dynamics of Structural Change' in Justin Yifu Lin (ed), *New Structural Economics: A Framework for Rethinking Development and Policy* (World Bank 2012) 159; and ibid 89-90.; The terms of trade of any country can be defined as the ratio of it import to per unit of primary commodity exports. In other words, it is a measure of how many units of the foreign goods one unit of the domestic good can acquire. See Victor A. Canto and Andy Wiese, *Economic Disturbances and Equilibrium in an Integrated Global Economy Investment Insights and Policy Analysis* (Elsevier 2018) 131.

[147] Dosman (n 145) 99.

[148] It is observed that according to liberal western economists, the market mechanism automatically benefited all countries, the large industrialized as well as the agricultural economies, and the business cycle regulated the periodic ebbs and flows in the international economy. See, ibid 89.

[149] ibid 90.

governments were able to invest in their manufacturing industry.[150] So, it is important to note that Prebisch, along with Hans Singer,[151] is recognized for developing the theoretical basis for the State-led industrialization which is globally referred to as import-substituting industrialization (ISI).[152] The concept of ISI is important because it is considered to have been adopted in the first national development strategy of Nigeria and many other African countries.[153] Consequently, note that the goal of Nigeria's ISI strategy, in the beginning of the post-independence era, was to reduce its reliance on foreign trade and conserve foreign exchange by investing in local industries and improving their capacity to meet local demand for goods and services.[154] This objective required the Nigerian government to implement economic programs that were capital intensive. Nigeria therefore required aid to fund its economic programs. Its ISI plan entailed a distribution of resources to industrial structures that had an estimated cost of $1,892 million. However, a major problem with Nigeria's first national development plan was that out of the $1,892 million that was required for its implementation, less than 20 percent was to be generated domestically. Nigeria's first national development plan required over 70 percent of foreign involvement with 30 percent ($560 million) to come from direct foreign investment and just over half ($1,892 million) of the funding to come from foreign loan facilities.[155] The first development plan was not successful in achieving economic autonomy for Nigeria. Some reasons for the failure of the first plan could be the lack of project readiness and lack of executive capacity to carry out certain aspects of the plan and various prolonged social skirmishes that characterized the implementation period of the plan.[156] An alternative explanation for the failure of the plan could be drawn from the claim by dependency theorists that aid was only making developing countries, such as Nigeria, to provide raw materials for industrial nations, rather than helping

[150] Monga (n 146) 159.
[151] Their seminal contributions speak to the importance that structural differences between manufacturing and primary production have on terms of trade. See, Harry Bloch and David Sapsford, 'Whither the Terms of Trade? An Elaboration of the Prebisch Singer Hypothesis' (2000) 24(4) Cambridge Journal of Economics 461 - 481 <https://academic.oup.com/cje/article-abstract/24/4/461/1700629?redirectedFrom=fulltext> accessed 27 January 2018.
[152] Houssam-Eddine Bessam, Rainer Gadow and Ulli Arnold, 'Industrialization Strategy Based on Import Substitution Trade Policy' in Yülek Murat and K. Taylor Travis (eds), *Designing Public Procurement Policy in Developing Countries: How to Foster Technology Transfer and Industrialization in the Global Economy* (Springer-Verlag New York 2012) 53.
[153] Lofchie Michael, 'The Political Economy of the African Middle Class' in Charles Leyeka Lufumpa and Mthuli Ncube (eds), *The Emerging Middle Class in Africa* (1st edn, Routledge 2015) 37.
[154] Louis N. Chete and others, 'Industrial Development and Growth in Nigeria: Lessons and Challenges' (2014) WIDER Working Paper 2014/019, 1 <https://www.econstor.eu/handle/10419/96311> accessed 20 May 2021.
[155] Sekwat Alex, 'Economic Development Experience in Nigeria' in Liou Kuotsai Tom (ed), *Handbook of Economic Development* (Marcel Dekker Inc 1998) 572 citing, Michael Watts and Paul Lubeck, 'The Popular Classes and the Oil Boom: A Political Economy of Rural and Urban Poverty' in William I. Zartman (ed), *The Political Economy of Nigeria* (Praeger 1983).
[156] See, ibid.

them to improve their economic situation.[157] The validity of the claim by dependency theorist is difficult to verify. However, what is known is that aid was used to implement the subsequent development plan of 1962, which was also considered to be unsuccessful for several reasons. To understand the relationship between aid and the lack of success in implementing the 1962 development plan for Nigeria, it is important to note some historical facts. For example, the implementation of the 1962 development plan is observed to have involved an ISI strategy that was highly dependent on financial aid and technological dependence on knowledge from foreign experts.[158] The donors of the aid, which was used to implement the 1962 development plan, were observed to have dictated the programs that their aid assistance would be used for.[159] The donors are observed to have made demands such as what program their aid should be used for and that the purchase of specific goods and services must be made from their countries' markets.[160] Therefore, as Alex has observed, the 1962 plan was undermined by a high level of external influence that was associated with its implementation process.[161] So, to a large extent, the idea of ownership of development has provided the basis on which to agree with the conclusion by Alex, or at least, to be skeptical about the role of donor influence in the execution of the 1962 plan.[162] It is probable that the Nigeria's ownership of the development process was low or absent in the implementation process for the 1962 plan. This is because it is observed that, from the onset, the 1962 plan required significant funding from foreign donors.[163] Therefore, Nigerian government was in a position where it was useful for it to maximize its access to donor funding. Essentially, the Nigerian government's ownership of the development process was partially hindered because it could only maximize its access to donor funding by performing the demands, which were offered to it as conditions for providing the funds.[164] Yet, although a part of the identified

[157] Dependency theorists claim that aid was given to developing countries for them to use for infrastructural projects that would facilitate export of primary commodities. See, Thompson Fred, 'Foreign Aid' in Phillip O'Hara (ed), *Encyclopedia of Political Economy* (Routledge 2002) 363.
[158] Chete and others (n 154); and see Denen Donald Dzever, Ozoko Francis Ogebe and Ugochukwu Christopher Nnama, 'An Overview of Past National Development Plans in Nigeria (1962-1985)' (2020) 5(1) 73-74 <https://www.rsisinternational.org/journals/ijrias/DigitalLibrary/Vol.5&Issue1/72-79.pdf> accessed 28 May 2021.
[159] Alex (n 155) 572.
[160] ibid.
[161] ibid.
[162] A country's ownership of the development process, which is also known as a nationally owned development strategy, is achieved through the requirement a requirement for donor countries to align their aid with the government's priorities and the basis for them to harmonize their development assistance among themselves. On limitations to ownership of the development process. See, Stephen Brown, 'Foreign Aid and National Ownership in Mali and Ghana' (2017) 44(3) Forum for Development Studies 339 <http://www.tandfonline.com/doi/abs/10.1080/08039410.2017.1344728> accessed 11 February 2018.
[163] Gordon Idang, 'The History of Planning in Nigeria' in Paul Collins (ed), *Administration for Development in Nigeria: Introduction and Readings* (African Education Press 1980) 42.
[164] The need to maximize access to donor funding is observed to be a limitation to ownership of the development process. On limitations to ownership of the development process. See, Brown (n 162) 335 - 356.;

restrictions to the ownership of development process is a country's need to maximize its access to donor funding, some authors have not identified dependency on foreign aid as a cause of the poor implementation of the 1962 plan.[165] For instance, Anyebe opines that the success of the 1962 development plan was hindered by poor coordination between federal and regional governments in Nigeria.[166] Ugwuanyi is in the opinion that the 1962 development plan was weakened by excessive political intervention in economic decisions in the country, limited public participation and poor preparation for the implementation stage of the plan.[167] There was a failure to effectively mobilize public participation because, as Dzever, Ogebe and Nnama have observed, the local authorities were not separately brought into the process of the conception and implementation of the 1962 development plan.[168] Therefore, it is not certain that there was sufficient commitment to ensuring ownership of the development process at the local level. It is also not certain that active participation in the development process was a part of the actualized values of the Nigerian public in the 1960s. There is no direct and obvious reason to conclude that the Nigerian populace was explicitly discontent about the donor conditions for providing aid. So, domestic pressure for the Nigerian government to not comply with aid conditions was not an obvious issue in the implementation stage of the 1962 plan. Accordingly, it is justifiable to focus on the domestic reasons for the drawbacks of the plan because the imposition of aid conditions was not a cause of serious contention and it was less of a setback to the 1962 plan, than the domestic issues that are identified in the literature. However, the tendency for the poor implementation of the 1962 plan to be blamed on only domestic factors, may mean that authors have inadvertently failed to give a holistic retelling or sufficient examination of the flaws of Nigeria's first post-independence partnership with donors. In retrospect, the Nigerian government is said to have acted in a way that put it in a position where its ability to access donor assistance would be a factor that could affect the success of the 1962 development

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The donors demand included, instructions on what programs the aid funds were to be used for and that the purchase of specific goods and services must be made from the donor country market. See, Alex (n 155) 572.

[165] Anyebe has referenced the argument that developing countries have engaged in planning because foreign aid donors have usually asked aid recipients to have a national plan before any assistance would be given to them. Yet, in analyzing the reason why the 1962 plan had not been properly implemented, Anyebe has not made mention of the idea that external influence could be one of the causal factors. Akinsanya is another author that has identified the domestic causes of the poor implementation of the 1962 plan. See, Adam Adem Anyebe, 'Federalism and National Development Planning in Nigeria' (2014) 2 (4) Public Policy and Administration Review 18 and 23 <http://pparnet.com/journals/ppar/Vol_2_No_4_December_2014/2.pdf> accessed 29 May 2021; and see, Adeoye A. Akinsanya, 'Constraint on Development Planning at the Grassroots in Nigeria' in Adeoye A. Akinsanya and John A. Ayoade (eds), *Reading in Nigeria Government and Politics* (New generation Books and Communication 2014) 383.

[166] Anyebe (n 165) 23.

[167] Georgina Obinne Ugwuanyi, 'The Economic Implications of National Development Plans: The Nigerian Experience (1946-2013)' (2014) 4 (9) Developing Country Studies 172 <https://core.ac.uk/download/pdf/234681706.pdf> accessed 2 January 2022.

[168] Dzever, Ogebe and Nnama (n 158).

plan.[169] This is because, in addition to the concerns about Nigeria's ownership of development in the 1960s, it has been opined that a high reliance on foreign aid was responsible for uncertainty and sluggishness in the implementation of the 1962 development plan.[170] Nevertheless, the Nigerian approach to planning in the 1960s and 1970s was justifiable because a relationship was presumed to exist between GDP growth and an improvement in population welfare.[171] In extant literature, the 1962 development plan has been acknowledged for its relative success in promoting economic growth, but criticized for its failure to improve the welfare of the entire population. For instance, according to Agnes, the 1962 development plan was successful for a while because it promoted growth in Nigeria's economy.[172] Additionally, Agnes has said that the 1962 development plan was responsible for creating some structural contradictions such as an improvement in urban affluence alongside a persistent rural experience of poverty and unemployment in the Nigerian polity.[173] So, an enquiry on cooperation for development, in Nigeria's pre-oil rich era of the 1960s, shows that foreign influence is identified as one of the factors that undermined the effectiveness of the 1962 development plan.[174] The civil war that occurred between 1967 and 1970 is also observed to have been an impediment to the 1962 development plan.[175] Oyelere has further explained that corruption by Nigerian politicians was the cause of various regional crises which brought about military intervention and the

[169] The Nigerian government put itself in this position because as Chete and others have noted, from the onset, its budget for the 1962 plan was heavily dependent on foreign funding. See, Chete and others (n 154); and see ibid.

[170] According to Idang, a high reliance on foreign aid was a factor that slowed down the implementation process of the 1962 plan. See, Idang (n 163) 42.

[171] Isa Aminu and Timothy Onimisi, 'Policy Implementation and the Challenges of Poverty Alleviation in Nigeria' (2014) 3(4) Academic Journal of Interdisciplinary Studies 295, 296-297 <https://www.richtmann.org/journal/index.php/ajis/article/view/3103> accessed 28 May 2021; and Jeremiah I. Dibua, *Modernization and the Crisis of Development in Africa* (Routledge Ltd 2017) 32-34.; This presumption was based on the school of thought that considers development to be a prompt gain in the overall and per capita gross national income growth of a country. See, Omorogbe Omorogiuwa, Jelena Zivkovic and Fatima Ademoh, 'The Role of Agriculture in the Economic Development of Nigeria' (2014) 10(4) European Scientific Journal 140 <https://eujournal.org/index.php/esj/article/view/2687>accessed 28 May 2021.

[172] Osita-Njoku Agnes, 'The Political Economy of Development in Nigeria: From the Colonial to Post Colonial Eras' (2016) 21(9) IOSR Journal of Humanities and Social Science 12 <https://www.iosrjournals.org/iosr-jhss/papers/Vol.%2021%20Issue9/Version-1/B2109010915.pdf> accessed 29 May 2021.

[173] ibid.

[174] Ekperiware and Olomu have observed that the oil boom in Nigeria started in the 1970s. See, Moses C. Ekperiware and Michael O. Olomu, 'Effect of Oil and Agriculture on Economic Growth in Nigeria' (2015) 3(2) Journal of Global Economics, Management and Business Research 76 <https://www.ikprress.org/index.php/JGEMBR/article/view/1532> accessed 29 May 2021.

[175] Abubakar S. Alfakoro, 'Efforts towards Development Planning, Issues and Challenges: An Overview of Nigeria Experience' (2021) 11 (4) Arabian Journal of Business and Management Review 2<https://www.hilarispublisher.com/open-access/efforts-towards-development-planning-issues-and-challenges-an-overview-of-nigeria-experience.pdf> accessed 2 January 2022.

ensuing civil war.[176] Therefore, this subsection has shown that internal agitation or other domestic negative attitudes towards any potential or actual foreign influence has not been identified as a limitation to the 1962 development plan. Insufficient planning and corruption were the root causes of the drawbacks of the 1962 development plan. This subsection has also shown that due to the importance attached to ownership of development by modern development experts, there is reason to be skeptical about the influence of donors in the implementation of Nigeria's first post-independence development plan. Furthermore, citizen participation in the development process was not sufficiently promoted by the Nigerian government and there was no obvious incident that was specifically organized to show the society's discontent with the 1962 development plan. Therefore, Nigeria had a different experience after its transition to oil dependency in the 1970s.[177] As an oil dependent country, some Nigerian citizens were overt about their displeasure against development related policies that were perceived to have been the result of foreign influence.[178] Consequently, the next section is an analysis of Nigeria's ownership of development, as an oil rich nation.

2.3.2 Ownership of Development in Oil Rich Nigeria

After Nigeria became an oil rich nation in 1973, it has been noted that there was a lot of wasteful spending by the Nigerian government.[179] The Nigerian government was, at the expense of the agricultural sector, observed to have embarked on bogus and unrewarding projects.[180] This meant that Nigeria was not ready for the declining commodity prices that were a consequence of the 1980-1982 worldwide economic recession. [181] It also meant that

[176] Moses Sunday Oyelere, 'Corruption Galore and the Development Initiatives in Nigeria' (2019) 6 (9) Journal of Research and Opinion <http://researchopinion.in/index.php/jro/article/download/22/17> accessed 2 January 2022.

[177] In 1968, the last implementation year of the 1962 plan (the plan was interrupted in 1967-1970 by the civil war), the oil sector only contributed only 13.95% to the revenue of the Nigerian government. By the end of the 1970s, the oil sector was contributing 82.30% to the revenue of the Nigerian government. Therefore, though the commercial discovery and export of oil began in 1956, scholars, such as Ekperiware and Olomu, are justified in view that the 1970s was the beginning of oil boom in Nigeria. The 1970s is the starting point where the oil sector became significant in the Nigerian economy. See, Ilesanmi Akanmidu Paul, 'A Historical Perspective of Petroleum on Nigeria's Economic Crisis Since Independence' (2015) 15(2) Global Journal of Human-Social Science: E Economics 17,19 <https://socialscienceresearch.org/index.php/GJHSS/article/download/1411/1352/> accessed 28 May 2021; and see, Ekperiware and Olomu (n 174).

[178] For instance, the National Association of Nigerian Students (NANS) was one of the groups that overtly resisted the measures of the Babangida government. The NANS was vocal about the fact that their actions were carries out to oppose an IMF imposed package. See, Kole Ahmed Shettima, 'Structural Adjustment and the Student Movement in Nigeria' (1993) 20 (56) Review of African Political Economy 86 <https://www.tandfonline.com/doi/abs/10.1080/03056249308703988> accessed 2 January 2022.

[179] Paul (n 177) 17, 20.

[180] ibid.

[181] Bonny Ibhawoh, 'Structural Adjustment, Authoritarianism and Human Rights in Africa' (1999) 19(1) Comparative Studies of South Asia, Africa and the Middle East 158 <http://dx.doi.org/10.1215/1089201X-19-1-158> accessed 25 January 2018.

Nigeria would require assistance from an international community that was pushing for free markets and reduced State involvement in the national economy.[182] Therefore, the Nigeria government had to accept the neo-liberal loan conditionalities that were being proffered by the International Monetary Fund (IMF) and the World Bank.[183] The alternative was for Nigeria to try to stymie the deepening crisis that had taken over the Nigerian economy. This latter option was the choice of the Shagari led civilian government of 1979 to 1983 (the Shagari government). His government did not accept IMF conditionalities such as to devalue the naira, remove fuel subsidies and encourage trade.[184] It is observed that the reason why the Shagari government did not concede to the demands of the IMF was because Nigeria was entering into an election season and the feeling was that to concede to the demands of the IMF before the elections would work against him.[185] So, rather than concede to the IMF demands, before and after its successful re-election, the Shagari government chose to institute stabilization and austerity measures that were not successful in stopping the economic crisis.[186] The Shagari government was subsequently deposed by a Buhari led military government that was also not willing to accept the IMF loan conditionalities.[187] The Buhari government, instead, chose to adopt a contrived stabilization program that is observed to have involved the reining in of public expenditures, reducing the government payroll, and extending administrative controls on trade and foreign exchange.[188] Furthermore, the Buhari government is observed to have focused on dealing with cases of corruption and misappropriation of public funds and properties.[189] This anti-corruption agenda of the Buhari

[182] It is observed that the global push for free markets and reduced state involvement in the economy was led by the United States and the United Kingdom. See, Fantu Cheru, 'Developing Countries and the Right to Development: A Retrospective and Prospective African View' (2016) 37(7) Third World Quarterly 1268 <https://www.tandfonline.com/doi/abs/10.1080/01436597.2016.1154439> accessed 28 May 2021.
[183] It is observed that donor agencies such as the World Bank and the IMF were propagating neoliberal policies at the time. See, Peter Oluchukwu Mbah, 'The Neoliberal State and Administrative Reforms in Nigeria' (2016) 7(3) Afro Asian Journal of Social Sciences 10 <http://mail.onlineresearchjournals.com/aajoss/art/210.pdf> accessed 28 May 2021.; See also, ibid 1268, 1272.; Also, it is observed on the Central Bank of Nigeria website that the Structural Adjustment Programme (SAP) adopted by Nigeria was suggested by the IMF. See, 'Monetary Policy' (*The Central Bank of Nigeria*) <https://www.cbn.gov.ng/MonetaryPolicy/IMF.asp> accessed 1 September 2020; see also, Gary Moser, Scott Rogers, and Reinold Van Til, *Nigeria Experience with Structural Adjustment* (International Monetary Fund 1997) <https://www.elibrary.imf.org/doc/IMF084/04946-9781557756305/04946-9781557756305/Other_formats/Source_PDF/04946-9781452737904.pdf> accessed 1 September 2020.
[184] James Raymond Vreeland, *The IMF and Economic Development* (Cambridge University Press 2003).
[185] ibid 37.
[186] Mbah (n 183) 8.
[187] It is observed that it was a lingering impasse in discussions with the IMF that prevented the essential rescheduling of the outstanding debt service that had continued to mount. See, Peter Lewis, 'From Prebendalism to Predation: The Political Economy of Decline in Nigeria' (1996) 34(1) The Journal of Modern African Studies 79, 82 <http://journals.cambridge.org/abstract_S0022278X0005521X> accessed 14 May 2021.
[188] ibid.; See also, Eucharia Nwabugo Nwagbara, 'The Story of Structural Adjustment Programme in Nigeria from the Perspective of the Organized Labour' (2011) 1(7) Australian Journal of Business and Management Research 30, 38 <http://www.ajbmr.com/articlepdf/ajbmr_17_07i1n7a3.pdf> accessed 28 May 2021.
[189] Nwagbara (n 188) 30, 38.

government was, according to Falola and Heaton, expected to facilitate its economic stabilization program.[190] It is also observed that the anticorruption policy of the Buhari government was expected to impact the economy by changing the orientation of the public and private sector.[191] The objective of the Buhari government was to make its institutions and the Nigerian businesses to develop a habit of ethical and legitimate business practices so that foreign investors would be more willing to see Nigeria as a safe and potentially lucrative place to do business.[192] Therefore, the motives for the Buhari government's anti-corruption and stabilization program are largely considered to have been pure.[193] However, it is observed that the Buhari government's approach to implementing its development plan was, at the time, seen as the most authoritarian approach to governance in the country.[194] Therefore, although it is observed that there were improvements in the Nigerian budgetary position and balance of payment, the Buhari government was deposed by the Babangida military government in 1985.[195] This change of government would eventually lead to the introduction of economic recovery policies that are known as the Structural Adjustment Program (SAP). These Babangida government SAP policies are observed to have been in line with the aid conditionalities imposed by the World Bank and approved by the IMF.[196] The Babangida government was observed to have gotten access to foreign assistance by agreeing to conditionalities that were based on negotiations with the IMF and the World Bank.[197] Furthermore, it is observed that the World Bank did most of the monitoring of the SAP's implementation in Nigeria.[198] Lewis has observed that the Babangida government was able to access foreign aid (through loans) from commercial and bilateral creditors after implementing the SAP.[199] This access to foreign aid would however be taken away because of the Babangida government's decision to adopt policies that were intended to palliate public

[190] Part of the stabilization program involved austerity measures to curb public spending by 50 percent in his first year and to control inflation (of particularly food prices). See, Toyin Falola and Matthew M. Heaton, *A History of Nigeria* (Cambridge University Press 2008) 212-213.
[191] ibid 212.
[192] ibid.
[193] Matthew Blood, 'Nigeria's Critical Juncture: Boko Haram, Buhari, and the Future of the Fourth Republic' (*ETH Zürich*, 3 June 2015) <http://www.css.ethz.ch/en/services/digital-library/articles/article.html/191004#_edn24> accessed 15 February 2019.; citing Toyin Falola and Ann Genova, *Historical dictionary of Nigeria* (Scarecrow Press 2009) and ibid.
[194] Nwagbara (n 188) 30, 38.
[195] Lewis (n 187); and Waheed Oshikoya, 'Balance-of-Payments Experience of Nigeria: 1960-1986' (1990) 25(1) The Journal of Developing Areas 69, 77 <https://www.jstor.org/stable/4191935> accessed 23 May 2019.
[196] Louis N. Chete and others, 'Industrial Development and Growth in Nigeria: Lessons and Challenges' (2014) WIDER Working Paper, 17 <https://www.brookings.edu/wp-content/uploads/2016/07/l2c_wp8_chete-et-al-1.pdf> accessed 20 May 2021.; Lewis (n 187) 83-86.
[197] Paul Mosley, 'Policy-Making Without Facts: A Note on the Assessment of Structural Adjustment Policies in Nigeria, 1985—1990' (1992) 91(363) African Affairs 230.; and Lewis (n 187) 79, 83-86.
[198] Falola and Heaton (n 190) 217.
[199] Lewis (n 187) 79, 84.

discontent with the SAP program.[200] Faced with anti-SAP protests, which sometimes turned violent, the Babangida government implemented a budget that contained compensatory measures such as increased wages and public spending, caps on interest rates, and a commitment to sustain the petroleum subsidy.[201] These compensatory measures are observed to have made multilateral financial institutions, such as the IMF, to withhold their endorsement of Nigeria's economic performance.[202] This meant that Nigeria did not get the necessary endorsement needed to expedite debt negotiations or get access to lending from the World Bank and bilateral donors. It also meant that the IMF was not willing to approve of Nigeria's eligibility for a standby loan grant, the same way it did when the Babangida government introduced a formal SAP in the 1986 budget.[203] In this point of Nigeria's history, the challenges of development assistance that arise because of lack of ownership of the development process were obvious to see. This is because the Babangida regime got the endorsement of the IMF after going forward with the privatization and financial liberalization policy of the SAP.[204] Subsequently, the opportunity for rent seeking was observed to have been evident during this liberalization and privatization period of the Babangida government.[205] According to Lewis, the rent seeking elites of the nationalization era (post SAP era) were recompensed with rent seeking opportunities in the financial sector of the newly privatized Nigerian economy.[206] Therefore, according to Lewis, although structural adjustment required a contraction of traditional outlets for State patronage, such as a sharp reduction in government contracts and the withdrawal of rents from import licensing, the impact of SAP was different in Nigeria.[207] This is because the licensing and regulatory procedures that were put in place during the pendency of the Babangida government, are observed to have been highly politicized for ulterior reasons.[208] Under this highly politicized regulatory atmosphere, the Babangida government is said to have given recompense to its cronies and allies that were deprived of the rent-seeking opportunities in the trading sector

[200] ibid 79, 84-85.
[201] David Bevan, Paul Collier and Jan Willem Gunning, *Nigerian Economic Policy and Performance: 1981-92* (Centre for the Study of African Economies, 1992) 33.
[202] Lewis (n 187) 79, 84-85.
[203] ibid 79, 83 and 85.
[204]This renewed endorsement of the IMF is observed to have helped the Babangida government access supplementary finance from other donors, as well as further reschedule its external debt, which now exceeded $30,000 million. See, ibid 79, 85-86.
[205] ibid 79, 89-91.
[206] ibid 79, 90.
[207] ibid 79, 89.
[208] ibid 79, 89-90.

because of the privatization policy.[209] This shows that the Babangida government was doing enough to make his regime look like it was implementing the IMF and World Bank's favored policies. However, in reality, the IMF and World Bank favored policies were not being implemented in an altruistic manner.[210] They were, rather, implemented in a way that only favored the interest of the allies and cronies of the regime.[211] One explanation for this is that the Babangida government was managing the political cost of those IMF and World Bank favored policies of the SAP.[212] The Babangida government is observed to have been contending with a populace that only saw the SAP as an infringement on the independence of the Nigerian State.[213] Therefore, there was a ownership of the development process problem that according to Osaghae, was a part of the concerns that had led to the discontentment over the SAP policies.[214] Thus, the Babangida government had the challenge of balancing the demands of a population that had concerns over the ownership of the development process with the demands of international donors who had leverage to control the policy-making in Nigeria.[215] The use of compensations, rent for elites in the society and expansion of the parallel economy are some of the methods, according to Lewis, that were used to assuage the domestic discontentment over the SAP policies.[216] Herbst and Soludo have opined that the SAP policies were a failure because of the inability for development cooperation to result in the development of new ideas on how to operate effectively within the Nigerian political system.[217] Accordingly, the Babangida government is said to not have fully implemented the SAP because of its lack of commitment and the fact that an execution of the program's policies was difficult to achieve within the political-economic context of the Nigerian society at the time.[218] The Babangida government was also described as a regime that reverted back

[209] Segun Osoba, 'Corruption in Nigeria: Historical Perspectives' (1996) 23(69) Review of African Political Economy 371, 383 <http://www.tandfonline.com/doi/abs/10.1080/03056249608704203> accessed 15 February 2019.; ibid.
[210] Brian Ikejiaku, 'Political Corruption, Critical Governance Problem Facing the Nigerian State: Comparative Assessment of Various Regimes' (2013) 16(2) The Journal of African Policy Studies 19 <https://www.academia.edu/1555571/Political_Corruption_Critical_Governance_Problem_Facing_the_Nigerian_State_comparative_assessment_of_various_regimes> accessed 28 May 2020.
[211] ibid. It is observed that even when palliative and more popular programs were implemented, the impact on the poor was dubious. See, Jeffrey Herbst and Charles C. Soludo, 'Nigeria' in Shantayanan Devarajan, David R. Dollar and Torgny Holmgren (eds), *Aid and Reform in Africa: Lessons from Ten Case Studies* (IBRD/World Bank 2001) 670.
[212] Lewis (n 187) 79, 87.
[213] Eghosa E. Osaghae, 'The state of Africa's second liberation' (2005) 7(1) Interventions 9 <http://www.tandfonline.com/doi/abs/10.1080/1369801052000330324> accessed 18 February 2019.
[214] Osaghae observes that some commentators saw the SAP as a recolonization strategy because ownership of the development process was called into question. See, ibid.
[215] It is observed that IFIs have significant influence in relation to Nigeria because of their unique ability to provide the certificate of good health that is a necessary element of private debt rescheduling. See, Herbst and Soludo (n 211) 647.
[216] Lewis (n 187) 79, 87.
[217] Herbst and Soludo (n 211) 675.
[218] ibid 663 and 671.

to high public spending in the periods when high oil prices had helped to ease its revenue problems.[219] Consequently, there were frequent reversals of the SAP policies by the Babangida led military government.[220] It was the frequent reversals and uneven implementation of SAP that led Herbst and Soludo to question the regime's commitment to the SAP policies.[221] Accordingly, the uncertainty of whether the Babangida government was implementing SAP because it wanted to reform the economy, or whether it was only trying to solve its lack of resource problem, reinforced the importance of ownership of development in Nigeria.[222] This is because the importance of the recipient country government (RCG) as the leader of the development process has been rarely challenged or considered to be a contentious issue.[223] The contention about ownership has usually arisen when stakeholders in an aid system, or interaction, are concerned about whether the input of actors, such as the civil society and other domestic institutions that are not controlled by the RCG, is recognized.[224] Therefore, at a minimum, the actions of the Babangida government was a key variable that gave an insight on the extent to which there was an ownership of the SAP policies by the Nigerian people. Accordingly, in addition to the preceding analysis, the Babangida government's dire need to gain access to debt renegotiation mechanisms, is a reason to conclude that the Nigerian ownership of the SAP policies was questionable.[225] This is because, according to Herbst and Soludo, it was the pressure to agree on Nigeria's debt renegotiation with donors that made the Babangida government to implement the SAP policies.[226] Moreover, in the period of high oil prices and increased government revenue, it is said that the reforms of the SAP collapsed because of adverse actions of the Babangida government, such as its heightened and wasteful expenditure.[227] In essence, the Babangida government was inadvertently reinforcing the notion that it had only implemented the SAP policies because of its need to access foreign assistance. Furthermore, Herbst and Soludo have observed that during the implementation period for the SAP, Nigerians were cynical

[219] ibid 669 and 671.
[220] ibid.
[221] Ibid 669 - 675.; Osaghae (n 213) 1, 9.
[222] Herbst and Soludo have inferred this idea. See, Herbst and Soludo (n 211) 667 and 669.
[223] See, Brian Tomlinson, 'Strengthening Ownership and Accountability: A Synthesis of Key Findings and Messages produced for the Busan High Level Forum on Aid Effectiveness (HLF-4)' (Cluster A of the Working Party on Aid Effectiveness) 7 <https://www.oecd.org/dac/effectiveness/49655107.pdf> accessed 10 February 2020; and Tomlinson (n 134) 116.
[224] Brian Tomlinson, *Strengthening Broad-Based Inclusive Ownership and Accountability: A Synthesis of Key Findings and Cluster A Messages for the Working Party on Aid Effectiveness and High-Level Forum* 4 (OECD) 7 <https://www.oecd.org/dac/effectiveness/49655107.pdf> accessed 13 February 2019.
[225] For a description of the events that shows how the Babangida government was under pressure to adopt policies that were favored by international institutions, see, Lewis (n 187) 79, 84-85.
[226] Herbst and Soludo (n 211) 671.
[227] Herbst and Soludo (n 211) 671-673.

about the Babangida government's claims to having full ownership of the SAP reforms.[228] Osaghae has said that some Nigerians opposed the SAP as a part of their struggle for real independence from foreign influence.[229]

In the discourse on development in Nigeria, it is evident that foreign influence has usually been associated with the failure of development programs. For reference, the introduction of development strategies such as the trickle-down strategy is observed to have failed in part because of the colonial experience and the adoption of the development paradigm of modernization theory.[230] It is observed that through diffusion of western values in Nigeria, the international financial institutions (IFIs), donor agencies, western scholars and governments had propagated the development paradigm of modernization theory.[231] This, according to Dibua, created a Nigeria that was distorted and afflicted with neo-colonial tendencies, such as the incessant mobilization of foreign production personnel, rather than the use of indigenous production personnel.[232] This point by Dibua, has been used as a counter narrative to the assertion that neo-patrimonialism is the only reason for the failure of development policies in Nigeria.[233] The challenge, however, is that analysts have continued to blame the failure of Nigerian development policies, such as the recent Subsidy Reinvestment and Empowerment Program (SURE-P), on it being a donor inspired program.[234] Like the SAP, SURE-P is observed to have been undermined by public sector corruption in the Nigerian polity.[235] So, for some analysts, it has been illogical for corruption to be overlooked and emphasis placed on other hindrances to development objectives because it is the usual factor that is deemed to be the cause of failures of development assistance in Nigeria and most parts of African.[236] However, this section has shown that to overlook the

[228] Herbst and Soludo (n 211) 665.
[229] Osaghae (n 213).
[230] Dibua Ji, Development and Diffusionism: Looking Beyond Neopatrimonialism in Nigeria, 1962–1985 (Palgrave Macmillan 2013) 3, 105-107.
[231] ibid.
[232] ibid 107.
[233] ibid.
[234] For examples of this, see Bukar Usman, 'Subsidy Removal Crisis in Perspective' in Henrietta O. Otokunefor, Helen Emasealu (comps), *Nigerian Petroleum Industry, Policies and Conflict Relations* (Malthouse Press 2014) 247-248.
[235]Adeoye O. Akinola, Globalization, Democracy and Oil Sector Reform in Nigeria (African Histories and Modernities, Springer Verlag 2018) 167-168.; Danjos D. Dalhatu and Ali S. Yusufu Bagaji, 'Implications of Unemployment on Nigeria's Sustainable Development' (2014) 2(2) International Journal of Public Administration and Management Research 56 and 61-62 <http://rcmss.com/2014/IJPAMR-VOl2-No2/Implications%20of%20Unemployment%20on%20Nigeria%D4%C7%D6s%20Sustainable%20Development.pdf> accessed 17 March 2019.
[236] Note that corruption and other acts, which are classified as a part of neopatrimonialism, are seen as the factors that are usually blamed for the failures of development assistance. See, Anne Pitcher, Mary H. Moran and Michael Johnston, 'Rethinking Patrimonialism and Neopatrimonialism in Africa' (2009) 52(1) African Studies Review 130 <https://www.jstor.org/stable/27667425> accessed 14 May 2019; and see also, Jeremiah I.

role of corruption in the Nigeria development discourse is not advisable because it is tantamount to deemphasizing an important determinant of the success of cooperation for development in Nigeria.[237] Furthermore, this section has shown that the Nigerian society has not reacted favorably to the assumed or real influence of international institutions. The Nigerian governments have not usually demonstrated full ownership of, and some Nigerians opposed, the policies that were associated with the assumed or real influence of international institutions. The section has also shown that in the history of development cooperation in Nigeria, the need to access international finance is a factor that has allowed international institutions, and other donors, to influence the Nigeria financial policies. Accordingly, this section provided a historical analysis of ownership of the development process and development cooperation in Nigeria. The next section was designed to provide clarity about the FATF because it is an international institution that seeks to influence Nigeria to implement AML polices, and it is observed to have the potential to limit a non-compliant country's access to the global financial system.[238] Among other things, the next section provided further clarity on why ownership of development should be considered in the evaluation of the FATF's effectiveness.

2.4 Overview on the FATF Framework

In evaluating the FATF accountability mechanisms, the goal was to look at its impact on the Nigerian anti-IFF regime. The reason for conducting an evaluation of FATF's impact was because it has been an international mechanism that has promoted the goal of implementing AML policies, which are useful for combating IFF and promoting transparency in Nigeria and other parts of the world.[239] Therefore, as poverty eradication is said to require the use of available resources and the funds that have been lost to IFFs and crimes such as corruption,

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Dibua, *Development and Diffusionism: Looking Beyond Neopatrimonialism in Nigeria, 1962–1985* (Palgrave Macmillan 2013) 170.; Pitcher Moran and Johnston have explained that neopatrimonialism is patrimonialism modified by many social scientists to be what they describe as a modern variant of Weber's ideal type—one in which a veneer of rational-legal authority has been imposed by colonialism, yet a personalistic or "patrimonial" logic characterized by patronage, clientelism, and corruption is said to prevail—just as it is assumed to have done in the past. For further explanation of neopatrimonialism see, Gero Erdmann and Ulf Engel, 'Neopatrimonialism Revisited - Beyond a Catch-All Concept' (2006) German Institute of Global and Area Studies 16/2006, 13, 27, 28 and 31 <https://core.ac.uk/download/pdf/71729549.pdf> accessed 6 July 2022.

[237] Neopatrimonialism, here, is used as a word that encompasses rent-seeking, patronage, clientelism, and corruption. See, Pitcher, Moran and Johnston (n 236) 130, 149.; Erdmann and Engel (n 236).

[238] For this observation see, Nathanael Tilahun, 'The Re-Organization of the FATF as an International Legal Person and the Promises and Limits to Accountability' in Alessandra Arcuri and Florin Coman-Kund (eds), *Technocracy and the Law: Accountability, Governance and Expertise* (Routledge 2021) 136.

[239] The FATF president has spoken on the need for collective action against IFFs, to help in preventing and combating financial crime, curb corruption and tax evasion and support sustainable economic growth. See, Marcus Pleyer, 'Public Statement on Pandora Papers' (*FATF*, 21 October 2021) <https://www.fatf-gafi.org/publications/fatfgeneral/documents/pandora-papers.html> accessed 2 January 2022.

the relationship of the FATF and Nigeria's AML was deemed to be a cooperation against the un-freedoms of Nigerians.[240] In other words, the interaction between the FATF and anti-IFF related institutions in Nigeria was considered to be a development cooperation relationship because of its significance to the fight against any un-freedoms that are related to poverty in Nigeria. Consequently, the enquiry in the preceding section was useful for gaining clarity about the nature and impact of ownership of development on the ability for Nigeria to implement policies that are recommended by international institutions. Therefore, the analysis in the preceding section was conducted because of a need to refute or justify the idea of adopting ownership of development as a factor that is considered in the evaluation of the FATF's interaction with the Nigerian government's AML/IFF regime. The next section was designed to provide information on the nature and function on the FATF framework.

2.4.1 FATF: History and Evolution of the FATF

The FATF is a brand for categorizing the documents and information that are produced by the FATF and the FATF-Style Regional Bodies (FSRBs).[241] The Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) is the FSRB that Nigeria is a member of. The FATF Recommendations 2012 has been a leading international instrument on AML. The soft normative structure of FATF standards is one of the variables that has helped to increase compliance and thus, establish the FATF as a formidable component of the international Anti-Money Laundry/Combating the Financing of Terrorism (AML/CFT) regime.[242] The normative regime for AML that is propagated by the FATF has been seen at key stages of its history to have been motivated by the expediencies around predicate offences of ML. At the onset, the FATF was an international instrument used to combat the financial power of drug traffickers and other organized crime groups whose activities are

[240] This is because in Sen's theory of human capability, the existence of poverty has been described as a deprivation of the basic capabilities and a source of unfreedoms that the development process is meant to eradicate. He has also noted that poverty as a deprivation of elementary capabilities is reflected in premature mortality, significant undernourishment (especially of children), persistent morbidity, widespread illiteracy, and other failures. See, Sen (n 16) 3 and 20.; For analysis of the relationship between IFF and poverty eradication see, Junior Davis and others, Economic Development in Africa Report 2020: Tackling Illicit Financial Flows for Sustainable Development in Africa (UNCTAD 2020) 138-139 <https://unctad.org/system/files/official-document/aldcafrica2020_en.pdf> accessed 29 May 2021.

[241] The FATF is a brand that refers to publications by FATF-Style Regional Bodies (FSRBs) such as GIABA and the FATF. See FATF, 'High-Level Principles and Objectives for FATF and FATF-Style Regional Bodies' (FATF/OECD 2019) 2 <https://www.fatf-gafi.org/publications/fatfgeneral/documents/high-levelprinciplesfortherelationshipbetweenthefatfandthefatf-styleregionalbodies.html> accessed 28 May 2021.

[242] Navin Beekarry, 'The International Anti-Money Laundering and Combating the Financing of Terrorism Regulatory Strategy: A Critical Analysis of Compliance Determinants in International Law' (2011) 31(1) Northwestern Journal of International Law & Business 193 <https://www.law.gwu.edu/sites/g/files/zaxdzs2351/f/downloads/BeekarryInternationalLaw.pdf> accessed 29 May 2021.

facilitated by ML.[243] There was a serious public concern about the use of illegal drugs in the United States of America (US) at the time when the FATF was established in 1989.[244] The original FATF Forty Recommendations were drawn up in 1990 to reflect the FATF's mandate to combat the misuse of financial systems by persons laundering drug money. In 1996, the Recommendations were revised for the first time to reflect evolving money laundering typologies.[245] In October 2001, CFT was integrated into the FATF mandate through nine Special Recommendations on terrorist financing[246] in response to the September 11 terrorist attacks.[247] Further revisions have since been made to the FATF Recommendations in 2003 and 2012.[248] The FATF history is one of constant evolution that is usually triggered by exigencies that are propagated as global concerns. This culture of incorporating global challenges into the FATF mandate should be encouraged and utilized to resolve other global challenges that can be resolved through its standards. This work looks at the propriety of incorporating RTD into the FATF framework. The next subsection will briefly analyze the FATF framework.

2.4.2 The Institutional Setup of the FATF

The FATF, as a body that is a distinct part of the FATF brand, is organized as a task force composed of member governments who agree to fund the FATF on a temporary basis with specific goals and projects.[249] The FATF Secretariat is housed administratively at the OECD as an autonomous entity from the OECD. There are currently 37 members of the FATF:[250] 35 jurisdictions[251] and 2 regional organizations (the Gulf Cooperation Council and the European Commission). These 37 Members are at the core of global efforts to combat money laundering and terrorist financing. There are also 31 international and regional organizations

[243] Peter Reuter and Edwin M. Truman, *Chasing Dirty Money: The Fight Against Money Laundering* (Institute for International Economics 2004) 81.
[244] ibid.
[245] FATF, 'FATF 40 Recommendations' (FATF/OECD 2003) 2 <https://www.fatf-gafi.org/media/fatf/documents/FATF%20Standards%20-%2040%20Recommendations%20rc.pdf> accessed 29 May 2021.
[246] The special recommendations were initially eight.
[247] Neil Boister, *An Introduction to Transnational Criminal Law* (Oxford University Press 2012) 194.
[248] In 2012, the risk-based approach and the financing of proliferation of weapons of mass destruction were some of the inclusions made to the FATF recommendations.
[249] FATF (n 241).
[250] 'FATF Members and Observers: The 39 Members of the FATF' (FATF) <http://www.fatf-gafi.org/about/membersandobservers/> accessed 16 January 2022.
[251] Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Denmark, Finland, France, Germany, Greece, Hong Kong- China, Iceland, India, Ireland, Italy, Japan, Republic of Korea, Luxembourg, Malaysia, Mexico, Netherlands, Kingdom of New Zealand, Norway, Portugal, Russian Federation, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States.

which are Associate Members[252] or Observers[253] of the FATF and participate in its work.[254] Although the membership of the FATF is largely populated by OECD members, there is an overlap of countries to include countries that are members of the FATF and not members of the OECD, and vice versa.[255] The OECD members however makeup a large portion of the FATF's membership. Out of 37 members of the FATF, 26 are OECD members.[256] Going by the UN classification of countries,[257] the FATF membership comprises 23 developed countries,[258] 11 developing countries[259] and 1 economy in transition.[260] Only 3 of the 11 developing countries are also OECD countries. This indicates that a substantial amount of recognized donor organizations and countries are already part of the FATF framework, as many of its members are developed and OECD countries. Another aspect of the FATF is its accountability framework which consists of the Grey List and Black List which are used to categorize countries. Grey list which is also known as Jurisdictions Under Increased Monitoring includes countries which have 'structural deficiencies' and loopholes in their AML laws and combating the financing of terrorism (CFT) regimes.[261] When countries are put on the Grey List, like was applicable to Nigeria in 2007, they commit with the FATF to address these insufficiencies in their laws, policies and systems through an action plan agreed with the FATF within a prescribed timeframe.[262] The names of countries in the grey list are only removed if the FATF is satisfied that they are being compliant with the action plan agreed. On the other hand, the Black List (which is now officially known as High-Risk Jurisdictions subject to a Call for Action) includes those countries which fail to apply measures to overcome the shortcomings and are considered as non-compliant high risk

[252] For list of FATF Associate Members, see, 'FATF Members and Observers: The 39 Members of the FATF' (FATF) <http://www.fatf-gafi.org/about/membersandobservers/> accessed 16 January 2022.
[253] Indonesia is the current FATF observer countries. For the list of FATF Observer organizations see, ibid.
[254] ibid.
[255] 'General Questions' (*FATF*) <http://www.fatf-gafi.org/faq/generalquestions/> accessed 16 January 2022.
[256] The following OECD countries are FATF members: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Netherlands, Korea, Luxembourg, Mexico, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States. The remaining countries are members of other FATF-style bodies: GAFISUD (Chile); MONEYVAL (Czech Republic, Estonia, Hungary, Israel (observer), Poland, Slovak Republic, Slovenia).
[257] For UN classification of countries, see Pingfan Hong and others, 'World Economic Situation and Prospects 2014' (United Nations 2014) 143-150 <http://www.un.org/en/development/desa/policy/wesp/wesp_current/2014wesp_country_classification.pdf> accessed 16 January 2022.
[258] Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Netherlands, Luxembourg, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom and United States.
[259] Argentina, Brazil, China, Hong Kong China, India, Korea, Malaysia, Mexico, Singapore, South Africa and Turkey.
[260] This country is the Russian Federation.
[261] Hina Kazi, 'FATF Grey List and its Impact on Business and Economy' (2018) The Pakistan Accountant 7 <https://www.icap.org.pk/files/per/publications/PA/2018/jul-sep/jul-sep-2018.pdf> accessed 1 September 2020.
[262] ibid.

countries.[263] Such countries are declared by the FATF to be non-cooperative in the global fight against money laundering and terrorist financing and are called Non-Cooperative Countries or Territories (NCCTs).[264] The FATF also publishes a Mutual Evaluation Report (MER) on countries effectiveness in implementation of AML/CFT standards on the basis of specific criteria.[265] Through its institutional framework, the FATF is able to monitor countries and exert influence that has some bearing on countries' reputational risk.[266] This work looks at the propriety of achieving accountability for RTD through the FATF framework. First, the next section will look at the relationship between the FATF and the development discourse.

2.4.3 The Scope of International Acceptance for the FATF Framework

The FATF has observed that its Recommendations improve transparency and enable countries to successfully act against illicit use of their financial system.[267] Through international development programs, some attempts have been made to promote the global implementation of the FATF Recommendations (2012). The decision to include the goal of implementing the FATF Recommendations (2012) as a part of the objectives of development programs has helped to promote the FATF's relevance to the global development agenda. For example, because of the global community's pledge in the AAAA (2015), the implementation of the FATF Recommendations (2012) has become a part of the international objectives for development financing. Furthermore, in addition to the AAAA (2015), there are IMF reports that are illustrative of how the goal of implementing the FATF Recommendations (2012) has been promoted in development aid programs. For example, in the IMF and World Bank's Financial Sector Reform and Strengthening Initiative (FIRST) Annual Report of 2014, it was observed that one of its global objectives was to provide

[263] ibid.
[264] ibid.
[265] FATF, 'Mutual Evaluations' (*FATF-GAFI*) <https://www.fatf-gafi.org/publications/mutualevaluations/more/more-about-mutual-evaluations.html?hf=10&b=0&s=desc(fatf_releasedate)> accessed 20 February 2021.
[266] Mark T. Nance, 'Re-Thinking FATF: An Experimentalist Interpretation of the Financial Action Task Force' (2018) 69 Crime, Law and Social Change 131-152 <https://link.springer.com/article/10.1007/s10611-017-9748-5> accessed 27 May 2019., See also, Amanda Banks, 'Cayman Receives Favorable Rating from Moody's' (*Wolters Kluwer,* 12 September 2002) <https://www.tax-news.com/news/Cayman_Receives_Favorable_Rating_From_Moodys___9357.html> accessed 1 September 2020.
[267] FATF, 'Topic: FATF Recommendations' (*FATF-GAFI*) <https://www.fatf-gafi.org/publications/fatfrecommendations/?hf=10&b=0&s=desc(fatf_releasedate)> accessed 29 April 2022.

guidelines for the implementation of the FATF Recommendations of 2012.[268] This global objective of FIRST was significant because the program's principal function was to support economic growth and poverty reduction through technical assistance for countries such as Nigeria.[269] Therefore, by stating that one of its global objectives was to provide guideline for the implementation of the FATF Recommendations of 2012, the FIRST was making the goal of compliance with the FATF's AML agenda a development assistance issue. Additionally, in an IMF report on Tunisia (Tunisian IMF report), which was produced as part of the process for considering the country's application for a loan grant, it was suggested that the country should improve on its compliance with the FATF Recommendations (2012).[270] Therefore, through the contents of some of the reports on IMF sponsored aid programs and the AAAA (2015), the goal of implementing the FATF Recommendations (2012) has been promoted as an voluntary international development objective.

The voluntary nature of the commitments to implement the FATF Recommendations (2012) in the AAAA (2015) is a common practice in the field of international development cooperation. This is because, as Dann and Sattelberger have observed, in most international development relationships, the commitments of parties are voluntary, and therefore not supported by any legal force.[271] Moreover, it is observed that in the situations where legal obligations exist (for example from loan agreements), hard enforcement mechanisms for sanctioning misbehavior by donors in a development co-operation are often lacking.[272] Consequently, the accountability mechanisms for development partnerships are often built on

[268] IMF, 'Thematic Funds for Capacity Development (CD)' (*International Monetary Fund*, 3 March 2021) <https://www.imf.org/en/About/Factsheets/Sheets/2017/04/19/Funds-for-Capacity-Development> accessed 29 May 2021; and see also, Financial Sector Reform and Strengthening Initiative, 'About Us' (*FIRST Initiative*) <https://www.firstinitiative.org/about-us#> accessed 29 May 2021; and see Financial Sector Reform and Strengthening Initiative, 'FIRST 2014 Annual Report: Strengthening Financial Sectors' (Financial Sector Reform and Strengthening Initiative) 65 <https://www.firstinitiative.org/node/50> accessed 29 May 2021.
[269] See, Financial Sector Reform and Strengthening Initiative, 'About Us' (n 268); and See also Financial Sector Reform and Strengthening Initiative, 'FIRST 2014 Annual Report:' (n 268).
[270] To be specific, the country was asked to work towards having a better performance in the FATF Mutual Evaluation (ME) process. See, IMF, 'Tunisia: 2017 Article IV Consultation, Second Review Under the Extended Fund Facility, and Request for Waivers of Non-observance of Performance Criteria, and Rephasing of Access' (2018) IMF Country Report No. 18/120, 32 and 27 <https://www.compactwithafrica.org/content/dam/Compact%20with%20Africa/Countries/Tunisia/tunisia_imf_staff_report_2017.pdf> accessed 16 April 2021.
[271] Philipp Dann and Julia Sattelberger, 'The concept of accountability in international development co-operation' in Erik Solheim and others (eds), *Development Co-operation Report 2015: Making Partnerships Effective Coalitions for Action* (OECD 2015) 69 <https://www.oecd-ilibrary.org/docserver/dcr-2015-en.pdf?expires=1617889885&id=id&accname=guest&checksum=394FD2898D0F6C022A4B33AB8ED9C611> accessed 16 March 2021.
[272] The providers of development co-operation are usually multilateral or bilateral development agencies or financial institutions. See, ibid.

soft rules and standards.[273] To a large extent, accountability for development partnerships has been achieved through soft enforcement in the form of monitoring and evaluation.[274] Some of the mechanisms of accountability for development partnerships have been setup as programs of intergovernmental organizations such as the UN.[275] It is observed that one of the reasons that these intergovernmental organizations have had a right to setup programs, including their accountability programs, is because they have achieved a high level of social acceptance.[276] In other words, these intergovernmental organizations have gotten the right to coordinate from the belief of actors or members who have agreed that their rule or the institutions themselves ought to be obeyed.[277] This belief that a rule or institution ought to be obeyed is, according to Hurd, the source of its legitimacy.[278] This definition of legitimacy by Hurd is not universally applicable[279] Yet, it shows that a high level of acceptance is important for international organizations. Therefore, in addition to the international community's pledge to implement the FATF Recommendation of 2012, a global acceptance for the FATF's AML agenda has been achieved through its activities and procedures. This is because the FATF's legitimacy has been based on the increasing number of countries and stakeholders who have agreed to be part of its AML framework.[280] In addition to this, it is said that the FATF often

[273] The providers of development co-operation are usually multilateral or bilateral development agencies or financial institutions. See, ibid.
[274] Rahul Malhotra and others, 'Accountability mechanisms in development co-operation' in Erik Solheim and others (eds), *Development Co-operation Report 2015: Making Partnerships Effective Coalitions for Action* (OECD 2015) 78 <https://www.oecd-ilibrary.org/docserver/dcr-2015-en.pdf?expires=1617889885&id=id&accname=guest&checksum=394FD2898D0F6C022A4B33AB8ED9C611> accessed 16 March 2021.
[275] For illustration, the high-level political forum on sustainable development (HLPF) is the core United Nations platform for follow-up and review of the 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals. See, UN, 'High-Level Political Forum 2021 Under the Auspices of ECOSOC' (*Sustainable Development Goals Knowledge Platform*) <https://sustainabledevelopment.un.org/hlpf/2021> accessed 28 September 2021.
[276] Acceptability is closely related to the notion of social legitimacy. For analysis of social legitimacy. See, Chris Thomas, 'The concept of legitimacy and International Law' (2013) Law, Society and Economy Working Papers 12/2013, 14 - 16 <http://eprints.lse.ac.uk/51746/1/__libfile_repository_Content_Law,%20society%20and%20economics%20working%20papers_2013_WPS2013-12_Thomas.pdf> accessed 16 March 2021.
[277] ibid 14.
[278] Hurd has defined legitimacy as the belief of actors or members who have agreed that a rule or institution ought to be obeyed. See, Ian Hurd, *After Anarchy: Legitimacy and Power in the United Nations Security Council* (Princeton University Press 2007) 7.
[279] For instance, one author has observed that legitimacy of international organizations is based on whether they are inclusiveness, decisiveness, and have epistemic reliability. Inclusiveness means that all valid interests (interests that are based on the welfare of a substantial number of people as they perceive them, rather than on hatred or an urge for dominance) must be represented effectively. Decisiveness means that the multilateral organization could take effective action, even against the opposition of its strongest member State. While epistemic reliability implies that the decision-making process must be transparent in a way that makes it open to criticism from outsiders as well as insiders. See, Robert O. Keohane, 'The Contingent Legitimacy of Multilateralism' in Edward Newman, Ramesh Thakur, and John Tirman (eds), *Multilateralism under Challenge? Power, International Order, and Structural Change* (United Nations University Press 2006) 68 - 69.
[280] Georgios Pavlidis, 'Financial Action Task Force and the Fight Against Money Laundering and the Financing of Terrorism: Quo Vadimus?' (2020) Journal of Financial Crime 766 -767

incorporates feedback and opinions from private stakeholders, such as the participants of financial market. Therefore, States are not the sole institutional source of political authority and innovation in the FATF process.[281] For illustration, the process for developing the FATF Recommendations of 2012 is observed to have involved the use of expertise and experience from its member countries.[282] So, the FATF is observed to have operated as a multidisciplinary body that has brought together experts in the fields of finance and law.[283] The FATF has also successfully marketed its Recommendations of 2012 as an expert and impartial solution that is endorsed by a specialized body.[284] So, because of its structure and wide membership, it is said that the FATF has been positioned to establish a common ground and substantial international cooperation against ML.[285] Additionally, the FATF has also been identified as an institution that the Africa Development Bank (AfDB) and the World Bank have worked with in their efforts to promote their anti-IFF program.[286] There have also been experts and anti-IFF organizations such as Global Financial Integrity (GFI) that have identified the FATF as a valuable part of the global fight against IFFs.[287] In essence, the

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<https://www.emerald.com/insight/content/doi/10.1108/JFC-09-2019-0124/full/html> accessed 16 September 2021.

[281] It is observed that the FATF process is comprised of 'broader interaction of processes and practices of governance'. See, ibid 766; citing Yee-Kuang Heng and Ken Mcdonagh, 'The Other War on Terror Revealed: Global Governmentality and The Financial Action Task Force's Campaign Against Terrorist Financing' (2008) 34 (3) Review of International Studies 553-573.

[282] It is observed that widening the base of participation in FATF decision-making would enhance the legitimacy of the process, as it would allow for formerly technocratic and closed processes, such as FATF rulemaking, to benefit from more feedback, information and argument. Pavlidis therefore observes that the old 2012-2020 FATF mandate recognized the need for change in this regard and ever since, the FATF has made significant progress to achieve this objective. See, Pavlidis (n 280) 766.

[283] It is observed that widening the base of participation in FATF decision-making would enhance the legitimacy of the process, as it would allow for formerly technocratic and closed processes, such as FATF rulemaking, to benefit from more feedback, information and argument. Pavlidis therefore observes that the old 2012-2020 FATF mandate recognized the need for change in this regard and ever since, the FATF has made significant progress to achieve this objective. See, ibid.

[284] ibid.

[285], 'Norwegian Minister of Finance Opens the FATF Plenary Meeting' (*FATF-GAFI*) <http://www.fatf-gafi.org/countries/n-r/norway/documents/johnsen-speech-june-2013.html> accessed on 22 February 2018.

[286] Africa Development Bank, 'Strategic Framework and Action Plan on The Prevention of Illicit Financial Flows In Africa (2016 – 2020)' (Africa Development Bank 2016) viii, 10 and 12 <https://www.tralac.org/documents/resources/africa/1771-afdb-strategic-framework-and-action-plan-on-the-prevention-of-illicit-financial-flows-in-africa-2016-2020-draft/file.html> accessed on 22 February 2018; and see also, Cari Votava, 'Fighting "Dirty Money" And Illicit Financial Flows To Reduce Poverty' (*World bank*, 26 February 2014) <http://www.worldbank.org/en/results/2013/04/04/helping-countries-establish-transparent-financial-systems-and-robust-mechanisms-for-asset-recovery> accessed on 22 February 2018.

[287] Global Financial Integrity, 'Illicit Financial Flows To And From Developing Countries: 2005-2014' (Global Financial Integrity 2017) 21 <https://www.gfintegrity.org/wp-content/uploads/2017/05/GFI-IFF-Report-2017_final.pdf> accessed 29 May 2021.; See also, Kjetil Hansen, 'Illicit Financial Flows from Developing Countries: Measuring OECD Responses' (OECD 2014) 44 <https://www.oecd.org/corruption/Illicit_Financial_Flows_from_Developing_Countries.pdf> accessed on 21 February 2018; and Karoubi Eve De La Mothe, Espey Jessica and Durand-Delacre David, *Indicators and a Monitoring Framework for FfD: Proposals for Follow-up and Review of the Addis Ababa Action Agenda of the Third International Conference on Financing for Development* (Sustainable Development Solutions Network 2016) 6 <https://irp-cdn.multiscreensite.com/be6d1d56/files/uploaded/Final-FfD-Follow-up-and-review-paper.pdf>accessed 27 May 2019.

FATF's AML framework has been regarded as a valuable part of the global fight against IFFs. Therefore, although, the FATF was created to help countries to address the challenge of ML, it has also been viewed as a mechanism that has helped them to combating IFFs. This is because AML regimes have been seen as an effective tool for preventing illicit funds from being held, received, transferred and managed by major banks and financial centers.[288] However, AML laws have not been applicable to all IFFs because ML is observed to be a specific legal concept that applies to the proceeds of crimes which have been described as predicate offences in domestic laws.[289] In other words, domestic AML laws have only been relevant to cooperation against IFFs in situations where the criminal sources of funds that have moved across borders are identified as ML related offences in the laws of the destination country. So, the FATF has been justifiably viewed as an anti-IFF mechanism, notwithstanding the fact that its contribution to the global efforts against IFFs, has, to an extent, been dependent on whether countries had made all crimes, including corruption, a predicate offence of ML. Therefore, in summary, it is because of its structure and AML agenda that the FATF has been accepted and described as an institution whose function is valuable to the global efforts against IFFs. This chapter has provided information on how and why the FATFs AML Recommendations have been accepted as a valuable part of the global agenda for anti-IFF and development cooperation.

2.5 Conclusion

This chapter provides the contextual background of the Thesis by discoursing development cooperation in Nigeria and the controversy around the UN level attempt to promote international cooperation for the actualization of the RTD. The chapter provided information on the relationship between the discourse on RTD and the international community's anti-IFF commitment in the AAAA (2015). Furthermore, the chapter has shown the Nigerian history of not fully committing to implementing the policies that are recommended by international institutions and other foreign donors. It has presented information about the FATF framework by describing its evolution and setup. It ends with an overview on how and why the FATF's

[288] Hansen (n 287) 11.
[289] Quentin Reed and Alessandra Fontana, 'Corruption and illicit financial flows: The limits and possibilities of current approaches' (U4 Issue 2011) 7 <https://www.cmi.no/publications/file/3935-corruption-and-illicit-financial-flows.pdf> accessed 1 September 2020.

AML Recommendations are a valuable part of the global agenda for anti-IFF and development cooperation.

To conclude, the controversies around the attempts to promote international cooperation for the actualization of the RTD at the UN level and the Nigerian history of development cooperation provides some insight on why it is useful to conducting an evaluation of the FATF's impact on Nigeria. Firstly, development cooperation has been a fundamental part of the Nigerian development process and it has historically been strongly interconnected with international institutions that have provided knowledge and finances for development related initiatives in the country. Therefore, the idea of development cooperation in Nigeria provides the possibility to examine the influence that the FATF has had on the Nigerian government's ability to promote RTD. Secondly, there are actions by international institutions, and their affiliated mechanisms, that have made the FATF to become a part of their global development agenda by working with it or by promoting the FATF Recommendations (2012). Some of the RTD related actions at the UN have identified anti-corruption, anti-IFF and the FATF, as a part of the global development agenda. Therefore, the international actions that have made the FATF to be a part of the global development agenda, create a reason to investigate the propriety of promoting the FATF as part of the international efforts to promote RTD in Nigeria. Thirdly, the FATF monitoring processes have operated as mechanisms that can damage the reputation of AML deficient countries.

In summary, the chapter showed the Nigerian history of not fully committing to implementing the policies that are recommended by international institutions and other foreign donors.

Chapter Three: Literature and Conceptual Framework

3.1 Introduction

This chapter provides a contextual understanding of Guzman's ILT of compliance, accountability under the FATF, and an overview of the development theories that are associated with the RTD. At the start of the chapter, the idea of promoting the actualization of development as a human right, by using mechanisms that are not RTD specific treaty instruments is scrutinized by reviewing the literature on the vague and contentious nature of the RTD. Subsequently, the chapter proceeds to review accountability by identifying different perspectives and adopting a working definition from Bovens's analytical framework. The

chapter then reviews the conceptualization of Guzman's ILT of compliance. The chapter also reviews the literature to identify the significance of Guzman's ILT of compliance in the discourse on the FATF and State compliance behavior. Furthermore, the chapter reviews the conceptualization of two RTD related development theories, dependency theory and modernization theory. After the conceptualization of dependency theory and modernization theory, the chapter provides a review of the literature that links these theories to anti-IFF in Nigeria. In the chapter, the conceptualization of Sen's theory of human capabilities is also reviewed. Afterwards, the literature that links Sen's theory of human capabilities and anti-corruption in Nigeria is reviewed. Therefore, in the chapter, a review is conducted on concepts and theories that contribute to the understanding and analysis of the data gathered in the primary and secondary data collection.

This study looks at accountability under the FATF and its implication for RTD in Nigeria because one of the fundamental challenges with the idea of promoting international cooperation for RTD at the UN is that there is no generally acceptable way to evaluate it. Without a mechanism for verification, it is difficult to conclude that the duty to cooperate and take collective action to further the realization of the RTD, as provided for in Article 3(3) and 4(1) of the UNDRD, has led to universal development. For verifiable conclusions to be made on whether solidarity for the RTD has progressed from principle to practice is difficult when there is no mechanism to evaluate the international community's attempt to achieve international cooperation for the RTD. Therefore, the value of the notion of anti-IFF as an RTD related objective is that, at the UN, it has been promoted without opposition from Member States. Consequently, the FATF is a mechanism that may be seen as a part of the international efforts for promoting the RTD. So, before investigating the overall research question of this study, a review of extant studies is essential for locating the gap in the literature, that is being improved upon by an enquiry on the relationship between the FATF and RTD in Nigeria.

Guzman's theory of compliance was adopted herein as a basis for evaluating the FATF's impact on compliance with anti-grand corruption related anti-IFF policies that promote transparency in Nigeria.[290] One reason for adopting Guzman's theory of compliance is that it has identified the importance of monitoring mechanisms in multilateral international

[290] This thesis evaluates the FATF's process of holding Nigeria accountable for their commitment to executing anti-AML policies that promote development by helping the Nigerian authorities to avoid or retrieve the IFFs of the proceeds of public sector corruption, in the country.

platforms such as the FATF.[291] Yet, Guzman's theory of compliance is not an analytical framework that has provided an explanation on why the monitoring mechanisms in multilateral international platforms are accountability frameworks. Consequently, Bovens's analytical framework is adopted in this Thesis to associate the FATF monitoring processes and Guzman's theory of compliance with the notion of accountability.

Dependency, modernization theory and Sen's theory of human capabilities has been selected to be the theoretical basis for investigating the FATF's effectiveness as an instrument that is relevant to Nigeria's involvement in the global cooperation for anti-IFF and development. The main components of what is understood as development by modernization and dependency theorists are concepts such as economic growth and high levels of industrial production.[292] In Sen's theory of human capabilities, economic growth is also deemed to be a component of development. Therefore, the concept of accountability is important when Sen's theory of human capabilities, modernization theory and dependency theory are used to understand the value of the FATF framework. The concept of accountability is important for investigating the relationship between the FATF and the goal of promoting economic growth and high levels of industrial production. The value of accountability is that it is useful for promoting compliance with the objectives of development.

3.2 The Right to Development Literature

A number of studies observe that the Nigerian AML regime has been influenced by the FATF's activities.[293] Yet, although AML mechanisms are useful for getting resources that are supposed to be used to promote development, there has been little or no studies that have focused on the relationship between the FATF and RTD in Nigeria.[294] There have also been no studies on the role that domestic factors have played in influencing the level of impact that the FATF's accountability framework has had on Nigeria. To a large extent, the literature on RTD in Nigeria has addressed the issue of whether the right can be enforced through the Nigerian law. The consensus in the literature is that the RTD is enforceable through the

[291]Guzman (n 15) 64, 160 and 231.
[292] Vincent Tucker, 'The Myth of Development: A Critique of a Eurocentric Discourse' in Ronaldo Munck and Denis O'Hearn (eds) *Critical Development Theory: Contributions to a New Paradigm* (Zed Books 1999) 12.
[293] For some relevant studies see n 5.
[294] Perhaps this is because RTD and the FATF are relatively unpopular in Nigeria. Onu has remarked that the RTD is not popular in Nigeria. See, Onu (n 6).

Nigerian legal system.[295] Similarly, there is a consensus that corruption is an impediment to the goal of actualizing the right to development in Nigeria.[296] Therefore, the very scant literature on RTD in Nigeria has generally focused on identifying the impediments and the enforceability of the right in the Nigerian society. One study that has added a different perspective on RTD is by Nkonge, where it was observed that without a need for outright provision of funds, the international dimension of RTD is actualized by joint action to curb the corruption of transnational corporations.[297] This conclusion by Nkonge is valid because as Reed and Fontana have observed, anti-corruption in developing countries cannot be effective without developed countries playing their part to stop cross-border flows of the proceeds of crimes such as corruption.[298] Undoubtedly, the interconnectedness of the global economy has made it essential that countries assist each other in limiting the cross-border flows of the proceeds of corruption by all entities such as transnational corporations. Therefore, on the one hand, Nkonge has elaborated on the idea that the international regulation of transnational corporations is vital because it could limit the supply side of corruption in Nigeria and contribute to the country's anti-corruption efforts and its ability to protect human rights.[299] On the other hand, no input to the literature on RTD in Nigeria has sought to analyze international regulations on corruption as mechanisms that could be helping to actualize the RTD by promoting cooperation against the cross-border flows of the proceeds of domestic corruption.

3.2.1 Secondary Enforcement Mechanism and Possible Solutions for Actualizing RTD

[295] Salim Bashir Magashi, 'The Human Right to Development in Nigeria' (PhD thesis, Stellenbosch University 2016) 151 -201 <https://scholar.sun.ac.za/bitstream/handle/10019.1/98432/magashi_human_2016.pdf?isAllowed=y&sequence=2> accessed 28 May 2021; and Onu (n 6).

[296] Olaitan Olusegun and Oyeniyi Ajigboye, 'Realizing the Right to Development in Nigeria: An Examination of Legal Barriers and Challenges' (2015) 6(1) Journal of Sustainable Development Law and Policy 145 <https://www.ajol.info/index.php/jsdlp/article/view/128018/117568> accessed 22 February 2018; and see also Magashi (n 295) 250; and Salim Bashir Magashi, 'Education and the Right to Development of the Child in Northern Nigeria: A Proposal for Reforming the Almajiri Institution' (2015) 61(3) Africa Today 73 <https://www.jstor.org/stable/10.2979/africatoday.61.3.65> accessed 28 May 2021.

[297] Christine Gakii Nkonge, 'The Right to Development under International Law: Reflections from the European Union and Nigeria' (LL.M. Thesis, Central European University 2014) iii and 75-76 < http://www.etd.ceu.edu/2014/nkonge_christine.pdf> accessed 16 March 2021.

[298] Reed and Fontana (n 289) 8.

[299] Nkonge (n 297) 68.; The supply-side of corruption relates to the people that seek and are willing to pay to get undue benefits from individuals who have the entrusted position to provide their request. The demand-side of public sector corruption usually refers to those in the government sector who demand for payment because they can allocate scarce resources, offer government contracts and issue a license. See, Nurfarizan Mazhani Mahmud, Intan Salwani Mohamed and Roshayani Arshad, 'The Supply-Side of Corruption: A Review of Scenario, Causes and Prevention Measure' (2022) 29 (1) Journal of Financial Crime 34-35 <https://doi.org/10.1108/JFC-06-2021-0120> accessed 15 January 2022.

An approach that has been adopted in the discourse on how to actualize global development is the integration of the RTD into international human rights law.[300] An analysis of the approaches and theories that have been advanced in the debate on the ideal basis for integrating development into the human rights dialog and law has been conducted in the extant literature.[301] There is, for instance, support for the idea that the RTD is a pre-condition for the actualization of ideals such as progress and creativity and other rights such as civil and political rights.[302] Furthermore, the RTD has been viewed as a combination of exiting rights or as a standalone right that is part of the third generation of rights (also known as solidarity rights).[303] In her analysis, Bunn observed how the potential for the UN level attempts to focus on the relationship between human rights and international solidarity is a factor that may lead to more acceptance for the notion of solidarity rights as a basis for RTD.[304] In other words, the act of promoting the dialogue on human rights and international solidarity is useful to the objective of accentuating the international dimension of RTD.[305] As Condé also observed, the reason for describing the RTD as a solidarity right is that it requires international cooperation and joint activity to give it effect.[306] Similarly, as Puvimanasinghe has explained, international cooperation is the catalyst that moves solidarity from the realm of legal principle and ethical concept to the realm of practice.[307] So, it is valid to conclude

[300] Isabella D Bunn, *The Right to Development and International Economic Law: Legal and Moral Dimensions* (Bloomsbury Publishing 2012) 78.

[301] For analysis of the history of the approaches that have been used to incorporate development into the human rights dialogue see generally, Peter Uvin, 'From the Right to Development to the Rights-Based Approach: How 'Human Rights' Entered Development (2007) 17 (4-5) Development in Practice <https://doi.org/10.1080/09614520701469617> accessed 29 September 2021.; Bunn has identified the theories that have been advanced in the RTD and human rights law dialogue. See, Bunn (n 300) 79.

[302] Bunn (n 300) 79-80.

[303] Third generation rights are group rights, which is distinct from individual rights (also known as first generation rights), such as political or civil rights. They are also different from second generation rights which require affirmative action by governments on behalf of citizens, such as economic, social and cultural rights. Third generation rights are based on international action and cooperation. Therefore, they are distinct from rights that can be fulfilled through the action of individual States. See, ibid 81; and Sara E. Allgood, 'United Nations Human Rights "Entitlements": The Right to Development Analyzed Within the Application of the Right to Self-determination' (2003) 31(2) Georgia Journal of International and Comparative Law 324-327 <https://digitalcommons.law.uga.edu/gjicl/vol31/iss2/4/> accessed 19 May 2021.; Note that the second and third generation rights, are collective rights that are based on notions of international solidarity and are justiciable in domestic courts. See, John C Mubangizi, 'Towards a New Approach to the Classification of Human Rights with Specific Reference to the African Context' (2004) 4(1) African Human Rights Law Journal 99 -100 <https://www.ahrlj.up.ac.za/images/ahrlj/2004/ahrlj_vol4_no1_2004_john_c_mubangizi.pdf> accessed 20 May 2021.

[304] Bunn has concluded that as more attention is given to the relationship between human rights and international solidarity, as well as to the legal status of other solidarity rights, there is a potential for the notion of solidarity as a basis of the RTD, to be enhanced. See, Bunn (n 300) 82.

[305] Note that in contrast, Bunn has advised against the idea of adopting the RTD as a pre-condition for the actualization of other rights. See, ibid 79 -80.

[306] H. Victor Condé, *A Handbook of International Human Rights Terminology* (2nd edn, University of Nebraska Press 2004) 242-243.

[307] Shyami Puvimanasinghe, 'International Solidarity in an Independent World' in Bonnie Nusser (ed), *Realizing the Right to Development* (United Nations Publication, 2013) 184.

that the international dimension of RTD is accentuated when the notion of solidarity rights, and its underlying components, such as international solidarity, cooperation and action, are an accepted or prominent part of the UN discuss on RTD.[308] Invariably, the adoption or promotion of solidarity rights as a fundamental part of the UN or academic discourse on RTD is meaningful if it leads to or is associated with existing actions that are actualizing international cooperation for the right. Therefore, in the literature on RTD, there has been an attempt to associate the RTD with extant practices in the discourse on international cooperation for human rights protection. In Sen's analysis of development as freedom, he has referred to the concept of development as a right and as a perspective that is most valuable when there is a need and demand for others to assist in the fulfillment of the right of an individual or community.[309] Sen has noted that in human rights discourse, it is acceptable to work towards achieving rights for everyone by demanding for assistance from all who are able to help.[310] So, essentially, the notion of development as a right is useful because it relaxes the need to identify the duty holders or the specific international and domestic duties to be promoted by the international community. However, in the interest of enhancing the notion of development as a right, there is need to identify the specific duties that are to be actualize through international cooperation for RTD. This is because the international community's ability to agree on what obligations are to be included in a special instrument on the RTD is useful for any evaluation process that is used to assess and promote the idea of development as a right of everyone.[311] Therefore, because the status and content of obligations under the international dimension of right are still unclear, there have been studies that have provided explanations or suggestions on what could be done with the right. For example, in a study on RTD by Have, the challenge of actualizing the general principle of international law that requires every attributable breach of an international obligation to result in responsibility for the erring State was considered.[312] In her analysis, Have opines

[308] See, Bunn (n 300) 81; and Mubangizi (n 303) 96.
[309] The act of claiming assistance from all who can help is based on the idea of imperfect obligations, rather than perfect obligations. Regarding perfect obligations, there is clarity on the specific duty that a particular agent must perform for the realization of a right. By contrast, an imperfect duty leaves open crucial features of the required act. When understood in this way, as duties of unspecified content, imperfect obligations such as the charitable duty to aid those in need leave leeway for personal choice. There is personal choice on whom to aid and when and how much assistance must be given. See, Sen (n 16) 230-231; and see, Patricia Greenspan, 'Making Room for Options: Moral Reasons, Imperfect Duties, And Choice' (2010) 27 (2) Social Philosophy and Policy 181 <http://faculty.philosophy.umd.edu/PGreenspan/Res/SPPC.pdf> accessed 29 September 2021.
[310] The demands are addressed generally to anyone who can help, even though no particular person or agency may be charged to bring about the fulfillment of the rights involved. See, Sen (n 16) 230.
[311] A special treaty instrument on RTD is different from treaties, such as the ICESCR (1966), that can be associated with the RTD. For the treaties that can be associated with the RTD see, OHCHR (n 107).
[312] Nienke van der Have, 'The Right to Development: Can States be Held Responsible?' in Dick Foeken and others (eds), *Development and Equity: An Interdisciplinary Exploration by Ten Scholars from Africa, Asia and Latin America* (Brill, Feb 2014) 197 -198.

that, arguably, the RTD is on its way to becoming a part of customary international law.[313] Have also, from a positivist perspective, opines that the current global framework for making States responsible for customary rules are not suitable for ensuring accountability for breaches of the RTD, especially with regard to obligations in its international dimension.[314] Consequently, Have concludes that a change to the current framework for making States responsible for customary rules or the creation of a treaty regime for RTD is necessary for actualizing a fair system of accountability for breaches of the right.[315] Similarly, the importance of a treaty regime has been highlighted by Varayudej in his study on the economic and environmental component of RTD.[316] In his analysis, Varayudej has described rights such as access to information, justice and participation in decision-making, as procedural practices that are promoted in the RTD and established in international law.[317] Accordingly, Varayudej has observed that whether the common use of RTD related procedural rights will lead to the establishment of a substantive right to development is a matter for the OEWG to eventually clarify.[318] In other words, Varayudej has highlighted the fact that the OEWG is a mechanism that is in a position to conclude on whether the RTD is

[313] ibid 194.; Note that the traditional view on customary international law is that it involves the consistent practice of States and the determination (by the practicing State) that such practice is being undertaken out of a sense of legal obligation (which is labelled as *opinio juris*). However, since the 1970s, a non-traditional approach has emerged. In the non-traditional approach, a strict adherence to the tradition of referring to State practice and *opinio juris* in determining customary international law is relaxed. In the non-traditional approach, there is acceptance for the idea that widely ratified multilateral conventions or treaties which have established human rights prohibitions against crimes such as genocide, torture, and slavery are a confirmation of customary international law, which is binding upon all States, not just the signatories. At the international level, there can also exist regional customary law which is binding on a group of nation States in a particular region, but not upon the international system. See, Roozbeh B. Baker, 'Customary International Law in the 21st Century: Old Challenges and New Debates' (2010) 21 (1) The European Journal of International Law 174 <https://academic.oup.com/ejil/article/21/1/173/363352> accessed 28 September 2021.; Note that customary law is law consisting of customs that are accepted as legal requirements or obligatory rules of conduct; practices and beliefs that are so vital and an intrinsic part of a social and economic system that they are treated as if they were laws. See, Garner (n 122) 443.

[314] The basis of her analysis is that because there are no specific global regimes under which claims based on a violation of the RTD can be brought, so it is necessarily to rely on the general regime of State responsibility. This is because the general regime of secondary norms, as laid down in the International Law Commission's (ILC) Draft Articles on the Responsibility of States for Internationally Wrongful Acts (Articles on State Responsibility), remains of importance in complementing treaty regimes and regulating the enforcement of customary human rights norms. See, Have (n 312) 198 and 211.; The positivist perspective is that international law emerges from the consent of States; are distinct from natural law, morality, and politics; have distinctive sources and arguments unique to legal science and is a closed logical system. See Alvarez (n 19) 18.

[315] The principal reason for her conclusion is that if violations of the RTD's international dimension are ever to translate into State responsibility for customary rules, it will be necessary to satisfy the need for agency-specific obligations. This means that the RTD must be complemented by a burden-sharing mechanism which can distribute collective obligations to specific States. Another reason is that the framework for State responsibility for customary rules does not address the idea of shared obligation by all States 'who are in a position to help', which is an important part of the international dimension of RTD. See, Have (n 312) 203 – 205 and 212.

[316] Same Varayudej, 'Two-Pronged Right to Development and Climate Change: Reciprocal Implications' in Ottavio Quirico and Mouloud Boumghar (eds), *Climate Change and Human Rights: An International and Comparative Law Perspective* (Routledge 2016) 118-131.

[317] ibid 130.

[318] ibid 130 -131.

going to become an established substantive right in international law. Certainly, it is plausible for the OEWG to be the first source of information on when the RTD will be a substantive right in international law because of its function as a platform where stakeholders, such as the representatives of countries, can deliberate on the status of the RTD. The OEWG is also an invaluable part of the global attempts to make the RTD a substantive right in international law because it is recognized as a mechanism that can and has helped to promote support for and continuous deliberations on this objective.[319] So, the idea of waiting for the OEWG to conclude on whether the RTD is going to become an established substantive right in international law is pragmatic. Nevertheless, the RTD has been a contentious issue that, according to Mark and others, has required the OEWG to keep a legally binding instrument among the possible outcomes of its deliberations without establishing that the process must automatically lead there.[320] Therefore the vague and contentious nature of the RTD is a reason to be pessimism about the potential for the OEWG and international community to create a special RTD treaty regime. Consequently, it is reasonable to agree with suggestion by Rajeev that the OEWG's efforts or any other attempt to identify and elaborate on some operational criteria for implementing the RTD is an ideal approach for actualizing the right.[321] This is because operational criteria for the RTD are useful tools for evaluating the global progress towards achieving the goal of implementing the right.[322] However, the OEWG's attempt to identify some operational criteria for implementing the RTD is also contentious. Thus, in his analysis on the international effort to actualize the RTD, Marks has observed that there is need for political will in the process of finalizing the criteria and sub criteria.[323] Therefore, until there is an observable demonstration of political will to finalize any criteria for operationalizing the RTD, there is reason to be skeptical about the idea that is suggested by Rajeev.

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[319] Stephen P. Marks and others, 'The role of international law' in Bonnie Nusser (ed), *Realizing the Right to Development* (United Nations Publication, 2013) 445.; See also, Malhotra Rajeev, 'Right to Development: Where are we Today?' in Archna Negi, Arjun Sengupta and Moushumi Basu (eds), *Reflections on the Right to Development* (SAGE Publications India Pvt Ltd 2005) 146; and Karin Arts and Atabongawung Tamo, 'The Right to Development in International Law: New Momentum Thirty Years Down the Line?' (2016) 63(3) Netherlands International Law Review 222 <https://link.springer.com/article/10.1007/s40802-016-0066-x> accessed 27 October 2019.

[320] Marks and others (n 319) 445.

[321] Note that Rajeev uses the word element and not criteria. Criteria has been used here for clarity in the analysis and because his explanation on the work to operationalize the RTD shows that it is the same thing as elements. See, Rajeev (n 319) 145-147.

[322] Rajeev's uses the term operational elements and not operational criteria. However, his explanation for what the operational elements are is aligned with the idea of a criteria and sub-criteria on RTD. For the relevant explanation by Rajeev, see ibid 147.

[323] Marks (n 59) 278.

Some authors have been doubtful about the prospect for resolving the challenge of inadequate progress in making the RTD a self-standing enforceable right in international law, and the lack of a recognized method for evaluating actions that are contributing to the fulfillment of RTD. For instance, Vandenbogaerde opines that it is advantageous to dissolve the RTD into the larger human right framework because it has the advantage of already having a legal, although imperfect, framework in place with monitoring bodies and accountability mechanisms.[324] Similarly, Vandenhole states that it is ideal to aspire for development by improving the enforcement mechanisms of civil, political, economic, social and cultural (CPESC) rights because the RTD is not conceptually developed or clarified in a global treaty instrument.[325] Indeed, an advantage that is linked with the international promotion of CPESC rights is the ability for treaties, such as the International Covenant on Civil and Political Rights (ICCPR) of 1966, to achieve global consensus on minimum protective parameters for human rights.[326] Consequently, in the absence of a global RTD treaty, it is justified to advocate that claims for and the consequent attempts to implement international cooperation for development, as a right, should be based on the extant CPESC rights treaties.[327] However, although there is no RTD treaty instrument and body, the RTD is valuable, as an self-standing right or as a component of CPESC rights.[328] The RTD is valuable because it reiterates the fact that the notion of development, as a right, has been recognized at the international level, and consequently, there is, at least, a moral basis to ask for development

[324] Arne Vandenbogaerde, 'The Right to Development in International Human Rights Law: A Call for its Dissolution' (2013) 31(2) Netherlands Quarterly of Human Rights 208 -209 <https://journals.sagepub.com/doi/pdf/10.1177/016934411303100204> accessed 19 May 2021.

[325] Vandenhole has made this argument. See, Wouter Vandenhole, 'The Human Right to Development as a Paradox' (2003) 36(3) Verfassung Und Recht in Übersee / Law and Politics in Africa, Asia and Latin America 382-388, 394, 403-404 <https://www.jstor.org/stable/43239163> accessed 29 September 2021.

[326] It is observed that above all, the system that has been setup by the relevant treaty instruments are reflective of a contemporary ethical conscience that is shared among States, to the degree that they invoke international consensus on minimum protective parameters with regard to human rights (the irreducible ethical minimum). See, Flavia Piovesan, 'Social, Economic and Cultural Rights and Civil and Political Rights' (2004) 1 International Journal on Human Rights 24 <http://www.scielo.br/pdf/sur/v1n1/en_a03v1n1.pdf> accessed 29 September 2021.; For an example of minimum rights in the ICCPR (1966) see, International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Article 14 (3).

[327] For a list and information on CPESC rights instruments and treaty bodies. See, 'The Core International Human Rights Instruments and Their Monitoring Bodies' (*United Nations Human Rights Office of the High Commissioner*) <Https://www.ohchr.org/en/professionalinterest/pages/coreinstruments.aspx> accessed 29 September 2021.

[328] For instance, in the studies by Vandenhole and by Beetham the RTD was analyzed as a right that is distinct from CPESC rights. However, the UNHRC has referred to the RTD as a part of CPESC rights. See, UNHRC Res 48/10 (8 October 2021) UN Doc A/HRC/RES/48/10, 2 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/288/99/PDF/G2128899.pdf?OpenElement> accessed 20 November 2021; see also, David Beetham, 'The Right to Development and its Corresponding Obligations', in Bård-Anders Andreassen and Stephen P. Marks (eds), *Development as a Human Right: Legal, Political and Economic Dimensions* (2nd edn, Intersentia 2010) 101.

assistance from all who are able to help.[329] In other words, the RTD should not be abandoned because it justifies and emphasizes the notion of development as a global right that should be encouraged by all who are able to help. Therefore, instead of ignoring the contributions of the proponents of RTD by abandoning the right, an ideal solution to the RTD's lack of a special treaty regime and conceptual vigor, is to develop or identify mechanisms that promote development assistance by all who can help. Furthermore, another reason to not abandon the RTD is that, to an extent, there is reason to view it as an appropriate basis to carry out actions that promote the implementation of civil and political (CP) rights and economic, social and cultural (ESC) rights. As Piovesan has highlighted, the RTD emerged at a time when there was an ideological battle between the advocates of CP rights and ESC rights.[330] Consequently, as Sengupta has observed, the RTD was promoted and described as a concept that unified the CP rights with ESC rights, and thus it closed the previous demarcation of human rights.[331] Sengupta also observed that following the unification of all rights, the international community moved on to examine the idea of implementing CPESC rights, as part of the RTD.[332] Similarly, Bunn has opined that UN documents usually refer to the RTD as a concept that seeks to integrate CP rights with ESC rights.[333] Accordingly, in extant literature, the idea that the RTD can be valuable to the goal of actualizing all CPESC rights has been referenced and promoted. Teshome has justifiably elaborated on the idea that the outcomes of development are influenced by the RTD, and they ought to enhance the actualization of CPESC rights.[334] One justification for the perspective that the RTD has positive implications for the goal of actualizing other CPESC rights is the notion of indivisibility and interdependence of human rights. The UNHRC and the international community have affirmed the idea that all CPESC rights, including the RTD are indivisible, interdependent and mutually reinforcing.[335] Therefore, it is logical to conclude that the actualization of any right is dependent on the ability for the international community to

[329] This conclusion is based on Sen's analysis on the value of a rights-based approach to development. See, Sen (n 16) 230-231.
[330] Flavia Piovesan further observes that the RTD emerged as an effort by the third world to elaborate its own cultural identity, proposing collective rights of cultural identity. See, Piovesan (n 326) 27.
[331] Arjun Sengupta held this same view when he was the independent expert on RTD for the UN. In reference to the preamble of the UNDRD, Sengupta observes that the RTD serves to unify CPESC rights into an indivisible and interdependent set of human rights and fundamental freedoms, to be enjoyed by all human beings. See, Sengupta (n 106) 840 -841.
[332] ibid 841.
[333] Bunn (n 300) 83.
[334] Roman Girma Teshome, 'The Draft Convention on the Right to Development: A New Dawn to the Recognition of the Right to Development as a Human Right?' (2022) 22 (2) Human Rights Law Review 7-8 <https://academic.oup.com/hrlr/article/22/2/ngac001/6542245> accessed 13 March 2022.
[335] UNHRC Res 48/10 (8 October 2021) UN Doc A/HRC/RES/48/10, 2 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/288/99/PDF/G2128899.pdf?OpenElement> accessed 20 November 2021; see also UNHRC Working Group on the Right to Development (21st Session) (n 71) 8 and 34.

protect and enhance other CPESC rights. It is also logical to conclude that all CPESC rights are or should be viewed as indivisible concepts. However, it is observed that CP and ESC rights are more commonly considered as distinct concepts at the UN level and in the literature.[336] Perhaps, the divergent history of CP and ESC rights has made it acceptable to consider them as distinct concepts. In contrast, the RTD has always been associated with the protection of other rights.[337] As the OEWG has observed, development as a right cannot be seen to have improved, if in the development process, one human right is sought to be realized at the cost of violating some other human rights.[338] For example, the completion of a water pipeline project in a rural area that is installed by forcibly taking the lands of poor farmers without consultation or adequate compensation cannot be seen as an improvement in the RTD of the community.[339] Thus, the act of promoting the RTD should not be abandoned because it has always been, and should be, considered as a concept that has positive implications for the goal of actualizing other CPESC rights. In other words, notwithstanding the lack of conceptual clarity, or a treaty regime on the RTD, it is ideal to aspire for development by improving the enforcement of RTD mechanisms because they are helping to protect other CPESC rights.

Contained in the literature on RTD are attempts to identify mechanisms that can help to actualize the right. Some authors have acknowledged the value of the development compact that was developed by Sengupta in 2002 as an appropriate mechanism for actualizing the RTD.[340] Nwauche and Nwobike have opined that Sengupta's development compact is unique because it makes the realization of human rights as its main objective in addition to empowerment and it seeks to impose reciprocal obligations on the potential State parties.[341] Some authors, such as Vandenhole, have described the development compact as a mechanism that would lead the RTD back to the realm of interstate rights because it is designed to create rights for States and not individuals.[342] The idea that a development compact will change the

[336] For analysis on how rights are rarely addressed as an indivisible concept. See, Gauthier de Beco, 'The Indivisibility of Human Rights and the Convention on the Rights of Persons with Disabilities' (2019) 68 (1) International and Comparative Law Quarterly 147-148 <https://doi.org/10.1017/S0020589318000386>accessed 29 September 2021.
[337] Bunn (n 300) 79-83.
[338] UNHRC Working Group on the Right to Development (21st Session) (n 71) 31.
[339] ibid.
[340] Eryinna Nwauche and Justice C. Nwobike, 'Implementing the Right to Development' (2005) 2(2) International Journal on Human Rights 106 <http://www.scielo.br/pdf/sur/v2n2/en_a05v2n2.pdf > accessed 5 July 2021.; and Vandenhole (n 325) 381 and 399.
[341] Khurshid Iqbal, *The Right to Development in International Law: The Case of Pakistan* (Taylor and Francis September 2009) 105.
[342] Vandenhole (n 325) 402-403.; See, also Irene I. Hadiprayitno, 'Development Hazard: A Violation-Based Approach to the Right to Development' (2017) 3(1) Chinese Journal of Global Governance 27–56, 36

RTD from a human right into a State right is not a bad thing because the act of holding States accountable for rights violation is a prevalent practice in the UN system. As Subedi has explained, except for cases where individual petitions against specific violations of human rights by treaty bodies are being examined, accountability by States is observed to be the approach that is used in most UN human rights mechanisms.[343] In essence, States would be asked to account for violations to the RTD, as an interstate right, in the same way as they are already doing in UN human rights mechanisms.[344] Furthermore, as Sengupta has observed, the interstate right approach in the development compact is useful because it assures developing countries that if they fulfill their obligations, their program for realizing the RTD will not be disrupted for lack of resources.[345] Therefore, by adopting the interstate rights approach, Sengupta's development compact was designed to impose on donor countries, a legal obligation to assist developing countries under its framework. The interstate approach in Sengupta's development compact is also an ideal way to insert dynamism into the policy making efforts of the global RTD regime. The idea of Sengupta's development compact is noteworthy because, as Piron has suggested, it could either serve as a framework that is adopted in current development partnerships around the world, or States could make separate agreements to implement the development compact.[346] The challenge with the idea of a development compact on RTD is that there is reason to be skeptical about the likelihood for it to be adopted by donor States. Iqbal, for instance, has expressed doubt about the likelihood that the OECD's Development Assistance Committee (DAC) members would participate in an RTD development compact with those developing countries that are seen as having conflicting interests with developed countries.[347] Hadiprayitno has described the development compact as an instrument that puts the RTD into the realm of theoretical and political debate

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<https://brill.com/view/journals/cjgg/3/1/article-p27_2.xml?language=en> accessed 5 July 2018.; For the development compact see, UNCHR Open-ended Working Group on the Right to Development 'Fourth Report of The Independent Expert on the Right to Development, Mr. Arjun Sengupta, Submitted in Accordance with Commission Resolution 2001/9' (20 December 2001) UN Doc E/CN.4/2002/WG.18/2 para 56-74 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G01/164/02/PDF/G0116402.pdf?OpenElement> accessed 17 March 2021.

[343] Subedi observes that even when an individual submits a petition to a un treaty body or to the human rights council, all they can do is to ask States to explain the situation and make recommendations to rectify the law, policy or situation. See, Surya (n 95) 2 and 5.

[344] ibid. This is because UN human rights mechanisms interact mainly with States rather than with individuals.

[345] Arjun K. Sengupta, 'Conceptualizing the right to Development for the Twenty-First Century' in *Realizing the Right to Development: Situating the Right to Development* (United Nations Publication) 83 <https://www.ohchr.org/documents/issues/development/rtdbook/partichapter4.pdf> accessed 4 July 2018.

[346] Hélène Piron, 'The Right to Development: A Review of the Current State of the Debate for the Department for International Development' (Overseas Development Institute 2002) 33 <https://cdn.odi.org/media/documents/2317.pdf>accessed 7 October 2018.

[347] Khurshid Iqbal, *The Right to Development in International Law: The Case of Pakistan* (Taylor and Francis September 2009) 105.; DAC is comprised of a membership that includes Canada, France, Germany. For more information on DAC see, OECD, 'Development Assistance Committee (DAC)' (*OECD*) <https://www.oecd.org/dac/development-assistance-committee/>accessed 29 September 2021.

without having concrete proposals that are actually significant for the lives of the poor people being impacted by development processes.[348] Thus, Hadiprayitno goes on to observe that the development compact is an example of the current trend in discourse on RTD because it is merely a framework for dialog.[349] Nwauche and Nwobike have observed that development compact has not been adopted or implemented because its implication, particularly with respect to the issue of accountability, is a cause of contention among States.[350] In essence, the idea that accountability for RTD will be achieved through the development compact is a controversial issue. So, because of the development compact's controversial nature, some authors have identified and analyzed the value of similar development assistance mechanisms that are favored by developed countries such as US. For example, Nwauche and Nwobike have observed that the Cotonou Agreement of 2000 is alike, but not as focused on a human rights approach to development as, Sengupta's development compact.[351] The Millennium Challenge Account (MCA) has been identified as a mechanism with elements that correspond to the main ideas of Sengupta's development compact.[352] On one the hand, development aid mechanisms such as the MCA have elements that are not aligned with, or promoted as part of the attempts to actualize the idea of RTD. On the other hand, as Mark has noted, it would no doubt enrich the dialogue on the RTD if the MCA were offered for discussion as one country's attempt to translate the RTD into policy and practice.[353] In essence, the international community has the option of enriching the dialogue on the RTD by discussing the idea that some of the components of existing mechanisms such as the MCA are translating the RTD into policy and practice. Therefore, some relevant theories and the concept of accountability are considered in the next subsection, as a preliminary part of the

[348] Irene I. Hadiprayitno, 'Development Hazard: A Violation-Based Approach to the Right to Development' (2017) 3(1) Chinese Journal of Global Governance 27–56 and 36 <https://brill.com/view/journals/cjgg/3/1/article-p27_2.xml?language=en > accessed 6 May 2018.

[349] ibid 36; it is observed that there is skepticism about a development compact as too bureaucratic. See, Irene I. Hadiprayitno, 'Development Hazard: A Violation-Based Approach to the Right to Development' (2017) 3(1) Chinese Journal of Global Governance 28 <https://brill.com/view/journals/cjgg/3/1/article-p27_2.xml?language=en> accessed 5 July 2018.

[350] Nwauche and Nwobike (n 340).

[351] ibid 98, 101, 103 and 106.; For a detailed analysis of the Cotonou Agreement see, Asmita Parshotam and Kate Mlauzi, 'Part I: Understanding the Cotonou Partnership Agreement' (*Africa Portal*, 13 September 2018) <https://www.africaportal.org/features/part-i-understanding-cotonou-partnership-agreement/> accessed 29 September 2021.

[352] The MCA is a development mechanism that is exclusively administered by the Millennium Challenge Corporation (MCC), a U.S. entity. See, Stephen Marks, 'The Human Right to Development: Between Rhetoric and Reality' (2004) 17 Harvard Human Rights Journal 159 and 167 <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/580/2012/10/spm_the_human_right_development.pdf> accessed 17 March 2021.; For more information on the MCC see, 'About MCC' (*Millennium Challenge Corporation United States of America*) <https://www.mcc.gov/about> accessed 29 September 2021.

[353] The MCA is a development mechanism that is exclusively administered by the Millennium Challenge Corporation (MCC), a U.S. entity. See, Marks (n 352) 167.; For more information on the MCC see, 'About MCC' (*Millennium Challenge Corporation United States of America*) <https://www.mcc.gov/about> accessed 29 September 2021.

enquiry on whether the FATF's mechanisms for holding States accountable is translating RTD into policy and practice.

3.3 Accountability and Guzman's Rational Choice Theory of Compliance

3.3.1 Perspectives on Accountability

In a broad sense, accountability has been viewed as a conceptual umbrella for other distinct concepts, such as transparency, equity, democracy, efficiency, responsiveness, responsibility and integrity.[354] This broad view of accountability is observed to be useful for evaluative studies.[355] It is therefore possible to adopt a broad view of accountability in an analysis that is designed to provide clarity on the effectiveness of the FATF processes for holding States accountable. In other words, an evaluation of accountability for countries in the FATF framework can be achieved by identifying the presence or absence of other distinct concepts such as efficiency. However, the usefulness of the broad view on accountability is contestable because there is no generally accepted list of standards for providing clarity on what is an accountable behavior in any forum.[356] Additionally, it has been observed that, the standard for what an accountable behavior is, in the broad perspective, has continued to be a contested concept because it has differed from time to time, role to role, place to place and from speaker to speaker.[357] Furthermore, the adoption of the broad view of accountability has been criticized because it makes it difficult for an empirical claim to be made on whether an individual or organization has been made to account for their action. Therefore, it is less controversial to define accountability as a process of giving account for one's actions.[358] This is because a process of giving account for one's actions is a concept that is observable and easy to explain.

Moreover, according to Mulgan, there has been a general acceptance for the notion of the accountability that is associated with a process of calling an entity to account.[359] Mulgan has also explained that this notion of accountability is a core form of accountability that is only

[354] Mark Bovens, 'Analysing and Assessing Accountability: A Conceptual Framework' (2007) 13(4) European Law Journal 449 <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1468-0386.2007.00378.x> accessed 27 May 2019.
[355] ibid.
[356] ibid 450.
[357] ibid; and see also, Elizabeth Fisher, *The European Union in the Age of Accountability*, vol 24 (Oxford University Press 2004) 510
[358] Richard Mulgan, ''Accountability': An Ever-Expanding Concept?' (2000) 78(3) Public Administration 555 <https://onlinelibrary.wiley.com/doi/abs/10.1111/1467-9299.00218> accessed 16 March 2021.
[359] ibid 555-556.

contestable because it appears to go beyond the idea of giving an account.[360] In other words, Mulgan has remarked that the core form of accountability can be criticized because a process of sanctioning does not have to be achieved in a platform where persons or organizations are only expected to give account. In contrast, when a person or organization is being called to account, there seems to be a need to implement an approach that will promote a process of positive change to any extant situation.[361] Similarly, Mansbridge has observed that the traditional view of accountability has only emphasized the notion of giving an account.[362] In her analysis, Mansbridge has said that the idea of imposing sanctions after a process of monitoring is more contemporary than the traditional view of accountability.[363] So, it is useful to note that in Bovens's analytical framework, the scope of accountability is not limited to frameworks that can impose sanctions. This is because in Bovens's analytical framework, accountability is 'a relationship between an actor and a forum in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgment, and the actor may face consequences.'[364] Therefore, in Bovens's analytical framework, the only compulsory component of accountability is the actor's formal or informal obligation to explain and to justify his or her conduct to a forum which is also described as the account-holder or accountee.[365] In Bovens's analytical framework, the notion of formal obligation is associated with those situations where public officials have to render account on a regular basis to fora such as supervisory agencies, courts or auditors.[366] Furthermore, Bovens has observed that an informal obligation is exercised when an account is given in situations such as press conferences and informal briefings or is self-imposed as in the case of voluntary audits.[367] Consequently, Bovens's analysis of informal obligation is applicable to the FATF's evaluation process. This is because the FATF evaluations are designed to be a process that involves meetings where countries are assessed on their compliance with the FATF Recommendations of 2012.[368] So, within the context of Bovens's

[360] ibid.
[361] ibid 556.
[362] Jane Mansbridge, 'A Contingency Theory of Accountability' in Mark Bovens, Robert E. Goodin and Thomas Schillemans (eds), *The Oxford Handbook Public Accountability* (Oxford University Press 2014) 56.
[363] ibid.
[364] Bovens (n 354) 450.
[365] ibid.
[366] Formal obligations also exist in situations where public officials are forced to appear in administrative or penal courts or to testify before parliamentary committees. See, ibid 451.
[367] ibid.
[368] FATF, 'Consolidated Processes and Procedures for Mutual Evaluations and Follow-Up "Universal Procedures"' (FATF/OECD 2021) 8 <https://www.fatf-gafi.org/media/fatf/FATF-Universal-Procedures.pdf> accessed 2 March 2021; and see FATF, 'Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems' (FATF 2020) 17-20 <https://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf> accessed 28 May 2021.

analytical framework, the States that have participated in the FATF mutual evaluation process have exercised an informal obligation to give an account on their compliance with the FATF Recommendations of 2012.[369] Furthermore, one of the important components of Bovens's analytical framework is the idea that sanctions are associated with the actions of formal forums such as domestic courts with legal power to punish. Accordingly, Bovens has remarked that sanctions have a formal, legal and negative connotation that would limit the scope of what an accountability forum is.[370] Therefore, an important component of Bovens's analytical framework is that it has broadened the scope of what accountability fora are by describing the possible consequences of the interactions of actors and fora.[371] Accordingly, in Bovens's analytical framework, the consequences of an actor's interaction with an accountability forum can be implicit, informal or based on written or unwritten rules.[372] In his explanations, Bovens has observed that sometimes the negative consequences are implicit or informal when, for instance, the reputation of the actor is damaged due to the negative publicity from a forum accountability process.[373] Therefore, Bovens's analytical framework is a conceptual support for the prediction, in Guzman's ILT of compliance that when States are subjected to the monitoring processes of institutions such as the FATF, they may face informal or reputational consequences.[374]

With the preceding analysis in mind, there are other traits of accountability fora that are present in the FATF framework. For instance, Mulgan has said that the idea of calling an entity to account implies a right of authority to perform actions that include demanding answers and imposing sanctions.[375] Mulgan has also observed that in some instances, certain

[369] Note that FATF's evaluation is conducted with the input of the country that is evaluated.
[370] For illustrative purposes, Bovens has note that in many countries an ombudsmen body does not have the authority to sanction formally. Nevertheless, they can be very effective in securing redress or reparation. See, Bovens (n 354) 452.
[371] Mansbridge (n 362).
[372] Bovens (n 354) 452.
[373] ibid.; To be specific, Bovens has said that the public image of the actor is damaged from negative publicity. However, reputation has been used here instead of public image because in Guzman's ILT of compliance, a country's reputation for compliance with legal obligations consists of judgments about the country's past behavior and predictions made about future compliance based on that behavior. Therefore, Guzman's view on a country's reputation is the same thing as its public image. This is because, according to Macmillan Dictionary, public image is the ideas and opinions that the public has about a person or an organization. For Guzman's conceptualization of reputation. See, Guzman (n 15) 33.; See also, 'Public Image' (*Macmillan Dictionary*) <https://www.macmillandictionary.com/dictionary/british/public-image> accessed 28 May 2021.
[374] To be specific, the notion of informal consequences is the same thing as reputational sanctions. This is because in Guzman's ILT of compliance, reputational sanction is described as the cost imposed on a State when its reputation is damaged. So, a State's reputation for compliance with legal obligations consists of judgments about the State's past behavior and predictions made about future compliance based on that behavior. See, Guzman (n 15) 33, 160 and 231.
[375] This is because those who are calling for an account are asserting a right of superior authority over those who are accountable in any situation. See, Mulgan (n 358) 565.

organizations, such as interest groups, who are asserting a right of authority to question government officials, are having a more partial or incidental, but equally important accountability objective.[376] This notion that organizations in a society are having an important accountability objective is particularly relevant to the conversation about the relationship that exist between the FATF and the member States of FSRBs such as Nigeria.[377] This is because the FATF's assessments are designed as a process that requires countries to provide information on their compliance with the FATF Recommendations 2012.[378] In some instances, the FATF assessment is based on an evaluation that is designed as a process were FSRBs, such as GIABA would ask their members to provide information on their level of compliance with the FATF Recommendations 2012.[379] Therefore, because of its design, the FATF's assessment process is promoting a partial or incidental accountability in the situations where FATF regional bodies are asking their member countries to provide information on their level of compliance with the FATF Recommendations (2012).[380]

This subsection has shown that in Bovens's general framework on accountability, the questioning of government officials, and the consequences that result from the publicity of such events, are seen as a part of the accountability process. Therefore, Guzman's theory of compliance is considered in the next subsection because its predictions on the consequences of international law mechanisms are aligned with the explanation for implicit or informal consequences in Bovens's general framework on accountability.[381] Moreover, Guzman's theory is a fundamental part of this Thesis because of its predictive characteristic.

3.3.2 Guzman's Rational Choice Theory of Compliance

In evaluating the relevance of the FATF's global administrative law function in the discourse about development in Nigeria, it is satisfactory to conduct an enquiry which is based on the claim that if the FATF is propagating norms that are obligations, then States must comply

[376] An example of such accountability holders are interest groups and the media. See, ibid.
[377] The FATF is a brand that refers to publications by FATF-Style Regional Bodies (FSRBs) such as GIABA and the FATF. See FATF (n 241).
[378] FATF (n 368) 7-9 and 14.
[379] This observation is based on the GIABA Mutual Evaluation procedures. See GIABA, 'Process and Procedures for the GIABA Second Round of AML/CFT Mutual Evaluations' (GIABA 2020) 3-6 <https://www.giaba.org/media/f/1153_GIABA_Process_and_Procedure.pdf> accessed 28 May 2021.
[380] FATF (n 265).
[381] In Guzman's theory, it is predicted that when States are subjected to the monitoring processes of institutions such as the FATF, they may face informal or reputational consequences.

with them.[382] If the Recommendations of the FATF norms are understood or assumed to be a reflection of international obligations, such as the requirements in the UNCAC (2003), it is then reasonable to conclude that States must comply with them. This is because of the concept of *pacta sunt servanda* which is known as the international legal rule that obligations must be followed.[383] Yet, to use this idea of *pacta sunt servanda* as a basis for studying the effectiveness of the FATF framework is, considered herein, to be akin to assuming that the concept is a theory about how international law works. As observed by Guzman, the legal principle of *pacta sunt servanda* cannot be a theory of how international law works because it tells us nothing about when compliance will come about and when it will not.[384] Additionally, it also fails to explain why States will or should comply with the law.[385] Similarly, the presupposition of international legal doctrine, which is the claim that international law has an impact on the global community, is applicable in a study on the FATF's accountability framework. However, with the international legal doctrine, it is observed that there is no aim at questioning or further explaining the assumption of its impact on the global community.[386] Therefore, there is a need to look at theories that provide an explanation of how international law works. There is also a need to use parameters set by a theoretical framework that gives explanations for its predictions about the nature of international law is valuable for investigating the effectiveness of the FATF accountability framework. Consequently, it is valuable to consider the usefulness of recent enquiries into international legal theory (ILT).[387] The considerations to note here are that some ILTs are not enthusiastic towards international law. For example, Koskenniemi, who is from the school of

[382] This is based on the concept of *pacta sunt servanda*, which means obligations must be followed. See, Christer Pursiainen, 'Pacta Sunt Servanda? The Development of the Sense of Community and the Principle of Obligation in Soviet and Russian Doctrines of International Law' (1998) 14(3) The Journal of Communist Studies and Transition Politics 84 <https://www.tandfonline.com/doi/abs/10.1080/13523279808415383?journalCode=fjcs20> accessed 28 April 2021.

[383] *Pacta sunt servanda* has served for centuries as an international legal canon. See, ibid.

[384] Guzman (n 15) 15.

[385] ibid.

[386] Matthias Goldmann, 'A Quantum of Solace: Guzman on the Classical Mechanics of International Law' (2009) 1(1) Göttingen Journal of International Law 219 <https://www.gojil.eu/issues/11/11_article_goldmann.pdf> accessed 20 April 2021.

[387] International legal theory comprises a variety of theoretical and methodological approaches used to explain and analyze the content, formation and effectiveness of public international law and institutions and to suggest improvements. Some approaches center on the question of compliance: why states follow international norms in the absence of a coercive power that ensures compliance. Other approaches focus on the problem of the formation of international rules: why States voluntarily adopt international legal norms, that limit their freedom of action, in the absence of a world legislature. Other perspectives are policy oriented; they elaborate theoretical frameworks and instruments to criticize the existing rules and make suggestions on how to improve them. Some of these approaches are based on domestic legal theory, others are interdisciplinary, while others have been developed expressly to analyze international law. See, Anil Kumar Singh, *International Regimes and World Order* (K.K. Publications 2014) 20-21 <https://books.google.co.uk/books/about/International_Regimes_and_World_Order.html?id=bIdCEAAAQBAJ&redir_esc=y> accessed 22 September 2021.

thought of critical legal studies (CLS), which is a part of the contemporary legal theory movement, has argued that international legal norms are entirely devoid of content because of their inherent indeterminacy.[388] He posits that international law is prone to be captured by special interests because of its inherent indeterminacy.[389] International law has also been discredited by other academic accounts, where it is being described as a phenomenon that is either limited in its ability to restrict power exercised by States or does not play any role in international relations.[390] Accordingly, there are ample enquiries into ILT that are a basis for dismissing the notion of accountability for global cooperation against IFF. This is why the rational choice theory (RCT) of compliance by Guzman was developed to answer the question of why States comply with international law in the absence of a central law

[388] Goldmann (n 386) 219; and China Miéville, *Between Equal Rights: A Marxist Theory of International Law* (BRILL 2005) 50.; To say that the law is indeterminate is to say that the class of legal reasons is indeterminate. The class of legal reasons, in turn, consists of four components. These components are legitimate sources of law, legitimate interpretive operations that can be performed on the sources to generate rules of law, legitimate interpretive operations that can be performed on the facts of record to generate facts of legal significance and legitimate rational operations that can be performed on facts and rules of law to finally yield particular decisions. See, Brian Leiter, 'Legal Indeterminacy' (1995) 1 legal Theory 481 <https://doi.org/10.1017/S1352325200000227> accessed 20 May 2021.; Critical legal studies (CLS) is a theory which states that the law is necessarily intertwined with social issues, particularly stating that the law has inherent social biases. Proponents of CLS believe that the law supports the interests of those who create the law. As such, CLS states that the law supports a power dynamic which favors the historically privileged and disadvantages the historically underprivileged. For more on CLS, see generally, Robert A. Williams, 'Taking Rights Aggressively: The Perils and Promise of Critical Legal Theory for Peoples of Color' (1987) 5 (1) Minnesota Journal of Law & Inequality <https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1343&context=lawineq> accessed 20 April 2021; and Legal Information Institute, 'Critical Legal Theory' (*Legal Information Institute*) <https://www.law.cornell.edu/wex/critical_legal_theory> accessed 20 April 2021.; The reference to contemporary legal theory movement is to be understood as those contemporary challenges to modern legal theories that typically look into the possibility of organizing, in intellectually satisfying ways, diverse doctrinal materials and modes of juristic thought. Prominent theorist such as Roger Cotterrell have referred to how the need to understand law a social phenomenon demands that legal theory should ask for the limited views of law held by participants in legal processes must be confronted with wider theoretical perspectives that can incorporate and transcend these partial views and thereby broaden understanding of the nature of law. Cotterrell has observed that the most promising recent legal philosophy, which are in some modern theories of law, have tended to abandon the idea of law as a distinctive form or a finite system. 'For example, some modern institutional theories of law claim to combine philosophical and sociological approaches by emphasizing certain kinds of (apparently quite varied) institutions - rather than legal forms as such - as central to law's identity. Institutions are recognized as normatively structured, but the implication is that the structuring may allow more diversity or flexibility in regulatory forms than was generally recognized by earlier positivist theories centered on a model of law in terms of rules'. See, Sionaidh Douglas-Scott, 'Brave New World? The Challenges of Transnational Law and Legal Pluralism to Contemporary Legal Theory' in Richard Nobles and David Schiff (eds), *Law, Society and Community: Socio-Legal Essays in Honour of Roger Cotterrell* (Routledge 2014) 79, 83 and 92; and Roger Cotterrell, 'Law's Community: Legal Theory and the Image of Legality' (1992) 19(4) Journal of Law and Society 406 and 414 <https://www.jstor.org/stable/1410061> accessed 20 April 2021.; For analysis of some of these theories, see Mauro Zamboni, *Law and Politics: A Dilemma for Contemporary Legal Theory* (Springer 2008) 125-145.

[389] Goldmann (n 386); and Terry Nardin, 'Theorising the International Rule of Law' (2008) 34 (3) Review of International Studies 390 <https://www.jstor.org/stable/40212481> accessed 20 April 2021.

[390] Mehrdad Payandeh, 'The Concept of International Law in the Jurisprudence of H.L.A. Hart' (2011) 21(4) The European Journal of International Law 969-970 <http://www.ejil.org/article.php?article=2121&issue=104> accessed 20 April 2021.

enforcement mechanism.[391] As is common with international legal theorists, Guzman uses rational choice theory to do what is known as approaching law from the outside or focusing on law as a social phenomenon.[392] Singh explains that when faced with the question of what international is and how it exists, ILT has moved back and forth between perspectives such as the internal and external accounts of law.[393] Therefore, in general, and from a legal perspective, rational choice is understood as an approach to law that applies useful theories or economics to identify the legal implications of maximizing behavior inside and outside of markets.[394] In conducting their enquiries, rational choice theorists assume that individual actors will seek to maximize their preferences and interests.[395]

In more specific terms, Guzman's theory is based on a Rational Choice Institutionalism (RCI) strand of RCT.[396] Some authors have described RCI as the analysis of institutions, which are defined as rules that are institutionalized in a society or rules of the game that affect the behavior of political actors.[397] This reference to institutions, in RCI, is to be understood as something that is entirely different from organizations. As Knio has noted, in RCI, which is a concept that draws heavily from the work of North, there is a distinction between institutions which set the rules of the game and organizations which are the players, agencies etc.[398] According to North,

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[391] Guzman (n 15).
[392] ibid 211; and Wouter G. Werner, 'Buribunks and foundational paradoxes of international law' (2019) 28(2) Griffith Law Review 260 <https://www.tandfonline.com/doi/full/10.1080/10383441.2019.1646195> accessed 20 April 2021.; For analysis on approaching the law from the outside. See, generally Kunal M. Parker, 'Approaches to the Study of Law as a Social Phenomenon: Legal History' in Austin Sarat and Patricia Ewick (eds), *The Handbook of Law and Society* (Wiley Blackwell 2015).; For analysis of the types and purposes of legal theory see, Brian H. Bix, 'Types of Legal Theory', *Encyclopedia of the Philosophy of Law and Social Philosophy* (2017); and William A. Edmundson, 'Why Legal Theory is Political Philosophy' (2013) 19(4) Legal Theory <https://www.cambridge.org/core/journals/legal-theory/article/why-legal-theory-is-political-philosophy/71EE625EFAD33E81880684CBD07AD5E7> accessed 20 April 2021.
[393] Other relevant perspectives include naturalism and positivism. See, Singh (n 387).
[394] Note that economics is the study of ration choice under limited conditions. See, Anil Kumar Singh, *International Regimes and World Order* (K.K. Publications 2021) 24 <https://books.google.co.uk/books/about/International_Regimes_and_World_Order.html?id=bIdCEAAAQBAJ&redir_esc=y> accessed 22 September 2021.
[395] Rational choice theorists use transaction cost economics, which is a technique that incorporates cost of identifying actors, negotiating, and cost of enforcing agreements into price theory. Price theory is observed to be one of the economic techniques used in rational choice approach to law. It is used to evaluate strategic interactions between actors. See, ibid.
[396] Guzman (n 15) 18.
[397] Svante Ersson and Jan-Erik Lane, *The New Institutional Politics: Outcomes and Consequences* (Routledge 2000) 3; and Fiona Mackay, Meryl Kenny and Louise Chappell, 'New Institutionalism Through a Gender Lens: Towards a Feminist Institutionalism?' (2010) 31(5) International Political Science Review 578 <https://journals.sagepub.com/doi/pdf/10.1177/0192512110388788> accessed 20 April 2021.
[398] Karim Knio, *The European Union's Mediterranean Policy: Model or Muddle?: A New Institutionalist Perspective* (Palgrave Macmillan 2013) 21.; Note that North is referenced here because of his work on the new institutional economics (NIE) school.

> institutions are the humanly devised constraints that structure political, economic and social interaction. They consist of both informal constraints (sanctions, taboos, customs, traditions, and codes of conduct), and formal rules (constitutions, laws, property rights).[399]

Equally, North has explained that organizations 'are groups of individuals bound by some common purpose to achieve objectives.'[400] Therefore, it is the complex interplay between institutions and organizations that is explained by RCI in its attempt to explain change and continuity.[401] In general, the rational choice institutionalist is interested in analyzing how different institutions affect the pattern of costs and benefits – the incentive structures – that face individual political actors.[402] With this background in mind, note that RCI is observed to be a scholarly tradition that has helped to reintroduce the notion of formal and informal institutions in the rational choice study of international systems.[403] Guzman acknowledges that he has relied on institutionalist assumptions to develop his ILT of compliance with international law.[404] These assumptions are:

- States are rational, self-interested, and able to identify and pursue their interests.
- States interests are a function (purpose) of their preferences which are assumed to be exogenous and fixed. However, it should be noted that Guzman relaxes the assumption that States preferences are fixed.[405]
- States do not concern themselves with the welfare of other States but instead seek to maximize their own gains or payoffs. States, therefore, have no innate preference for complying with international law, they are unaffected by the legitimacy of a rule of

[399] Douglass C. North, 'Institutions' (1991) 5 (1) The Journal of Economic Perspectives 97 <https://www.jstor.org/stable/1942704> accessed 2 January 2022.; North has also explained that the term institutions refer to the underlying rules of the game. The term institutions include any form of constraint that individuals devise to shape human interactions. These rules that human beings devise is an example of formal institutions, while conventions and code of behavior are an example of informal institutions. While using the analogy of the rules of the game in a competitive team sport, North explains that institutions consist of the formal written rules as well as typically unwritten codes of conduct that underlie and supplement formal rules, such as not deliberately injuring a key player in the opposing team. See, Douglass C. North, *Institutions, Institutional Change and Economic Performance* (Cambridge University Press 1990) 3; and Becky Carter, 'Inclusive Institutions: Topic Guide' (Governance and Social Development Resource Centre 2014) 7 <https://gsdrc.org/topic-guides/inclusive-institutions/> accessed 29 April 2021.
[400] North has observed that organizations include social bodies, political bodies and economic bodies. He also observes that organizations are shaped by institutions and, in turn, influence how institutions change. See, North, *Institutions, Institutional Change and Economic Performance* (n 399) 5.
[401] Knio (n 398).
[402] Mark Pennington, 'Theory, Institutions and Comparative Politics' in Judith Bara and Mark Pennington (eds), *Comparative Politics: Explaining Democratic Systems* (SAGE 2009) 16.
[403] Mark Pollack, 'Rational Choice and EU Politics' Ben Rosamond, Knud Erik Jørgensen, Mark Pollack (eds), *Handbook of European Union Politics* (SAGE Publications 2006) 33.
[404] Guzman (n 15) 17 and 20.; See also, Cotterrell (n 388); and Singh (n 387).
[405] Guzman (n 15) 122 and 128; and Goldmann (n 386) 225.

> law, past consent to a rule is insufficient to ensure compliance, and there is no assumption that decision-makers have internalized a norm of compliance with international law.

Finally, under Guzman ILT of compliance, States are considered to be a group of rational actors that will want to achieve their interest and try to maximize their gains or payoffs in any given situation.[406] Therefore, when adopting Guzman's ILT of compliance, all States are considered to be rational actors that need to maximize their gains or payoffs and do not have any innate preference for complying with the provisions of international law.[407]

3.3.2.1 The Location of Guzman's ILT of Compliance in the FATF Literature

In the context of universal development, the implication of Guzman's ILT of compliance is that despite the legal norms on anti-IFF, RTD and the whole development agenda of the UN, States are not seen as actors that are concerned with the welfare of the Nigerian population. Rather, as Guzman observes, all States will prefer the outcome that is useful to the goal of achieving their interest.[408] With the preceding analysis in mind, it is important to note Thirlway's observation that in recent times, Guzman's ILT is, in one way or the other, frequently invoked for the analysis of international law.[409] One of the reasons for using Guzman's ILT is to analyze the extent to which reputation is important in explaining a country's compliance with international law. Mushkat's study on compliance with international law is an example of how Guzman's ILT has been invoked in an analysis on the importance of State's reputation from the perspective of a specific country.[410] To be specific, her analysis is on the extent to which a loss of reputation is the explanation for China's compliance with international law.[411] In her analysis of China's preference towards compliance with international law, she identified several factors, including reputational capital, which are useful for explaining the country's conduct. Accordingly, Mushkat's finding was that although China's objective of getting a new identity has predisposed it to acknowledge the importance of reputation, her analysis of the country's experience is a

[406] Guzman (n 15) 17.
[407] ibid.
[408] ibid.
[409] Hugh Thirlway, *The Sources of International Law* (2nd edn, Oxford University Press 2019) 226 and 231-232.
[410] Roda Mushkat, 'State Reputation and Compliance with International Law: Looking through a Chinese Lens' (2011) 10(4) Chinese Journal of International Law 709- 711 and 721 <https://doi.org/10.1093/chinesejil/jmr038> accessed 20 May 2021.
[411] ibid.

reminder of why a single factor cannot fully explain its compliance with international law.[412] The analysis by Mushkat's is extensive. Her conclusions are a reason for why research should be focused on specific factors which contribute to influencing a country's compliance, rather than the generalized analysis which is conducted by Mushkat. The approach of focusing on reputational capital, as a specific factor that can explain compliance, is used in Geisinger and Stein's study on compliance with human right treaties. In their analysis, Guzman's ILT is used for the purpose of testing its conclusion on the importance of reputational capital.[413] Geisinger and Stein's conclusion is that because Guzman's ILT has limited the scope of its explanation to the consequences occurring in a cooperation and coordination framework, it cannot fully explain the influence that reputational forces have on the conduct of States.[414] In other words, Geisinger and Stein's conclusion is that the scope of Guzman's ILT is not wide enough to explain the impact of reputational forces on States behavior towards human right treaties. Geisinger and Stein's conclusion is important because it highlights the need for Guzman's ILT to only be used in studies that are focused on compliance in cooperation and coordination frameworks. Therefore, it is important to note that Vido has used Guzman's ILT as a basis for her analysis of the Financial Stability Board (FSB) and the FATF as an international cooperation and coordination frameworks.[415] Vido's conclusion is that the FSB and the FATF are an important part of international law because they induce a change in the behavior of States.[416] Furthermore, Vido concluded that the FATF's ability to influence the behavior of States is enhanced by its publications on countries level of compliance, such as its list of non-cooperative countries and jurisdictions. Consequently, it should be noted that the impact of the FATF's publications on countries level of compliance is discussed in the relevant literature. For instance, in addition to analyzing the positive implication of the FATF's activities, some studies have identified the negative impact of some assumed weaknesses in the evaluation processes that is used to assess the level of countries' compliance with the FATF's policies.[417] The impact of the FATF's publications on countries

[412] ibid 735 and 737.
[413] Alex Geisinger and Michael Ashley Stein, 'Rational Choice, Reputation, and Human Rights Treaties' (2008) 106(6) Michigan Law Review 1130 <https://repository.law.umich.edu/mlr/vol106/iss6/11> accessed 20 May 2021.
[414] ibid 1142.
[415] Sara De Vido, 'Soft Organizations, Hard Powers: The FATF and the FSB as Standard-Setting Bodies' (2019) 19(2) Global Jurist 1 and 6 <https://www.proquest.com/docview/2244698174> accessed 20 May 2021.; The Financial Stability Board (FSB) is an international body that monitors and makes recommendations about the global financial system. See, 'About the FSB' (*FSB*, 16 November 2020) <https://www.fsb.org/about/> accessed 20 May 2021.
[416] Vido (n 415) 1, 5 and 7.
[417] Findley, Nielson and Sharman have opined that the FATF methods have not led to a correct identification of the countries where most of the proceeds of corruption go. According to them, the failure to properly identify the locations where most of the proceeds of corruption go is one of the issues that has obstructed the fight

compliance has also been addressed by studies that are designed to investigate the FATF's ability to cause reputational damage. On one hand, there is the study by Sharman where interview data was used to analyze some situations where compliance levels were improved in some countries, after they concluded that some identified damage to their economy was caused by the FATF's publication of the blacklist.[418] In the study by Sharman, it was also shown that in anticipation of some damage to their economy, which would result from their inclusion in the FATF blacklist, Austria, the Cayman Islands, the Isle of Man and Mauritius were found to have improved their compliance levels.[419] Therefore, while Sharman's study affirmed the ability of the FATF to influence compliance by states, there are other studies that suggest the opposite. For instance, in a study that compared the compliance of some FATF members before and after 2003, when the FATF Recommendations of 1996 was updated, it was found that countries' compliance levels were declining.[420] Likewise, in the study by Olga, D'Andrea and Masciandaro, an analysis on the volume of cross-border financial transactions for their sample, which included the countries such as Nigeria that had been put in the FATF's blacklist, was conducted.[421] They looked at the change in the volume of cross-border financial transactions that had occurred before and after the countries in their sample had been included in the FATF's blacklist. Their finding was that, in general, the levels of international financial flows are not affected by the FATF's publication of a

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against corruption and related financial crimes. See, Michael Findley, Daniel Nielson and Jason Sharman 'Anti-Corruption Measures' (2020) FACTI Background Paper 5, 13-15 <https://assets-global.website-files.com/5e0bd9edab846816e263d633/5f15bdfd2d5bdd2c58a76854_FACTI%20BP5%20-%20Anti%20corruption%20measures.pdf> accessed 20 May 2021.; Another relevant study is by Unger and Ferwerda, who has analyzed the FATF's decision to make the economic possibility to deal with the challenge of AML, a factor that is used in the assessment of countries. They analysed the impact of FATF activities that was evident when Cyprus commended itself after wrongly comparing its FATF assessment scores to that of other countries. According to Unger and Ferwerda, it is because the FATF has not made its assessment criteria to be the same for all countries, that Cyprus's reason for commending itself was invalid. This means that FATF evaluations process has created a situation where countries can portray themselves as being more compliant with international AML policies than they really are. See, Brigitte Unger and Joras Ferwerda, 'Regulating Money Laundering and Tax Havens: The Role of Blacklisting' (2008) Tjalling C. Koopmans Research Institute Discussion Paper Series 08-12, 16-17 <https://www.uu.nl/sites/default/files/rebo_use_dp_2008_08-12.pdf>accessed 25 May 2021.

[418] Sharman identifies St Kitts and Nevis, Vanuatu and the Cook Islands as the countries that improved their compliance after experiencing problems that were deemed to be consequences of the FATF blacklisting. See, Jason C. Sharman, 'The bark is the bite: International organizations and blacklisting' (2009) 16 (4) Review of International Political Economy 593 <https://www.tandfonline.com/doi/full/10.1080/09692290802403502> accessed 25 May 2021.

[419] ibid 593 - 594.

[420] The study used data in reports on self-assessment by FATF members and from the mutual evaluation by the FATF. See, Jackie Johnson, 'Third Round FATF Mutual Evaluations Indicate Declining Compliance' (2008) 11(1) Journal of Money Laundering Control 47, 56 and 58-59 <https://www.emerald.com/insight/content/doi/10.1108/13685200810844497/full/html> accessed 2 January 2022.

[421] Olga Balakina, Angelo D'Andrea and Donato Masciandaro, 'Bank Secrecy in Offshore Centres and Capital Flows: Does Blacklisting Matter?' (2017) 32(1) Review of Financial Economics 30-31 <https://www.sciencedirect.com/science/article/abs/pii/S1058330015300100> accessed 22 May 2021.

blacklist.[422] The findings by Olga, D'Andrea and Masciandaro's are important because it supports the claim that, in general, the FATF's publications on countries' compliance cannot be systematically linked to the material decline of countries' fortunes.[423] This is why Nance has reasoned that because existing literature does not support any reliance on the ability for the FATF's country compliance publications to result in strong reactions from financial institutions, there is need for more clarity about the role of blacklisting.[424] Therefore, Nance has analyzed the FATF by using the concept of experimentalism, which he identifies as an analytical framework that emphasizes broad, participatory standard setting, intensive but diagnostic monitoring, and routinized updating in light of experience.[425] He has concluded that if his experimentalist interpretation is correct, then the FATF is a more useful tool for the objective of influencing the preference of countries than has been previously acknowledged by extant literature.[426] Another relevant contribution to the literature on FATF's impact is the study by Clarke, which was an analysis on regimes for combating ML in international business transactions.[427] Clarke's rationale for analyzing AML regimes is that illicit funds produced through grand corruption are laundered through methods that hide their illegitimate identity.[428] Therefore, Clarke analyzed the effectiveness of the FATF and the UNCAC of 2003, as international instruments that are created to facilitate the goal of domestic criminalization of corruption and the implementation of AML mechanisms in all countries.[429] One of Clarke's observations was that the act of non-compliance with the FATF Recommendations 2012 is unattractive to States because of the reputational consequence that is associated with the FATFs country compliance publications. He posited that the effectiveness of the FATF Recommendations 2012 is limited to the measures that are being implemented at the domestic level.[430] Clarke's conclusions are based on his analysis of information that is in the FATF country compliance publication which is known as the mutual evaluation reports (MERs). As a result of his analysis of the MERs for United Kingdom, the United States of America and Canada, Clarke has concluded that the effectiveness of the FATF Recommendations 2012 is limited because States are

[422] ibid.
[423] Nance (n 266) 134.
[424] ibid.
[425] Contextualized implementation is also emphasized by experimentalism. See, ibid 131.
[426] ibid 148.
[427] Andrew Emerson Clarke, 'Is There a Commendable Regime for Combatting Money Laundering in International Business Transactions?' (2021) 24(1) Journal of Money Laundering Control 163-176 <https://doi.org/10.1108/JMLC-05-2020-0057> accessed 28 May 2021.
[428] ibid.
[429] ibid 165.
[430] ibid 170.

implementing it in dissimilar ways.[431] In essence, Clarke has concluded that the FATF has a limited impact as a mechanism that is relevant to countries' efforts against the cross-border laundering of corruption related illicit funds.[432]

3.4 The Concept of Law and Development

An enquiry on the FATF's value as a body that is relevant to the goal of actualizing RTD in Nigeria because of its impact on the efforts against the cross-border laundering of corruption related illicit funds is a contribution to knowledge about law and development. According to Dann, global administrative law (GAL) is identifiable in the literature on law and development.[433] Therefore, Dann has identified GAL of development as an academic field which is partially focused on the law of institutions that organize the transfer of funds or knowledge for development purposes, such as the United Nations Development Program (UNDP) or domestic aid agencies.[434] An example of relevant literature is Tan's analysis of the Poverty Reduction Strategy Paper (PRSP) framework within the broader context of international law and global governance.[435] Tan explores the impact that the PRSP framework has had on non-industrialized countries' engagement with the global political economy and the international regulatory norms and institutions which support it. Tan's conclusion is that the PRSP framework is a regulatory regime that builds upon the disciplinary project of structural adjustment by embedding economic conditionalities within a regime of domestic governance and public policy reform. Similarly, an example of the studies in GAL and development is by Chazournes, who has identified the relationships that exist between international financial institutions (IFIs) and regional development banks and the legal consequences that arise from them.[436] Chazournes identifies mechanisms for development cooperation such as the uniform framework that has led to the adoption of

[431] ibid 163.
[432] ibid 168.
[433] Dann (n 20) 417.
[434] Dann observes that one aspect of the literature on law and development can be described as GAL of development, institutional law of development or the law of development cooperation and finance. In explaining GAL of development, Dann observes that the applicable institutions and the laws regulating them do not engage in development activities themselves. These institutions and the laws regulating them enable others to engage in development activities by providing funds or knowledge. See, Dann (n 20) 415-416 and 417.
[435] See generally, Celine Tan, *Governance through Development: Poverty Reduction Strategies, Inter- national Law and the Disciplining of Third World States* (Routledge 2011).
[436] Laurence Boisson de Chazournes, 'Partnerships, Emulation, and Cooperation: Towards the Emergence of a Droit Commun in the Field of Development Finance' in Hassane Cissé, Daniel D Bradlow and Benedict Kingsbury (eds), *The World Bank Legal Review* (The World Bank 2011) 173 – 187.

similar anti-corruption policies by the World Bank and regional development banks.[437] Therefore, through the work of academics such as Chazournes who have focused on the law of institutions that organize the transfer of knowledge or funds for development purposes, there has been more clarity about the field of law and development.[438] Invariably, the academics that have contributed to knowledge of GAL and development are a part of the larger discuss on the concept of development and the related development theories.[439] Furthermore, it is useful to adopt development theories in analyses that are focused on GAL and development, and are referred to as GAL of development studies.[440] As Dann has observed, in the study of GAL of development and other branches of GAL which are focused on domestic and international development, it is ideal to reflect on the concept of development from a doctrinal or theoretical view, or as a combination of both.[441] Consequently, in assessing the FATF, as an institution that fosters the implementation of AML policies which allow States and their institutions to promote development resource availability by retrieving the proceeds of crime, it is ideal to conduct a relevant theoretical analysis.[442] Therefore, the ensuing subsection focuses on how the enquiry on the FATF, as an international instrument that is relevant to anti-IFF and the actualization of RTD, is informed by international development theory. The focus is on development theories that are relevant to the development discuss in the UN. This is because it is the UN that has given RTD the global status it enjoys by adopting the UNDRD 1986.

3.4.1 Theories of Development: Modernization and Dependency Theory

Dependency and modernization theories have been a subject of much criticism.[443] Some authors, such as Schaefer have argued against the use of modernization theory and

[437] The uniform framework was put into place in 2006. It has led to policies such as the adoption of common definitions of fraud and corruption and the development of common investigatory principles by the World Bank and regional development banks.
[438] Dann (n 20) 415 and 417.
[439] ibid 419 - 420.
[440] Note that the terminology is not always coherent, either with regard to the field of legal research or to the respective policy area. Therefore, there times when scholarly work that is under GAL of development is referred to as institutional law of development or the law of development cooperation and finance. See, ibid 415-416.
[441] One of the branches of GAL is comprised of studies that focus on the role of law as an instrument for development in domestic settings. Another branch of GAL analyses international law from a development perspective, be it in international economic law (trade, investment, sovereign debt), environmental law, intellectual property or any other area of law. See, ibid 419-421.
[442] In his analysis, Dann has explained that GAL of development is associated with the laws, including soft law, of institutions that are involved in development cooperation. See, ibid 417 - 421.
[443] Some authors criticize dependency and modernization theory in general. Some other authors criticize specific theorists. For instance, in appendix I of the acclaimed work by the dependency theorist, Arghiri Emmanuel, is contained the criticisms of his work by Charles Bettelheim. Arghiri Emmanuel's dependency theory has also been criticized by Pilling. See, Geoff Pilling, *Marxist Political Economy* (Routledge 2012) 75-95; and Arghiri Emmanuel, *Unequal Exchange: A Study of the Imperialism of Trade* (Monthly Review Press 1972) 271- 322.;

dependency theory.[444] Nevertheless, the modernization theory and dependency theory are influential theories that have been adopted at the international level. In the years before the RTD was recognized in the UNDRD of 1986, the discourse on underdevelopment and the methods to achieve development were largely based on dependency theory or modernization theory. As Protopsaltis has highlighted in its history, the UN has adopted modernization theory and dependency theory in the policy framework for guiding all international action and national development policies.[445] For a better understanding of the theoretical background of how the development discussions in the UN has evolved before and after the adoption of the UNDRD (1986), it is useful to refer to the literature that provides knowledge on the relevant development theories. For example, in Nwosu's chapter on the concept of third world, it is posited that modernization theory and dependency theory are some of the leading theories of development and underdevelopment for a non-industrialized county such as Nigeria.[446] In Tucker's analysis on the concept of development, he points out that economic growth, high levels of industrial production, and liberal democracy are the main components of what is understood as development by modernization and dependency theorists.[447] However, it is noted by Sachs that modernization theorists are more attentive to economic growth than their dependency theory counterparts.[448] This is because dependency theorists are more focused on assessing economic development by considering, for instance, whether an economic activity is actually benefitting the nation as a whole than they are on

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For general criticisms of modernization and dependency theory see generally, Harriet Friedmann and Jack Wayne, 'Dependency Theory: A Critique' (1977) 2(4) The Canadian Journal of Sociology <https://www.jstor.org/stable/3340297?seq=1#metadata_info_tab_contents> accessed 15 May 2021; and Mutongi Chipo, Thabani Nyoni and Smartson P. Nyoni, 'A Critique of the Modernization Theory to Development' (2020) (1) International Journal of Innovations in Engineering Research and Technology <https://repo.ijiert.org/index.php/ijiert/article/view/2393> accessed 15 May 2021.

[444] Modernization theory has been criticized by Schaefer for the use of the term modernization. He aligns himself with the view that the term terms perpetuate the dominant ideology of capitalist societies and is suggestive of an eventual positive change, but the change that occurs is slow and only beneficial to affluent members of the society. See, Richard T. Schaefer, *Sociology: A Brief Introduction* (McGraw-Hill Education 2017) 208.; Andre Frank is another person that has criticized modernization theory, see generally Andre Gunder Frank, *Latin America: Underdevelopment or Revolution* (Monthly Review Press 1969).; For some of the criticisms of dependency theory see, Tony Smith, 'The Underdevelopment of Development Literature: The Case of Dependency Theory' (1979) 31 (2) World Politics 247-288 <https://www.jstor.org/stable/2009944> accessed 15 May 2021; and Young Namkoong, 'Dependency Theory: Concepts, Classifications, and Criticisms' (1999) 2(1) International Area Studies Review 141-144 <https://journals.sagepub.com/doi/pdf/10.1177/223386599900200106> accessed 15 May 2021.

[445] Panayotis M. Protopsaltis, 'Deciphering UN Development Policies: From the Modernization Paradigm to the Human Development Approach?' (2017) 38 (8) Third World Quarterly 1733–1752 <https://doi.org/10.1080/01436597.2017.1298436> accessed 30 April 2021.

[446] Maxwell Owusu, 'Third World', *International Encyclopedia of the Social and Behavioral Sciences* (Second edn, 2015) 301.

[447] Tucker (n 292).

[448] For detailed analysis of economic growth, see Jeffrey D. Sachs, *The Age of Sustainable Development* (Columbia University Press 2015) 14-27.

economic growth.[449] This is why Ferraro has said that dependency theorists are disposed to discount the aggregate measures of economic growth such as the gross domestic product (GDP) of a country.[450] Dependency theorists are inclined to emphasize social indicators far more than economic indicators because they focus more on indices such as life expectancy, literacy, infant mortality and education.[451] Apart from the divergent approach towards what is understood as the core component of development, there are other differences in modernization theory and dependency theory which are comprehensively considered in relevant literature.[452] For instance, in their analysis of world system theory, Chirot and Hall have considered the relationship and history of modernization theory and dependency theory.[453] They have noted that modernization theory has a structural side (which was a uniform evolutionary vision of social, political, and economic development) and its socio-psychological versions.[454] In one of the socio-psychological versions of the modernization theories, the rise of a society is explained by claiming that its members possess a high need for achievement and rationality.[455] So, it can be said that the socio-psychological versions have tended to explain development of a society by focusing on the mentality of the indigenous population.[456] In the structural side of development theory, the mentality of the population is not the factor that is used to explain development. On the contrary, the structural side of development theory is based on the proposition that when any society begins the process of modernization, it must move from development stage A to B, B to C, and so on.[457] The focus in the structural side is the claim that societies are able to move from an economy that is driven by age-old traditions to a system where scientific methods of technology are adopted, and eventually, there is a high level of industrial production and consumption.[458] In essence, the proponents of the structural side of modernization theory are

[449] Vincent Ferraro, 'Dependency Theory: An Introduction' in Giorgio Secondi (ed), *The Development Economics Reader* (Routledge 2008) 63.
[450] ibid.
[451] ibid.
[452] See, Thomas M. Dunn, 'The Failings of Liberal Modernization Theory' (*E-International Relations*, 26 June 2013) <https://www.e-ir.info/2013/06/26/the-failings-of-liberal-modernisation-theory/> accessed 3 May 2021; and Bubaker F. Shareia, 'Theories of Development' (2015) 2 (1) International Journal of Language and Linguistics 79 <http://ijllnet.com/journals/Vol_2_No_1_March_2015/9.pdf> accessed 3 May 2021.
[453] In their analysis, they point out that world system theory is a version of dependency theory. See, Daniel Chirot and Thomas D. Hall, 'World-System Theory' (1982) 8 Annual Review of Sociology 81-106 <https://www.jstor.org/stable/2945989> accessed 30 April 2021.
[454] ibid 81.
[455] ibid 82.
[456] Chirot and Hall have referred to another example of the socio-psychological version of modernization theory, which is propagated by theorists such as Inkeles and Smith. In the version by Inkeles and Smith, it is posited that the ideal population which achieve development are said to be the result of human contact with modern institutions. This conclusion also implies that the mentality of the population is also affected by their contact with modern institutions.
[457] Chirot and Hall (n 453) 82.
[458] ibid.

advocates of the idea of uniform stages of development that the world's societies must experience eventually.[459] It is noted by Chirot and Hall that although the structural side and socio-psychological versions are not necessarily cohering with each other, they are the components of what is known as modernization theory.[460] The challenge with modernization theory includes its rejection of the belief that the very international nature of modernization might be an obstacle to the economic progress of poor nations.[461] Therefore, modernization theory has directly opposed dependency theory, which was from the onset, a school of thought that gave a portrayal of the quasi-colonial situation of economic stagnation and foreign control of export territories.[462] As time went on, dependency theory morphed to become the basis for analysis that addresses those situations

> in which domestic industrialization has occurred along with increasing economic denationalization; in which sustained economic growth has been accompanied by rising social inequalities; and in which rapid urbanization and the spread of literacy have converged with the even more evident marginalization of the masses.[463]

In general, the basic idea of the dependency school is that the development of Europe and North America was predicated on the active underdevelopment of the non-European or non-industrialized countries.[464] As a result, developing countries can achieve at best, the forms of development that make them dependent on the First World for capital, technology, markets and, especially at times of emergency, aid, loans, and grants.[465] One example of a dependency theorist that has written and influenced literature on African countries including Nigeria is Amin.[466] Amin's version of dependency theory is referred to as global historical

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[459] ibid.
[460] In general, they posit that All versions of modernization theory are meliorative, admitting the possibility of accelerated change through such devices as foreign aid (to provide capital and modern know-how), psychological manipulation to better motivate individuals, reform of legal and economic norms, or a combination of these. See, ibid 81 and 83.
[461] It also tends to reject the notion of any deep structural factors that might prevent economic progress. See, ibid 83.
[462] ibid 91.
[463] ibid.
[464] That is, by making Third World societies less developed than they had previously been. See, Elaine Hartwick, 'Dependency', *International Encyclopaedia of Human Geography* (2009) 92 <https://www.sciencedirect.com/science/article/pii/B9780080449104000857> accessed 3 May 2021.
[465] ibid.
[466] Samir Amin, 'Underdevelopment and Dependence in Black Africa-Origins and Contemporary Forms' (1972) 10 (4) The Journal of Modern African Studies 503-524 <https://www.jstor.org/stable/160011> accessed 30 April 2021.; See also, Patrick I. Chuke, 'Samir Amin's Underdevelopment Theory and Nigeria's Dependent Development' in Friday E. Iyoha and Emmanuel C. Onwuka (eds), *Administering Development in the Third World: Theory, Practice and Constraints* (Stirling-Horden Publishers 1996) 32-44; and Dolapo Adeniji-Neill,

materialism.[467] Amin also observes that the core characteristic of global historical materialism is the use of the worldwide law of value to explain underdevelopment in poor countries.[468] The main feature of the worldwide law of value is observed to be the understanding that in the relationships between industrialized countries and non-industrialized countries, the price of the labour force is distributed in a very unequal way than are the productivities of social labour.[469] Therefore, Amin has used the idea of the worldwide law of value to explain why the trajectory of development in the non-industrialized countries of Africa has not been a replication of what was experienced in the development journey of industrialized nations of the world.[470] His arguments are an opposition to the idea that all countries go through the same stages of development. Hence, it is certain that through his writings Amin has expressed opinions which are slightly similar to the ideas of the version of dependency theory known as world system theory.[471] This is because the proponents of world system theory are a community of intellectuals that reject the idea of the uniform stages of development which is posited by modernization theorists.[472] In general, world system theorists use the basic categories of analysis such as core (which is in more current terminology referred to as the global north); semi-periphery; and periphery to explain the continued poverty of most non-western societies, and to challenge modernization theory.[473] The central theme of the world systems approach is the proposition that core regions are

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'Communal and Tributary Formations: A Discussion of the Theories of Samir Amin and the Land Tenure System of the Yoruba Kingdom of Western Nigeria' (2018) 11(3) The Global Studies Journal 51-62 <https://doi.org/10.18848/1835-4432/CGP/v11i03/51-62>accessed 30 April 2021.

[467] This is a statement that Amin made to Kvangraven in an interview that is documented in, Ingrid Harvold Kvangraven, 'A Dependency Pioneer: Samir Amin' in Ingrid Harvold Kvanraven and others (eds), *Dialogues on Development Volume 1: Dependency* (Institute for New Economic Thinking 2017) 12 <https://eprints.whiterose.ac.uk/131850/1/dependency_theory_e_book_comp.pdf> accessed 30 April 2021.

[468] This is based on a statement that Amin made to Kvangraven in an interview that is documented in, see ibid.

[469] In other words, the price of the labor force is distributed in a much more unequal way than are the productivities of social labor. The argument of global historical materialist is further explained in an illustration where the difference in productivity between a poor nation and an industrialized country is 1:5 in favor of the later, and the difference in the price of the labor force may be 1:20. See, ibid 12-13.

[470] Samir Amin, 'A Tribute to Giovanni Arrighi' (2011) 27(1) Journal of Development Studies 19 <https://www.mattersburgerkreis.at/site/de/publikationen/jep/alleausgabenartikel/article/102.html> accessed 30 April 2021.; See also Samir Amin, *Capitalism in the Age of Globalization: The Management of Contemporary Society* (Zed Books 2014) 5, 107 and 133.

[471] This point is also made by Chirot and Hall, who have observed that Amin has expressed views that are closer to the conclusions of world system theorists, such as Immanuel Wallerstein and Andre Gunder Frank than the quintessential dependency theorists such as Raúl Prebisch. See, Chirot and Hall (n 453) 90 and 92.

[472] ibid 83-84.

[473] ibid 81 and 83.; See also, James Petras, 'Dependency and World System Theory: A Critique and New Directions' (1981) 8 (3/4) Latin American Perspectives 148 <https://www.jstor.org/stable/2633477> accessed 30 April 2021.; Note that the term core is used to suggest a multicentric region containing a group of states rather than the term center, which implies a hierarchy with a single peak. It is also observed that when the world-system perspective emerged, the focus on the non-core (periphery and semi-periphery) was called Third Worldism. Current terminology refers to the Global North (the core) and the Global South (periphery and semi-periphery). See, Christopher Chase-Dunn and Marilyn Grell-Brisk, 'World-System Theory' (*Oxford Bibliographies*, 26 November 2019) <https://www.oxfordbibliographies.com/view/document/obo-9780199743292/obo-9780199743292-0272.xml> accessed 30 April 2021.

exploiting the peripheral and semi-peripheral regions (which are in more current terminology referred to as the global south) through various mechanisms of unequal exchange.[474] According to Petras, world system theory has propagated the idea that the transfer of value from one region of the world capitalist economy to another is a form of primary accumulation that is necessary for maintaining the monopoly forms of capitalism in the core.[475] Due to this monopolistic forms of capitalism at the core, the peripheries are experiencing an unequal exchange which is a situation that contradicts the idea of a modern capitalist world. From the point of view of Petras, the argument of the world system theory is clear but flawed.[476] Chirot and Hall, who are in agreement with Petras, have noted that world system theory is flawed because of reasons such as the ease with which its practitioners have tended to fall into blind dogmatism.[477] Yet, the perceived flaws of world system theorist has not affected the use of their conclusions to justify the ideas of dependency theory.[478] In fact, it is observed that for dependency theory to be truly understood there is need for a firm grasp of world system theory.[479] Therefore, the preceding analysis of world system theory is necessary for an adequate portrayal of the dependency theory that has influenced the development discussions in the UN. The analysis shows that the proponents of dependency theory have identified various reasons for Africans to be distrustful about the interaction between African countries and the international community. Consequently, it is essential that international influence or presence in African countries is scrutinized to know whether it is beneficial or not to RTD.

3.4.1.1 Anti-Corruption and IFF in Modernization and Dependency Theory

From a modernization theory standpoint, the concept of development is observed to consists

> of a complex transition from traditional society, based on multiplex, affective and ascriptive relationships, to modern society that is based on role separation, rational relationships and achieved statuses. At a certain stage in

[474] Petras (n 473) 149.
[475] To further explain the arguments of world system theory, Petras observes that as a means of extracting surplus, unequal exchange is not only different from the extended reproduction of capital that is characteristic of the core, but it is the principal contradiction of the modern capitalist world. See, ibid.
[476] For analysis of some of these flaws. See, ibid 152 -155.
[477] Chirot and Hall (n 453) 102.
[478] Chirot and Hall observe that, the world-system theorists from the North (industrialized countries) are now being used by Southern (non-industrialized countries) dependency theorists to legitimize their ideas. See, ibid.
[479] ibid 90.

> this transition, a take-off into sustained economic growth would become possible.[480]

In order to be more specific, a prominent modernization theorist that has given a definitive account of the process of development is Rostow.[481] According to Rostow, the process of development is in stages that lead up to the creation of a modern stage which is characterized by high levels of consumption.[482] Therefore, Rostow's work is an example of how modernization theory is interested in the goal of achieving a society in which a high level of industrial production of goods has helped to create a high level of consumption in the economy.[483] Furthermore, from a modernization theory perspective, the emphasis of development discuss is on the internal forces and sources of socioeconomic development such as formal education, market-based economy, and democratic and secular political structures.[484] It is observed that although modernization theory does not rule out external forces and sources of social change and economic development, it has focused less on foreign influences in the development discourse.[485] Therefore, on the basis of modernization theory, Dode and Cletus have identified corruption, bad leadership, and lack of technology as some of the internal causes of underdevelopment in Africa in general and in Nigeria, in particular.[486]

Additionally, the proponents of modernization theory have stated that although the stimulus for the development of a country requires many inputs, the single most important input is a massive increase in the ratio of investment to national income.[487] In other words, one of the conclusions of modernization theory is the claim that an important factor which initiates the

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[480] Colin Leys, *The Rise and Fall of Development Theory* (East African Education Publishers and Indiana University Press 1996) 110.
[481] Dunn (n 452).
[482] Walt W. Rostow, *The Stages of Economic Growth: A Non-Communist Manifesto* (Cambridge University Press 1960) 12.
[483] In the analysis by proponents of a subset of modernization theory, which is known as post-modernization theory, they envisage that after an age of consumption, there will be postindustrial societies were there will be a change from a goods producing economy to a service economy and technology development and assessment will be the determinant of the society's future development. See, Chirot and Hall (n 453) 82; and Shareia (n 452); and ,'Post-modernization Theory' (*China Centre for Modernization Research*, 1 July 2015) <http://en.modernization.ac.cn/document.action?docid=24468> accessed 3 May 2021.
[484] Marcus A Ynalvez and Wesley M. Shrum, 'Science and Development', *International Encyclopaedia of the Social and Behavioural Sciences* (2nd edn, 2015) 150 <https://doi.org/10.1016/B978-0-08-097086-8.85020-5> accessed 3 May 2021.
[485] ibid.
[486] Robert O. Dode and Egugbo Chuks Cletus, 'Modernization Theory and African Development in the 21st Century' (2019) 5(1) Kampala International University Journal of Social Sciences <http://www.ijhumas.com/ojs/index.php/kiujoss/article/download/479/445> accessed 2 January 2022.
[487] Leys (n 480).; The application of this modernization theory approach is observed in some of the UN's policies. See, Protopsaltis (n 445) 1735, 1740 and 1743-1744.

development of Nigeria, or any other country, is its ability to invest more than its national income. In extant literature, all forms of corruption and the other factors such as IFFs, have been identified as part of the obstacles to the development process because they are factors that affect Nigeria's ability to effectively invest its national income, or in any other additional source of investments.[488] Consequently, because it is a factor that reduces domestic expenditure and investment, grand corruption related IFFs is an impediment to the development process that is envisaged by modernization theorists such as Rostow.[489] In essence, corruption related IFFs in all its forms are an impediment to development from a modernization theory standpoint. Therefore, from the modernization theory standpoint, the positive or negative impact of institutions such as the FATF on the anti-corruption related IFF efforts in Nigeria, is a part of their contribution to the development of the country. Accordingly, in this Thesis, the FATF is evaluated to identify its value to anti-corruption related IFF efforts in Nigeria.

As one of the critics of modernization theory, Tucker has observed that dependency theorists do not question the desirability of development as a concept which is large comprehended as economic growth, high levels of industrial production, and liberal democracy.[490] Dependency theorists are also known to be interested in development that includes social concepts such as improved life expectancy, literacy, education and reduced infant mortality.[491] In the dependency theory tradition, the goal of development can be achieved through self-reliance measures that include the domestic production of previously imported goods and a total dissociation from the world market.[492] Therefore, from a dependency theory standpoint, the existence of IFFs are significant because they have caused the loss of resources that would have been used to promote the ideals of dependency theorists. Accordingly, in a dependency

[488] In Obilikwu's study on the effects of corruption on economic growth in Nigeria, he has posited that corruption reduces the investment, which would have been done by government to stimulate the economy. For some of the relevant studies. See, James Obilikwu, 'Corruption and Economic Growth in Nigeria' (2018) 9(6) Journal of Economics and Sustainable Development 19 <https://www.iiste.org/Journals/index.php/JEDS/article/viewFile/41680/42913> accessed 15 May 2021; and Fineboy Ikechi Joseph and Cordelia Onyinyechi Omodero, 'Illicit Financial Flows and the Growth of Nigerian Economy' (2019) 4(1) International Journal of Economics and Financial Modelling <https://onlinesciencepublishing.com/index.php/ijefm/article/view/317/461> accessed 16 May 2021.; See also, Amah Kalu Ogbonnaya and Okezie Stella Ogechuckwu, 'Impact of Illicit Financial Flow on Economic Growth and Development: Evidence from Nigeria' (2017) 3(4) International Journal of Innovation and Economics Development 19-33 <http://dx.doi.org/10.18775/ijied.1849-7551-7020.2015.34.2002> accessed 19 May 2021.
[489] Hansen (n 287) 15; Rostow (n 482) 12-16.
[490] Tucker (n 292).
[491] Ferraro (n 449) 63.
[492] Protopsaltis (n 445) 1734; and Namkoong (n 444) 126-127.; To be specific, Amin has been one of the champions of this school of thought. See, Samir Amin, 'Accumulation and Development: A Theoretical Model' (1974) Review of African Political Economy 9-26 <https://www.jstor.org/stable/3997857> accessed 15 May 2021.

theory inspired study on IFF in Nigeria by Chinwe, it is stated that there is a nexus between corruption related IFF and underdevelopment in the country.[493] Chinwe noted that the loss of resources to corruption, and through IFFs has hampered the objective of development and growth in Nigeria.[494] Similarly, Amadi and George-Anokwuru, have clarified that there is a nexus between IFFs and underdevelopment in the context of dependency theory.[495] They have posited that the link between IFF and globalization has increasingly contributed to the financial inequality of the global community.[496] The conclusion in Amadi and George-Anokwuru's study is that global inequality between the affluent and poor societies is increasingly becoming a demonstration of how economic globalization is a ploy to extend the influence of wealthy nations over other countries.[497] Therefore, both studies are part of the literature that have justifiably connected IFF in Nigeria to dependency theory. The conclusions of these studies are an indication of why anti-IFF is a valuable policy for alleviating any insinuation that the causes of underdevelopment are being encouraged by wealthy nations who want to perpetuate their dominance on the world economy. The conclusions of these studies are also an indication of how anti-IFF in Nigeria is an important part of the overarching objective of self-reliance that is promoted by dependency theorists. Accordingly, the ability for international institutions such as the FATF to enhance anti-IFF in Nigeria is an indication of their value to the goal of self-reliance in the country. Therefore, in the interest of identifying the FATF's contribution to Nigeria's self-reliance, it is evaluated in this Thesis in order to identify the extent of its value to anti-corruption-related IFF in Nigeria.

3.4.2 Human Development Approach and Sen's Theory of Human Capabilities

Apart from modernization and dependency theories, another important theory that is relevant to the development and RTD discussions in the UN is the theory of human capabilities, which was first articulated by Sen in 1979.[498] This is because Sen's theory of human capabilities is the larger theoretical framework that underlies the human development

[493] Chinnah Promise Chinwe, 'Illicit financial flow and underdevelopment in Nigeria' (2019) 1(4) International Journal of Social Research and Development 5 <https://www.socialsciencejournal.net/article/view/12/1-4-11> accessed 16 May 2021.
[494] ibid.
[495] Luke Amadi and Chioma George-Anokwuru, 'Economic globalization and inequality: Exploring the linkages' (2018) 6(1) Issues in Business Management and Economics 4 <https://doi.org/10.15739/IBME.18.001> accessed 16 May 2021.
[496] ibid 2, 4, 7 and 11.
[497] ibid 11.
[498] Sabina Alkire and Séverine Deneulin**, '**The Human Development and Capability Approach' in Séverine Deneulin and Lila Shahani (eds) *An Introduction to the Human Development and Capability Approach: Freedom and Agency* (Earthscan 2009) 31.

approach to development which is adopted at the UN system.[499] The human development approach, which is about expanding the richness of human life rather than simply the richness of the economy in which human beings live, is a concept that has shaped the discourse on development in the UN.[500] Protopsaltis opined that as modernization and dependency theory began to wane in influence in the 1990s, the human development approach became the dominant paradigm in the global development discuss.[501] Hence, it must be noted that Sen's writings on the theory of human capabilities have largely provided the philosophical basis for the human development approach.[502] According to Whelan, Kanade and Puvimanasinghe, it is partly due to Sen's work and studies by influential writers such as Escobar that consensus began to grow on the need to include the human dimension as a central element of development.[503] They have observed that at the moment of Sengupta's appointment as the Independent Expert on RTD and the publication of Sen's work on development as freedom, there was convergence of the concept of development from an economic and a human rights perspective. Sengupta, who has been an important proponent of the convergence between development and the human rights perspective through his contributions to the literature, has noted that the RTD builds upon the notion of human development.[504] Sengupta has also stressed that the RTD can be described as the right to human development defined as a development process that expands substantive freedoms and thereby realizes all human rights.[505] Therefore, because the conceptual foundation of RTD is the human development approach, it is important to look at its larger logic, which is the theory of human capabilities by Sen.

3.4.2.1 Sen's Theory of Capabilities

[499] Craig N. Murphy, *The United Nations Development Program: A Better Way?* (Cambridge University Press 2006) 249; and Protopsaltis (n 445) 1733–1752.
[500] UNDP, 'About Human Development' (*UNDP Human Development Report*) <http://hdr.undp.org/en/humandev> accessed 3 May 2021.
[501] Protopsaltis (n 445) 1733.
[502] Sabina Alkire and Séverine Deneulin, 'The Human Development and Capability Approach' in Séverine Deneulin (ed), *An Introduction to the Human Development and Capability Approach: Freedom and Agency* (Routledge 2009) 23.
[503] Daniel J. Whelan, Mihir Kanade and Shyami Puvimanasinghe, 'The Right to Development: Origins, History and Institutional Development' (OHCHR) <https://www.ohchr.org/Documents/Issues/Development/chapter-1-whelan-kanade-and-puvimanasinghe-history-and-evolution-of-the-rtd.pdf> accessed 30 April 2021.; Whelan, Kanade and Puvimanasinghe's work is part of a OHCHR sponsored program on Operationalizing the Right to Development in Implementing the Sustainable Development Goals. For more on this OHCHR sponsored program see, OHCHR, 'Training Materials - Online Course on the Right to Development and Sustainable Development Goals' (OHCHR) <https://www.ohchr.org/EN/Issues/Development/Pages/intro-training-on-rtd-and-sdgs.aspx> accessed 30 April 2021.
[504] Arjun Sengupta, 'On the Theory and Practice of the Right to Development' (2002) 24 (4) Human Rights Quarterly 851 <https://www.jstor.org/stable/20069637> accessed 17 May 2021.
[505] ibid.

An appropriate starting point in the comprehension of Sen's theory of human capabilities is to refer to his definition of capabilities as the freedom to achieve various lifestyles.[506] The next step is to note that in Sen's theory of human capabilities, poverty is a deprivation of basic capabilities and a source of unfreedoms that development is meant to eradicate.[507] In order to understand what development is, note that in Sen's theory of human capabilities, the concept is viewed as an integrated process for expanding substantive freedoms which are related to one another.[508] In Sen's landmark work, which is titled development as freedom, he uses substantive freedoms and real freedoms as interchangeable terminologies in his explanation of what development is.[509] In general, it is observed that the meaning of freedom is a cause of unclarity in comprehending Sen's theory of human capabilities.[510] This is because Sen equates capabilities with freedoms without always specifying in more detail what kind of freedoms he is referring to.[511] Indeed, the association of capabilities with freedoms by Sen can cause a lack of clarity if there is no understanding of what these concepts mean.[512] To be more specific, the definition of development by Sen is somewhat unclear because he has not expressly defined substantive and real freedoms. Fortunately, Sen has made statements that are useful for understanding the meaning of substantive and real freedoms. His observation that substantive freedoms can materialize in the form of people's capabilities to lead the lives that they value, is one of the hints that is useful for understanding the meaning of the concept.[513] Furthermore, in his analysis of development, Sen was particularly interested in the connection between capabilities and substantive freedoms.[514] In fact, there is a conscious effort to emphasize the connection between capabilities and substantive freedoms that is evident in various aspects of Sen's work. For an illustration, his list of substantive freedoms are elementary capabilities which include the ability to avoid such deprivations as starvation, escapable disease as well as the freedoms that are associated with being literate, enjoying political participation and free speech.[515] Therefore, there is

[506] Sen (n 16) 75.
[507] Poverty as a deprivation of elementary capabilities is reflected in premature mortality, significant undernourishment (especially of children), persistent morbidity, widespread illiteracy, and other failures. See, ibid 3 and 20.
[508] ibid 8.
[509] ibid 3 and 36.
[510] Ingrid Robeyns and Morten Fibieger Byskov, 'The Capability Approach', *The Stanford Encyclopedia of Philosophy* (Winter edn, 2021) <https://plato.stanford.edu/archives/win2021/entries/capability-approach/> accessed 2 January 2022.
[511] ibid.
[512] This is because according to Robeyns and Byskov, Sen himself acknowledges that there are many kinds of freedom (some valuable, some detrimental, and some trivial) and freedom means very different things to different people. See, ibid.
[513] Sen (n 16) 109.
[514] ibid 18.
[515] ibid 36.

reason to see why substantive or real freedom is understood by Robeyns and Byskov to be an indication that someone has all the required means (or capability) necessary to achieve their potential doing or being, if one wishes to.[516] This is because Robeyns and Byskov's definition of substantive or real freedom has recognized the fact that Sen's theory of capabilities is not based on the concept of formal freedoms.[517] This is why Robeyns and Byskov have stated that real freedoms are not merely the formal freedom to do or be something, but the substantial opportunity to achieve it.[518] Moreover, Robeyns and Byskov's description of substantive freedom can be used to produce a clearer version of Sen's definition of development. In other words, if Robeyns and Byskov's description of substantive freedom is adopted, it means that Sen's definition of development can be restated in a more coherent manner. Consequently, the concept of development is then defined as an integrated process for expanding the substantial opportunities to achieve a potential being or doing (action) which are related to one another. It is therefore due to the foregoing explanations that Robeyns and Byskov's description of substantive freedom is herein adopted, and capability is understood as the freedom to achieve various lifestyles. In essence, development is herein understood as an integrated process for expanding the substantial opportunities to achieve a potential being or action which are related to one another.

Another important part of Sen's theory of capabilities is the concept of instrumental freedoms. In Sen's theory of capabilities, the concept of instrumental freedoms is seen as a factor that directly enhances the capabilities of people.[519] Sen has noted that instrumental freedom is concerned with the ways that different kinds of entitlements, opportunities, and rights such as the right to information, are contributing to the expansion of human freedom, and thus to promoting development in the society.[520] He has also noted that the promotion of instrumental freedoms is beneficial to the objective of fostering human capabilities and

[516] Robeyns and Byskov (n 510).
[517] Formal freedoms refer to the normal liberties such as a citizen freedom to change their jobs. See, Sen (n 16) 29.; Note that Sen's neglect for the concept of formal freedom is also identified in the article by Selwyn. See, Ben Selwyn, 'Liberty Limited? A Sympathetic Re-engagement with Amartya Sen's Development as Freedom' (2011) 46(37) Economic and Political Weekly 71 <https://www.epw.in/journal/2011/37/special-articles/liberty-limited-sympathetic-re-engagement-amartya-sens-development> accessed 17 May 2021.
[518] Robeyns and Byskov (n 510).
[519] Sen (n 16) 40.
[520] Sen has used right of disclosure as an example of instrumental freedom. However, for more clarity, the right to information is stated here, rather than the right to disclosure. The right to information is used here as the right of citizens to know what governments, international organizations and private corporations are doing, and how public resources are allocated. This is because the impact of this right is in line with what Sen's has said that instrumental freedoms are supposed to do. For instance, the right of information, in this context, is an important approach to anticorruption. See, Issa Luna Pla and others, *Using the Right to Information as an Anti-Corruption Tool* (Transparency International 2006) 5 <http://oas.org/dil/access_to_information_human_Policy_Recommendations_Transparency_International_Right_to_Information_as_an_Anti-Corruption_Tool.pdf> accessed 17 May 2021; and see Sen (n 16) 37, 38 and 40.

substantive freedoms.[521] Furthermore, Sen has identified five distinct instrumental freedoms. The five instrumental freedoms that Sen has identified are political freedoms, economic facilities, social opportunities, transparency guarantees, and protective security.[522] The instrumental freedom that is specifically relevant to the present study is transparency guarantees which involves 'the freedom to deal with one another under guarantees of disclosure and lucidity'.[523] This is because of Sen's conclusions on the relationship between the freedom to deal with one another under guarantees of disclosure and lucidity and the anti-corruption approach to poverty reduction in any society. For an illustration of the relevant conclusions by Sen, note that he has described the freedom to deal with one another under guarantees of disclosure and lucidity as a fundamental part of anticorruption initiatives.[524] Sen has also posited that promotion of the instrumental freedom to deal with one another under guarantees of disclosure and lucidity is one of the ways to foster human capabilities and substantive freedoms in general.[525] Therefore, it is necessary to note and emphasize that in Sen's capabilities theory, the discuss on any corruption eradication approach is associated with the discourse on the relationship between a society's values and its ability to achieve development.[526] So, in his analysis, Sen has emphasized the importance of a society's values in several ways. For instance, Sen has remarked that the act of avoiding the temptations of pervasive corruption is one of the essential values for developing countries to aspire to achieve.[527] Furthermore, Sen has also stated that on one hand, the values of a society is an example of the factors that influence the freedoms which people enjoy and have reason to treasure.[528] On the other hand, the values of a society is influenced by public discussions and social interactions which are themselves influenced by participatory freedoms.[529] Therefore, it is instructive that Sen has spoken of the crucial need for a discuss on the role of societal values to be included in any analysis of poverty eradication.[530] Thus, in Sen's theory of capabilities, the absence or presence of positive values, such as the act of avoiding the temptations of pervasive corruption, is a factor to be considered in poverty removal efforts which are supposed to contribute to development.[531] An example of negative values is a

[521] ibid 10.
[522] ibid 38-40.
[523] Transparency guarantees deal with the need for openness that people can expect. See, ibid 39.
[524] ibid 40.
[525] ibid 10.
[526] For analysis of the role of negative and positive values in development see also, Alkire and Deneulin (n 502) 27 and 32.
[527] Sen (n 16) 266 - 267.
[528] ibid 9 and 267.
[529] ibid 9.
[530] ibid 3, 20 and 280.
[531] ibid 3, 267 and 280.

government's predisposition to limit the political opportunity for ordinary citizens to express their views and to dispute the claims made by the authorities.[532] In the next section, the connection between the FATF's impact and Sen's theory of capabilities is explained.

3.4.2.1.1 The Nexus between Sen's Theory of Capabilities and Corruption in Nigeria

In Sen's theory of capabilities, the use of regulations to promote desired values, which include a society's behavior towards corruption and the environment, is a factor that is a part of the development discourse.[533] The importance of regulations is identified in Sen's analysis on prevalence of pro-corruption values, where he explained that regulatory activities such as the implementation of systems for inspection, regulation and punishment, are a recognized method for preventing corruption.[534] This observation by Sen is particularly relevant to the instrumental freedom to deal with one another under guarantees of transparency in any society. This is because Article 19 of the Universal Declaration on Human Rights (UDHR) of 1948 has highlighted the existence of a universal right to opinion and expression, which is comprised of the freedom to seek, receive and impart information.[535] Although the provisions in UDHR (1948) are not binding, they are observed to be a model for the constitution of most countries including Nigeria.[536] Therefore, it is useful to note as is observed by Sturges that the UDHR (1948) provision for a universal right to seek, receive and impart information is relevant for analyzing the activities of regulators that have sought to induce the business world into operating in a climate of transparency.[537] In other words, the provisions in Article 19 of the UDHR (1948) can be deemed to have established a right to receive information that is, consciously or inadvertently, being promoted by regulators that are fostering a climate of transparency in the private sector. This conclusion is relevant to this Thesis because the regulatory act of implementing a system that accumulates data for the purpose of any

[532] ibid 151.
[533] ibid xi, 7, 9, 159, 223, 269, 275 and 280.
[534] ibid 275 -276.
[535] This right to opinion includes a freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. See, 'Universal Declaration on Human Rights' (*UN*) <https://www.un.org/en/about-us/universal-declaration-of-human-rights> accessed 19 May 2021.
[536] Christian Tomuschat, 'Protection of Human Rights under Universal International Law' (*United Nations*) <https://www.un.org/en/chronicle/article/protection-human-rights-under-universal-international-law> accessed 19 May 2021; and Hurst Hannum, 'The UDHR in National and International Law' (1998) 3(2) Health and Human Rights 150-152 <https://cdn2.sph.harvard.edu/wp-content/uploads/sites/125/2014/04/16-Hannum.pdf> accessed 19 May 2021.; For a description of how the UDHR has influenced the Nigerian constitution see, OHCHR, 'National Action Plan for the Promotion and Protection of Human Rights in Nigeria 2009 – 2013' (OHCHR) <https://www.ohchr.org/Documents/Issues/Education/Training/actions-plans/Excerpts/Nigeria09_13.pdf> accessed 19 May 2021
[537] Paul Sturges, 'Corruption, Transparency and a Role for ICT?' (2004) 2 International Journal of Information Ethics 4-5 <http://www.i-r-i-e.net/inhalt/002/ijie_002_25_sturges.pdf> accessed 19 May 2021.

potential investigation of corrupt public officials is observed to be a useful approach for promoting a climate of transparency.[538] In particular, the regulatory act of requiring private institutions to collect and report on anti-IFF related information, such as providing data on beneficial ownership, is observed to be an approach for promoting a climate of transparency and effective domestic investigations.[539] So as Sen has posited, the role of regulatory bodies is an indispensable part of the pro-development discuss on how values, such as anti-corruption values, are shaped in a society. Therefore, Sen's theory and his observations are a basis for any study on development that recognizes the anti-corruption implications of the ability for regulators to encourage data collection and storage so that the public can access information about corrupt public officials.

In light of the preceding analysis, it is logical to adopt Sen's conclusions as a basis for an analysis that acknowledges the anti-corruption implication of the instrumental freedom to deal with one another under guarantees of transparency.[540] Consequently, it is useful to note Okolo's study on good governance because it is one of the studies on human development that have identified the anti-corruption and pro-development implications of the need to foster transparency and freedom of Nigerians.[541] The analysis is useful for showing that the objective of filling a gap in the literature is a reason to focusing on the objective of using the accountability framework of the FATF to promote anti-corruption related IFF in Nigeria. So it is valuable to emphasize that Okolo's study on good governance is one of the studies that has identified the anti-corruption implications of transparency in the Nigerian polity.[542] In particular, Okolo's analysis has highlighted the relationship between the freedom to deal with one another under guarantees of transparency and the right to information which includes the Nigerian citizenry right to know the activities of their government.[543] He has also highlighted

[538] Andres Knobel, 'Beneficial Ownership Verification: Ensuring the Truthfulness and Accuracy of Registered Ownership Information' (Tax Justice Network 2019) 16 <http://dx.doi.org/10.2139/ssrn.3320600> accessed 19 May 2021.
[539] ibid 14-16.
[540] For the sake of clarity, transparency is used here in place of disclosure and lucidity. See, Sen (n 16) 39.
[541] Salihu Ibrahim-Dasuki, Pamela Abbott and Armin Kashefi, 'The Impact of ICT Investments on Development Using the Capability Approach: The case of the Nigerian Pre-paid Electricity Billing System' (2012) 4(1) The African Journal of Information Systems 42 <https://digitalcommons.kennesaw.edu/ajis/vol4/iss1/2/> accessed 19 May 2021; and Philips O. Okolo, 'The Role of a Free Press in Good Governance a Paper Presented' (2014) 14(3) Global Journal of Human-Social Science: F Political Science 4-5 and 8-10 <https://socialscienceresearch.org/index.php/GJHSS/article/download/1131/1073/> accessed 17 May 2021.
[542] Okolo (n 541) 8.
[543] ibid 4-5.; For more analysis on how the right to know what governments, international organizations and private corporations are doing, and how public resources are allocated is associated with the right to information. See, Pla and others (n 520).; For research and analysis of how the right to know is provided for in the applicable Nigerian law, the Freedom of Information (FOI) Act of 2011, see Jacob U. Agba, Eric Ugor Ogri and Kwita Ojong Adomi, 'The Nigerian Freedom of Information (FOI) Act and the Right to Know: Bridging

the importance of openness as a focal part of transparency in public or private institutions.[544] An important fact to note also is that Okolo's position on openness is aligned with Sen's view on the importance of trust and the freedom to deal with one another under guarantees of transparency in any society.[545] Therefore, Okolo's analysis of the right to information in Nigeria, is in essence, a restatement of Sen's claim on the anti-corruption and development implications of the need to promote the freedom to deal with one another under guarantees of transparency.[546] An obvious drawback or missing part in his analysis is that, unlike Sen's position, Okolo has only alluded to the pro-development implications of an effective regulatory environment.[547] So, it is valuable to note other Nigerian focused studies that have, similar to Sen, acknowledged the importance of regulatory activities and corruption related values in the development discuss.[548] One relevant study is by Olujobi, whose findings are that a lack of political will and regulatory inefficiencies are a reason for corruption in Nigeria. His recommendation is that soft law techniques and hard law implementation should be used to fight corruption in Nigeria.[549] Olujobi's findings are important because he has posited that corruption is a root cause of the depreciation in human development of Nigerians.[550] So, Olujobi's findings are aligned with Sen's idea of promoting human development through anti-corruption regulatory activity. His recommendation on the need to use soft law techniques is a valid solution to the lack of political will in the Nigerian government. Olujobi's solution is a reasonable one because with the introduction of soft law techniques, a government that does not want to forcefully implement anti-corruption laws

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the Gap between Principle and Practice' (2018) 73 New Media and Mass Communication 21-31 <https://iiste.org/Journals/index.php/NMMC/article/viewFile/44391/45794> accessed 17 May 2021.

[544] Okolo (n 541) 9.

[545] In his analysis of transparency guarantees, as a concept that deals with the need for openness that people can expect, Sen has said that when trust is seriously violated, the lives of many people may be adversely affected by the lack of openness. Therefore, Okolo is reenforcing and expanding on Sen's argument by defining transparency as openness and describing it as a tool that enables citizens to hold institutions and governments accountable for their performance and policies. This is because Okolo has also said that a lack of accountability to citizens is one of the factors that lead to a governments unwillingness or inability to formulate and implement pro-growth and pro-poor policies. In essence, Okoro has associated the presence of openness and trust in a society with increased government accountability to its citizens and a higher probability for the formulation and implementation of pro-growth and pro-poor policies. Hence, it can be said that he is alluding to the inevitability or increased probability for a lack of openness to result in less pro-growth and pro-poor policies in Nigeria. See, ibid 5 and 9.; and Sen (n 16) 39-40.

[546] Okolo (n 541) 4-5 and 8-10.

[547] This is because Okolo has expounded on the idea that the objective of the press is to minimize corruption and inefficiency in public office and to ensure the public's participation in governance through the promotion of transparency and accountability in governance. Furthermore, he has concluded that an effective regulatory environment is synonymous with public access to a free press. Therefore, it can be said that Okolo's analysis has alluded to the role of the press in promoting an effective regulatory environment. See, ibid 8 and 13.

[548] Olusola Joshua Olujobi, 'Nigeria's Upstream Petroleum Industry Anti-Corruption Legal Framework: The Necessity for Overhauling and Enrichment' (2021) Journal of Money Laundering Control <https://www.emerald.com/insight/content/doi/10.1108/JMLC-10-2020-0119/full/html> accessed 20 May 2021.

[549] In his study, Olujobi has referred to anti-corruption self-reporting tool, strict implementation and incentivization of obedience to anti-corruption statutes as soft law techniques.

[550] Olujobi (n 548).

will be able to ask for compliance without the threat of imprisonment or fine. The challenge with Olujobi's recommendations is that they do not tackle the root problem which he has identified in his findings. Rather, after identifying political will as the root cause of corruption, Olujobi has recommended that soft law and hard law mechanisms should be used for anti-corruption in Nigeria. In essence, Olujobi has proffered solutions without directly tackling the challenge of fostering the political will that is needed to genuinely promote the nationwide implementation of any soft law or hard law mechanism. Olujobi's recommendations are therefore only defensible if they do not require any government intervention. However, if government intervention is required, then there is, at least, a need for him to have identified the specific mechanisms such as administrative bodies that are to implement the relevant soft law techniques for corruption prevention in Nigeria.[551] Another part of Olujobi's work that could have addressed the issue of political will in Nigeria is his analysis on the need to work on the weaknesses and lacunae in international conventions such as the UNCAC (2003). However, he has not posited that the use of international conventions is a possible solution for addressing the lack of political will in Nigeria. Furthermore, Olujobi did not refer to the international mechanisms that are relevant to the analysis of soft law and anti-corruption in Nigeria. Therefore, as a contribution to the human development discuss for Nigeria, this Thesis is based on the evaluation of the FATF, which was conducted because of its status as a global administrative law mechanism that wants countries to have an effective anti-corruption regime. To be more specific, the FATF was evaluated herein because it advocates for AML Recommendations that are designed to guide countries in their implementation of mechanisms that promote transparency for the purpose of preventing and detecting offenses such as corruption.[552] Therefore, the FATF's ability to influence the promotion of mechanisms that will foster transparency for anti-corruption purposes is important to the instrumental freedom of Nigerians to deal with themselves under guarantees of transparency. It is important to know whether the FATF is an effective global administrative law mechanism, so that conclusions can be made about its usefulness as an accountability mechanism for achieving the RTD. An analysis of the theoretical perspective that is used to evaluate the FATF is conducted in the next subsection.

[551] The soft law techniques that are referenced in Olujobi's work are anti-corruption self-reporting tool, strict implementation and incentivization of obedience to anti-corruption statutes. Administrative activity by government is important for the implementation of these and any other soft law techniques required. For analysis on how soft law is part of administrative activity see, Alexandre Flückiger, 'Soft Law Instruments in Public Law' in Andreas Ladner and others (eds), *Swiss Public Administration: Making the State Work Successfully* (Springer Nature Switzerland AG 2019) 121-122.

[552] FATF, 'Transparency and Beneficial Ownership' (FATF/OECD 2014) 4 <https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf> accessed 28 May 2021.

3.5 Observations on the Literature and the Research Objectives

This chapter provided a contextual understanding and relevant insight for this research. The sections on RTD aimed to show the solutions and perspectives that some authors have expressed in the literature on the human right to development. The sections on accountability and Guzman's RCTC aimed to identify the accountability approach that the FATF has implemented and review the literature on the interconnections between the FATF and Guzman's RCTC. Similarly, the sections on development theories aimed to illustrate how development has been conceptualized and review the literature that connects Sen's theory of human capabilities, dependency theory and modernization theory with anti-corruption and IFFs in Nigeria.

This chapter has introduced the different perspectives on accountability and identifies the characteristics of accountability processes. In Bovens's explanation of his analytical framework on accountability, he has described the publicity of an account that is made by an actor to a forum as a source of reputational damage, which is referred to as implicit or informal consequences.[553] So, the notion of implicit or informal consequences, which are the result of the act of giving account to a forum, is a conceptual justification for viewing the FATF as an accountability framework that promotes the implementation of AML policies in Nigeria. Moreover, Guzman has explained in his theory on compliance that, like treaties, the ability for the FATF and other soft law instruments to have features such as strong monitoring arrangements may affect the extent to which they influence State behavior and reputation.[554] Similarly, some studies have acknowledged the FATF's function as an international mechanism that holds countries to account for failure to implement the FATF Recommendations 2012.[555] Some authors have either posited that the FATF is a mechanism that has the ability to impose consequences on States or that its monitoring mechanism has influenced the behavior of States because it has the potential to create reputational cost for

[553] Bovens (n 354) 452.
[554] Guzman (n 15) 9, 33, 160, 214 and 231.
[555] The Institute of International Finance and Deloitte LLP, *The Global Framework for Fighting Financial Crime Enhancing Effectiveness and Improving Outcomes* (2019) 9 <https://www2.deloitte.com/content/dam/Deloitte/tw/Documents/financial-services/tw-the-global-framework-for-fighting-financial-crime-en.pdf> accessed 2 January 2022; and see, FATF, 'Financial Action Task Force: 30 years (FATF/OECD 2019) 92 <https://www.fatf-gafi.org/media/fatf/documents/brochuresannualreports/FATF30-(1989-2019).pdf> accessed 2 January 2022.

them.[556] Yet, as Nance has observed, the literature has not sufficiently explained the role of the FATF mechanisms, such as its backlisting of countries, because the evidence for the claim that the FATF's activities are able to result in consequences to the financial sector of States is not strong.[557] Therefore, this Thesis builds on Bovens's analytical framework on accountability and the studies that have acknowledged the FATF's ability to impose consequence by investigating the ideality of promoting the FATF as an accountability framework for RTD. To contribute to the literature that explains the role of the FATF mechanisms, such as its backlisting of countries and mutual evaluation reports, this Thesis will show how they are related to different forms of accountability. Furthermore, this Thesis uses the FATF experience to highlight the relationship between Guzman's theory of compliance and the discuss on accountability for States.

Sen's capability theory, modernization theory, and dependency theory are the development theories that are the theoretical lens of the Thesis. Therefore, this chapter has shown that Sen's capability theory, modernization theory, and dependency theory have emphasized the value of taking actions to stimulate development. Accordingly, some studies are noteworthy because they have shown that, from a modernization and dependency theory perspective, there is need to stimulate development by taking actions to stop the occurrence of IFFs. Furthermore, from the Sen's capability theory and a modernization theory perspective, it has been concluded that anti-corruption is an important part of the development discourse.

In this Thesis, the theoretical lens of Guzman's rational choice theory of compliance (RCTC) is also used to investigate the FATF's impact on cooperation against grand corruption related IFFs in Nigeria. Therefore, this chapter has shown that Guzman's RCTC has stated the relevance and influence of soft law mechanisms such as the FATF. Furthermore, the focus of the Thesis is built on Nkonge's suggestion that the international dimension of RTD is actualized by global cooperation to curb corruption of transnational corporations. However, because of important theoretical considerations, this Thesis has slightly deviated from Nkonge's suggestion. The reason for this deviation is related to Guzman's observation that it is valuable to complement his theory of compliance with other conceptual explanations on the internal influences on a country's behavior or compliance. It is because of Sen's stipulation, in his theory of capabilities, that there is need for societal values to be included in

[556] Tilahun (n 238); and Mari Takeuchi, 'Non-State Actors as Invisible Law Makers?: Domestic Implementation of Financial Action Task Force (FATF) Standards' in Karen N. Scott (eds), *Changing Actors in International Law* (Brill Nijhoff 2021) 211 and 220.
[557] Nance (n 266) 134.

any discuss on poverty eradication that the notion of pro-corruption values in Nigeria is used to give contest to the FATF's impact in the Nigerian context. Therefore, based on Sen's capability theory and Guzman's RCTC, this Thesis evaluates the FATF's ability to impact the anti-corruption and AML regime in Nigeria by investigating the interaction between its normative force and the pro corruption values in the country. In other words, the Thesis tests the validity of assertions in Guzman's RCTC by evaluating the effectiveness of the FATF and its accountability mechanisms. The Thesis also investigates the relationship between pro corruption values in Nigeria and the FATF's ability to influence the country's anti-corruption and AML regime. Accordingly, the interview and survey questions were designed to examine pro-corruption values in Nigeria and the FATF's ability to influence and enhance Nigeria's commitment to combating grand corruption related IFF.

To be specific, the domestic form of corruption that this Thesis has focused on is domestic grand corruption by public officers because it promotes the occurrence of negative societal values.[558] Furthermore, this Thesis has evaluated the FATF because it seeks to encourage the international implementation of AML mechanisms that are useful for external assistance against grand corruption. The reason for the specific focus in the evaluation of the FATF is that, as Reed and Fontana have observed, the policies for tracking illicit flows are likely to be more useful against grand corruption rather than against petty corruption such as small scale bribery.[559] The reason for this perspective on the effect of anti-IFF related policies is that it is more probable for small illicit funds to remain outside the banking system and so, the policies designed to tackle IFFs unavoidably have to focus primarily on the larger transactions.[560] Moreover, a focus on cooperation against large scale corruption is necessary because, according to TI, grand corruption is a crime that violates human rights and deserves adjudication and punishment accordingly.[561] Furthermore, it is observed that grand corruption, asset theft, and international flows of stolen and laundered money have an insidious and devastating impact on development.[562] They degrade and undermine confidence in public institutions. They taint and destabilize financial systems, affecting trust. They damage the victim country's investment climate and prospects for macroeconomic stability. This fuels capital flight, impedes growth and poverty reduction efforts, and heightens

[558] U Myint, 'Corruption: Causes, Consequences and Cures' (2000) 7 (2) Asia-Pacific Development Journal 45 <https://www.unescap.org/sites/default/d8files/apdj-7-2-2-Myint.pdf> accessed 15 January 2022.
[559] Reed and Fontana (n 289) 20.
[560] Note that petty corruption can yield detectable flows in situations where, for instance, one official receives large numbers of small bribes that then need to be laundered. See, ibid.
[561] See n 48.
[562] Greenberg and others (n 46) xiii.

inequalities. These damages are long-lasting and become more severe, the longer a corrupt regime is in place.[563] So, with the preceding observations in mind, the decision to focus on grand corruption in this Thesis is aligned with the view that 'the laundering of the proceeds of grand corruption is one of the reasons for IFFs and the obstructions to universal development.'[564] Furthermore, the objective in the Thesis is aligned with the view that cooperation against IFF is more suited to the fight against cross-border movement of large illicit funds. Therefore, an evaluation of the FATF's accountability mechanism is ideal because it is designed to promote the implementation of AML policies which discourage the high level of financial sector secrecy that is required for IFFs to occur. In other words, an evaluation of the FATF is ideal because it is a part of the global attempt to limit IFFs and promote development. Accordingly, one of the research objectives is to evaluate the FATF's ability to assist the Nigerian AML regime to achieve, contribute to, and benefit from the actualization of a sufficient levels of information availability for combating the occurrence of grand corruption related IFFs.

3.6 Conclusion

This chapter reviewed the RTD literature on the Nigerian and international perspective on its actualization. One noticeable fact in the literature on RTD is that some authors have tried to provide explanations on its applicability in the current system of international or domestic law. Some of the authors conducted analysis to expatiate on the approaches that the cooperation for RTD discourse should take. One of the recommended approaches in the literature is that an existing development related mechanism should be suggested and promoted as a part of the attempts to implement the RTD. The approach of using existing development related mechanisms as a part of the attempts to implement the RTD has become essential for a number of reasons. In subsection 3.2.1 of this Thesis, the analysis has identified that in the literature some authors have recognized the challenges associated with the goal of identifying specific duties that are to be actualize through international cooperation for RTD. For example, the analysis in this chapter has shown that the idea of

[563] UNODC and World Bank, 'Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan' (The International Bank for Reconstruction and Development / World Bank 2007) 9 <https://www.unodc.org/pdf/Star_Report.pdf> accessed 28 May 2021.

[564] The emphasis on grand corruption is because, as Reed and Fontana have observed, policies that focus on tracking illicit flows are likely to be more useful against corruption where relatively large amounts of money are involved. Petty bribery - a phenomenon which plagues the lives of millions in many countries – is much less likely to yield detectable illicit flows unless one official receives large numbers of small bribes that then need to be laundered. This is so because policies designed to tackle illicit financial flows unavoidably have to focus primarily on transactions larger than a certain size. Small bribes are also more likely to remain as cash outside the banking system. See, Reed and Fontana (n 289) 20.

creating a treaty instrument for the RTD has been contentious and the current global framework for making States responsible for customary rules are not suitable for ensuring accountability for breaches of the right. Although, there is the option of ignoring the RTD but the analysis in subsection 3.2.1 has shown that the subsistence of the right is essential. Therefore, using existing development related mechanisms as a part of the attempts to implement the RTD is a more promising alternative to ignoring the right or waiting for the controversial solutions to become available. This is because, as it is explained in subsection 2.1.2 of this Thesis, there have been successful attempts to get majority support for the approach of actualizing the RTD through international instruments such as the UNGA 2030 Agenda (2015). Moreover, this approach is important because it helps to make the adoption or promotion of solidarity rights as a fundamental part of the UN or academic discourse on RTD meaningful. This is because the use of existing development related mechanisms as a part of the attempts to implement the RTD is an indication that the promotion of solidarity rights in RTD discourse has led and is associated with identifiable actions that are actualizing international cooperation for the right. Consequently, this Thesis evaluates the propriety for the FATF to be promoted as a part of the mechanisms that are helping Nigeria to actualize the RTD by influencing the global application of AML tools that are useful for cooperation against grand corruption related IFF. As is observed in the preceding subsection, the recommendation in the literature that international dimension of RTD is actualized by global cooperation against corruption is a major influence behind this choice of enquiry. Furthermore, an evaluation of the FATF is important because the findings in some studies have challenged its effectiveness. Clarke has found that the FATF has limited effectiveness as a mechanism for promoting cooperation against the cross-border laundering of corruption related illicit funds.[565] So, there is, at least, a need to know whether the FATF's limitations are a reason to question its value as an international instrument that promotes transparency for the purpose of preventing and detecting the instances of corruption related IFFs in Nigeria. Therefore, because of the FATF's limitations an evaluation of its usefulness, as an accountability framework, has been conducted in this Thesis. The evaluation of the FATF utilizes Bovens analytical framework because subsection 3.3.1 has shown that Bovens's work is less controversial because it includes elements of the traditional and contemporary views of accountability and it is an ideal conceptual support for Guzman's theory. Consequently, in the forthcoming chapters, this Thesis relies on Bovens' analytical framework on accountability, Guzman's ILT of compliance and Sen's capabilities theory to evaluate FATF's ability to promote RTD in Nigeria by impacting the anti-corruption and AML regime

[565] Clarke (n 427) 168.

in the country. The next chapter is designed to contribute to this objective by investigating the relationship between FATF and several accountability categories that are useful for enforcing RTD related international objectives.

Chapter Four: The FATF's Impact on the Reputation of States and its Implication for Accountability

4.1 Introduction

In Chapter 3, achievement of accountability was identified as a process that may lead to consequences.[566] It was also observed in Chapter 3 that Guzman's theory of compliance has predicted that States will comply with international law because the monitoring processes of soft law institutions such as the FATF and non-compliance with treaties could have consequences.[567] Therefore, based on the analysis in Chapter 3, there is a reason to conclude that the accountability mechanisms of the international legal instruments which are referred to in Guzman's theory of compliance are a part of the reason for the effectiveness of international law. Accordingly, this chapter provides an analysis on how and why the FATF's processes offer an important accountability mechanism that have helped to promote compliance with RTD related requirements in international law instruments.

The analysis in this chapter is conducted in furtherance of the overarching objective of the Thesis which is to make determinations on the extent to which the FATF's accountability processes are important. The paramount concern in this chapter is on the FATF's ability to facilitate the fulfillment of the global community's pledge to implement the FATF Recommendations 2012 that was made under the UN platform. Accordingly, the objective here is to consider several accountability categories to know how they occur, and are applicable to the discourse on the impact of the FATF.

4.2 Assessing the Value of Accountability through the FATF Framework

The question of who is being held to account is vital in the analysis of accountability for development cooperation.[568] Is a type of accountability applicable to UN and the FATF bureaucrats or staff, or does it apply directly to the State? In the context of this Thesis, a type of accountability that could influence countries to be compliant with the requirements of international legal instruments on AML is the focus of analysis because of the provisions of

[566] This is based on Bovens's conceptual framework on accountability. See, Bovens (n 354) 450.
[567] The theory provides that they may cause reputational damages. Guzman (n 15) 33, 160 and 231.
[568] Dann and Sattelberger (n 271) 68.

Article 3(1) of the UNDRD (1986).[569] Furthermore, the accountability that applies to UN bureaucrats or staff are relevant to the objective of the work, albeit indirectly. Accountability for UN bureaucrats or staff are relevant because they are actors that can be held to account by fora such as their home country governments if they are not effective or committed to devising the necessary policies and procedures. Likewise, accountability of UN bureaucrats or staff are important to ensure that effective policies and procedures for facilitating global cooperation for RTD related policies are being devised within the UN system. However, because this Thesis is intended to focus on accountability of States, for the non-binding duty to formulate extraterritorial policies on corruption related IFFs, the mechanisms identified will not be based on whether or not they can hold UN bureaucrats or staff to account. This is because the concern in this Thesis is not on whether there is a reason to believe that there is need for greater accountability of UN bureaucrats or staff. Moreover, the contentious nature of, especially, the external dimension of RTD in general has put the onus on States to reach a consensus on issues of accountability in this context. The role of staff and bureaucrats (in their role as members of working groups or committees) is limited to the extent to which there can be consensus on the policies and procedures they propose. Accordingly, it is more beneficial to focus on the actual accountability of States instead of whether staff or bureaucrats are being held to account within the UN system. Consequently, accountability mechanisms will be considered to establish how they relate to the FATF's ability to facilitate the fulfillment of the global community's pledge to implement the FATF Recommendations 2012 that was made under the UN platform. The analysis of accountability will focus on its forms that are relevant to the FATF framework and the UN system. This is because, although the FATF is the focus of enquiry, the goal of promoting the RTD through the UN is a reason for the enquiry in this Thesis. In essence, the enquiry here is conducted because of the relationship between the FATF Recommendations 2012 and the UN RTD agenda that has been established by the global community's pledge in the AAAA 2015. Accordingly, the relevant accountability types and how they apply to the FATF and the UNRTD regime are analyzed in the following sections.

4.2.1 Bureaucratic Accountability

[569] This section of the UNDRD (1986) provides that States have the primary responsibility for the creation of national and international conditions favorable to the realization of the RTD. Therefore, the FATF's ability to influence countries into implementing AML policies that enhance RTD and are provided for in the UNCAC (2003) is the reason for the analysis in this chapter.

This form of accountability refers to the different types and degrees of policy control, whether from executive politicians, legal mandates or internal leadership structures that government departments and other agencies are subject to.[570] Therefore, it could be relevant to the objective of actualizing the external dimension of RTD in Nigerian. UN bureaucrats such as the High Commissioner for Human Rights could for instance be mandated to make presentations to the UNGA. These presentations would afford members of UNGA (as the forum in this instance) the opportunity to review the approaches to actualizing the external dimension of RTD that has been adopted by the High Commissioner for Human Rights, as the actor. The members of the UNGA can then exert a degree of policy controls by making recommendations on the external dimension of RTD in the resolutions that are directed to the High Commissioner for Human Rights. Arguably, bureaucratic accountability is achieved in the FATF because its Recommendations are presented to the plenary, which consists of its members and associate members, for adoption. Therefore, bureaucratic accountability can be advocated for by Nigeria, as a means for actualizing the RTD, because of the role it can play in ensuring that UN bureaucrats are committed to developing and implementing relevant policies within the UN system. This type of accountability can be adopted for the core sense of answering to external scrutiny about the efforts put in place to devising policies on the external dimension of RTD.[571] However, this type of accountability is less suited to holding States to account for failing to implement policies that help to actualize the external dimension of RTD. This is because, unlike the Office of the High Commissioner for Human Rights (OHCHR), for instance, States do not exist as bodies, departments or organs of the UN.[572] On the contrary, Member States are represented in the UNGA as sovereign equals that discuss and work on a wide array of international issues covered by the UN Charter.[573] It is therefore not suitable to rely on only bureaucratic accountability as a mechanism to achieve State accountability for the external dimension of RTD.

4.2.2 Administrative Accountability

[570] Richard Mulgan, 'Accountability: An Ever-Expanding Concept?' (2000) 78(3) Public Administration 564 <https://onlinelibrary.wiley.com/doi/abs/10.1111/1467-9299.00218> accessed 16 March 2021.
[571] ibid.
[572] United Nations, 'About the UN' (*United Nations*) <https://www.un.org/en/about-un/> accessed on 25 April 2019.
[573] United Nations, 'General Assembly of The United Nations: About the General Assembly' (*United Nations*) <https://www.un.org/en/ga/> accessed on 25 April 2019; accordingly, it is observed that the UN Charter marks the formal rejection of heirachy of States. See, Aidan Hehir, *Humanitarian Intervention: An Introduction* (Palgrave Macmillan 2009) 52.

This involves a wide range of quasi-legal forums that exercise independent and external administrative and financial supervision and control in regional, national or local ombudsmen and audit offices.[574] From a broad understanding, it exists in independent supervisory authorities, inspector generals, anti-fraud offices and chartered accountants that have been mandated to, among other things, secure the probity, efficiency, effectiveness and legality of public spending.[575] This form of accountability is observed to be very important for executive public agencies and semi-public administrative bodies that are not part of the civil service but for whom the government gives financial support and appoints their senior staff.[576] From the explanation given here, one can deduce that with administrative accountability, the right of authority of an accountability forum is derived from a source that cannot be ignored by the actor. One example of sources that cannot be ignored are governments which exert administrative accountability by asking quasi-legal fora to carryout duties such as securing the probity, efficiency, effectiveness and legality of the actor's expenditure. In this instance, the government exerts administrative accountability because of the financial support it gives to the individual or institution being held to account. Here, the individuals or institutions being held to administrative accountability has to consent because of the financial support it receives from the government.[577] Furthermore, the right to exert administrative accountability may have come from a statute or as a result of the general norm being practiced in the country or institution.[578] Therefore, administrative accountability is useful in the context of making States accountable for the external dimension of RTD in that it allows for the accountability of bodies within the UN system. At the UN level, a special quasi-legal forum could be instructed to carryout duties such as securing the probity, efficiency, effectiveness and legality of the UN RTD regime. In such an instance, administrative accountability will be useful because it is exerted over bodies within the UN system. However, it could be problematic to rely on administrative accountability in the attempts to actualize the external dimension of RTD from a perspective that is focused on State accountability. Yes, it is true that some people have

[574] Involves a wide range of quasi-legal forums, exercising independent and external administrative and financial supervision and control that is important for important for quangos and other executive public agencies. It covers issues such as the probity and legality of public spending, its efficiency and also its effectiveness. See, Bovens (n 354) 456.
[575] See, ibid 456.; See also Christopher Pollitt and Hilkka Summa, 'Reflexive Watchdogs? How Supreme Audit Institutions Account for Themselves' (1997) 75(2) Public Administration 313.
[576] This semi-public administrative bodies are known as quangos.
[577] Mathias Koenig-Archibugi, 'Accountability in Transnational Relations: How Distinctive is It?' (2010) 33 (5) West European Politics 5 <http://eprints.lse.ac.uk/29564/> accessed 27 May 2019.
[578] These administrative forums exercise regular financial and administrative scrutiny, often on the basis of specific statutes and prescribed norms.

bestowed on the UN Secretariat the technical identity of an international civil service.[579] Consequently, this type of thinking has been understood to be informed by Global Administrative Law scholarship.[580] The proponents of this type of thinking have opined that due to global administration, the States are becoming administrative units of international institutions.[581] Accordingly, the international bodies are taking administrative decisions in relation to the activity of the States.[582] The consequence of this is that the proponents of the notion of global administrative law have focused on the increasingly administrative-law-like procedures of these international bodies.[583] These proponents of global administrative law have observed that when these bodies use administrative-law-like procedures, they are able to establish uniform global standards that have normative legitimacy in the international community.[584] Yet it is problematic to expect that the UN has an unassailable right to hold countries to account for their non-binding duty to formulate extraterritorial policies on corruption related IFFs. The idea that the UN has an unassailable right is problematic because an attempt to achieve accountability for the external dimension of RTD could lead to repercussions for the legitimacy of the UN or any other international institution that is being considered.[585] In other words, if the process of accountability is questionable, this could be a dent on the legitimacy of the account holder or international institution. Take for instance, the observation that with regard to the UN, the source of its legitimacy includes its credentials for representing the international community, agreed procedures for making decisions on behalf of international society, and political impartiality.[586] Therefore, there is some damage to the legitimacy of the UN when it attempts to influence countries'

[579] Ramesh Thakur, 'Law, Legitimacy and the United Nations' in Richard Falk, Mark Juergensmeyer and Vesselin Popovski (eds), *Legality and Legitimacy in Global Affairs* (Oxford University Press 2012) 48.
[580] Rajeshwar Tripathi, 'Concept of Global Administrative Law: An Overview' (2011) 67(4) India Quarterly 356 <https://journals.sagepub.com/doi/pdf/10.1177/097492841106700405> accessed 16 March 2021.
[581] ibid.; An administrative unit is a unit with administrative responsibilities. See, 'Administrative Unit' (*Vocabulary*) <https://www.vocabulary.com/dictionary/administrative%20unit> accessed 16 March 2021.
[582] Tripathi (n 580).
[583] Vido (n 415) 6.; For analysis of what would constitute administrative law procedures see, Dacian C. Dragos, 'Administrative Procedure', *Global Encyclopedia of Public Administration, Public Policy, and Governance* (1st edn, 2018) 215-218.
[584] Tripathi (n 580).; Note that normative legitimacy refers to the question of whether an institution has a right to rule as a matter of moral theory. See, Daniel Bodansky, 'Legitimacy in International Law and International Relations' in Jeffrey L. Dunoff, Mark A. Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (Cambridge University Press 2013) 327.
[585] Social legitimacy is what is being considered here because it dominates the scholarship of international law and in particular, the study of compliance in international law. Social legitimacy relates to beliefs about normative legitimacy, which is concerned with whether an institution has a right to rule as a matter of moral theory. Social legitimacy is also referred to as an institution's descriptive or sociological legitimacy – with whether its authority is accepted by relevant audiences such as states and civil society groups; whether it enjoys a reservoir of support that makes people willing to defer even to unpopular decisions and helps sustain the institution through difficult times. See, Thomas (n 276) 15-16; and Bodansky (n 584).
[586] Thakur (n 579) 56–76.

internal policies without following a process that is based on true representation of its members and political impartiality.[587] This concern is particularly valuable to the objective of this Thesis because of the contentious nature of accountability for the external dimension of the RTD. As a result, the UN's ability to establish uniform global standards on the non-binding duty to implement extraterritorial policies on corruption related IFFs must be analyzed with an understanding that there is need to protect the legitimacy of the institution. Accordingly, the Nigerian government can focus on how the global administrative law mechanisms within the UN are relevant for actualizing the non-binding duty to implement extraterritorial policies on corruption related IFFs.[588] This focus on the applicable mechanisms must be carried on with an understanding that the adoption and processes of accountability mechanisms must be based on political impartiality and true representation of the UN Member States.

4.2.3 Political Accountability

This form of accountability is observed to operate in the opposite direction of delegation.[589] For instance, at the national level, voters delegate their sovereignty to popular representatives, who, in turn, at least in parliamentary democracies, delegate most of their authorities to a cabinet of ministers. The ministers subsequently delegate many of their authorities to the civil servants or to various, independent, and administrative bodies. Political accountability is then exercised along the chain of principal-agent relationships where public servants and their organizations are accountable to their ministers (in parliamentary systems) who must render political account to the parliament. Similarly, it is

[587] See generally, ibid.

[588] Rather than being a lex specialis, to be related to international organizations, the literal legal meaning of international administrative law suggests that it is a set of rules in international law that pertains mostly to the activities of international organizations in the execution of their mandates. This is a whole system of international procedural law, administrating or executing the substantive law of international organizations, which support international public interests. When the UNGA establishes a subsidiary organ, such as the UNDP or a peace-keeping operation, it executes one of its mandates under the UN Charter and plays a role as the executive power of the organization. The resolution establishing a subsidiary organ, in this case, is an international institutional law with fully binding force, a substantive international administrative law, in other words. When the UNDP enters into a working agreement with a government or another international body, such as UN Specialized Agencies, or even with private enterprises in conducting its technical assistance activities, these agreements or contracts constitute procedural international administrative law. See, Shinichi Ago, 'What is 'International Administrative Law'? The Adequacy of this Term in Various Judgments of International Administrative Tribunals' in Peter Quayle (eds) *The Role of International Administrative Law at International Organizations: AIIB Yearbook of International Law 2020* (Brill 2020) 89.

[589] Note however, that although it operates precisely in the opposite direction of delegation, there are also instances of informal political accountability that do not come under this description. For instance, in countries such as the USA, political parties and party barons often also function as important, informal political forums. Also, in many countries, the media are fast gaining power as informal forums for political accountability. See, Bovens (n 354) 455.

said that the people's representatives render an account to the voters at election time.[590] Therefore, at the UN system, political accountability is present in the relationship that exists between, for instance, the UNGA and the UNHRC. On the one hand, Member States are voted into the UNHRC by the UNGA. On the other hand, the UNHRC renders account to the UNGA on issues such as the progress made in actualizing the RTD.[591] The relationship between the UNGA and the UNHRC suggests that, arguably, there is delegation in the UN system because States with bad human rights reputation are not likely to be selected by other UN members. Moreover, the UNHRC makes reports to the UNGA. Consequently, political accountability is useful if the goal is to ensure that only countries that support RTD are members of the UNHRC. However, it is more productive that support for the RTD is global instead of being limited to the UNHRC. Therefore, this form of accountability is not an ideal way to actualize the RTD because it does not apply to States in their capacity as members of the UNGA. On the contrary, it is the national governments that delegate bureaucrats to represent them in the UNGA. The political accountability is exercised between national governments and their representatives in the UNGA. Therefore, because the representatives of States are delegated by their national governments, and not by bodies within the UN system, this Thesis does not focus on political accountability in the UN RTD regime.

4.2.4 Hierarchical Accountability

This form of accountability is also known as a one for all form of accountability where the processes of calling to account start at the top, with the highest official in an organization. In the UN, this form of accountability exists where, for instance, the High Commissioner for Human Rights rather than ordinary members of the office of the High Commissioner for Human Rights reports to the UNGA about the progress made in the efforts to actualize the external dimension of RTD.[592] UNGA recommendations, in this instance, are addressed to the High Commissioner on Human Rights (the High Commissioner) rather than the ordinary members of the Office of the High Commissioner for Human Rights. It is then the prerogative of the High Commissioner to decide on whether to address ordinary members of

[590] ibid 455.
[591] As a subsidiary of the General Assembly, it reports directly to the Assembly's 193 members. See, Blanchfield and Weber (n 104) 2.
[592] In hierarchical accountability, ordinary members (rank and file) do not appear before external forums but hide behind the broad shoulders of the minister, the commissioner or the director of the agency. See, Bovens (n 354) 458.

the OHCHR regarding questions of internal accountability.[593] This form of accountability will therefore be suitable if this Thesis is a study on how to guarantee the propagation of policies on the external dimension of RTD in the UN system. In such a study, the emphasis will be on holding the High Commissioner to account because he is the head of the OHCHR. However, the focus in this work is on how to achieve global accountability for the non-binding duty to implement extraterritorial policies on corruption related IFFs. So, although the activities of the president of the UNHRC or other heads of UN institutions can lead to policies that guarantee accountability of States within the UN system, this Thesis does not focus on hierarchical accountability. The scope of this Thesis is on accountability for States, and not for UN bureaucrats or UN staff. Therefore, the idea of using hierarchical accountability to actualize the RTD is not emphasized herein because it is not an option. This is because the UN has formally rejected the notion of hierarchy of States based on the provisions of Article 2.1 of its Charter.[594] Therefore, it cannot be argued that influential countries should be held accountable for not doing enough to encourage global compliance or acceptance of RTD related policies. Accordingly, hierarchical accountability is not the objective of this enquiry as it is not suitable to accomplish the objective of the Thesis.

4.2.5 Public Reputational Accountability

This form of accountability applies to situations where there is supervision through the use of reputational consequences.[595] This form of accountability exists when mechanisms are used to induce loss of credibility or reputation for individuals or organizations being held to account.[596] Public reputational accountability applies to situations in which reputation, widely and publicly known, provides a mechanism for accountability even in the absence of other mechanisms as well as in conjunction with them.[597] The idea of reputational accountability is pervasive because it is involved in all the other forms of accountability.[598] Therefore, reputational accountability is recognized as an essential part of accountability mechanisms,

[593] In hierarchical accountability the lower echelons can, in turn, be addressed by their superiors regarding questions of internal accountability. See, ibid.
[594] Article 2.1 of the UN Charter has marked the formal rejection of hierarchy of states by embedding sovereign equality as a universal principle. See, Aidan Hehir, *Humanitarian Intervention: An Introduction* (Macmillan International Higher Education 2013) 48.
[595] Heleen Mees and Peter Driessen, 'A Framework for Assessing the Accountability of Local Governance Arrangements for Adaptation to Climate Change' (2018) 62(4) Journal of Environmental Planning and Management 11 <Https://www.tandfonline.com/doi/full/10.1080/09640568.2018.1428184> accessed on 25 April 2019.
[596] ibid.
[597] ibid.
[598] Ruth W. Grant and Robert O. Keohane, 'Accountability and Abuses of Power in World Politics' (2005) 99(1) American Political Science Review 37 <http://journals.cambridge.org/abstract_s0003055405051476> accessed on 25 April 2019.

and it can be used to actualize the non-binding duty to implement extraterritorial policies on corruption related IFFs. In the field of politics, the notion of reputation is recognized as a form of soft power, which is defined as the ability to shape the preferences of others.[599] In the field of law, especially soft law, it is observed that emerging civil regulations are grounded in the rule of reputation which ties accountability solely to reputational capital, or a lack thereof.[600] It has been said that regimes of global civil regulations and their attendant informal and decentralized modes of enforcement constitute an integral part of both the domestic and international rule of law.[601] Therefore, mechanisms that cause reputational consequences are important, and they are useful for incentivizing countries into implementing RTD related policies such as corruption and anti-IFFs. As Sengupta has observed, the realization of RTD can be achieved through the implementation of related policies.[602] So, the mainstreaming of development related policies in the UN RTD regime, and the adoption of relevant mechanisms that can cause reputational consequences are viable options for addressing the gridlock in the discourse on accountability for RTD. For example, the UN level publications of countries' compliance behavior, such as the executive summaries for UNCAC member States, can be promoted as a mechanism that promotes the implementation of RTD related policies.[603] Similarly, the FATF's publications on countries compliance levels are viable accountability mechanisms for policies that make the RTD realizable. The UN can promote global civil regulations that it has helped to create and other relevant soft law mechanisms as a part of the international RTD related policies.[604] However, the drawback of using soft law mechanisms is that they are often ignored by commentators because they are only backed by soft sanctions, and the nature and extent of their effect are

[599] ibid.
[600] Kevin Jackson, 'Global Corporate Governance: Soft Law and Reputational Accountability' (2010) 35(1) Brooklyn Journal of International Law 47 <https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1165&context=bjil> accessed 16 December 2016.
[601] Kevin T. Jackson, 'The Normative Logic of Global Economic Governance: In Pursuit of Non-Instrumental Justification for the Rule of Law and Human Rights' (2013) 22(71) Minnesota Journal of International Law 96 <https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1287&context=mjil> accessed 27 May 2019.
[602] This is based on what he describes as the right to policies that genuinely pursue the objective of making the RTD realizable in advocate for the mainstreaming of relevant policies. The notion of a right to policies that genuinely pursue the objective of making the RTD realizable is a meta-right. See, Arjun Sengupta, 'The human right to development' (2004) 32(2) Oxford Development Studies 179, 191-192 <http://www.tandfonline.com/doi/abs/10.1080/1360081042000169948> accessed 14 January 2019.
[603] Mathias Huter and Ruggero Scaturro, 'UNCAC in a Nutshell: A Quick Guide to The United Nations Convention Against Corruption for Donor Agency and Embassy Staff' (U4 Anti-corruption Resource Centre 2019) 9 <https://www.u4.no/publications/uncac-in-a-nutshell-2019> accessed 20 February 2021.
[604] An example, for addressing accountability in climate change, is to use the Global Reporting Initiative (GRI) is a partnership of the Coalition for Environmentally Responsible Economies (CERES) and the United Nations Environmental Program (UNEP). See, Jackson (n 601) 89; and see, Global Reporting Initiative, 'Our mission and history' (*GRI*) <https://www.globalreporting.org/about-gri/mission-history/>accessed 2 March 2022.

not well understood.[605] Accordingly, it is important to ensure that the policies and the soft law frameworks that are advocated for can be reasonably expected to overcome this drawback in order to pre-empt the detractors of the mainstreaming policy.

4.2.6 Fiscal Accountability

This form of accountability applies to mechanisms through which funding agencies can demand reports from, and ultimately sanction those agencies that are recipients of funding.[606] This form of accountability is particularly important for international organizations such as the UN and the World Bank which rely on government appropriations to fund substantial parts of their activities.[607] Usually weak and dependent states may be subject to fiscal and supervisory accountability, often through international organizations such as the IMF and the World Bank or, the UN in cases of State breakdown (as in parts of the former Yugoslavia).[608] Typically, States can delegate extensive authority to international organizations to supervise their behavior when they find themselves in great difficulty.[609] However, this form of accountability does not strictly apply to the objective of this Thesis because all States will have to be funded by the forum that is expected to achieve universal accountability for RTD before fiscal accountability can be deemed to be applicable here. This Thesis does not focus on fiscal accountability in the sense that donor countries, at the very least, are not sponsored by international bodies. The relevance of fiscal accountability in this Thesis is to the extent that there is an element of fiscal consequence which is derived from the State's performance against the accountability framework of institutions such as the FATF. An example of this element of fiscal consequence is in the ramification for external financing that accountability under the FATF framework can have on countries' risk assessment and sovereign risk rating. To better understand the fiscal consequence of accountability under the FATF framework it is important to understand the act of countries' risk assessment and sovereign risk rating by credit rating agencies (CRAs). It is also important to understand the value in demarcating countries' risk assessment and sovereign risk rating in an analysis of the fiscal consequence of accountability under the FATF framework. Therefore, it is important to note that there is a tendency for analysts to use countries' risk assessment and sovereign risk rating interchangeably. According to experts in the credit rating agency, Standard and Poor's (S&P),

[605] Jackson has said that global civil regulations are often ignored. See, Jackson (n 601) 96.
[606] Grant and Keohane (n 598) 36.
[607] ibid.
[608] ibid 39.
[609] ibid.

> many analysts use sovereign debt ratings as a proxy for country risk assessment despite the fact that credit rating agencies do not intend their sovereign debt ratings to speak to country risk because these two risk sources are conceptually distinct.[610]

However, in the literature on credit rating, there is a demarcation between country's risk assessment and sovereign risk rating. The demarcation is observed in literature where country risk is considered to be all forms of cross-border lending in a country, whether to the government, a bank, a private enterprise or an individual.[611] In other words, country risk is a broader concept than sovereign risk in that the latter is the credit risk of a sovereign government as a borrower.[612] Therefore, sovereign risk ratings capture the risk of a country defaulting on its commercial debt obligations.[613] The country risk assessment, on the other hand, covers the downside of a country's business environment including legal environment, levels of corruption, and socioeconomic variables such as income disparity.[614] Accordingly, a country's sovereign risk is one of the factors that can be considered as part of its risk assessment.[615] In specific terms, the country risk is defined as the credit risk of borrowers in a country as a whole which is viewed from a specific country perspective.[616] In other words, the credit risk of an entity in a country is identified through an assessment of risk considerations such as the governance issues of the country. Accordingly, due to sovereign risk rating, a fiscal consequence can accrue to countries that are being held to account for their AML deficiencies. The implication of FATF processes to sovereign risk ratings is an

[610] Marcel Heinrichs and Ivelina Stanoeva, 'Country Risk and Sovereign Risk: Building Clearer Borders' (Standard and Poor's Capital IQ 2013) 1 <https://www.spglobal.com/marketintelligence/en/documents/country-risk-and-sovereign-risk-1-.pdf> accessed 21 April 2021.
[611] Marwan Elkhoury, 'Credit Rating Agencies and their Potential Impact on Developing Countries' (2008) UNCTAD Discussion Papers No. 186, 2 <https://unctad.org/system/files/official-document/osgdp20081_en.pdf> accessed 21 April 2021.
[612] Özden Timurlenk and Kubilay Kaptan 'Country Risk' (2012) 62 Procedia - Social and Behavioral Sciences 1089 <https://www.sciencedirect.com/science/article/pii/S1877042812036270> accessed 21 April 2021.
[613] Heinrichs and Stanoeva (n 610) 1.; Another similar definition has identified sovereign risk to be the risk of lending to the government of a sovereign nation. See, Elkhoury (n 611).
[614] Heinrichs and Stanoeva (n 610).; Another similar definition has identified country risk as the exposure to a loss in cross-border lending, caused by events in a particular country which are – at least to some extent – under the control of the government but definitely not under the control of a private enterprise or individual. See, Elkhoury (n 611).
[615] For instance, Compagnie Française d'Assurance pour le Commerce Extérieur (Coface)is a credit insurer operating globally, offering companies solutions to protect them against the risk of financial default of their clients, both in their domestic and export market. To rate country risk is part of the activities carried out by Coface. Therefore, it is instructive to note that Coface considers sovereign risk to be one of the factors that can be considered as part of a country's risk assessment. See, Coface, '7 types of country risk assessment' (*Coface*, 12 November 2018) <http://blog.coface.com.au/country-risk/7-types-of-country-risk-assessment/> accessed 21 April 2021.
[616] Timurlenk and Kaptan (n 612) 1089.

example that shows the relevance of fiscal accountability to Nigeria's objective of achieving the extraterritorial dimension of RTD.

4.2.6.1 Fiscal Accountability in Sovereign Risk Rating

Credit rating changes or the opinions of CRAs regarding the likely rating direction over the medium term (outlook signals) have an undeniable effect on the decision-making procedures of global financial players.[617] Hence, it is observed that credit rating changes or outlook signals affect reweighting of global portfolios, reallocation of capital, changes in the liquidity of the market, and fluctuations in the cost and flow of funds across national borders.[618] The impact of sovereign rating by CRAs is reported to be capable of increasing the risk of undesirable systemic consequences in countries' financial system.[619] This risk of undesirable systemic consequences is often cited as the reason for why the CRAs are considered to be a factor that can exacerbate a period of economic downturn. An example to buttress this point is the role of CRAs during the initial period following the subprime mortgage crisis that began in 2007 (hereinafter financial crisis).[620] A report by a US Congress commission which was setup to examine the causes of the financial crisis, observes that

> The failures of credit rating agencies were essential cogs in the wheel of financial destruction... This crisis could not have happened without the rating agencies. Their ratings helped the market soar and their down-grades through 2007 and 2008 wreaked havoc across markets and firms.[621]

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[617] Dervis Kirikkaleli and Korhan K. Gokmenoglu, 'Sovereign Credit Risk and Economic Risk in Turkey: Empirical Evidence from a Wavelet Coherence Approach' (2020) 20(2) Borsa Istanbul Review 144 <https://www.sciencedirect.com/science/article/pii/S2214845019301462> accessed 28 April 2021.; A Moody's rating outlook is an opinion regarding the likely rating direction over the medium term. See, Moody's Investors Service, 'Rating Symbols and Definitions' (Moody's Corporation 2021) 30 <https://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBC_79004> accessed 28 April 2021.

[618] Kirikkaleli and Gokmenoglu (n 617).

[619] Rasha Alsakka and Owain ap Gwilym, 'Rating agencies' signals during the European sovereign debt crisis: Market impact and spillovers' (2013) 85 Journal of Economic Behavior & Organization 144 <https://www.sciencedirect.com/science/article/pii/S0167268111003003> accessed 28 April 2021.

[620] ibid.

[621] Financial Crisis Inquiry Commission, *The Financial Crisis Inquiry Report* (Financial Crisis Inquiry Commission 2011) xxv <https://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf> accessed 28 April 2021.; An adequate analysis of the 2008 financial crises has be provided by Whalen. See generally, Richard Christopher Whalen, 'The Subprime Crisis—Cause, Effect and Consequences' (2008) 17(3) Journal of Affordable Housing & Community Development Law <https://www.jstor.org/stable/25782816?seq=1#metadata_info_tab_contents> accessed 28 April 2021.; Note that A similar evaluation of the role of CRAs has been made in respect to the European sovereign debt crisis.

A similar evaluation of the role of CRAs has been made in respect to the European sovereign debt crisis[622] Accordingly, a number of analysts have remarked on how CRAs such as Moody's Investors Services, S&P and Fitch Ratings are blamed for downgrading sovereign states in the EU and the US, and in turn for plunging financial markets into a state of profound distress.[623] The impact of sovereign rating downgrades on countries' financial sector, especially during crisis periods, has also been identified in relevant research.[624] Consequently, it is important to note that some CRAs have identified countries' inclusion in the FATF grey list as part of their analysis of sovereign risk. A recent example is in the S&P sovereign risk rating for Iceland that was published on 15 May, 2020. As part of its analysis, S&P remarked that the issues identified as reason for Iceland's inclusion in the FATF grey list had already been addressed and therefore a material impact on the financial status or reputations of Icelandic banks over the near term is not expected.[625] In the case of Panama, the S&P analysts observed that the FATF's and EU's decisions to place the country in their grey and blacklist, respectively, have not had an immediate impact on economic growth or investment.[626] These examples of S&P sovereign risk analysis that consider the impact of

[622] Angela Roman and Irina Bilan, 'The Euro Area Sovereign Debt Crisis and the Role of ECB's Monetary Policy' (2012) 3 Procedia Economics and Finance 766 <https://www.sciencedirect.com/science/article/pii/S2212567112002274> accessed 28 April 2021; and Alsakka and Gwilym (n 619) 144.

[623] Nicolas Petit, 'Credit Rating Agencies, the Sovereign Debt Crisis and Competition Law' (2011) 7(3) European Competition Journal 587 <https://www.tandfonline.com/doi/abs/10.5235/ecj.v7n3.587?journalCode=recj20> accessed 28 April 2021.; See also, Jakob De Haan and Fabian Amtenbrink, 'Credit Rating Agencies' (2011) De Nederlandsche Bank Working Paper No 278, 6 <https://ideas.repec.org/p/dnb/dnbwpp/278.html> accessed 28 April 2021; and see generally, John Ryan, 'The Negative Impact of Credit Rating Agencies and proposals for better regulation' (2012) German Institute for International and Security Affairs Working Paper FG 1, 2012/Nr. 01 <https://www.swp-berlin.org/fileadmin/contents/products/arbeitspapiere/The_Negative_Impact_of_Credit_Rating_Agencies_KS.pdf> accessed 28 April 2021.

[624] For relevant research see generally, Fahad Bashir, Omar Masood and Abdullah Imran Sahi, 'Sovereign Credit Rating Changes and its Impact on Financial Markets of Europe During Debt Crisis Period (Greece, Ireland)' Journal of Business and Financial Affairs <https://www.hilarispublisher.com/open-access/sovereign-credit-rating-changes-and-its-impact-on-financial-marketsof-europe-during-debt-crisis-period-greece-ireland-2167-0234-1000304.pdf> accessed 28 April 2021; and Huimin Li and others, 'The Impact of Sovereign Rating Changes and Financial Contagion on Stock Market Returns: Evidence From Five Asian Countries' (2008) 19(1) Global Finance Journal 46-55 <https://www.sciencedirect.com/science/article/pii/S1044028308000185> accessed 30 April 2021.; Note that the impact of CRAs may not apply to some Asian countries. See, Nicoletta Rosati and others, 'Ratings Matter: Announcements in Times of Crisis and the Dynamics of Stock Markets' (2020) 64 Journal of International Financial Markets, Institutions and Money 1-16 <https://www.sciencedirect.com/science/article/pii/S1042443119300460> accessed 30 April 2021.

[625] Niklas Steinert and others, 'Research Update: Iceland 'A/A-1' Ratings Affirmed; Outlook Remains Stable' (Standard & Poor's Financial Services LLC 2020) 5 <https://www.stjornarradid.is/library/02-Rit--skyrslur-og-skrar/RatingsDirect_ResearchUpdateIceland_May-15-2020.pdf> accessed 30 April 2021.

[626] In full the EU blacklist is referred to as the EU blacklist of noncooperative jurisdictions in terms of tax transparency and financial information. See, Livia Honsel, 'Research Update: Panama Long-Term Sovereign Ratings Lowered To 'BBB' From 'BBB+' On Higher Interest Burden; Outlook Stable' (Standard & Poor's Financial Services LLC 2020) 5-6 <https://cdn.corprensa.com/la-prensa/uploads/2020/11/24/Informe%20de%20Standard%20&%20Poors%20sobre%20Panama%20Noviembre%202020.pdf> accessed 30 April 2021.

country inclusion in the FATF grey list are not an isolated occurrence. There are examples of sovereign risk analysis by Fitch Rating in which the impact of country inclusion in the FATF grey list is considered. For instance, in a Fitch Rating commentary on Panama's sovereign risk, it is observed that the reasons for the country's inclusion in the FATF grey list are not directly related to the banking sector, and there has not been a discernible macroeconomic consequence.[627] Furthermore, it is opined in the commentary that Panama did not exhibit an extended macroeconomic impact when placed on the grey list in 2014.[628] These examples are important for understanding how the FATF accountability process of grey listing is relevant to the sovereign risk analysis of countries by CRAs. The examples show that the consequence of countries' inclusion in the FATF grey list is one of the factors that could be considered in CRAs evaluation of sovereign credit risk. From the examples identified herein, it is clear that the impact of countries' inclusion in the FATF grey list has been considered in the evaluation of sovereign credit risk by CRAs. The examples do not show that countries' sovereign credit risk rating was negatively impacted by their inclusion in the FATF grey list. However, these examples show that the inclusion of a country in the FATF grey list can be a factor that affects its sovereign credit rating. A fiscal consequence can accrue in the event that the impact of a country's inclusion in the FATF grey list is significant enough to affect its sovereign credit rating. This is because sovereign credit rating is associated with outcomes that constrain the fiscal framework of a nation. The examples of relevant outcomes of sovereign downgrades include an increase in the cost of sovereign borrowing and its implication for periods of economic crisis.[629] Therefore, all the factors that can affect a sovereign credit rating must be seen as factors that have potential consequence on the fiscal programs of a country.[630] The FATF downgraded countries may have to pay additional risk

[627] Carlos Morales, Todd Martinez and Erich Arispe Morales, 'Rating Action Commentary: Fitch Revises Panama's Outlook to Negative; Affirms IDR at 'BBB'' (*Fitch Ratings*, 6 February 2020) <https://www.fitchratings.com/research/sovereigns/fitch-revises-panama-outlook-to-negative-affirms-idr-at-bbb-06-02-2020> accessed 30 April 2021.; Whether other countries will have the same experience as Panama case may be influenced by factors such as how integrated or interconnected each country's economy is with the rest of the world.

[628] ibid.

[629] There are fiscal ramifications that accrue from sovereign ratings because they have an impact on bond yields (i.e., the cost of public borrowing). See, Patrycja Klusak and others, 'Rising Temperatures, Falling Ratings: The Effect of Climate Change on Sovereign Creditworthiness' (2021) Bennett Institute (University of Cambridge) Working Paper, 4 <https://www.bennettinstitute.cam.ac.uk/media/uploads/files/Rising_Climate_Falling_Ratings_Working_Paper.pdf> accessed 30 April 2021; Reuters, 'South Africa's 'painful' ratings downgrade will raise borrowing costs – minister' (*Reuters*, 21 November 2020) <https://www.reuters.com/article/safrica-ratings/south-africas-painful-ratings-downgrade-will-raise-borrowing-costs-minister-idINL8N2I706A> accessed 30 April 2021.; For relevant research on the impact of sovereign downgrades, see Shaen Corbet, 'The Contagion Effects of Sovereign Downgrades: Evidence from the European Financial Crisis' (2014) 4(1) International Journal of Economics and Financial Issues 83-92 <https://core.ac.uk/download/pdf/84263319.pdf> accessed 30 April 2021.

[630] This argument has been made in regard to the effect of climate change on sovereign rating. See, Klusak and others (n 629).

premiums or face outright funding restrictions when they source for finance from the international markets.[631] All countries that do not want to have the risk of a negative market reaction to their inclusion in the FATF grey list will therefore act to improve their AML/corruption related IFFs framework. To do otherwise will mean that a country is taking on the risk of a negative market's reaction to its inclusion in the FATF grey list. Such a course of action will be ill advised because financial markets cannot be predicted with absolute certainty.[632] Therefore, countries cannot be certain that the market reaction to their inclusion in the FATF grey list will not be significant enough to affect their sovereign risk rating. In other words, there is always a risk that a country's inclusion in the FATF grey list could lead to sovereign credit downgrades and consequently, the government will have to pay additional premiums for its debt obligations as part of its overall day-to-day spending.[633] Invariably, a country's decision to pay additional premiums would mean that it is acting in an antithetical manner to the goal of limiting excess expenditure which is the reason for having a fiscal policy in place.[634] Accordingly, it is on the basis of the potential for fiscal consequence that Nigeria should look to the FATF in its quest to achieve accountability for the non-binding duty to implement extraterritorial policies on corruption related IFFs.

4.2.6.2 Other Sources of FATF's Fiscal Consequence

The fiscal consequence that is associated with the FATF framework is not limited to its relevance for sovereign rating by CRAs. Global institutions such as the IMF have underscored the importance of the FATF accountability framework and its relevance to countries' external debt requirement. One example to buttress this point is in the IMF's response to Tunisia's application to extend its IMF loan facility (otherwise known as the Extended Fund Facility (EFF).[635] In the IMF Staff Report for the second review under the EFF, the IMF referred to enhancing the AML/CFT regime, and consequently exiting the FATF Grey List as a part of the financial sector reforms that will entrench stability and

[631] Sisira Dharmasri Jayasekara, 'Sisira Dharmasri Jayasekara, 'Deficient Regimes of Anti-Money Laundering and Countering the Financing of Terrorism: An Analysis of Short-Term Economic Implications' (2020) (23) 3 Journal of Money Laundering Control 667 <https://www.emerald.com/insight/content/doi/10.1108/JMLC-02-2020-0015/full/html?skipTracking=true> accessed 16 April 2021.
[632] Jim Parker, 'The Certainty Principle' (Dimensional Fund Advisors LP 2014) <https://www.parkerfeeonly.com/files/140618_the_certainty_principle.pdf> accessed 30 April 2021; and Jeff Stibel, 'Why We Can't Predict Financial Markets' (*Harvard Business Review*, 22 January 2009) <https://hbr.org/2009/01/why-we-cant-predict-financial> accessed 30 April 2021.
[633] Thomas Pope, 'Fiscal rules' (*The Institute for Government*, 27 February 2020) <https://www.instituteforgovernment.org.uk/explainers/fiscal-rules> accessed 16 April 2021.
[634] Fiscal rules (also known as fiscal targets) are parameters set by the government to limit its own tax and spend excesses. They are designed to help it avoid the temptation to borrow more, leaving future generations to deal with the consequences. See, Pope (n 633).
[635] IMF (n 270).

facilitate access to finance.[636] This recommendation by the IMF implies that it has taken recognizance of Tunisia's inclusion in the FATF Grey List and has considered this development to be one of the factors that is limiting the country's access to finance. In other words, the IMF Staff Report is indicating that although the country's inclusion in the FATF Grey List bears no direct impediment on a country's ability to borrow from the IMF, it is a factor that is considered in the analysis of countries' ability to attract financing.[637] This point is further buttressed by Manuelides and others in their analysis of sovereign debt in African countries.[638] They observe that the international community has discouraged money laundering and its predicate offences such as corruption by condemning the performance of these activities.[639] Therefore, financial and trade sanctions are used by international organizations and government bodies to discourage regimes or individuals from assisting the performance of activities such as money laundering and related offences such as corruption.[640] The use of sanctions to discourage animadverted activities also apply to people and institutions that are considered to be facilitators, enablers or intermediaries of the discouraged activities.[641] In analyzing sovereign debt in Africa, Manuelides and others observe that international institutions which provide or arrange financing for sovereigns will almost always be subject to a number of applicable legal regimes.[642] These institutions, which include development finance institutions (DFI) such as the European Investment Bank Group (EIB Group) will therefore want to ensure that they do not breach any of the dictates of the applicable legal regimes.[643] For instance, the International Finance Corporation (IFC), the EIB Group, and the European Bank for Reconstruction and Development (EBRD) are all examples of DFIs with internal policies that prescribe specific due diligence on countries in the FATF grey list.[644] It is clear that their policy on interactions with countries in the FATF

[636] The Second Review Under the EFF was carried on as part of the 2017 Article IV Consultation on Tunisia. See, ibid 32.
[637] IMF 'International Monetary Fund: Frequently Asked Questions on Pakistan' (*IMF*, 8 April 2021) <https://www.imf.org/en/Countries/PAK/FAQ> accessed 21 April 2021.
[638] Yannis Manuelides and others, 'Understanding sovereign debt: options and opportunities for Africa' (Allen and Overy 2020) <https://www.allenovery.com/en-gb/global/news-and-insights/publications/understanding-sovereign-debt-options-and-opportunities-for-africa> accessed 30 April 2021.
[639] ibid 59.
[640] ibid.
[641] ibid.
[642] ibid.
[643] Thomas Dickinson, 'Development Finance Institutions: Profitability Promoting Development' in OECD (eds), *Turning African Agriculture into a Business: A Reader* (OECD Publishing 2009) 25-28.; For analysis of the types of DFIs, bilateral and multilateral DFIs. See, OECD, 'Development Finance Institutions and Private Sector Development' (*OECD*) <https://www.oecd.org/development/development-finance-institutions-private-sector-development.htm> accessed 2 May 2021.
[644] EIB, 'EIB Group NCJ Policy – Frequently Asked Questions (FAQs)' (European Investment Bank) <https://www.eib.org/en/about/compliance/tax-good-governance/faq.htm#> accessed 2 May 2021; and IFC Business Risk and Compliance Department, 'Unique Markets, Responsible Investing: IFC's Integrity Due Diligence Process' (International Finance Corporation 2017) 5

Grey List are also aligned with the FATF requirements on what to do to countries identified as having a deficient AML regime. It is noteworthy to point out that these DFIs such as the African Development Bank (AFDB), or the institutions they are a part of, have been given an observer status by the FATF.[645] As part of the criteria for attaining the observer status, the FATF must ascertain that the international/regional organization, including DFIs, are carrying out activities such as endorsing its standards, enhancing its global reach, and contributing to its work in general.[646] Upon attaining the observer status, the DFIs and the other international/regional organizations are required to commit to endorsing the FATF Recommendations, guidance and other policy for combating ML. The observers will also commit to contribute to the work of the FATF in accordance with their respective legal frameworks and policies.[647] As part of their commitment to the work of the FATF, the FATF observers have helped to ensure that the FATF Standards and assessment processes are in line with various international standards, including the protection of human rights.[648] To a large extent, the commitment of DFIs under the FATF framework is relevant for analyzing the fiscal impact of its accountability framework. This is especially the case because the

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<https://www.ifc.org/wps/wcm/connect/90f4efde-ba09-477b-9de5-ed13b0091b7d/202103-IFC-Integrity-Due-Dilligence-Process.pdf?MOD=AJPERES&CVID=nvVYyTU> accessed 2 May 2021; and EBRD, 'The Integrity and Anti-Corruption Report 2018' (European Bank for Reconstruction and Development 2019) 28 <https://www.ebrd.com/documents/occo/anticorruption-report-2018.pdf?blobnocache=true> accessed 2 May 2021.; Note that the IFC is a member of the World Bank Group. Its activities are geared towards fostering sustainable economic growth in developing countries by supporting private sector development, mobilizing private capital, and providing advisory and risk mitigation services to businesses and governments. Similarly, the EBRD is a multilateral development bank that has 69 countries from five continents as its shareholders. Its shareholders also include the European Union and the European Investment Bank. As a multilateral development bank, it has provided investments to countries (€11 billion in 2020). The EBRD is a major multilateral development bank that is currently expanding its shareholder base. Its new members include China, India, San Marino and Libya. See, EBRD, 'The History of the EBRD' (*European Bank for Reconstruction and Development*) <https://www.ebrd.com/who-we-are/history-of-the-ebrd.html> accessed 2 May 2021.

[645] The AFDB has remarked that as a FATF Observer Organization, the Bank endorses the FATF standards and incorporates AML/CFT issues in its operations as well as policy work with its regional member countries. See, ECGF, 'Strategic Framework And Action Plan On The Prevention Of Illicit Financial Flows In Africa (2017 - 2021)' (AFDB 2017) <https://www.afdb.org/sites/default/files/documents/strategy-documents/bank_group_strategic_framework_and_action_plan_for_the_prevention_of_illicit_financial_flows_in_africa_2016-2020.pdf> accessed 2 May 2021.; Note that in conducting an online research for this thesis, some information on how the AFDB has incorporated the accountability list to its internal measures was only seen in its Policy on Non-sovereign Operations. See, Strategy and Operational Policies Department of AFDB, 'African Development Bank Group's Policy on Non-sovereign Operations' (AFDB Group) 31 <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/NSO_Policy-En.pdf> accessed 2 May 2021.

[646] FATF, 'FATF Policy on Observers' (*FATF*) <https://www.fatf-gafi.org/about/membersandobservers/fatfpolicyonobservers.html> accessed 2 May 2021.

[647] See, FATF, 'Financial Action Task Force Mandate: Approved by the Ministers and Representatives' (FATF-GAFI 2019) para 16 <https://www.fatf-gafi.org/media/fatf/content/images/FATF-Ministerial-Declaration-Mandate.pdf> accessed 20 February 2020.

[648] Letter from Marcus Pleyer to Fionnuala Ni Aolain, Mr. Clément Nyaletsossi Voule and Mary Lawlor (18 December 2020) <https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=35813> accessed 2 May 2021.; See also ibid para 13, 14 and 16; and FATF, 'Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations' (FATF/OECD 2021) 25 and 26 <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF-4th-Round-Procedures.pdf> accessed 2 March 2021.

FATF accountability procedures, at the moment, are not designed to result in an automatic loss of current and prospective sovereign debt or other business relationships. On the contrary, the FATF is only asking for the information it has provided on the grey listed countries to be used in assessing the risk they pose.[649] In respect to blacklisted countries, the FATF has called for enhanced due diligence (EDD) to be applied in all instances and in the most serious cases, countries are called upon to use countermeasures to protect the international financial system from the prohibited activities.[650] Therefore, by calling on its members to consider the Grey List in their risk assessment or for the implementation of EDD on the basis of the Blacklist, the FATF is asking them to include its accountability framework in their risk assessment process. Accordingly, the inclusion of the FATF's accountability list in the risk assessment process of DFIs is beneficial to the FATF objective of global financial stability. To a large extent, the inclusion of the Jurisdictions under Increased Monitoring and High-Risk Jurisdictions subject to a Call for Action in DFIs risk assessment processes has helped to further validate the FATF as a framework for protecting the global financial sector.[651] It is the reason for why a fiscal consequence can be associated with the FATF accountability framework. This is because the FATF's call to its members under its accountability framework is designed to influence rather than make the decision on how AML deficient countries and the entities that are linked to them are to be treated. The FATF has not asked DFIs to stop future and current interactions with countries that have been placed in its accountability list. Rather, all that is required for DFIs to fulfill the FATF's request is for them to consider the accountability list as a part of their risk assessment processes. If one is to consider EBRD, for instance, it has structured its policy to be compliant with the FATF's request on what should be done to jurisdictions with deficient AML regimes. As part of its operations, the EBRD has observed that it conducts enhanced due diligence on all proposed counterparties in those jurisdictions which the FATF has identified as having strategic deficiencies in their AML regimes.[652] The EBRD has also observed that the EDD assessment is used to determine the extent to which the counterparties have appropriate AML and CFT procedures to mitigate against the deficiencies that the

[649] FATF, 'Jurisdictions under Increased Monitoring' (FATF, 21 February 2020) <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-february-2020.html> accessed 2 May 2021.
[650] FATF, 'High-Risk Jurisdictions subject to a Call for Action' (FATF, 21 February 2020) <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-february-2020.html> accessed 2 May 2021.; The FATF has adopted a consistent approach as is evidenced in its first blacklist. See, FATF, 'Review to Identify Non-Cooperative Countries or Territories: Increasing the Worldwide Effectiveness of Anti-Money Laundering Measures' (FATF, 22 June 2000) para 65 and 67 <https://www.fatf-gafi.org/media/fatf/documents/reports/1999%202000%20NCCT%20ENG.pdf> accessed 2 May 2021.
[651] These are FATF accountability mechanisms.
[652] EBRD, 'The Integrity and Anti-Corruption Report 2018' (n 644) 28.

FATF has identified. So, basically, the activities of DFIs such as EBRD have extended the impact of the FATF accountability framework. The decision to incorporate the accountability list in their risk assessment procedures has extended the impact of the FATF accountability framework to the realm of fiscal consequence. It has contributed to creating a direct relationship between the FATF accountability framework and the sovereign debt activities of the countries that have been placed on the accountability list. When the FATF decides that a country's AML regime is deficient, the DFIs that have incorporated the accountability list as a part of their risk assessment process will be put on notice, alongside the rest of the global community. As a result of the internal policy of an applicable DFI, it will be required to conduct a risk assessment on the counterparties that are linked to a country which the FATF has placed in the accountability list. The DFI will have to decide on whether or not the AML deficiency in the jurisdiction is going to affect its willingness to carry on a transaction with counterparties that are linked to it.[653] The DFI is not likely going to raise finance for a sovereign if it is not satisfied with the result of its risk assessment. Therefore, because the accountability list is included in the risk assessment policy of some DFIs, it is reasonable to expect that there will be an increase in the scrutiny of FATF listed countries. The increased scrutiny of relevant countries can have an impact on the cost of sovereign debt management.[654] This risk of an increase in the cost of sovereign debt management is relevant for limiting excess expenditure which is the reason for having a fiscal policy in place.[655] Accordingly, if a country is placed on the accountability list, it is invariably taking on a risk that could lead to additional government expenditure. In order to avoid the risk of fiscal consequence associated with increased cost of sovereign debt management, countries are to avoid the prospect of being included in the FATF accountability list. This risk of fiscal consequence is one of the reasons why the Nigerian objective of actualizing accountability for RTD is achievable under the FATF framework. In the light of its implication for accomplishing the non-binding duty to implement extraterritorial policies on corruption related IFFs, the FATF's ability to generate the risk of fiscal consequence is a factor that has put the FATF in a position to be an effective RTD instrument.

[653] In the case of EBRD, an enhanced due diligence is undertaken on all proposed counterparties in the jurisdictions which the FATF has identified as having strategic deficiencies in AML. The enhanced due diligence is undertaken in order to satisfy itself that those counterparties have appropriate AML and CFT procedures to mitigate these deficiencies. see, ibid.
[654] Manuelides and others (n 638) 59-60.
[655] Fiscal rules (also known as fiscal targets) are parameters set by the government to limit its own tax and spend excesses. They are designed to help it avoid the temptation to borrow more, leaving future generations to deal with the consequences. See, Pope (n 633).

It is useful to note that the activities of regulators around the world have also contributed to the efficacy of the FATF accountability framework. Through the activities of regional and domestic regulators, the FATF accountability framework has received some relevance in various jurisdictions. The activities of regulators have helped to mainstream the FATF accountability framework by incorporating the accountability list into their guidance for institutions within their jurisdictions. The regulatory role of issuing local or regional guidance, as is applicable, has been vital for extending the influence of the FATF accountability framework into the operational policy of multilateral development banks (MDBs).[656] In order to buttress this point, the internal policy of the EIB Group is an apt example.[657] This is because the EIB Group, which consists of the European Investment Bank (EIB) and the European Investment Fund (EIF), is bound by Article 12 of the EIB Statute of 2020 to comply with best banking practices.[658] Accordingly, the EIB Group has observed that the concept of best banking practices require it to comply with EU AML/CFT Directives (AML Directive) which are applicable to its activities.[659] This EIB Group statement is important because it gives an insight on how a multilateral DFI can be subject to legal regimes that are relevant to anti-corruption related IFFs. It gives insight on how regulatory activities are influencing the internal policy of MDBs. Although this EIB Group statement is conveying a point about the importance of best banking practices in the decision making of the EIB Group, it is instructive to note that the same can be said for most, if not all multilateral MDBs. This is because the value of complying with best banking practices is related to the reputational risk of an MDB. In most cases, MDBs have partial or absolute immunity from legal action because of the provisions in national laws and the provisions in their own constituent instruments.[660] Accordingly, the question of whether the immunity of a MDB is upheld in any situation is usually a matter for the local courts to decide.[661] However,

[656] Although what is considered as DFI and MDBs may overlap, their definitions are different. For analysis of DFIs and MDBs, see OECD (n 643); and Lars Engen and Annalisa Prizzon, 'A guide to multilateral development banks' (Overseas Development Institute 2018) 8 and 88 <https://cisp.cachefly.net/assets/articles/attachments/75082_12274.pdf> accessed 2 May 2021.
[657] 'EBRD, EIB and World Bank Group Join Forces to Support Central and Eastern Europe' *The information magazine of the European Investment Bank Group* (Luxembourg April 2009) 12-13 <https://www.eib.org/attachments/general/bei_info/bei_info134_en.pdf> accessed 21 April 2021.
[658] European Investment Bank Group, *Statute and other Treaty Provisions* (EIB 2020) 14 <https://www.eib.org/attachments/general/statute/eib_statute_2020_03_01_en.pdf> accessed 21 April 2021.
[659] European Investment Bank Group, *Anti-Money Laundering and Combating Financing of Terrorism Framework "EIB Group AML-CFT Framework"* (EIB 2020) 1 <https://www.eib.org/attachments/strategies/eib_group_aml_cft_framework_en.pdf> accessed 21 April 2021.
[660] Chengjin Xu and Bin Gu, 'A Critique of Immunity for Multilateral Development Banks in National Courts' (2018) 4(1) The Chinese Journal of Global Governance 51 and 60 <https://brill.com/view/journals/cjgg/4/1/article-p49_3.xml?language=en&body=pdf-44182> accessed 29 May 2021.
[661] Aleksandra Antonowicz-Cyglicka and others, 'Can the EIB Become the "EU Development Bank"? A Critical View on EIB Operations Outside Europe' (Counter Balance and CEE Bankwatch Network 2020) 53

the resultant reputational harm incurred from public knowledge about a MDB's inadequate compliance with best banking practices is an outcome that cannot be avoided by invoking the theory of immunity. So, essentially, a MDB's compliance with best banking practices is an act that is done on the basis of a number of reasons. These reasons can include the risk of a corruption scandal that is associated with the MDB's operations. In the event of a corruption scandal, a MDB will want to be in compliance with best banking practices.[662] This is why the role of regulators, as a source of banking practices, is important for explaining the impact of the FATF accountability framework in Nigeria. In the EU, for instance, a support for the FATF accountability framework is evident in the activities of regulators such as the European Commission (EC). In performing the duty provided for in Article 9 of the 4th Anti-Money Laundering Directive of 2015, the EC has helped to mainstream the FATF accountability framework.[663] The reason for this conclusion is that the FATF accountability list has been a contributory factor for why the EC has given EDD directives on clients or counterparties established in foreign jurisdictions.[664] In its website, the EC has acknowledged that it considers the FATF Grey List before it updates its list of non-EU countries with deficient AML regimes (list of high-risk third countries). [665] The EC has, in essence, integrated the accountability list in its process for determining the countries that do not have sufficient mechanisms for combating ML. On the basis of this decision to consider the FATF Grey List as a part of its process for identifying high-risk third countries, it is clear that through its influence on institutions in the EU, the EC is helping to enhance the implications of the FATF accountability framework. The EC's influence has helped to make the impact of the FATF framework far-reaching enough to influence countries' sovereign debt interactions with MDBs such as the EIB. Correspondingly, the activities of regulators around the world, such as the Central Bank of Nigeria (CBN) and the Financial Crimes Enforcement Network (FinCEN) in the US, have helped to extend the possibility of the fiscal risk that is associated

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<https://bankwatch.org/wp-content/uploads/2020/11/2020-Can-the-EIB-become-the-EU-Development-Bank_Online.pdf> accessed 2 May 2021.

[662] For analyses of how MDBs have been involved in corruption scandals and how they handle such matter see, Matthew Jenkins, 'Multilateral Development Banks' Integrity Management Systems' (U4 Anti-Corruption Resource Centre 2016) <https://knowledgehub.transparency.org/assets/uploads/helpdesk/Multilateral_development_banks%E2%80%99_integrity_management_systems_2016.pdf> accessed 2 May 2021.

[663] The 4th Anti-Money Laundering Directive is in Article 9 of Directive (EU) 2015/849. It is a legislative act that is to be incorporated by member countries of the EU.

[664] Directorate-General for Financial Stability, Financial Services and Capital Markets Union, 'EU Policy on High-Risk Third Countries' (*European Commission*) <https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/anti-money-laundering-and-counter-terrorist-financing/eu-policy-high-risk-third-countries_en> accessed 21 April 2021.

[665] The 4th Anti-Money Laundering Directive is provided for in Article 9 of Directive (EU) 2015/849. For further analysis of the EC's decision, see European Commission 'Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016: Supplement to Directive 2015/849 by Identifying High-Risk Third Countries with Strategic Deficiencies [2016] OJ L 254/1' (20 September 2016) L 254/1.

with the FATF framework.[666] This is because banking regulators are helping to mainstream the accountability list as a part of best practices in the AML risk assessment process.[667] As a result of the mainstreaming activities of regulators, it is now acceptable to consider the use of the accountability list as a banking best practice for risk assessment processes. Therefore, the regulator's ability to influence the policies of DFIs and MDBs through best banking practice directive or circulars is an important factor that is helping to widen the implication of countries' inclusion in the accountability list. As a consequence of how regulators are helping to promote the use of the accountability list in the AML risk assessment process, there is heightened likelihood that most DFIs and MDBs are being influenced into being compliant with the FATF accountability request. In other words, it can be expected that a large proportion of DFIs and MDBs are influenced into being conscious of countries' inclusion in the accountability list. There is invariably a risk of heightened scrutiny and a subsequent risk of increase in the cost of sovereign debt management that is associating the impact of the FATF accountability framework to the risk of fiscal consequence. Therefore, the objective of actualizing accountability for the non-binding duty to implement extraterritorial policies on corruption related IFFs is invariably achievable under the FATF because of the risk of fiscal consequence that is associated with its accountability framework. In essence, it can be concluded that the risk of fiscal consequence, which is associated with FATF's accountability framework, is a reason for why the FATF is suitable for the Nigerian objective of achieving the extraterritorial dimension of RTD.

There is reason to be mindful that the FATF's ability to cause fiscal accountability is limited because it is possible for MDBs to implement strong AML mechanisms when they engage in transactions with any country with AML deficient laws. The EIB Group is a good example to buttress this point because it has observed that the standards promoted by the FATF have

[666] FinCEN is the primary AML/CFT regulator in the United States and operates under the authority of the United States Treasury Department. FinCEN is responsible for combating money laundering, the financing of terrorism and other financial crimes by monitoring banks, financial institutions and individuals and analyzing suspicious transactions and payments. FinCEN works with state and federal law enforcement agencies, sharing information to assist in the fight against financial crime. See, Comply Advantage, 'AML Regulations in the United States: Compliance and Noncompliance with AML' (*Comply Advantage*) <https://complyadvantage.com/knowledgebase/aml-regulations-united-states/> accessed 30 April 2021.; For examples of how the FinCEN has helped to legitimize the FATF accountability framework, see FinCEN, 'Advisory Information' (*Financial Crimes Enforcement Network*, 27 April 2018) <https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2018-a002> accessed 30 April 2021.

[667] For instance, the CBN's efforts in advocating for the use of the accountability list in risk assessment processes is bound to have an impact on DFI's such as the Nigerian Trust Fund. For relevant CBN policies, see CBN, 'Rule Book (A Compendium of Policies and Regulations)' (CBN 2019) 49, 51-52, 149, 250 and 253 <https://www.cbn.gov.ng/Out/2020/FMD/CBN%20Rule%20Book%20Volume%203.pdf> accessed 2 May 2021.

been incorporated into its policy for transactions involving foreign jurisdictions.[668] Consequently, before conducting operations in countries under the FATF Grey List, the EIB Group must be certain the operation is to be physically implemented in the country and that it will not be used for targeted activities such as ML.[669] The EIB Group also conducts due diligence in its dealings with jurisdictions that have been identified under the FATF accountability list in other to satisfy itself that its operations are not supporting the financial sector of such countries.[670] Furthermore, an important component of EIB's policy is to first have measure to mitigate against the risk of misuse of its operations before the bank can engage with counterparties who are established or incorporated in countries that are identified in the FATF accountability list.[671] All of these measures are aligned with the FATF's request on what should be done to the countries in its accountability lists. Therefore, the FATF's ability to cause fiscal accountability is dependent on the level of cooperation that it gets from regulators, and on whether or not an institution has decided to adopt mechanisms to mitigate against the AML risk of a country with an AML deficient regime.

4.2.7 Market Accountability

This form of accountability is not the abstract force called the market. Rather, it is related to investors and consumers whose influence is exercised in whole or in part through the markets.[672] It exists when investors stop investing in or at least, demand higher rates of interest for transactions undertaken with countries whose policies they disapprove.[673] Consumers may refuse to buy products from companies with bad reputations because of lower labour standards or other such practices as well as from companies with inferior or costly products.[674] Accordingly, an attempt to associate the RTD with mechanisms that

[668] EIB Group, 'Corporate: EIB Group Policy Towards Weakly Regulated, Non-Transparent and Non-Cooperative Jurisdictions and Tax Good Governance' (European Investment Bank 2019) 3 and 5 <https://www.eib.org/attachments/strategies/eib_group_ncj_policy_en.pdf> accessed 30 April 2021.
[669] Physical implementation exceptions for both Prohibited and Restricted Jurisdictions are envisaged in order to avoid penalizing the local population of countries where the EIB Group has received an EU mandate to provide finance and to support the EU objectives of development, cooperation and economic, social and territorial cohesion stipulated in Articles 209 and 309 of the Treaty on the Functioning of the European Union (TFEU) and its Protocol No 28. In determining the applicability of such expectation, the EIB Group shall assess whether the risk (if any) that the operation could be misused for Targeted Activities can be mitigated. It should be noted that the physical implementation exception applies, unless specifically excluded in the applicable mandates. See, ibid 5 and 8.
[670] However, an entity can be contracted to serve as financial intermediary for the EIB Group's investments in the relevant Prohibited Jurisdiction. See, ibid 5 and 9.
[671] ibid 5, 6 and 10.
[672] Grant and Keohane (n 598) 37.; For analysis of the different types of markets see, Neva Goodwin and others, *Microeconomics in Context* (Routledge 2015) 48-50.
[673] Grant and Keohane (n 598) 39.
[674] ibid 37.

influence countries' financial market reputation should provide the incentive for countries to be committed to actualizing the RTD.[675] Therefore, to associate the FATF with the RTD is a viable option for promoting universal development because of its ability to impact on financial markets. Due to the FATF's reputation, as an AML compliance monitor institution, countries that continue to perform poorly under the FATF accountability process are most often subjected to a downgrade by other international organizations and rating agencies.[676] Accordingly, there are examples to show that the credit rating agencies such as Standard and Poor's (S&P) have shown interest in countries' performances against the FATF benchmarks/standards.[677] For instance, S&P has shown interest in whether the recent placement of Panama in the Grey List would affect the financial system of the country. The conclusion by S&P was that there was limited possibility of a significant impact on the country's financial system because the FATF's Recommendations (which is the action plan that would lead to countries' removal from the grey list) for Panama are primarily outside the financial sector.[678] In a similar tone, the credit rating agency, Moody's, has recently observed that the Pakistan banking system faces a credit risk from the country's continued inclusion on the FATF Grey List.[679] The conclusion by Moody's was that the FATF's announcement of Pakistan's continued inclusion in the grey list

> is credit negative for Pakistani banks because it raises questions about potential additional restrictions relating to banks' foreign currency clearing services, as well as their foreign operations.[680]

The use of the term 'credit negative' by Moody's means that the ratings agency is cautiously watching the incident but does not think the incident is warranting of an opinion regarding

[675] Financial markets are a type of factor market. Generally, markets are divided into factor and product markets. Factor markets are for the services of land, labour, and capital, while product markets are for newly produced goods and services. See, Goodwin and others (n 672) 33 and 48-50.
[676] Jayasekara (n 631) 667.
[677] For in debt analysis of credit ratings and credit rating agencies, see Ulrich G Schroeter, 'Credit Ratings and Credit Rating Agencies' in Gerard Caprio (eds), Handbook of Key Global Financial Markets, Institutions, and Infrastructure (Elsevier Science 2012); and Michel Henry Bouchet, Ephraim Clark and Bertrand Groslambert, *Country Risk Assessment: A Guide to Global Investment Strategy* (Wiley 2003) 93-110.
[678] S&P Global Ratings, 'Global Banks Country-By-Country 2021 Outlook: Toughest Test for Banks Since 2009' (Standard & Poor's Financial Services LLC 2020) 28 <https://www.spglobal.com/_assets/documents/ratings/research/100047457.pdf> accessed 21 April 2021.
[679] Reuters, 'Pakistan's inclusion on 'grey list' is credit negative for banks - Moody's' (*Reuters*, 27 February 2020) <https://www.reuters.com/article/fatf-pakistan-moodys/pakistans-inclusion-on-grey-list-is-credit-negative-for-banks-moodys-idUKL3N2AR1TM> accessed 21 April 2021.
[680] ibid.

the likely rating direction over the medium term (rating outlook) or rating downgrade.[681] In essence, Moody's is acknowledging that it views the continued inclusion of Pakistan in the grey list to be a potential cause of risk to its banking system. Moody's has adopted a similar approach for Mauritius by identifying its inclusion in the FATF Grey List to be an environmental, social and governance considerations (ESG) that have an impact on the rating of Mauritian banks.[682] Accordingly, the inclusion of Mauritius in the FATF Grey List is an ESG that Moody's has assessed in its process of rating the country risk associated with Mauritian banks.[683] A similar conclusion is applicable to Ghana's inclusion in the FATF's grey list and the subsequent Moody's evaluation of Ghanaian banks that was published on 29 January, 2020.[684] This is because the country's inclusion in the FATF's grey list is clearly identified as a part of the factors that influenced the Moody's country risk assessment for Ghana.[685] Therefore, on the strength of these examples, it is clear that credit rating agencies do consider countries' inclusion in the FATF's grey list in their countries' ratings. However, it is also clear from the examples identified herein that countries' inclusion in the FATF's grey list is usually considered in the context of other relevant considerations identified by the credit rating agency which include the issues identified in the FATF's action plan. In identifying a country's risk, the negative impact of its inclusion in the grey list is subject to the assessment of the credit rating agencies, and not an outcome that must always be expected. Therefore, for the countries that are put on the FATF's grey list, it is the possibility of a negative impact on their countries' risk assessments that should be the cause of concern for them. This is because country risk assessments are a pre-lending as well as post-lending decision tools that have an influence on the investment decisions of lenders.[686] Furthermore, the extent to which country risk assessment is detrimental to financial entities is an issue that

[681] A Moody's rating outlook is an opinion regarding the likely rating direction over the medium term. See, Moody's Investors Service (n 617) 30.; See also Kate Fazzini, 'In a Rare Move, Moody's Says it's Paying Close Attention to Pitney Bowes Ransomware Attack' (*CNBC*,16 October 2019) <https://www.cnbc.com/2019/10/16/moodys-credit-negative-note-on-pitney-bowes-after-ransomware-attack.html> accessed 21 April 2021.

[682] Moody's Investors Service, 'Rating Action: Moody's affirms ratings of Mauritian Banks; outlooks are negative' (*Moody's*, 3 April 2020) <https://www.moodys.com/research/Moodys-affirms-ratings-of-Mauritian-Banks-outlooks-are-negative--PR_421856> accessed 28 April 2021.; See also, Moody's Investors Service (n 617) 30.

[683] Moody's conducts qualitative assessment of the impact of ESG considerations in the context of an issuer or transaction's other credit drivers that are material to a given rating. See, Moody's Investors Service (n 617) 30.

[684] Moody's Investors Service, 'Rating Action: Moody's Affirms the Ratings of Ghana's GCB Bank; Changes Outlook to Positive' (*Moody's*, 29 January 2020) <https://www.moodys.com/research/Moodys-affirms-the-ratings-of-Ghanas-GCB-Bank-changes-outlook--PR_417570> accessed 28 April 2021.

[685] ibid.

[686] Timurlenk and Kaptan (n 612) 1089; and Suzana Popa, 'The Influence of the Country Risk Rating on the Foreign Direct Investment Inflows in Romania' (2012) 1(2) International Journal of Economic Sciences 104 <https://www.iises.net/download/Soubory/soubory-puvodni/pp093-116_ijoes_2012V1N2.pdf> accessed 28 April 2021.

requires further empirical support.[687] Consequently, there must be skepticism about the idea of adopting the processes of the FATF, or any other institution as a mechanism for market accountability.

4.2.8 Peer Accountability

This form of accountability arises as the result of mutual evaluation of organizations by their counterparts.[688] One example of this type of accountability is when non-government organizations (NGOs) evaluate the quality of information they receive from other NGOs and the ease of cooperating with them. In this instance, those organizations that are poorly rated by their peers are likely to have difficulty in persuading them to cooperate and, therefore, to have trouble achieving their own purposes.[689] It is clear that this type of accountability incorporates the use of reputation to shape the preference of others. In other words, it could be expected, or at the very least hoped that there would be enough incentive for entities being held to account to desire positive ratings from their peers. For instance, if peer reviews are not widely recognized the intended reputational impact of the review will not be achieved. Moreover, larger, or more influential entities can easily discredit the review process by the use of bad publicity or influence the process by lobbying their peers if they suspect that the outcome will not be in their favor. However, peer reviews can be an important approach to achieving accountability for RTD if the process can be conducted in a manner that is acceptable to all parties involved. Therefore, in addition to any UN level peer review mechanisms that is adjudged by the UNGA, as being relevant to the RTD, the FATF should be promoted as a source of peer accountability for RTD.[690]

4.2.9 Supervisory Accountability

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[687] There is little research on the impact of country (corporate) risk rating changes on countries financial market returns. The only relevant study that was identified, for the purpose of this thesis, is research on whether investors rely on the country ratings of Coface Group when valuing companies in 69 countries. The conclusion in the research was that while country ratings may still be useful in signaling potential debt coverage or political problems, they do not appear to influence investor valuations of country stock markets. See, Oliver Schnusenberg, Jeff Madura and Kimberly C. Gleason, 'The effect of country risk ratings on market returns' (2007) 17(16) Applied Financial Economics 1290 <https://www.tandfonline.com/doi/pdf/10.1080/09603100600993786?needAccess=true> accessed 28 April 2021.

[688] Grant and Keohane (n 598).

[689] ibid; citing, Layna Mosley, *Global Capital and National Governments* (Cambridge University Press 2003).

[690] This is because the FATF conducts peer reviews of each member on an ongoing basis. See, FATF 'Topic: Mutual Evaluations' (*FATF-GAFI*) <https://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc(fatf_releasedate)> accessed 1 September 2020.

This form of accountability refers to relations between organizations where one organization acts as principal with respect to specified agents. This type of accountability is observed to be reliant on delegation, a system where performance of power wielders is evaluated by those entrusting them with the powers.[691] An example of this type of relationship is in how the World Bank and IMF are subject to supervision by States and by institutions within States, such as courts.[692] It is observed that in the World Bank, for instance, supervision is achieved through an executive board, composed of representatives of States that make policies, and an inspection panel that is designed to ensure the performance of its policies within the organization.[693] It is certain that donor States do not get their power from institutions such as the UN, instead, the opposite is the case. However, it is observed that the UN has implemented supervisory accountability in the past.[694] Furthermore, some States have agreed to be subject to monitoring by organizations such as the FATF and the World Bank. Therefore, there are instances where the monitoring function of international organizations have made them to be mechanisms that inform the citizens about the performance quality of their government. Accordingly, the monitoring function of international organizations is important because governments (or their priorities) change often following elections. Therefore, due to its monitoring function, an international organization can provide the consistent impetus for achieving well established aims and objectives. Consequently, the FATF's ability to monitor States is a reason for why it should be promoted as a mechanism that has contributed to accountability in the global development cooperation against IFF.

4.2.10 Collective and Individual Accountability

Collective accountability involves a strategy where any member of an organization is chosen and personally held accountable for the conduct of that organization as a whole by virtue of the fact that the person is a member of the organization.[695] It also involves a situation where every member of the organization is held accountable for misconduct in an organization.[696] An illustrative example would be in a situation where the imputation of guilt, shame and blame are accorded without regard for the role members of the entity played in the transaction they are being held to account for. This form of accountability is challenging because of its lack of sophistication in doing justice to the many different roles' members of

[691] Koenig-Archibugi (n 577).
[692] Grant and Keohane (n 598) 36.
[693] ibid 37.
[694] ibid 39.
[695] Bovens (n 354) 458-459; and ibid 37.
[696] Bovens (n 354) 459.

an organization or other entities play in a transaction for which they are being held to account for. For instance, the director who ordered secret accounts to be opened in a case of fraud is judged on equal footing with a simple statistician who was just collecting and processing data in the company. However, it is observed that the value for collective accountability seems to arise in specific circumstances, for example with small, collegiate public bodies, such as cabinets in various countries, and in some instances in the European Commission.[697] In the development discourse, the use of collective accountability between donors and donor recipients has been advocated for because the consequences of inaction or lack of effort in any partnership will affect virtually all stakeholders, albeit not all will be affected equally.[698] It is observed that collective accountability is valuable in development cooperation if it is seen as a source of positive motivation, instead of conditionality and enforcement. Therefore, collective accountability of States can be an asset if it serves as motivation for improved commitment by assistance providers and assistance receivers to the task of actualizing RTD related policies.[699] Accordingly, the FATF's monitoring function is useful because it is used to achieve collective accountability when the FATF provides an assessment on the impact of the global AML regime.[700]

Individual accountability occurs during the judgment phase of either hierarchical or collective accountability. This kind of accountability is achieved when each individual official is held proportionately liable for his/her personal contribution to the infamous conduct of the organization.[701] Under this approach, everyone is judged based on their actual contribution, instead of their formal position. Individual officials will thus find it impossible to hide behind their organization or minister, and those in charge are not required to shoulder all the blame of the infringements.[702] Regarding individual accountability, the provisions of Articles 2 and 3 of the UNDRD, 1986 are relevant as they stipulate that States and all human beings have a

[697] ibid.; For how collective accountability can occur in the European Commission. See, Walter van Gerven, *The European Union: A Polity of States and People* (Hart 2005) 83.
[698] For analysis on how collective accountability is useful for development cooperation, see Timo Mahn Jones, *Accountability for Development Cooperation under the 2030 Agenda* (Deutsches Institut für Entwicklungspolitik 2017) 30.
[699] For analysis on how collective accountability is useful for development cooperation, see ibid.
[700] For illustration, in a 2022 report, the FATF interpreted some of its findings as an indication that the current level of international co-operation is not having an impact on successful or effective ML/TF investigations and asset recovery. Therefore, in such instances, the FATF's evaluation process has been used to assess the impact of all international co-operation for ML/TF investigations and asset recovery. See, FATF, 'Report on the State of Effectiveness and Compliance with the FATF Standards' (FATF/OECD 2021) 21 <https://www.fatf-gafi.org/media/fatf/documents/recommendations/Report-on-the-State-of-Effectiveness-Compliance-with-FATF-Standards.pdf>20 April 2022.
[701] Bovens (n 354) 459.
[702] ibid.

responsibility to promote and protect the processes that enhance development.[703] It is therefore an ideal RTD related objective to actualize individual accountability for the actions that private citizens are taking to promote and protect all development enhancing processes. The idea of individual accountability for RTD is problematic if formal domestic regulations are used to impose liability and sanctions on citizens that are not promoting and protecting the RTD. Moreover, if citizens are individually accountable for not promoting the RTD, then governments or all relevant accountability fora would have to contend with the capacity challenge that will arise from legitimate and frivolous claims. In other words, the possibility that a significant number of citizens can be accused of not promoting the development process is an issue that would have to be resolved by governments or all fora that are used to achieve individual accountability for the RTD. The concern that individual accountability requires fora to contend with a significant capacity challenge is reduced if the notion of the unitary State actor is adopted. Therefore, under the assumption that States are unitary actors in the international community, individual accountability is achieved when they are held as liable for their delays or inability to implement RTD related policies. Accordingly, the FATF's monitoring function is useful because it enables it to assess individually States and publish information about their compliance levels, thereby achieving individual accountability.

4.2.11 Vertical, Horizontal and Diagonal Accountability

Vertical accountability refers to the situation where a forum formally wields power over to an actor.[704] This could be due to a hierarchical relationship between an actor and a forum as is the case in an executive organization that is accountable to a minister or to a parliament. It also exists in situations where laws empower a formal authority to compel an actor into giving account and in political arrangements where there is delegation of power from the principal to agents, such as the relationship between citizens and governments. The idea of vertical accountability does not apply to the relationship that exist between States and an international body such as the UN and the FATF. Only regional supranational organizations such as the EU are seen as international bodies that formally wield power over States. At the global level, there is no international body that formally wields power over States. Therefore, the relationship between the FATF and the notion of horizontal accountability is that it has

[703] OHCHR (n 107) 4 and 5.
[704] Bovens (n 354) 460.

helped to provide information that relevant fora and citizens should use to assess their governments' commitment to AML.

Diagonal accountability is described as a two-step relationship where an intermediary forum such as an audit office that does not wield power over an actor, reports to the forum.[705] In this instance, there is hierarchy between the forum (such as a parliament) and the actor (such as a public organization). The intermediary forum, on the other hand, only gains informal power because it reports to the forum. Diagonal accountability has also been described as a concept that reflects the non-state actor's contribution as a mechanism for holding actors, such as government institutions, accountable.[706] Therefore, the FATF has provided information that non-state actors can use to exert diagonal accountability on States.

Horizontal accountability has been described as a mutual form of accountability between two or more bodies that are standing on an equal footing.[707] It is also described as a situation where there is a non-hierarchical relationship between the actor and the forum. In addition to the non-hierarchical relationship between the actor and the forum, there is no formal obligation to give account.[708] This form of accountability is distinct from what is expected in formal accountability setups where the forum has power to hold an actor accountable based on statutes, norms, and acts such as parties expressly agreeing to be bound by the decision of the forum. The obligation felt by agencies to account for themselves to the general public is usually moral in nature, although in some cases there may be formal requirements as well in their charters.[709] Accordingly, the use of mechanisms that accomplish horizontal accountability to promote the RTD could be challenging if countries are not willing to provide information about their RTD related activities. Therefore, the FATF is important because it ensures the availability of information that should have been made available through horizontal accountability mechanisms such as government circulars and other similar publications.

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[705] ibid.
[706] Anna Lührmann, Kyle L. Marquardt and Valeriya Mechkova, 'Constraining Governments: New Indices of Vertical, Horizontal, and Diagonal Accountability' (2020) 114 (3) American Political Science Review 813 <https://www.cambridge.org/core/journals/american-political-science-review/article/constraining-governments-new-indices-of-vertical-horizontal-and-diagonal-accountability/7C790A7E00B4279C60BB8F4CD8A6DEC5> accessed 17 May 2021.
[707] Guillermo A. O'donnell, 'Horizontal Accountability in New Democracies' (1998) 9(3) Journal of Democracy 112 <https://muse.jhu.edu/article/16904> accessed 16 December 2016.
[708] Bovens (n 354) 460.
[709] ibid.

4.2.12 Professional Accountability

This form of accountability exists in situations where members of an organization are part of an accountability relationship with professional associations and disciplinary tribunals.[710] In this instance, accountability comes externally as the professional associations and disciplinary tribunals can hold actors accountable for unprofessional conduct. From an internal perspective, however, there is professional accountability for independent and discretionary acts of professionals.[711] This form of professional accountability occurs when professionals engage in a purely personal exercise of judgment and adherence to internalized standards regardless of any external scrutiny or sanction, actual or potential.[712] Professional accountability from an internal perspective applies to individuals, and should not be considered as a way to actualize accountability for RTD. The external form of professional accountability is more useful to the objective of promoting the RTD. Therefore, it could be extrapolated that countries are subject to some form of professional accountability by being a member of global standard setting bodies that have accountability mechanisms. For instance, reviews and ratings of the FATF member countries mean that these countries are being subjected to some form of professional accountability for how they have implemented AML standards within their jurisdiction. Accordingly, the FATF is a source of professional accountability for one of the RTD related issues.

4.2.13 Legal Accountability for RTD

The concept of legal accountability is said to have been derived from the work of legal philosophers and scholars of jurisprudence who were interested in enquiries related to the rule of law maxim.[713] It is observed that these legal scholars and philosophers were concerned with questions such as which legal institution and procedure can foster respectable democracies or whether political regimes, such as the Nazi regime, constituted a legal system

[710] For instance, if they have trained as engineers, doctors, veterinarians, teachers or police officers. See, Bovens (n 354) 456.
[711] Mulgan (n 358) 555, 560.
[712] ibid.
[713] See, Jackson (n 600) 41; note that although there is divergence of understandings of what the rule of law is, it has been defined as the subordination of all citizens and all representatives of the state to well-defined and established laws, is a desirable trait for a country's legal system. See, Jerg Gutmanna and Stefan Voigt, 'The Rule of Law: Measurement and Deep Roots' (2018) 54 European Journal of Political Economy 68–82 <https://www.sciencedirect.com/science/article/pii/s0176268017304664> accessed 16 December 2016; and Nciko Arnold 'Ignorance of the Law is No Defence: Street Law as a Means to Reconcile this Maxim with the Rule of Law' (2018) 3 Strathmore Law Review 35 <https://heinonline.org/HOL/LandingPage?handle=hein.journals/strathlwrv3&div=5&id=&page=> accessed 16 January 2022.

in any meaningful sense.[714] The focus was on traditional legal regimes whose norms are enforced through centralized systems of sanctions that are based on local cultural mores or parochial regulations.[715] In other words, the focus on legal accountability is influenced by the positivists' view that law is a uniform order of social norms or an expression of basic social laws in the development of society.[716] Boven, for instance, observes that legal accountability and legal scrutiny are based on detailed legal standards prescribed by civil, penal or administrative statutes, or precedents.[717] Grant and Keohane have described legal accountability as the requirement that agents abide by formal rules and are prepared to justify their actions in those terms in courts or quasi-judicial arenas.[718] Therefore, it involves the civil courts such as in Britain, or specialized administrative courts such as in France, Belgium and the Netherlands.[719] Similarly, the description of international legal accountability is aligned with the positivists' perspective because it is limited to mechanisms such as the International Court of Justice (State accountability), or the International Criminal Court (individual accountability).[720] Accordingly, the UNCAC (2003) is an international formal rule for anti-IFF which Nigeria should comply with, and the International Court of Justice (ICJ) as a relevant legal accountability forum that can be used to promote compliance.[721]

Yet, it is important to acknowledge the role of soft law instruments because they complement and influence compliance with formal rules.[722] The importance of soft law norms has become more obvious as civil societies have exerted significant regulatory control over firms by propounding public expectations and preferences.[723] It is said that some soft law norms have relied on decentralized accountability mechanisms to achieve global economic governance.[724]

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[714] Grant and Keohane (n 598) 36.
[715] Jackson (n 600) 46.
[716] Laurel E. Fletcher, 'A Wolf in Sheep's Clothing? Transitional Justice and the Effacement of State Accountability for International Crimes' (2016) 39(3) Fordham International Law Journal 447, 453 <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2441&context=ilj> accessed 5 October 2017; citing Frauke Lachenmann, 'Legal Positivism', *The Max Planck Encyclopedia Of Public International Law* (R. Wolfrum Edn, 2011); and Alexander Orakhelashvili, 'Natural Law And Justice', *The Max Planck Encyclopedia Of Public International Law* (R. Wolfrum Edn, 2007).
[717] Bovens (n 354) 456.
[718] Grant and Keohane (n 598) 36.
[719] ibid.
[720] Koenig-Archibugi (n 577) 10.; These mechanisms embody the core positivist tenets of international law. The positivist tenets are that international law emerges from the consent of States; are distinct from natural law, morality, and politics; use distinctive sources and arguments unique to legal science and is a closed logical system. See Alvarez (n 19) 18.
[721] Nigeria should comply with the UNCAC (2003) because it has ratified the treaty.
[722] Quasi-judicial bodies and voluntary civil regulations have been classed as soft law. See, Francisco Forrest Martin and others, *International Human Rights & Humanitarian Law: Treaties, Cases and Analysis* (Cambridge University 2006) 7; and Jackson (n 600) 44.
[723] Jackson (n 600) 43.
[724] ibid 46; citing Richard Holme and Philip Watts, *Corporate Social Responsibility: Making Good Business Sense* (E& Y Direct, 2000) 20.

To be specific, the FATF has used mechanisms that have the capacity to cause reputational damage to States that are not compliant with its soft law recommendation. The FATF is said to be creating global administrative law because international law is not only made by representatives of States but is also made by international civil servants that work with domestic agencies.[725] Thus, the mechanisms that cause consequences for non-compliance with soft law norms such as the FATF Recommendation (2012), are accountability mechanisms for global administrative law. So, the accountability for global administrative law that is achieved under the FATF is complementary to the legal accountability mechanisms for relevant normative rules such as the UNCAC (2003). In other words, the FATF Recommendations (2012) and the UNCAC (2003) have asked States to implement AML mechanisms, and therefore, their accountability processes are useful for the furtherance of this objective. Moreover, in Article 14 (4) of the UNCAC (2003) and Article 7 (3) of UNCTOC (2000), States are called upon to make use of the initiatives of international AML bodies. Consequently, the FATF's status as an international AML body has made country's compliance with its Recommendations to be a proof that they are compliant with Article 14 (4) of the UNCAC (2003) and Article 7 (3) of UNCTOC (2000). Therefore, the FATF's accountability process is helping to publicize and enhance compliance with the provisions of these international formal rules.

The essential nature of the FATFs role, as an accountability mechanism that is enhancing countries' compliance with the provisions of these rules, is not obvious because States can achieve legal accountability through some domestic courts and ICJ.[726] Certainly, in some countries that have ratified the UNCAC, there is an expectation that legal accountability mechanisms, such as courts, should be and are appropriate enforcers of their international obligations under the treaty.[727] Yet, in Nigerian for instance, the UNCAC has been ratified but the section 12 (1) of the Constitution of Federal Republic of Nigeria (CFRN) 1999 has provided that treaties can only have legal effect when they are transposed into national law by the legislative arm of government. Therefore, the use of legal accountability through its

[725] James Thuo Gathii, 'The Financial Action Task Force and Global Administrative Law' (2010) Journal of the Professional Lawyer 201 <https://heinonline.org/HOL/AuthorProfile?base=js&search_name=Gathii,%20James%20Thuo&1==1651631695> accessed 17 May 2021.

[726] The ICJ has power to give rulings that are binding on States, with no possibility of appeal. See, Anthony Deutsch, 'Explainer: Highest U.N. Court Can Tell States What to Do - But Not Enforce' (*Reuters*, 23 January 2020) <https://www.reuters.com/article/us-myanmar-rohingya-world-court-explaine-idUSKBN1ZM1HP> accessed 29 May 2021.

[727] For analysis of the role of domestic courts as enforcers of international treaties see, Odile Ammann, *Domestic Courts and the Interpretation of International Law: Methods and Reasoning Based on the Swiss Example* (Brill 2019) 137-140.

domestic courts to foster Nigeria's compliance with the provisions of the UNCAC (2003) is limited because Nigeria has not enacted any law that fully domesticates the treaty.[728] Accordingly, the Nigerian context is an example of how legal accountability for the country's compliance with provisions of the UNCAC (2003) through its domestic courts can be impacted by domestic law. Furthermore, the ICJ is a source of legal accountability that should incentivize States to comply with the UNCAC. This is because the existence of legal accountability mechanisms is a reason for countries to comply with the UNCAC (2003). The potential for proceedings in the ICJ to result in reputational consequences is a reason for countries to comply with the UNCAC (2003).[729] The use of legal accountability to promote compliance with provisions of the UNCAC and the UNCTOC (2000) is achievable because of their dispute resolution provisions.[730] Therefore, in theory, legal accountability is a viable way to facilitate the goal of global compliance with formal rules that are relevant to the international anti-IFF agenda. In theory, the Nigeria's need for a more effective anti-IFF approach to the goal of actualizing the RTD can be facilitated by using the dispute resolution process of the UNCTOC (2000) and the UNCAC (2003).[731] The Nigerian government is allowed to use dispute resolution measures on State parties that are wrongly interpreting or applying the provisions of the UNCTOC (2000) and the UNCAC (2003). If a state party, for instance, is alleged to have not properly interpreted or applied the AML related articles of the UNCTOC (2000) and the UNCAC (2003), the Nigerian government is allowed to initiate the applicable dispute resolution measures. The implication of this approach is that to facilitate legal accountability for countries' compliance with the provisions of UNCAC (2003), the Nigerian government will have to address its discontent by initiating the dispute resolution measures on the States that are alleged to be non-compliant. It is arguable that it is not ideal for Nigeria to institute actions against any member state that it sees as not being compliant with the UNCAC (2003) and the UNCTOC (2000) because of the potential for ICJ proceedings to be protracted and adversarial. For instance, a UNCTOC (2000) related case

[728] In the influential case of Fawehinmi v Abacha, the Nigerian supreme court pronounced that without enactment, to incorporate a treaty into Nigerian law, a treaty is not justiciable in Nigerian courts. See, Chief Gani Fawehinmi v General Sani Abacha and Others [1996] 9 NWLR (Pt 475) 710; and Abacha v. Fawehinmi (2000) 6 NWLR (Pt 660) 228.; See also, Amazu A. Asouzu, *International Commercial Arbitration and African States: Practice, Participation and Institutional Development* (Cambridge University Press 2001) 206.

[729] Deutsch has referred to the potential for a States international reputation to be hurt by the court's rulings. See, Deutsch (n 726).

[730] This means that the option of using the dispute resolution procedures of the UNCTOC (2000) and the UNCAC (2003) is, in theory, a viable way to facilitate the goal of global compliance with the provisions that are relevant to the international anti-IFF agenda. The dispute resolution process is provided for in Article 35 (2) of UNCTOC (2000) and Article 66 (2) of the UNCAC (2003).

[731] By commencing the dispute resolution process in Article 35 (2) of UNCTOC (2000) and Article 66 (2) of the UNCAC (2003).

that was decided by the ICJ, and was between Equatorial Guinea and France was contentious and it lasted for over 4 years.[732] Moreover, Nigeria's right to institute ICJ proceedings for any alleged non-compliance with the UNCAC (2003) or the UNCTOC (2000) is limited because member States are allowed to declare that they do not consider themselves to be bound by the extant settlement of dispute provisions. In both the UNCTOC (2000) and UNCAC (2003) a total of 43 States Parties have registered reservations that establish their intention not to be bound by the dispute settlement provisions of these treaty instruments.[733] In other words, several States Parties have registered reservations that are intended to preclude or limit the use of arbitration and the ICJ to settle all disputes, arising from the interpretation or application of the UNCTOC (2000) and the UNCAC (2003). These reservations have created a challenge for a member state that will want to use legal accountability through the ICJ to promote compliance with anti-IFF related provisions in the UNCTOC (2000) and UNCAC (2003).[734] This is because the provisions of Article 35 (3) of the UNCTOC (2000) and Article 66 (3) of the UNCAC (2003) have stated that each State Party

> may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

Invariably, the member states that have registered a reservation against the dispute resolution provisions of the UNCTOC (2000) and the UNCAC (2003) have agreed to lose the ability to initiate or be involved in the applicable legal accountability procedures. Accordingly, the potential for the ICJ to be a source of global legal accountability for the UNCAC is limited because some member states have opted out of being subjected to the provisions on dispute resolution. Consequently, in the Nigerian context, it is appropriate that the option of legal

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[732] ICJ, 'Immunities and Criminal Proceedings (Equatorial Guinea v. France): Overview of The Case' (*International Court of Justice*) <https://www.icj-cij.org/en/case/163> accessed 29 May 2021.
[733] UN, 'United Nations Convention against Transnational Organized Crime New York, 15 November 2000' (*UN Treaty Collection*, 1 May 2022) <https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12&chapter=18&clang=_en> accessed 1 May 2022; and UN, 'United Nations Convention against Corruption: New York, 31 October 2003' (*UN Treaty Collection*, 1 May 2022) <https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12&chapter=18&clang=_en> accessed 1 May 2022.
[734] The request that the relevant initiatives of international organizations are to be used as a guideline for establishing any domestic frameworks on AML in Article 7 (3) of UNCTOC (2000) and Article 14 (4) of the UNCAC (2003) is a relevant provision.

accountability for the provisions of the UNCAC (2003), through domestic courts and the ICJ, is augmented by relevant accountability mechanisms for global administrative law. Therefore, the FATF's role has a source of accountability for global administrative law has been an ideal supplement to some legal accountability mechanisms that are to be used to promote member states' compliance with the UNCAC (2003). This is because the FATF accountability is designed to be ongoing, non-adversarial and it is based on soft law rule that are more responsive to changes in the field of AML than the treaty provisions of the UNCAC (2003).

4.3 Conclusion

This chapter has identified the relationship between the FATF's processes and several forms of accountability. The analysis in this chapter shows how the forms of accountability that should be associated with the RTD are achieved or supported by the FATF's processes. The desk-based analysis on the FATF that has been conducted in this chapter is indicative of its value as an international source of accountability for countries' compliance with AML legal and moral obligations that are relevant to the goal of actualizing the RTD. The FATF's ability to actualize accountability for legal obligations in the UNCAC (2003) is essential because some of the processes of legal accountability for the treaty have been limited by factors such as the legal independence of Nigeria.[735] Therefore, the analysis in this chapter has shown that the FATF has effectively actualized one element of Guzman's theory of compliance prediction that countries will comply with international law because soft law, hard law, and customary law can cause reputational consequences. This is because this chapter has shown that there is reason to see the FATF as a source of consequences for countries that are not compliant with AML requirements which are in international law. Furthermore, the chapter has also shown that the accountability function of the FATF is not undermined because it does not have a principal (or executive superior) and agent (or employee) relationship with Nigeria or other countries it evaluates.[736] This is because in many traditional accountability relations, the fora are not principals of the actors that are held to account. For example, it is observed that courts (in cases of legal accountability) or professional associations (in cases of professional accountability) are not principals of the actors that they hold to account.[737]

[735] It is said that legal independence is one of the factors that can affect the effectiveness of accountability frameworks in some countries. See, Grant and Keohane (n 598) 39.
[736] Accountability mechanisms do not have to have this type of relationship. See, ibid 32.
[737] Bovens has made this observation also. See, Bovens (n 354) 451.

In general, this chapter has shown that the FATF is valuable because it is achieving a multifaceted form of accountability. There are other international organizations that have had an active part in development cooperation with Nigeria and can achieve a multifaceted form of accountability. For instance, at the same time, the IMF and the World Bank can exercise fiscal and supervisory accountability over weak and dependent countries.[738] Chapter 2 of this Thesis has shown that Nigeria has engaged in development cooperation with the IMF and the World Bank. Therefore, the Nigerian experience presents an opportunity for an enquiry on whether the dynamics of cooperation between the FATF and Nigeria is deemed to be positive or negative. Additionally, countries' status, the internal regimes of countries and the extent to which countries are enmeshed in networks of interdependence are factors that can affect accountability.[739] So, there is need to conduct further inquiries on the value of the FATF's processes for holding States accountable because of the likelihood that the effectiveness of some accountability frameworks is affected by factors such as the nature of the country that is held to account. Accordingly, this Thesis uses secondary and primary research to generate information on whether the FATF has been an effective source of accountability that can promote compliance in the Nigerian context. The next chapter will discuss the methodological framework of the Thesis by introducing research philosophies and the qualitative research methodology. It provides information on the selected mix-method, the data collection approach with semi-structured interviews, and explanations about the data analysis.

Chapter Five: Research Design and Methodology

5.1 Introduction

The analysis in chapter 4 above has shown that the FATF is valuable to the discuss on the Nigerian and international objective of actualizing the RTD because its activities promote some of the forms of accountability that encourage compliance with anti-IFF related provisions of UNCAC (2003). Consequently, this Thesis looks at the value of the FATF as mechanism that promotes RTD from an empirical standpoint. Herein, an empirical study to further understand the extent to which the FATF's activities, such as the ME process, have

[738] Grant and Keohane (n 598) 39.
[739] It was extraordinarily difficult even for the great powers, acting through the UN Security Council, to hold Saddam Hussein's Iraq accountable for its weapons of mass destruction, and in 1998 Iraq expelled the UN inspectors from the country. See, ibid.

been effective and ideal mechanisms for promoting RTD related accountability which is articulated in chapters 6,7 and 8 of this work. Therefore, this chapter is designed to explain the methodology used in conducting an empirical study on the value that the FATF's work has had on the goal of actualizing RTD from the Nigerian perspective. This chapter describes the methodology that underlies the Thesis and tools that were used to answer the research questions to solve the research problem. The research methodology is the totality of the research methods and the underlying logic behind the methods that are used to conduct research.[740] The research methods should be understood as all those methods or techniques that are used for conducting the research operations.[741] The chosen methodology guides the researcher's understanding of the phenomenon that is investigated, and it influences the way data are collected and collated. The methodology is therefore a vital part of the research project.

This chapter starts with a short overview on research philosophies and reflections on the methodology, followed by the introduction of the mixed-method approach, the evaluative design and data collection, and analysis methods.

5.2 Research Philosophies and Methodological Reflections

The study focuses on the use of the FATF as an accountability mechanism for facilitating global cooperation for the RTD policy of anti-IFF. In doing so, the study evaluates the FATF accountability framework as a mechanism that is relevant to the UN approach to achieving global development. This is because as a result of UN mandated activities that are related to its goal of actualizing the RTD, the global community has pledged to implement the FATF Recommendations 2012.[742] As an endeavor in legal scholarship, this Thesis uses the socio-legal approach which is also known as law in context.[743] This approach is different from doctrinal research which is also referred to as black-letter law research or the technocentric' approach to the study of law. In the doctrinal research tradition, the focus is exclusively on traditional legal materials such as court judgments, and the techniques required to interpret

[740] C. R. Kothari, *Research Methodology: Methods and Techniques* (New Age International 2004) 8.
[741] ibid 7 – 8.
[742] The AAAA 2015 is the activity referred to here. Note that the AAAA 2015 was organized at the behest of the UNGA. See, UNGA Res 68/204 (14 January 2014) UN Doc A/RES/68/204 para 43.; For analysis of how the AAAA 2015 is related to the RTD, see the rationale section in chapter 1 of this thesis.
[743] Fiona Cownie and Anthony Bradney, 'Socio-Legal Studies: A Challenge to The Doctrinal Approach' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (Routledge 2018) 41.

them.[744] Although some doctrinal analysis is conducted herein, for the purpose of, for instance, giving a rationale to the study in this Thesis, the research conducted here is a socio-legal one. This is because the objective of this Thesis is unlike that of doctrinal research where the legal system and its categories and concepts are the conceptual and theoretical framework that is used by the researcher.[745] As elucidated by Westerman,

> the legal system itself provides the concepts required in order to study a certain legal or social development. That means that the law is not only the object of research, but also the theoretical perspective from which that object is studied. …the legal doctrinal researcher … does not set out to understand the legal system, but his energy is primarily directed to give sense and to order new cases or developments.

To think of doctrinal research in this way means that its practitioners are not thought to be interested in understanding, for instance, the nature of duties of care in the same way as a political scientist is interested in explaining the origin and political context of relevant rules.[746] Rather, the doctrinal researcher is primarily interested in the question of how, for instance, a new rule that imposes some duties of care can be reconciled with other parts of the system. An example of how a new rule is reconciled with other parts of the legal system is to look at how penal or administrative sanctions, and so on, can be used for enforcement purposes.[747] Thus, the doctrinal researcher is interested in identifying the meaning and pattern that can be associated with the object of their enquiry.[748] The doctrinal researcher that has located or identified the law or rule is then interested in progressing to the point of effective

[744] ibid 40.; Note that most of the time, the techniques such as inductive reasoning, which are used to interpret traditional legal material involves the reference to legal principles. This is because legal principles guide legal reasoning by legal officials, but they also serve as points of explanation in legal research. Note also that legal doctrines are considered by some, such as Mackor, as a tool for legal explanations and not just for legal justifications. See, Pauline Westerman, 'Open or Autonomous? The Debate on Legal Methodology as a Reflection of the Debate on Law', in Mark Van Hoecke (eds), *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Hart Publishing 2011) 93 and Paul Chynoweth, 'Legal research' in Andrew Knight and Les Ruddock (eds), *Advanced Research Methods in the Built Environment* (Blackwell Publishing 2008) 32-34.; Also see generally, Anne Mackor, 'Explanatory Non-Normative Legal Doctrine. Taking the Distinction between Theoretical and Practical Reason Seriously', in Mark Van Hoecke (eds), *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Hart Publishing 2011).
[745] Westerman (n 744) 90.
[746] Or in the same way as a philosopher is interested in the nature of duty of care in new rules that are created to impose duties of care.
[747] In this instance, the interest of the doctrinal researcher is in whether the new rule should be enforced by penal or by administrative sanctions, and so on. See, Westerman (n 744) 91.
[748] Terry Hutchinson, 'Doctrinal research: Researching the jury' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (Routledge 2018) 19.

analysis.[749] The goal of the doctrinal researcher is to fit the object of their enquiry into an existing legal framework so that an arguably correct and complete statement of the law on the matter in hand can be established from critical analysis.[750] Therefore, after positioning the situation or object of enquiry in the legal framework, thereafter an arguably correct and complete statement of the law is established by analyzing the relevant segment of the law in the context of its position within a larger system of law.[751] This is why Hutchinson and Duncan have pointed out that this act of situating the object of analysis within a legal framework is the reason why legal reasoning is usually deductive.[752] This is because in doctrinal research, the usual goal is to use the general rule that is gotten from the legal framework to analyze the object of the study. Therefore, as Westerman has explained in his analysis on the dichotomy in legal research, it is important that in a doctrinal study the legal system is the source of the general rules which are used in conducting analysis. Westerman notes that the analysis of the object of an enquiry in doctrinal research must be based on theoretical frameworks which are provided by the legal system as opposed to the use of external theories.[753] In other words, the theoretical framework is one of the ways to differentiate between a doctrinal and non-doctrinal legal research. This Thesis is largely based on non-doctrinal legal research. Further explanation to the above is provided in the next section.

5.2.1 Non-Doctrinal Legal Research

The use of theoretical framework to differentiate between doctrinal and non-doctrinal legal research is beneficial because in the former, the theory used should belong to the legal system, while in the latter, the theory must be external. When there is a use of theory that has taken its vantage point from the legal system, the ensuing study possesses one of the qualities of the doctrinal tradition. So, for research in the non-doctrinal legal tradition, the applicable theories to be used are the ones that are provided by non-legal disciplines which involve

[749] It is said that before analyzing the law the researcher must first locate it. See, Terry Hutchinson and Nigel Duncan 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17(1) Deakin Law Review 110 <https://ojs.deakin.edu.au/index.php/dlr/article/viewfile/70/75> accessed 5 June 2017.
[750] This is because, as Hutchinson notes, 'one of the basic claims of or assumptions of the black-letter tradition is that legal doctrine possesses logical coherence' or an underlying rationale. See, Hutchinson (n 748) 13 and 19; citing Julie Mason and Michael Salter, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research* (Longman 2007) 68 and 75.; Note that doctrine has been defined as 'a synthesis of rules, principles, norms, interpretive guidelines and values', which 'explains, makes coherent or justifies a segment of the law as part of a larger system of law'. See, Trischa Mann (ed), *Australian Law Dictionary* (1st edn, Oxford University Press 2010) 197.
[751] Hutchinson (n 748) 13.
[752] Hutchinson and Duncan (n 749) 111.
[753] Westerman (n 744) 94.

studying the law. In explaining the relationship between legal research and research with external theories, Westerman notes that the study of law in non-legal disciplines is described as legal science or the empirical legal science.[754] Westerman notes also that, although, this demarcation between legal science and the doctrinal tradition is essential for understanding what lawyers do, it is not a rigid dichotomy that cannot be relaxed.[755] On the contrary, legal theorists and scholars have relaxed the dichotomy of legal science and doctrinal tradition because of the criticisms of the separation of law as an autonomous system that is to be differentiated from morals, politics or other non-legal disciplines.[756] The above criticisms of the separation of legal science from the doctrinal tradition, such as how the study of law as an autonomous system is the cause of a lack of practical orientation in legal scholarship, has led to the support for studies that connect the legal world to the non-legal world.[757] The need to move legal scholarship from a purely doctrinal tradition to an exercise in understanding legal phenomenon by adopting a critical and, above all, empirical attitude towards rules has led to more support for studies that do not separate the legal world from the non-legal world.[758] Hence, there is a lot of support for socio-legal studies, where the objective is to understand the context in which a rule is established and administered in a society.[759] It is this socio-legal approach to law that is adopted in this Thesis. Herein too, there is a focus on the rational choice theory (RCT) of international law that was developed by Guzman. The Thesis uses Guzman's RCT of international law to critique the FATF's ability to ensure the global cooperation against IFFs from a Nigerian's perspective. In this Thesis, the use of Guzman's RCT of international law is applied in line with the principles of socio-legal research. In effect, the Thesis is using a theory which was developed for the purpose of studying law as a social phenomenon.[760] In other words, this Thesis adopts a socio-legal approach in investigating the effect of soft law in the FATF framework as a social phenomenon that is relevant to the international community's goal of actualizing the RTD by achieving global cooperation against IFF. The social nature of international relations is a core influence on Guzman's RCT of international law.[761] Therefore by adopting Guzman's RCT of international law, this Thesis is adopting a non-doctrinal research of law approach to the analysis of the FATF as a global administrative law mechanism. From a Nigerian's

[754] ibid 94.
[755] ibid.
[756] ibid 101-110.
[757] ibid 108-110.
[758] ibid 108.
[759] ibid; and Cownie and Bradney (n 743) 41.
[760] Niels Petersen, 'How Rational is International Law?' (2009) 20(4) The European Journal of International Law 1249 <https://academic.oup.com/ejil/article/20/4/1247/530757?login=true> accessed 12 March 2021.
[761] Anthony Carty, 'Reputation and International Law' (2009) 10(2) Melbourne Journal of International Law 692 <https://law.unimelb.edu.au/__data/assets/pdf_file/0004/1686208/Carty.pdf> accessed 12 March 2021.

perspective, the goal in this Thesis is to look at the social realities and context in which the relevant FATF anti-IFF Recommendations are operating in.[762]

The technique for conducting the socio-legal study for this thesis, is an important consideration which is influenced by the guiding philosophy that is adopted herein. In general, the philosophy or a set of basic beliefs that guides this research is its paradigm. This research paradigm is, according to Collins and Stockton, the net that captures the combination of epistemology (nature of knowledge), ontology (nature of reality), and methodology (techniques for inquiry and examining practice).[763] It is inherently reflective of a researcher's beliefs about the world.[764] Consequently, the research paradigm has been defined by Guba and Lincoln as a basic set of beliefs or worldview that guides research action or an investigation.[765] Denzin and Lincoln have also defined paradigms as human constructions which deal with principles or the ultimates that describe the worldview of the researcher as an interpretive-*bricoleur*.[766] In their description of paradigm, Denzin and Lincoln have also referenced the term *bricoleur*, which is a metaphor often used to describe a fluid approach to research that might consist of using or doing several different things.[767] According to Denzin and Lincoln's explanation, the paradigm involves the principles that define the worldview of researchers as they conduct interpretation by using all the relevant tools available to them.[768] For a scholar that is within the doctrinal tradition, the aim of analysis is to answer relevant question such as: 'what is the law in a particular situation?'[769] The analysis is accomplished through the use of techniques such as open texture of rules, analogical and deductive reasoning that allow for available body of legal rules to be put into

[762] As Deplano notes, non-doctrinal methods are tools to examine the social reality in which law, including international law, operates. See, Rossana Deplano, 'Introduction', in Rossana Deplano (eds), *Pluralising International Legal Scholarship: The Promise and Perils of Non-Doctrinal Research Methods* (Edward Elgar 2019) 10.
[763] Christopher Collins and Carrie Stockton, 'The Central Role of Theory in Qualitative' (2018) 17(1) International Journal of Qualitative Methods 2 <https://journals.sagepub.com/doi/full/10.1177/1609406918797475> accessed 20 March 2021.; For analysis of epistemology, ontology, and methodology see, Charles Kivunja and Ahmed Bawa Kuyini, 'Understanding and Applying Research Paradigms in Educational Contexts' (2017) 6(5) International Journal of Higher Education 27-29 <https://www.sciedu.ca/journal/index.php/ijhe/article/view/12169> accessed 20 March 2021.
[764] Kivunja and Kuyini (n 763) 26; citing Patti Lather 'Research as Praxis' (1986) 56(3) Harvard Educational Review 257-277.
[765] ibid; citing Egon Guba and Yvonna Lincoln, 'Competing Paradigms in Qualitative Research' in Norman Denzin and Yvonna Lincoln (eds), *Handbook of qualitative research* (Sage 1994).
[766] Norman Denzin and Yvonna Lincoln, 'Paradigms and Perspectives in Contention' in Norman Denzin and Yvonna Lincoln (eds), *Handbook of qualitative research* (Sage 2011) 91.
[767] Norman K. Denzin and Yvonna S. Lincoln have pointed out that there are many kinds of *bricoleurs*, for example, interpretive, narrative, theoretical, political, and methodological. See, David Wicks, 'Bricoleur', *Encyclopedia of Case Study Research* (2010) 60.
[768] Norman Denzin and Yvonna Lincoln, 'Introduction: The Discipline and Practice of Qualitative Research' in Norman Denzin and Yvonna Lincoln (eds), *Handbook of qualitative research* (Sage 2018) 12.
[769] Chynoweth (n 744) 32.

coherent patterns (or doctrines) and also be applied to new factual situations in an apparently logical and consistent manner.[770] Within the common law jurisdictions, the legal rules are to be found in statutes and decided cases (the sources of law). These legal rules cannot, on their own, provide a complete statement of the law in any given situation. This can only be ascertained by applying the relevant legal rules to the particular facts of the situation under consideration. Therefore, it has been observed that the dominant paradigm in legal scholarship

> revolves around the verbal manipulation of the available sources of law, in the belief that the answer to most legal problems can be found in the underlying logic and structure of the rules if only this can be discovered.[771]

This paradigm is usually described as 'legal formalism.'[772] It is a paradigm that fits within the doctrinal tradition which allows for legal rules to be fit into coherent patterns (or doctrines) and applied to new factual situations in an apparently logical and consistent manner. This paradigm is useful for doctrinal analysis that seeks to answer the question of whether or not a legal rule should be enforced by penal or by administrative sanctions, and so on. This legal formalism paradigm is also useful if an understanding of phenomenon is not required to answer the question of whether or not the legal rules should be enforced by penal or by administrative sanctions. However, if legal analysis is to go beyond simply using the underlying logic and structure of the rules to make conclusions about the propriety of enforcement mechanisms, then there is need for some understanding of relevant phenomena.[773] In order to have a holistic analysis, a reference to the historical or social context behind the use of enforcement mechanisms is an appropriate approach to explaining the legal issues that are being considered. Consequently, it is noted herein that in practice, some scholars who are considered to be within the doctrinal tradition have been observed to having made reference to other external factors alongside their quest for answers which are consistent with the existing body of rules.[774] For example, an uncertain or ambiguous legal ruling can often be more easily interpreted when viewed in its proper historical or social context, or when the interpreter has an adequate understanding of the industry or technology

[770] ibid 32-34.
[771] ibid 34.
[772] ibid; citing Kenneth J. Vandevelde, *Thinking Like a Lawyer: An Introduction to Legal Reasoning* (Westview Press 1996).
[773] As Westerman observes, legal scholars lack interest in understanding phenomena. Therefore, Westerman postulates that this this lack of interest is, in her opinion, indicative of the general feeling that an understanding of the phenomenon is not necessary for arriving at a coherent order. See, Westerman (n 744) 91.
[774] Chynoweth (n 744) 30.

to which it relates. From the point of view of this Thesis, an appropriate example is in situations where the enforcement of a legal rule by a particular mechanism is explained by looking at the historical or social context. This merging of research traditions is why it has been observed that interdisciplinary research is likely to be used by scholars working within the socio-legal and doctrinal traditions, and it would not necessarily be immediately identified as socio-legal by all its readers.[775] Therefore, this thesis is an inquiry into law as a social entity.[776] This is because when countries, including Nigeria, are adopting the AML initiatives of organizations such as the FATF, they are fulfilling the requirements of Article 14 (4) of the UNCAC (2003). Therefore, an enquiry on compliance with the FATF Recommendations (2012) is one of the ways to show that Article 14 (4) of the UNCAC (2003) is being complied with.[777] Another perspective is that the status and characteristic of the FATF Recommendations (2012) are helping to make Article 14 (4) of the UNCAC (2003) an effective treaty provision. In Guzman's RCT of compliance, which is the theoretical lens for this study, soft law mechanisms such as the FATF are seen as mechanisms that are helping the international legal system to influence the behavior of States.[778] As Guzman has noted from a rational choice perspective, it is problematic to consider soft law mechanisms as irrelevant to countries' compliance because they are not binding under traditional international law principles. Guzman also observed that from a rational choice perspective, the binary notion of whether or not an agreement is binding is problematic. He elaborates on his conclusion about the importance of binding agreements in international law by noting that

> States enter into agreements—whether treaties or soft law—to enhance cooperation. Both forms of agreement facilitate cooperation among states because they impose some form of cost (reputation, reciprocity, retaliation) on states that fail to comply. The choice between soft law and treaties represents just one of the ways states adjust the magnitude of those costs.[779]

[775] Cownie and Bradney (n 743) 60.
[776] In other words, the epistemological nature of the research that is conducted for the purpose of this thesis, is about an external inquiry into law as a social entity. See, Chynoweth (n 744) 30.
[777] Chynoweth has observed that an example of an external enquiry into the law as a social entity is an examination on whether a law is being complied with. See, ibid 30.
[778] Guzman (n 15) 9.
[779] ibid 160.

This is the reason why the traditional distinction between soft law and treaties is not accepted in Guzman's RCT of compliance with international law.[780] Under Guzman's RCT of compliance with international law, soft law instruments are seen as mechanisms that allow States, as unitary actors, to avoid an obligation while remaining in compliance with the precise language of an agreement.[781] In essence, through Guzman's RCT of compliance with international law, the FATF and FSRBs members, including Nigeria, are seen in this study as unitary actors that have agreed to comply with the soft law norms of the FATF Recommendations, 2012. In other words, the non-binding agreement to implement the FATF Recommendations of 2012 is viewed in this Thesis as an act that is intended to enhance cooperation for RTD related policies such as anti-corruption and anti-IFF. Therefore, for this work, the implication of Guzman's RCT of compliance is that it forms the basis on which the FATF is being evaluated as a mechanism that is promoting compliance with Article 14 (4) of the UNCAC (2003). Accordingly, the FATF is evaluated as a mechanism used in Nigeria as one of the unitary actors involved in a global cooperation against IFF. The notion that the FATF is facilitating a global cooperation against IFF and consequently the RTD is being investigated to make conclusions on whether the FATF is effectively influencing compliance with Article 14 (4) of the UNCAC (2003) and helping to fulfill Nigeria's request for global cooperation for its development.

5.2.1.1 Pragmatic Paradigm

It is due to the goal of looking into law as a social entity that a pragmatic paradigm is adopted in this Thesis. This does not mean that the assumptions and techniques of other social science

[780] ibid 25-69.

[781] To view States as unitary actors means that they are being seen as a single entity in their dealings with the outside world (or other States). Note that the presumption of a rationality behavior derived from national unity at the international level is present in the views expressed by various theoretical currents of International Relations. For example, the neorealism, as expressed by Mearsheimer, is based on some premises about the international system and the behavior of states, being among them the rational nature and the quest for survival as the basic objective of any state. Thus, neorealism considers that states – understood as organized political communities – behave at the international level in a consistent and unitary way (either because subnational actors are united around a supposed "national interest"; because only a limited group has access to the means of international action; or for any other reason that can be theorized), being the perpetuation of their state the ultimate goal of all actors. See, Douglas H. Novelli, 'Rationalism in International Relations: Concepts, Theoretical Limits and Criticism' (2018) 9(1) Revista InterAção 124 <https://core.ac.uk/download/pdf/231211797.pdf> accessed 20 April 2021.; Note also that the primary focus of international relations theory has been on the behavior of countries, rather than of individuals or nonstate actors such as international organizations. Often this requires an assumption that the country, or state, behaves as a unitary rational actor. Although this assumption is often sharply challenged, heads of state typically speak in the name of their countries, so information about their pronouncements and actions may be treated as information about the country itself. Country-level information, however, includes much more, notably about the economic, political, and social characteristics and institutions of the country. see, Bruce Russett, 'International Relations', *Encyclopedia of Social Measurement* (2005) 346 <https://www.sciencedirect.com/science/article/pii/B0123693985002826> accessed 20 April 2021.

related research philosophies such as the interpretivist, critical or transformative and positivist paradigm are entirely rejected.[782] On the contrary, the assumptions and techniques of other social science related research philosophies are not entirely rejected because the pragmatic paradigm allows its practitioners to borrow elements from any of them.[783] This is because the practitioners of the pragmatic paradigm are not dogmatic about the practice of separating qualitative from quantitative methods due to the differences in their underlying philosophies. In order to understand this willingness to merge different types of research by the pragmatists, it is important to note that the use of qualitative methods is observed to have stemmed from the interpretivist/constructivist paradigm.[784] On the other hand, the use of quantitative methods is observed to have stemmed from the positivist paradigm.[785] It is because of the criticisms of the assumptions of interpretivist and positivist paradigm by philosophers such as Tashakkori and Teddlie that the pragmatic paradigm was developed.[786] The creation of the pragmatic paradigm was as the result of the work of philosophers who argued that

> it was not possible to access the 'truth' about the real world solely by virtue of a single scientific method as advocated by the Positivist paradigm, nor was it possible to determine social reality as constructed under the Interpretivist paradigm. For them, a mono-paradigmatic orientation of research was not good enough. Rather, these philosophers argued that what was needed was a worldview which would provide methods of research that are seen to be most appropriate for studying the phenomenon at hand.[787]

Therefore, the pragmatic paradigm has developed as a social science related philosophy that allows its practitioners to adopt the mixed method approach to research.[788] The pragmatic

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[782] For analysis of other social science related research paradigms, see Piergiorgio Corbetta, *Social Research: Theory, Methods and Techniques* (SAGE 2003) 8-28.
[783] Kivunja and Kuyini (n 763) 30.
[784] Jessica T. DeCuir–Gunby, 'Mixed Methods Research in the Social Sciences' in Jason Osborne (ed), *Best Practices in Quantitative Methods* (SAGE 2008) 127.
[785] ibid.; Note that terms such as neopositivism and postpositivism are terms used to denote the approach that dominated the discourse on the positivist paradigm in certain period. See, Corbetta (n 782) 17.
[786] Kivunja and Kuyini (n 763) 35.
[787] ibid.
[788] Donna Mertens, *Research and evaluation in education and psychology: integrating diversity with quantitative, qualitative, and mixed methods* (SAGE 2010) 35-36 and 476; Jorge Revez and Leonor Calvão Borges, 'Pragmatic Paradigm in Information Science Research: A Literature Review' (2018) 7 Qualitative and Quantitative Methods in Libraries 583 <http://www.qqml.net/index.php/qqml/article/view/504/497> accessed 12 March 2021; and David L. Morgan, 'Paradigms Lost and Pragmatism Regained: Methodological Implications of Combining Qualitative and Quantitative Methods' (2007) 1(48) Journal of Mixed Methods Research 70

paradigm is not the only research philosophy that has been associated with mixed method research. Another research philosophy that allows its practitioners to use the mixed method is the transformative/emancipatory paradigm.[789] In explaining the approach of the transformative/emancipatory paradigm, DeCuir–Gunby describes it as a philosophy that is an extension of the interpretivist/constructivist paradigm.[790] The transformative/emancipatory paradigm is a philosophical framework that allows researchers with a relevant scholarly traditions, such as feminism studies and indigenous research, to address politics in research by confronting social oppression at whatever levels it occurs.[791] This paradigm therefore allows researchers to consciously and explicitly position themselves side by side with the less powerful, in a joint effort, to bring about social transformation. In other words, the paradigm in question assumes an epistemology in which the researcher interacts with the participants in a transactional manner.[792] This is why the transformative/emancipatory paradigm is usually associated with participatory and action research.[793] Researchers that adopt transformative/emancipatory paradigm are making or using their research to confront social oppression and improve the social justice in the situation that is being investigated.[794] Therefore, the goal of this Thesis is closely related to the objective of researchers who are using the transformative/emancipatory paradigm. However, in this Thesis, the enquiry is on the effectiveness of the FATF in its capacity as an instrument that is relevant for improving the development situation of Nigerians. The use of participatory research methods to confront the issues that are responsible for the development situation of Nigeria is not the primary consideration in this Thesis. Consequently, the use of mixed method in this Thesis is based

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<https://www.dedoose.com/publications/paradigms%20lost%20and%20pragmatism%20regained%20methodological%20implications%20of%20combining%20qualitative%20and%20quantitative%20methods.pdf> accessed 12 March 2021.

[789] Mertens (n 788) 35.

[790] DeCuir–Gunby (n 784) 127.

[791] For more analysis and reference to relevant examples, see Mertens (n 788) 21, 25 and 29.

[792] Kivunja and Kuyini (n 763) 35.

[793] See, ibid.; In participatory research and action research, the researcher works with the people who are part of the situation that is being investigated, to achieve the goals of the research. For more explanation on action research and participatory research, see L. David Brown and Rajesh Tandon, 'Ideology and Political Economy in Inquiry: Action Research and Participatory Research' (1983) 19 Journal of Applied Behavioral Science 277-280 <https://journals.sagepub.com/doi/10.1177/002188638301900306> accessed 12 March 2021.; Note that some people refer to action research as participatory action research (PAR). Furthermore, it is observed that in most of its forms, action research is participative (among other reasons, change is usually easier to achieve when those affected by the change are involved) and qualitative. However, participatory research and action research have a distinct origin. See, Michel Thiollent, 'Action Research and Participatory Research: An Overview' (2011) 7(2) International Journal of Action Research 161 <https://www.ssoar.info/ssoar/handle/document/41407> accessed 12 March 2021.; See also, Elizabeth Koshy, Heather Waterman and Valsa Koshy, *Action Research in Healthcare* (SAGE 2010) 1; and Bob Dick, 'Action research: action and research' in Shankar Sankaran and others (eds), *Effective Change Management Using Action Learning and Action Research: Concepts, Frameworks, Processes, Applications* (Southern Cross University Press 2001) 21.

[794] Kivunja and Kuyini (n 763) 35.

on the assumptions of its pragmatic paradigm. This means that in this Thesis, the epistemology of research which is defined as the way we know what truth or reality is, is in accordance with the pragmatic approach to research.[795] In other words, the pragmatist researcher's discretion to conduct research in ways that they deem appropriate and to utilize the results in ways that can bring about positive consequences within their value system is used in this Thesis.[796] The subsequent sections of this chapter will elaborate on the way the research for this thesis was conducted.

5.3 Research Design

As has been alluded to in the preceding section of this chapter, a mixed method research was conducted for the purpose of this Thesis. The term 'mixed methods research' is defined as the class of research where the researcher mixes or combines quantitative and qualitative research techniques, methods, approaches, concepts or language into a single study.[797] In most cases, mixed methods research is associated with pragmatist paradigm. So, it is important to note that the mixed method approach of pragmatist researchers has been criticized and lauded by some scholars. For instance, Denzin disagrees with the pragmatists mixed methods scholars' assertions that no incompatibility between quantitative and qualitative methods exist at either the level of practice or that of epistemology.[798] Denzin states that it is a mistake to forget the paradigm, epistemological, and methodological differences between and within quantitative and qualitative frameworks. Denzin claims that the differences between qualitative and quantitative research are important; and that mixed method research has provided few strategies for assessing the interpretive, and contextual levels of experience, where meaning is created. Apart from these claims, Denzin, does very little to elaborate on why the mixed method approach of pragmatists should be abandoned. Arguably, Denzin criticism is indicative of how the contention about mixed methods is a

[795] To put it differently, epistemology refers to how we come to know something. It has also been described as nature of knowledge and justification. See, ibid 34; and Musiliu Okesina, 'A Critical Review of the Relationship between Paradigm, Methodology, Design and Method in Research' (2020) 10(3) The International Organization of Scientific Research Journal of Research and Method in Education 59 <https://iosrjournals.org/iosr-jrme/papers/Vol-10%20Issue-3/Series-1/K1003015768.pdf> accessed 12 March 2021.
[796] Abbas Tashakkori and Charles Teddlie, *Mixed methodology* (SAGE 1998) 30.; Note that in the approach of the pragmatic paradigm, the appropriateness of a method, with its implied relationship between the researcher and the researched, is judged by determining whether the purpose of the research is achieved. See, Spencer J. Maxcy, 'Pragmatic Threads in Mixed Methods Research in the Social Sciences: The Search for Multiple Modes of inquiry and the End of the Philosophy of Formalism' in Abbas Tashakkori and Charles Teddlie (eds), *Handbook of Mixed Methods in Social and Behavioral Research* (SAGE 2003) 85; and Mertens (n 788) 38.
[797] Robert Burke Johnson and Anthony J. Onwuegbuzie, 'Mixed Methods Research: A Research Paradigm Whose Time Has Come' (2004) 33(7) Educational Researcher 17 <https://journals.sagepub.com/doi/10.3102/0013189X033007014> accessed 12 March 2021.
[798] Norman K. Denzin, 'Triangulation 2.0' (2012) 6(2) Journal of Mixed Methods Research 83-84 <https://journals.sagepub.com/doi/10.1177/1558689812437186> accessed 12 March 2021.

matter of whether someone agrees or disagrees with the view that quantitative and qualitative methods can be used in the same research. On one side, you have scholars such as Denvin who are particularly concerned with the goal of pragmatists and mixed method researchers. On the other side, some scholars such as Johnson and Onwuegbuzie acknowledge the weakness of pragmatist mixed method research but they choose to focus on their usefulness.[799] In this Thesis however, the approach is to acknowledge the weaknesses of the mixed method. Moreover, the value of using mixed methods approach is considered here to be the best route for getting useful answers. Therefore, in accordance with the advice of Johnson and Onwuegbuzie, there is herein a conscious effort to be reflexive (by reflecting on the role of the researcher in the research) and strategic in avoiding the potential consequences of any potential weaknesses.[800] The consequent approach in this Thesis is to be reflexive in adopting a convergent mixed method. This means that the quantitative and qualitative data are collected and analyzed separately before a comparison of the results is carried out to see if the findings confirm or disconfirm each other.[801] Consequently, in this Thesis, reflexivity in the research process and the collection of data are achieved by acknowledging when a question and idea, identified in the quantitative component, are addressed in the qualitative section.[802] As part of the goal of identifying the thinking which has led to the research design for this Thesis, the subsequent section in this chapter will cover the specific qualitative and quantitative methods that have been used herein.

5.3.1 Evaluative Design

The study for this Thesis is based on the mixed method approach, and data is generated from primary and secondary sources using questionnaire and interview method. Opinion from experts in AML and development related sectors in Nigeria are sourced through questionnaires and in-depth interviews. Furthermore, an evaluative research tradition guides the design that is used in this Thesis. Therefore, in adopting the research design for this

[799] Johnson and Onwuegbuzie (n 797) 17 and 19.; Note that Johnson and Onwuegbuzie have provided a comprehensive list of the characteristics, strengths and weaknesses of pragmatism and mixed method research. They also identify the strengths and weaknesses of quantitative and qualitative research.
[800] Johnson and Onwuegbuzie (n 797) 17.; For an explanation of reflexivity see, John W. Creswell and John David Creswell, *Research Design Qualitative, Quantitative, and Mixed Methods Approaches* (SAGE 2018) 245, 249, 251-252 and 333.
[801] Creswell and Creswell (n 800) 291.
[802] Reflexivity means that researchers reflect about their biases, values, and personal background, such as gender, history, culture, and socioeconomic status, and how this background shapes their interpretations formed during a study. See, ibid 333.; One of the characteristics of mixed method research is that reflexivity enables questions and ideas arising from one component to be addressed in the other. Reflexivity increased validity by expanding the scope or depth of inquiry. See, Janice M. Morse, Julianne Cheek and Lauren Clark, 'Data-Related Issues in Qualitatively Driven Mixed-Method Designs: Sampling, Pacing, and Reflexivity' in Uwe Flick (ed), *The SAGE Handbook of Qualitative Data Collection* (SAGE Publications 2018) 568 and 574.

Thesis, it is noted that evaluative research is integrally related to research methodology. Evaluative research adopts a very heavy reliance on the techniques, methods and skills of the research methodology. However, it is acknowledged herein that some scholars now consider evaluative research to be a self-defined discipline in its own right with its own techniques and skills.[803] Accordingly, the objectives of evaluative research are distinct from the objectives of research methodology which is usually represented in the form of either descriptive study, correlational study, exploratory research and explanatory research.[804] Although there is some disagreement on whether evaluative research is distinct or a part of research methodology, it, however, is an important research tool that is used in and outside the field of academic research.[805] It is used in this Thesis because a pragmatic paradigm has been adopted herein. The pragmatic paradigm seeks to utilise the best approaches to gaining knowledge using every methodology that helps knowledge discovery.[806] Therefore, because this Thesis is interested in how the FATF accountability framework is important to Nigeria's compliance with the global RTD related global cooperation against IFF, the evaluative research tradition is considered herein to be suitable for this enquiry. To further expatiate on this conclusion what evaluation research is, is necessary because the term has no universally accepted definition.[807] It has been suggested that a few factors such as potential for difficulty can arise from an attempt to distinguish evaluative research from other types of educational research. To define evaluation research is also problematic because the term has been used to represent activities that have become more disparate over the years to reveal major differences in underlying assumptions, purposes, procedures, and intended uses. As a result of various definitions for evaluative research, it is important to identify and follow the core idea of this type of research. Accordingly, following a review of the relevant definitions of evaluative research, Kumar has proffered an encompassing definition. Kumar has defined evaluative research as a process of reviewing an intervention or program in order to make informed decisions. This process is designed to collect and analyze information in order to answer research questions. Another similar definition is provided by Kellaghan. The latter defines evaluation research as a form of disciplined and systematic inquiry that is carried out to arrive at an assessment or appraisal of an object, program, practice, activity, or system with the

[803] Ranjit Kumar, *Research Methodology: A Step-by-Step Guide for Beginners* (Sage 2010) 324.
[804] For explanation of types of research, from the perspective of its objectives, see ibid 10-11.
[805] Ibid 323.; For academic work that uses evaluation research techniques. See, Hasmik Chakaryan, 'A Retrospective Program Evaluation of a Domestic Violence Curriculum' (Ph.D. thesis, University of Toledo 2013) <https://etd.ohiolink.edu/apexprod/rws_etd/send_file/send?accession=toledo1385044721&disposition=inline> accessed 20 March 2021.
[806] Kivunja and Kuyini (n 763) 36.
[807] Thomas Kellaghan, 'Evaluation Research', *International Encyclopedia of Education* (3rd edn, 2010) 150.

purpose of providing information that will be of use in decision making.[808] This definition takes into consideration the fact that not all evaluation has a research component, and not all research involves evaluation. Evaluation research is an intersection between two research evaluations. Incidentally, this intersection is present in this Thesis. To evaluate the FATF's role in encouraging compliance with its standards is a core part of the purpose of this Thesis. This analysis is conducted from a Nigerian's perspective because Nigeria contributes and benefits from the global cooperation against IFF. An evaluation is generally conducted around either outputs or outcomes of a service, and also on the process by which it is delivered.[809] The outputs are the direct products of a program's activities and are usually measured in terms of volume of tasks accomplished. While the outcomes are benefits or changes in individuals or populations that can be attributed to the inputs of a program. In this Thesis, the focus of the evaluation is to consider the outcome and process of the FATF accountability framework.[810] Furthermore, one of the philosophical perspectives adopted in this Thesis is the holistic research or illuminative evaluation.[811] The use of this philosophical perspective makes the Thesis to fit in with a social–anthropological paradigm that acknowledges the historical, cultural and social factors in the evaluation of the FATF accountability framework. The aim of this study is to look at the FATF framework in all of its aspects: how it operates, how it is influenced by various contexts, how it is applied, how the persons directly involved view its strengths and weaknesses, and what the experiences are of those who are affected by it. In summary, by adopting this philosophical perspective, this Thesis is able to elucidate on a complex array of questions, issues and factors, and to identify procedures that give both desirable and undesirable results. So, by using a holistic/illuminative perspective of evaluation, the goal here is to try to understand issues relating to the FATF accountability framework from many perspectives. The goal is also to view the setup of the FATF accountability framework in its totality. Another philosophical perspective that is adopted in this Thesis is the goal-centered/objective-oriented evaluation.[812] This philosophical perspective is based on the notion that the success or failure of an intervention should be based upon the extent of congruence between its objectives and actual outcomes. Under this perspective, the outcomes are studied to determine the achievement of objectives, and the congruence between the two is regarded as the sole determinant of the

[808] ibid.
[809] The majority of evaluations are either outputs or outcomes of a service that is delivered. See, Kumar (n 803) 328.
[810] Note that from the perspective of the focus of evaluation there are four types of evaluation: programme/ intervention planning, process/monitoring, impact/outcome and cost–benefit/cost-effectiveness. See, ibid 329.
[811] ibid 343.
[812] ibid 342.

success or failure. Accordingly, in this Thesis, the goal of achieving full compliance with the anti-IFF related AML Recommendations of the FATF are considered. The Thesis uses the FATF ratings of countries as an outcome of the FATF accountability framework. The FATF ratings of countries are used because this Thesis is evaluating the FATF framework based on Guzman's RCT of international law. The latter considers the FATF accountability framework to be an intervention that imposes cost on non-complying States. Accordingly, it is assumed in this Thesis that the FATF ratings of countries are outcomes related to the FATF accountability framework. These outcomes are assumed to be directly related to a previous the FATF accountability process or the fact that the countries are complying in preparation for FATF accountability process. The use of the goal-centered/objective-oriented evaluation is often criticized because it assesses the effectiveness of a program without explaining the reasons for its use.[813] Therefore, because the use of the different types of evaluation are not mutually exclusive, this Thesis use of the holistic/illuminative perspective of evaluation is useful in ensuring that there is explanation for the effectiveness of the FATF's accountability framework.

Although the evaluative research tradition is used here, there are aspects of this Thesis that are in line with what is known as a descriptive study. This is because a descriptive study aims to systematically describe a situation, problem, phenomenon, service or programme, or provide information about realities such as the living conditions of a community, or describe attitudes towards an issue.[814] It could, for example, attempt to describe the type of service provided by an organisation, the administrative structure of an organisation, the needs of a community, what it means to go through a divorce, or the attitude of employees to management.[815] The main purpose of descriptive studies is to describe what is prevalent with respect to the issue/problem under study.[816] Hence, this Thesis can be labelled as a descriptive study because it has described the FATF member countries' performance patterns in the FATF mutual evaluation process. The descriptive part of the Thesis provides information that is used to evaluate the FATA's role in promoting global cooperation for RTD.

[813] ibid.
[814] Ranjit Kumar, *Research Methodology: A Step-by-Step Guide for Beginners* (3rd edn, Sage 2011) 10
[815] Other examples are the living conditions of aboriginal people in the outback and how a child feels in a house with domestic violence. See, ibid.
[816] ibid.

In general, by using a mixed method approach, the context of the Nigerian's experience is highlighted here, thereby ensuring that this Thesis contributes to knowledge on accountability for anti-IFF, as a RTD related policy. There is also an analysis of the Nigerian's experience with development cooperation in the Thesis. Therefore, using desk-based research, survey and interview, an evaluative study is conducted in this Thesis. In the next section, the data collection for the quantitative and qualitative methods that were used to conduct the research for this Thesis is also explained.

5.4 Data Collection

An inquiry into the FATF's effectiveness as an accountability mechanism for anti-IFF is conducted herein. The objective in this Thesis is to make conclusions on the FATF's role in encouraging compliance with RTD related anti-IFF policies. In other words, this Thesis looks at the question of whether a good legal order for anti-IFF policies is achieved through the existence of the FATF accountability framework. This is because, in general, the objective of legal researchers is to propose a coherent, meaningful and workable new arrangement.[817] A legal researcher proposes a new arrangement by identifying how a case or rule fits into the legal system. For instance, a case or rule is associated with a legal framework, before being reconciled to other parts of the legal system such as penal sanctions and other enforcement mechanisms.[818] This process of proposing a coherent, meaningful and workable new arrangement by identifying the order in which legal rules or cases exist is why legal research is described as an act of ordering. Therefore, in this Thesis, an enquiry into why it is appropriate for the RTD related anti-IFF policies of the FATF to be reconciled to its accountability framework is conducted. As has been identified in the rationale chapter of this Thesis, the international community has, under the global partnership for development agenda of the UN, pledged to implement the FATF Recommendations (2012).[819] This global adoption of the FATF framework in the global partnership for development agenda of the UN is the reason for the research and it forms the basis of this Thesis. The goal here is to consider the propriety of proposing that under the global partnership for development agenda, the FATF accountability framework has effectively contributed to a coherent, meaningful and

[817] Westerman (n 744) 92-93.
[818] Here, the interest of the doctrinal researcher is in whether the new rule should be enforced by penal or by administrative sanctions, and so on. See, ibid 91.
[819] In the rationale chapter, it is noted that in paragraph 24 of the AAAA (2015), the international community has pledged to identify, assess and act on ML risks, including through effective implementation of the FATF standards on anti-money laundering/counter-terrorism financing (AML/CTF). This means that through the AAAA (2015), the international community has made the goal of achieving the implementation of the FATF standards a part of the global partnership for development agenda.

workable new global arrangement for the FATF anti-IFF policies. In undertaking the objective of this Thesis, some non-doctrinal methods are used to examine the social reality in which the FATF Recommendations (2012) and its accountability framework are operating in.[820] This is necessary because the goal here is to evaluate the effectiveness of the FATF accountability framework. Hence, there is need to go beyond a purely legal analysis where there is no need to understand the phenomenon being studied.[821] To make conclusions on the effectiveness of the FATF accountability framework, there is need to understand the social reality in which it is operating in. To be specific, the Thesis assesses the FATF as an instrument of accountability of States for corruption related IFFs. The work identifies the FATF as a global instrument that was meant to protect the global financial system against money laundering for which additional Recommendations were added for the purpose of adopting the fight against terrorism into the FATF framework. Furthermore, the work assesses the FATF as an accountability mechanism that is more suited to the RTD than other frameworks that are relevant to corruption related IFFs. It identifies the advantages and limitations of the FATF mechanisms as is related to the Nigerian context. In addition, some recommendations are made on how the FATF framework can be adopted as a mechanism for realizing the external dimension of RTD. This section identifies the data collection process used in the study. This section starts by provided a concise outline of the research objective.

5.4.1 The Online Survey, Public Data Sources and Semi-Structured Interviews

5.4.1.1 Sampling and Sample Technique

Sample is a portion of a population or universe usually consisting of people but also used in reference to the total quantity of the things or cases which are the subject of a research.[822] Probability sampling is described as indicating that every participant has an equal probability of being selected from the population.[823] In more technical terms, it is described as having the 'distinguishing characteristic that each unit in the population has a known, nonzero chance of

[820] It is observed that non-doctrinal methods are tools to examine the social reality in which law, including international law, operates. See, Deplano (n 762) 10.
[821] Westerman (n 744) 108.
[822] Ilker Etikan, Sulaiman Abubakar Musa and Rukayya Sunusi Alkassim, 'Comparison of Convenience Sampling and Purposive Sampling' (2016) 5(1) American Journal of Theoretical and Applied Statistics 1 <https://www.researchgate.net/profile/Sumanta_Deb2/post/Purposive_Sampling_and_Convenience_Sampling_are_these_two_types_of_Sampling_different_Please_Explain/attachment/59d64fc179197b80779a8d1c/AS:499559933505536@1496115777990/download/Comparison_of_Convenience_Sampling_and_Purposive_S.pdf> accessed 27 May 2019.
[823] Arlene Fink, *How to Sample in Surveys* (2nd edn, Sage Publications 2003) 10.

being included in the sample'.[824] The reference to population in research does not necessarily mean a number of people, it is a collective term used to describe the total quantity of things (or cases) of the type which are the subject of a study.[825] A population can consist of certain types of objects, organizations, events or people as is the case in study that may contain a sampling frame which is the specific group that the research is interested in, for instance, of all the school buildings the focus is on only the buildings in cities.[826] Out of this selected category, the sampling frame, the sample for the study is selected. A study sample could be developed as a probability sample which is based on using random methods such as simple random sampling, stratified sampling to select the sample used or a non-probability sample which is based on selection by non-random means.[827] This study uses purposive sampling which is a type of non-probability sampling technique where informants are chosen by the researcher for their ability to elucidate a specific theme, concept, or phenomenon.[828] The inherent bias of the method is deliberate as it contributes to its efficiency, and the method stays robust even when tested against random probability sampling.[829] Non-probability sampling is used for the survey and also interview data collection because it helps to generate insight about the phenomenon of corruption related IFFs and the impact of the FATF as a framework which is relevant to cooperation for anti-IFF in Nigeria. The non-probability method is particularly suited to this type of study because it is used when a researcher is interested in contributing to the theoretical understanding of a phenomenon that is being studied.[830] The objective of this Thesis requires the knowledge of experts who have the requisite knowledge required for the study.[831] AML experts in Nigeria are suitable for the purposive sampling in this study because they have requisite knowledge about AML regulations and the international norms that influence these regulations. The use of purposive sampling technique allows the researcher to choose AML experts that will constitute the non-probability sample used in this study because it is difficult to get information from the whole population of AML experts in Nigeria.[832] Purposive sampling technique is particularly

[824] Gary T. Henry, *Practical Sampling* (Sage 1990) 25.
[825] Nicholas Walliman, *Research Methods: The Basics* (Routledge 2011) 94.
[826] ibid.
[827] ibid 96.
[828] Rebecca S. Robinson, 'Purposive Sampling' in Alex C. Michalos (ed), *Encyclopedia of Quality of Life and Well-Being Research* (Springer Netherlands 2014) 5244.
[829] Dolores C. Tongco, 'Purposive Sampling as a Tool for Informant Selection' (2007) 5 Ethnobotany Research and Applications 147 <http://ethnobotanyjournal.org/era/index.php/era/article/view/126> accessed 17 February 2019.
[830] Amy Blackstone, *Principles of Sociological Inquiry: Qualitative and Quantitative Methods* (Saylor Foundation 2012) 80.
[831] Based on the knowledge of this experts the study can decide on the propriety for Nigeria to advocate for the FATF to be promoted as an accountability mechanism for actualizing the RTD.
[832] Walliman (n 825) 96

appropriate here because the aim of this Thesis is to generate insight about the phenomenon of accountability for corruption related IFFs under the FATF framework and its effect on the economic development of Nigeria.[833] Therefore the information gleaned from the AML experts are used in making a determination on the propriety for Nigeria to advocate for the FATF Recommendations to be promoted as an accountability mechanism for actualizing the external dimension of RTD. One prominent criticism of the purposive sampling technique is that the likelihood of bias is inherent to it. However, several scholars agree that the strength of purposive sampling technique actually lies in its intentional bias.[834] Moreover, some studies have shown purposive techniques to perform similarly or better than when random methods (probabilistic techniques such as random sampling) are used.[835] In this study efforts are made to ensure that the respondents are reliable by being certain of their knowledge and skill and being conscious and alert for possible biases on the part of the respondents. Furthermore, when analysing, the researcher documents the bias and does not apply the interpretations beyond the sampled population because non-probability samples provide only a weak basis for generalization.[836]

In reference to the survey, note that it is designed for the purpose of getting the perception of respondents. Ideally, a survey should use probability sampling methods such as simple random, systematic, stratified, and cluster sampling.[837] However, the survey in this Thesis uses the purposive non-probability sample method. This is because the study is based on pragmatism which is a paradigm that seeks to utilise the best approaches for gaining knowledge.[838] As a principle that defines the worldview of the researcher, pragmatism allows for discretion in conducting research.[839] The pragmatic paradigm allows researchers to conduct research in ways that they deem as appropriate, and the appropriateness of a method is judged by determining whether or not the purpose of the research is achieved.[840] Therefore, it is important to note that a purposive sample is appropriate for a survey which is used to

[833] The non-probability method is particularly good when a researcher is interested in contributing to the theoretical understanding of a phenomenon. See, Blackstone (n 830).
[834] Tongco (n 829) 154.
[835] Walliman (n 825) 96.; For analysis of these studies see, ibid 147.
[836] For analysis of non-probability samples and generalization. See, Walliman (n 825) 96.
[837] Francis Lau, 'Methods for Survey Studies' in Francis Lau and Craig Kuziemsky (eds), *Handbook of eHealth Evaluation: An Evidence-based Approach* (University of Victoria 2016) 231 <https://www.ncbi.nlm.nih.gov/books/NBK481590/pdf/Bookshelf_NBK481590.pdf> accessed 29 April 2021. Probability sampling methods include simple stratified sampling, which is a method that recognizes the different strata in the population in order to select a representative sample. For explanation of these probability samples see, Walliman (n 825) 169 and 177.
[838] The pragmatic paradigm allows for the use every methodology that helps that knowledge discovery. See, Kivunja and Kuyini (n 763) 36.
[839] Denzin and Lincoln (n 768) 12; and Tashakkori and Teddlie (n 796) 30.
[840] Maxcy (n 796) 85; and Mertens (n 788) 38.

conduct a descriptive impact assessment evaluation of the FATF accountability framework. A descriptive impact assessment evaluation is a study that describes people's experiences and perceptions of the effectiveness of an intervention.[841] In this study, the impact assessment evaluation design, which is used to evaluate the FATF accountability framework, allows for information provided by experts and clients to be used in assessing the effectiveness of an intervention.[842] The clients of the FATF accountability framework are, for the purpose of the study for this Thesis, considered to be the governments that have made use of the FATF activities.[843] In the Nigeria's context, its Constitution of 1999 (as amended), in section 14 (2) (a) provides that its people are the givers of all the powers and authority which the government uses to carry on its activities. The section 14 (2) (b) of the Nigerian Constitution of 1999 (as amended) provides that the primary purpose of government is the security and welfare of the citizens. This section is a basis for assuming that the Nigerian government's activities are done in fulfilment of its primary purpose which is to protect the security and welfare of the citizens. In theory, the provisions of section 14 of the CFRN 1999 are indicative of a social contract where the Nigerian citizens have entrusted power to their government so that their security and welfare are protected.[844] In theory, the interest of the citizens is or should be a basis for the activities of the Nigerian government. Moreover, it is trite that the citizens are impacted by the activities of the Nigerian government. So, by the provisions of section 14 (2) (a) of the CFRN 1999, it is the citizens that give power to the government to use in performing activities that are going to have an impact on them, directly or indirectly. In theory, this provision under section 14 (2) (a) of the CFRN 1999 is indicative of an agency relationship where the Nigerian government is an agent of the citizens.[845] In

[841] For analysis of impact assessment evaluation see, Kumar (n 803) 338 -342.
[842] ibid 338.
[843] This is based on the definition of a client in Black's Law Dictionary. A client is defined as a person or entity that employs a professional for advice or help in that professional's line of work. Furthermore, note that to make use of something is a definition for the term employ. For this definition of client and employ, see Garner (n 122) 289 and 602.
[844] Kenneth Nweke and Joseph Okwesili Nkwede, 'The Nigerian State and Hobbes' Social Contract Theory: An Albatross around the Collective Will of the People' (2019) 152 (3) European Journal of Scientific Research 305-306 <https://www.europeanjournalofscientificresearch.com/issues/PDF/EJSR_152_3_07.pdf> accessed 20 April 2021.
[845] An agency relationship is applicable to the Nigerian government and its citizens, in this context, because of the idea that constitutions are conceived as contracts drawn up by 'the people' to establish and limit the powers of governing institutions. This is true because according to Black's Law Dictionary, an agency is a fiduciary relationship created by express or implied contract or by law, in which one party (the agent) may act on behalf of another party (the principal) and bind that other party by words or actions. Therefore, the provisions of the Nigerian constitution have established an agency relationship between the government and citizens. See, Martin Loughlin, *Foundations of Public Law* (Oxford University Press 2010) 275; and Garner (n 122) 70.; For analysis of how the contract analogy is useful for understanding constitutional formation and endurance. See, generally Tom Ginsburg, 'Constitutions as Contract, Constitutions as Charters' in Denis J. Galligan and Mila Versteeg (eds), *Social and Political Foundations of Constitutions* (Cambridge University Press 2013).; Furthermore, to read on analysis of observations about the agency relation between the Nigerian government and citizen, see generally Asaju Kayode, Sunday Onah Adagba and Silas Felix Anyio, 'Corruption and Service Delivery: The

other words, the Nigerian government's use of its resources to participate and utilize the FATF activities, such as the Mutual Evaluation, is ultimately done in the interest of the common good of the citizens. Therefore, the Nigerian citizens are, for the purpose of this study, considered to be inadvertent clients of the FATF because the government is presumed to be acting as an agent in its use and participation in the FATF framework. Consequently, the Nigerian citizens, who are also comprised of the people that work in the Nigerian government, are a good source of information for evaluating the effectiveness of the FATF accountability framework. However, we know from personal experience that a majority of Nigerians are not aware of the FATF accountability framework. It is only anti-money laundering (AML) experts that are the segment of the Nigerian public which are capable of providing the information on the impact of the FATF accountability framework. The reliance on AML experts allows the study to benefit from their opinion as citizens who are also inadvertent clients of the FATF accountability framework. We also consider the data collected from the respondents in this study as assessments by experts in the area of money laundering (ML). This means that the data collected is the opinion of citizens who are also inadvertent clients of the FATF accountability framework and assessments by experts in the area of ML. In essence, by collecting data from Nigerian AML experts, the study is able to rely on indicators that are used for conducting an after-only or a before-and-after evaluation of interventions such as the FATF accountability framework.[846] Accordingly, the survey used a purposive sampling of experts. This is because by using purposive sampling, the survey was part of a mixed method study that was able to use the indicator of opinion of clients and the assessment of experts in the area to evaluate the effectiveness of the FATF accountability framework.

The research paradigm is an important consideration for data analysis and other part of any research work. This is because the research paradigm involves the principles that define the worldview of researchers, as they conduct interpretation by using all the relevant tools available to them.[847] Consequently, the use of mixed method in this Thesis was based on the assumptions of the pragmatic paradigm. This means that in this thesis, the epistemology of

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Case of Nigerian Public Service' (2013) 1(1) Wudpecker Journal of Public Administration <https://www.researchgate.net/profile/Kayode-Asaju/publication/288822520_Corruption_and_service_delivery_the_case_of_Nigerian_public_service/links/56afc72008ae8e37214d0fc8/Corruption-and-service-delivery-the-case-of-Nigerian-public-service.pdf> accessed 20 April 2021; and Omololu Fagbadebo, 'An Overview of Legislative Oversight and Accountability Mechanisms in Nigeria and South Africa' in Omololu Fagbadebo, Fayth Ruffin (eds), *Perspectives on the Legislature and the Prospects of Accountability in Nigeria and South Africa* (Springer 2019) 21.

[846] Kumar (n 803) 338-339.

[847] Denzin and Lincoln (n 768) 12.

research, which is defined as the way we know what truth or reality is, is in accordance with the pragmatic approach to research.[848] This is because the pragmatist researchers' discretion to conduct research in ways that they deem appropriate and to utilize the results in ways that can bring about positive consequences within their value system is used in this Thesis.[849] Accordingly, the pragmatic paradigm that was used in this thesis seeks to utilise the best approaches to gaining knowledge, using every methodology that helps that knowledge discovery.[850]

5.4.1.2 Methods of Data Collection

This study uses a social-legal research approach because it employs methods taken from non-legal disciplines to generate empirical data that answers research questions in order to generate qualitative legal non-doctrinal findings.[851] Social-legal research overcomes the criticism that legal scholarship usually assumes that the law exists in a doctrinal objective vacuum rather than within the social framework or context, or it is often done without due consideration of social, economic, and the political importance of the legal process.[852] Accordingly, social-legal research allows us to generate empirical data that answers research questions on a problem, policy, or on a reform of the existing law.[853] With social-legal research, we are able to investigate any RTD related policy and make determinations on the propriety of advocating for them based on empirical data that has been gathered rather than simply asking what the law is on RTD. Therefore, to generate empirical data that allows us to give due consideration to social, economic, and the political importance of the legal process of accountability for RTD, this study will collect data through primary sources that include the use of survey and face-to-face oral interviews. To elicit firsthand information on interviewees' knowledge of the subject matter is the objective for the survey and interviews undertaken. The survey and interview of AML/CFT practitioners in Nigeria helps to generate expert and insiders' opinion about the impact of the FATF in the country. These mixed methods also help to generate data on the disposition of the respondents to the

[848] To put it differently, epistemology refers to how we come to know something. It has also been described as nature of knowledge and justification. See, Kivunja and Kuyini (n 763) 34; and Okesina (n 795) 59.
[849] Tashakkori and Teddlie (n 796) 30.; Note that in the approach of the pragmatic paradigm, the appropriateness of a method, with its implied relationship between the researcher and the researched, is judged by determining whether the purpose of the research is achieved. See, Maxcy (n 796) 85; and Mertens (n 788) 38.
[850] Kivunja and Kuyini (n 763) 36.
[851] Salim Ibrahim Ali, Zuryati Mohamed Yusoff and Zainal Amin Ayub, 'Legal Research of Doctrinal and Non-Doctrinal' (2017) 4(1) International Journal of Trend in Research and Development 494 <http://www.ijtrd.com/papers/IJTRD6653.pdf> accessed 27 May 2019.
[852] ibid.
[853] ibid.

prospect of adopting the FATF framework in a global policy for development assistance. The use of interview and survey data is consistent with the approach known as 'methodological triangulation' which allows to advance the validity of qualitative research by combining various methods of data collection or adopting different techniques for analyzing data.[854] Through this mode of triangulation, data can be linked and compared to produce far more profound, detailed and comprehensive results.[855] Accordingly, in aspects of the survey and interview that addressed similar issues, triangulation is used to: (a) look for divergence which will suggest that the methods did not function correctly; or (b) produce an alternative construction, theory, or map to reveal contradiction of findings.[856] For those aspects of the survey and interview that are not similar, triangulation is used for complementarity, in which different research methods address different aspects of the phenomenon, and convergence is not expected. Furthermore, triangulation is also achieved here by using analysis of information in documents such as policy documents, news media, academic literature and internet-based data to confirm what is said in the interviews.[857]

In addition to the empirical method that has been discoursed in this subsection, the information used in this work are sourced through doctrinal and auto-ethnographic research methods. Auto-ethnography is a form of autobiographical narrative which explores the researcher's subjective experience of a culture.[858] As a result of being part of the culture being studied in both informal and a professional capacity, this researcher is able to offer subjective experience that is invaluable to the objective of this work. Furthermore, in the study of underlying UN policies, this study utilizes archival data that are publicly available

[854] Triangulation methods have been classified as within-method triangulation' (where, for example, multiple qualitative methods are used) and 'between or across-method triangulation' (where both qualitative and quantitative methods are used). See, Rebecca S. Natow, 'The Use of Triangulation in Qualitative Studies Employing Elite Interviews' (2020) 20(2) Qualitative Research 161-162 <https://journals.sagepub.com/doi/pdf/10.1177/1468794119830077> accessed 17 April 2021; and Uwe Flick, *Managing Quality in Qualitative Research* (SAGE Publications 2007) 117.
[855] Flick (n 854) 115 and 120.
[856] Note that triangulation is used for confirmatory, divergent and complementary purposes. See, Lois R. Harris and Gavin T.L. Brown, 'Mixing Interview and Questionnaire Methods: Practical Problems in Aligning Data' (2010) 15(1) Practical Assessment, Research, and Evaluation <https://scholarworks.umass.edu/pare/vol15/iss1/1/> accessed 17 April 2021; and Mary Lee Smith, 'Multiple Methodology in Education Research' in Gregory Camilli, Judith L. Green and Patricia B. Elmore (eds), *Handbook of Complementary Methods in Education Research* (Taylor & Francis 2012) 465.
[857] Natow (n 854) 161 and 166.; Note that elite interviews and expert interviews, which is used in this thesis, have no systematic difference in their process and the actual interaction in the interview. See, Beate Littig, 'Interviewing the Elite — Interviewing Experts: Is There a Difference?' in Alexander Bogner, Beate Littig and Wolfgang Menz (eds), *Interviewing Experts* (Palgrave Macmillan 2009)106.
[858] Salma Siddique, 'Being In-Between: The Relevance of Ethnography and Auto-Ethnography for Psychotherapy Research' (2011) 11(4) Counselling and Psychotherapy Research 310 <https://onlinelibrary.wiley.com/doi/abs/10.1080/14733145.2010.533779> accessed 16 May 2019; citing Heewon Chang, *Autoethnography as Method* (Left Coast Press 2008) and Tessa Muncey, *Creating Autoethnographies* (Sage 2010).

on the UN websites.[859] UN resolutions and other such documents are critically reviewed to assess the challenges in the attempt to get convergence and consensus on a global policy for actualizing the RTD. The effectiveness of the FATF framework as a soft law instrument for AML, and its potential for achieving accountability for the RTD, are assessed based on available facts, data obtained from credible sources on the subject, and those trends of related events that have occurred in recent history. Accordingly, the secondary sources included library materials such as textbooks, journal articles, encyclopedias, newspapers, magazines, periodicals, reports and Internet materials. These materials help the researcher to make a qualitative analysis of the issues involved in the topic. The aim of the secondary source was to interpret, offer commentary, document analysis and draw conclusions.

Discussions are held with AML/CFT practitioners in Nigeria to gain experts' and insiders' opinion about the impact of the FATF in the country and their general disposition to the prospect of adopting the FATF framework in a global policy for development assistance. The information obtained is however subjected to systematic and rigorous analysis and critical evaluation. The underlying policies in the UN resolutions and other such documents are critically reviewed to assess the challenges in the attempt to get convergence and consensus on a global policy for actualizing the RTD. The effectiveness of the FATF framework as a soft law instrument for AML, and its potential for achieving accountability for the RTD are assessed based on available facts, data obtained from credible sources on the subject, and the trends of related events that have occurred in recent history.

5.5 Statistical Considerations on the FATF Data

In order to determine what countries would be classified as being in need of development assistance, we have given thought to the propriety of using the OECD country classification of eligibility for tied aid. In the OECD country classification, the ineligible countries which are not in dire need of aid are those:

(i) whose per capita Gross National Income has been for at least two consecutive years above the threshold[860] and which had been classified as ineligible until the previous year; and

[859] W. Paul Vogt, Dianne C. Gardner and Lynne M. Haeffele, *When to Use What Research Design* (The Guilford Press 2012) 96.

[860] 4036 in 2015, 3956 in 2016, 3896 in 2017 and 3995 in 2018. See, OECD 'Country Classification 2019 – As of 14 August 2019' (OECD 2019) 12 <https://www.oecd.org/trade/topics/export-credits/documents/oecd-export-credits-prevailing-list-of-countries-repayment-terms-and-aid-eligibility.pdf> accessed 1 September 2020.

(ii) countries which had been classified as ineligible until the previous year according to (i) above, and which have fallen below the threshold but have not yet changed their category because they have to be eligible for two consecutive years.[861]

On the other hand, the eligible countries which are referred to in this Thesis as recipient countries, are comprised of other countries that do not meet the threshold of ineligible countries, including all countries recognized as the least developed countries by the UN.[862] The OECD country classification would have been preferred here because its dichotomy is specifically developed for the purpose of giving assistance and it is constantly being updated to reflect current realities in the global economy. For instance, Kyrgyzstan is an economy in transition in the UN classification and is an eligible (recipient for the purpose of this work) country in the OECD country classification.[863] However, the dichotomy used here is based on the UN classification of developed, countries in transition, developing and least developed countries. Here the researcher uses a two-prong dichotomy of countries in which developed countries are classified as donors or countries not in dire need of aid; while transition, developing countries and least developed countries are classified as recipient countries. For the analysis in this chapter, the compliance of 15 countries (not in dire need of this aid) alongside 31 recipient countries compliance are considered for the purpose of determining the extent to which there have been improvements made in implementing the relevant IFF related recommendations. The improvements are judged based on how countries' implementation of the relevant IFF related recommendations are judged after the mutual evaluation process. Therefore, data from the mutual evaluation and the follow-up evaluation are analyzed as repeated cross-sectional data. This type of study is referred to as using a before-and-after designs (where two sets of cross-sectional data collection point on the same population) are analyzed to find out the change in a phenomenon or variable(s) between two points in time.[864] The change is measured by comparing the difference in the phenomenon or variable(s) that has happened in-between the before and the after observations.[865] For the purely cross-sectional design, which is also used in this Thesis, data are collected on one or more variables for a single time period.[866] This design is best suited to studies aimed at finding out the prevalence of a phenomenon, situation, problem, attitude or issue by taking a

[861] This two consecutive years' rule is as a result of provisions in Article 36 of the Arrangement.
[862] OECD (n 860) 12.
[863] United Nations, *World Economic Situation and Prospects 2020* (United Nations 2020) 165.
[864] Kumar (n 803) 379.
[865] ibid.
[866] Scott Menard, 'Introduction: Longitudinal research design and analysis' in Scott Menard (eds), *Handbook of Longitudinal Research: Design, Measurement, and Analysis* (Elsevier 2008) 3.

cross-section of the population. They are useful in obtaining an overall picture of what is obtainable at the time of the study.[867] Furthermore, it is important to note that there is a difference between the quantitative based cross-sectional designs and qualitative-based designs that are used in research. It is observed that quantitative-based cross-sectional designs use data to make statistical inferences about the population of interest or to compare subgroups within a population.[868] To make statistical inference, as is explained in chapter one of this Thesis is not our objective here. On the other hand, qualitative based cross-sectional designs focus on interpretive descriptive accounts of a population under observation.[869] This chapter will look at cross-sectional data available on the FATF website in order to qualitatively describe, interpret the said data, and make determinations on the extent to which the FATF accountability framework has affected the compliance of the sampled countries. The repeated cross-sectional design that is used here is well suited to examining changes in values of variables and in relationships among variables over time.[870] Consequently, the analysis will involve the use of aggregate level research which is observed to be one of the tools used to analyze changes in repeated cross-sectional data.[871] At the time of conducting this research and based on the literature review, this is the first study of its kind which analyzes accountability under the FATF framework through the use of repeated cross-sectional data. This approach is not uncommon as post-graduate research is known to improve knowledge in this way.[872] This chapter, therefore, will identify the IFF related policies in the FATF Recommendations 2012 and to learn from analyzing the effect of the accountability regime on countries' compliance with each of the policies advocated for under the FATF framework. Accordingly, in this chapter we shall make determinations on the extent to which the FATF accountability regime has affected countries' compliance within the review period under consideration.

5.5.1. Scoring Scheme

[867] ibid 383.
[868] Christopher Cummings, 'Cross-Sectional Design', *The SAGE Encyclopedia of Communication Research Methods* (1st edn, 2017) 315.
[869] ibid.
[870] Menard (n 866) 6.
[871] ibid.
[872] One example is a thesis in which the researcher acknowledges that this is the first effort to try to understand the relationship between conflict and achievement in standardized exams through the use of a pseudo panel of schools. See, Silvia Consuelo Gómez Soler, 'Civil Conflict and Education: How Does Exposure to Civil Conflict Affect Human Capital Accumulation? Evidence from Standardized Exit Exams in Colombia' (PhD thesis, Maastricht University 2015) iv <https://dokumen.tips/documents/civil-conflict-and-education-how-does-exposure-to-civil-conflict-affect-.html> accessed 5 June 2019.

The researcher's scoring scheme for countries used in this chapter is the same as the scoring scheme used by the FATF. It is represented as follows:

- The score for 'compliant countries' is represented as C. This is indicative of countries that were judged by the evaluation process to be 'fully compliant' with a particular Recommendation.
- The score for 'largely compliant countries' is represented as LC. This score indicates that there are only 'minor shortcomings' in countries' compliance with a particular Recommendation.
- The score for 'partially compliant countries' is represented as PC. This score indicates that there are 'moderate shortcomings' in countries' compliance with a particular Recommendation.
- The score for 'non-compliant countries' is represented as NC. This score indicates that there are 'major shortcomings' in countries' compliance with a particular Recommendation.
- When a Recommendation is adjudged as 'not applicable to a country', a score of NA is recorded. This score indicates that a requirement does not apply, due to determinations made by the evaluating team.

5.5.2 Explanation for Statistical Analysis of Secondary Data

First, the researcher has used reliability test for the data he has mined from the FATF website. The researcher has also used Cronbach's Alpha to test the reliability of the data used in this Thesis. The scores are greater than 0.7 which means that the data is highly reliable. He has consequently done descriptive statistics analysis of the data too. Therefore, the results shown in the analysis of data mined from the FATF website are:

1. Mean value: It is also known as average value. It allows the researcher to measure the central tendency, which is a single value that attempts to describe a set of data by identifying the central position within the set of data.
2. Standard deviation: This is a measure of the spread of scores within a set of data.
3. Wilcoxon signed-rank test: It is the nonparametric equivalent of the paired samples t-test that is sometimes called the 'dependent sample t-test'. In both the Wilcoxon signed-rank test and the paired samples t-test, a measurement is taken at two different times, for instance, at a pre-test and post-test periods with an intervention

administered between the two time points.[873] In this Thesis, the researcher had earlier intended to use the paired samples t-test to analyze the data on countries' compliance with the FATF Recommendations. However, Wilcoxon signed-rank test is used here because the researcher's variables are categorical, rather than intervals or rations which are the required data type for conducting a paired samples t-test analysis.[874] Wilcoxon signed-rank test is a nonparametric inference procedure that allows the researcher to avoid the restrictive assumption of normality that is required in the paired samples t-test.[875] In a Wilcoxon signed-rank test, any change in scores from one time point to another, or when individuals are subjected to more than one condition can be investigated.[876] Therefore, the countries' compliance rating during the MER period and the rating period before the production of the Follow-up Evaluation Report (FER) will be used as dependent variables in this chapter. The intervention administered between the two time points is the Mutual Evaluation (ME) of Countries. The ME is the review done on the conditions that countries are subjected to.

5.6 Data Analysis: Techniques and Process for Primary Data

The research paradigm is an important consideration for data analysis and other part of any study. This is because the research paradigm involves the principles that define the worldview of researchers as they conduct interpretation by using all the relevant tools available to them.[877] According to Denzin and Lincoln's explanation, qualitative research, as a set of interpretive practices, does not restrict a researcher's use of methodological practices. They opine that qualitative research does not privilege a single methodological practice over another. Qualitative research allows the researcher to use all forms of analytical tools such as

[873] Brian C Cronk, '*How to Use SPSS®: A Step-By-Step Guide to Analysis and Interpretation* (10th edn, Taylor & Francis 2018) 110-113, 73-77; , 'Wilcoxon Signed-Rank Test using SPSS Statistics' (*Laerd Statistics*) <https://statistics.laerd.com/spss-tutorials/wilcoxon-signed-rank-test-using-spss-statistics.php> accessed 17 October 2020; see also, 'Dependent samples t-test' (Lucerne University of Applied Science and Arts) <https://www.empirical-methods.hslu.ch/decisiontree/differences/central-tendency/dependent-samples-t-test/> accessed 8 October 2020; , 'SPSS Tutorials: Paired Samples tTest' (*Kent State University*, 1 October 2020) <https://libguides.library.kent.edu/SPSS/PairedSamplestTest> accessed 8 October 2020.

[874] Cronk (n 873) 110-113, 73-77.; For explanation on the different types of variable see, , 'Types of Variable' (*Laerd Statistics*) <https://statistics.laerd.com/statistical-guides/types-of-variable.php> accessed 17 October 2020.

[875] Jean Dickinson Gibbons and Subhabrata Chakraborti, 'Nonparametric Statistical Inference', *International Encyclopaedia of Statistical Science* (2011) 977-978; For explanation on the assumption of normality of data, see, Jason D. Pole and Susan J. Bondy, 'Normality Assumption', *Encyclopaedia of Research Design* (2010) 932-934.

[876] , 'Wilcoxon Signed-Rank Test using SPSS Statistics' (*Laerd Statistics*) <https://statistics.laerd.com/spss-tutorials/wilcoxon-signed-rank-test-using-spss-statistics.php> accessed 17 October 2020.

[877] Denzin and Lincoln (n 768) 12.

semiotics, narrative, content, discourse, archival, and phonemic analysis—even statistics, tables, graphs, and numbers.[878] Qualitative research also draws on and uses the approaches, methods, and techniques of ethnomethodology, phenomenology, ethnographies, interviews, cultural studies, survey research, and participant observation, among others. The important thing to note here is that as an interpretive *bricoleur*, the researcher must understand that research is an interactive process which is shaped by one's personal history, biography, gender, social class, race, and ethnicity and those of the people in the setting.[879] In other words, when using the interpretive practices of qualitative research, the researchers, as interpretive *bricoleur*, are engaged in an interactive process that is shaped by their backgrounds and those of the people in the setting. The researcher also uses the relevant methods with the knowledge that they are equal under qualitative research and that they bear the traces of their own disciplinary history.[880] With this context in mind, the study that is conducted for this Thesis is evaluative research, and the paradigm used is the pragmatic one. Herein, the adoption of qualitative approach as part of a mixed method research is done with the understanding that researchers accomplish their goals in an emergent way by using the tools which are required by any research situation.[881] Consequently, in analyzing the qualitative expert interview data that is collected for this Thesis, a thinking with theory analysis approach is adopted herein.[882] This thinking with theory approach is an alternative to traditional qualitative data analysis techniques such as empirical coding, reducing data to themes, and writing up transparent narratives.[883] In this approach to analysis, the researcher uses a process known as plugging in to find meaning in the interview data.[884] According to Jackson and Mazzei, the plugging in is the moment where the researcher connects data with theory. This moment of plugging in is achieved by reading the data while thinking the theory, and consequently making new connectives. The goal of the thinking with theory analysis approach is to identify the different connections that plugging in has created among the text

[878] ibid.
[879] ibid.
[880] ibid.
[881] It is observed that whatever researchers are trying to accomplish, they do so in an emergent way as bricoleurs use the tools at their disposal or add new ones to their toolbox as they become aware of new ones. The bricoleurs can even create new techniques if the ones at their disposal are not adequate for the problems being researched, emphasizing the fact that in much qualitative research, not all decisions concerning research design can be made in advance. See, Wicks (n 767) 60.
[882] For examples of this form of theory, see generally Alecia Y. Jackson and Lisa A. Mazzei, *Thinking with Theory in Qualitative Research: Viewing Data Across Multiple Perspectives* (Routledge 2012).
[883] The proponents of this form of analysis have argued that qualitative data interpretation and analysis does not happen via mechanistic coding, reducing data to themes, and writing up transparent narratives that do little to critique the complexities of social life; such simplistic approaches preclude dense and multi-layered treatment of data. They challenge simplistic treatments of data and data analysis in qualitative research that, for example, beckon voices to "speak for themselves," or that reduce complicated and conflicting voices and data to thematic "chunks" that can be interpreted free of context and circumstance. See, ibid vii-viii and 11-12.
[884] ibid 4.

of various interviews. The data and theorist (which is the voice that created the theory being used) are allowed to make each other in the plugging in, in order to create new ways of thinking about the theory and the data.[885] As is explained by Jackson and Mazzei, an interview participant or source of qualitative data can be said to be constituted in the theorist who is constituted in another interview participant or source of qualitative data, and so on.[886] The result of the plugging in is then articulated as newly created identities that are made from the new combination of data and theory.[887] For this data analysis approach to work, the researcher must assume that interview data is partial, incomplete, and always in a re-telling and remembering process.[888] The methodological implications of this view is that researchers must question what they ask of the data as told by participants, question what they hear and how they hear (their own privilege and authority in listening and telling) and deconstruct why one story is told and not another.[889] In traditional qualitative analysis techniques such as coding and reducing data to themes, the goal is to tell generalized stories that represent the experiences of the population being studied by creating thematic patterns to represent the essence of the participants in a study.[890] This Thesis is not an articulation of the type of story that is told by using traditional analytical approaches to reduce complicated and conflicting voices and data to thematic chunks which can be interpreted free of context and circumstance. [891] On the contrary, the goal in this Thesis is to engage in a process where theory is used to interpret data and at the same time, data is used to investigate the occurrence of theory in society. In essence, the creation of themes that can be interpreted free of context and circumstance is not done in this Thesis.[892] Instead, priori (deductive) codes are used to group the data by identifying the parts of the interviews where participants' responses are related to concepts, such as ownership chosen before the analysis is conducted.[893] The priori

[885] ibid 4-5.
[886] ibid 4.
[887] ibid 5.
[888] ibid ix and 3.
[889] ibid ix.
[890] ibid.
[891] ibid viii.; The discuss on participant voice is based on the attempt to give a voice to research participant by qualitative researchers. For a historical perspective, it is observed that as a result of the reaction to the voicelessness of statistical, positivist, quantitative research in the social sciences and critical qualitative research emerged in efforts to privilege voice, to "give" voice, to research participants, to bring voices out from the shadow of numbers, to valorize the authenticity of voice. See, Kate McCoy, 'Voice in Qualitative Inquiry: Challenging Conventional, Interpretive, and Critical Conceptions in Qualitative Research (2011) 24(6) International Journal of Qualitative Studies in Education 751 <https://www.tandfonline.com/doi/full/10.1080/09518398.2011.605081> accessed 17 April 2021.
[892] For analysis on the disadvantage of creating themes through coding see, Jackson and Mazzei (n 882) 11-12.
[893] 'Learn to Build a Codebook for a Generic Qualitative Study' (SAGE Research Methods Datasets Part 2, SAGE 2019) 3, 6 and 34 <https://methods.sagepub.com/base/download/DatasetStudentGuide/build-codebook-general-qualitative-study> accessed 17 April 2021; and Jamie Harding, 'Identifying Themes and Coding Interview Data: Reflective Practice in Higher Education' (SAGE Research Methods Datasets Part 1, SAGE 2015) 3 <https://methods.sagepub.com/base/download/DatasetStudentGuide/coding-education> accessed 17

codes that are used here are different from empirical codes.[894] A Priori codes are created prior to research to reflect categories that are already of interest before the research begins. They tend to derive at least partly from the researcher's previous reading, and are more appropriately used as part of a deductive approach. This is different from empirical codes which are derived after the data evidence has been collected. Empirical codes are produced by reading through the collected data and identifying the points of importance and commonality. It is observed that empirical codes are more likely to be used in inductive pieces of research where the data is examined and analyzed before consideration of the existing theory and literature.[895] In the study for this Thesis, deductive codes were used to group the interview transcripts into segments of transcript that are analyzed by looking into the data through the theoretical lens of Guzman's RCT of compliance with international law.

In respect to the survey done here, data is analyzed through descriptive statistics such as frequency which is used to summarize the distribution of numeric data. In general, descriptive statistics is used as a qualitative analysis method for conducting univariate analysis which means to analyze the qualities of one variable at a time.[896] The descriptive tests of frequencies are used to reveal the shape of the data in the sense of how the values of a variable are distributed. Accordingly, in this study, a use of frequency distribution which shows the values for each variable expressed as a number and as a percentage of the total cases are the descriptive statistics applied in analyzing the survey data.[897]

5.5.3 Statistical Limitations of the Study

Due to the use of non-probability sampling, the survey data that is analysed in this Thesis is not used to achieve empirical generalization (which is also called population

April 2021.; The use of ownership as one of the codes is because, in its essence, the logic of Guzman's RCT is advocating for ownership to be used in explaining compliance in any international cooperation agreements. This is because the actions of the players within a country are a factor that explains the actions of the country, as a unitary actor.

[894] Although Jackson and Mazzei are opposed to the used of codes to create themes, this does not mean that codes are not useful for the plugging in process. Yacoub notes that when using the thinking with theory analysis approach, researchers still need to collect data through interview or whatever qualitative method they choose, and they still need to code their transcripts; the difference comes at the analysis. Instead of analyzing the data through grouping themes, you look into the data from a theoretical lens. See, Mohamed A. Yacoub, 'To Think or Not to Think with Theory in Qualitative Research' (2017) 22 (7) The Qualitative Report 1779 <https://doi.org/10.46743/2160-3715/2017.2995> accessed 17 April 2021.

[895] Harding (n 839) 3.

[896] Walliman (n 825) 117.

[897] ibid.

generalization).[898] The concept of empirical generalization is a form of external validity in quantitative research.[899] It is understood as the extent to which the finding in quantitative research can be generalized from the research sample to the population that is being studied.[900] As Kumar has observed, the desire to use a random sample which is also known as probability or representative sampling is the guiding factor in quantitative research.[901] In essence, the use of random sampling is the prominent quantitative approach because it helps researchers achieve the level of randomization that is required to avoid bias in their selection of the samples which are to be seen as a representation of the population being studied.[902] However, as Kumar has noted, quantitative researchers can also use non-probability sampling if a sample size is determined before data is collected.[903] Therefore, in addition to the fact that non-probability sampling is recognised as the only sampling approach for qualitative research, it is also known as a sampling approach which is used in quantitative research.[904] So, in assessing the impact of FATF's accountability from a Nigerian's perspective, the option of choosing between the two sampling approaches was made with due consideration to the fact that, in general, probability sampling is more suited to survey instruments. Yet, instead of using probability sampling, the researcher has relied on his knowledge of Nigeria to determine that an expert sampling for the interview and survey instruments used was essential to the goal of achieving the research objective. The researcher's reason for using an expert sampling technique in generating interview and survey data is because the ability for respondents to provide information about the FATF's operation was considered. Owing to the researcher's knowledge about the lack of public awareness of financial regulation and compliance in Nigeria, it was determined that the respondents should be AML experts. Consequently, the decision to get data from only AML experts has meant that the study is using an expert sample which is a type of non-probability sampling approach. The implication of this decision to use a non-probability sampling approach is that the respondents of the survey cannot be seen as a representative sample for the total population of Nigerians.[905] Therefore, because of the use of non-probability sampling, the inferences drawn from the statistical results of the survey cannot be used to make empirical

[898] Margrit Schreier, 'Sampling and Generalization' in Uwe Flick (ed), *The Sage Handbook of Qualitative Data Collection* (SAGE Publications 2018) 85.
[899] ibid.
[900] According to Schreier, this type of generalization has become the default understanding of generalization in social sciences. See, Kumar (n 803) 192, 213 and 394.; See also, ibid.
[901] Kumar (n 803) 213.
[902] ibid 192.
[903] ibid 212-213 and 371.
[904] ibid 192.
[905] ibid 200.

generalizations about the whole population of Nigeria.[906] Invariable, the statistics from the surveys data in this Thesis is not useful for generalization and the number of participants is not large.[907] However, the statistic from the survey is useful because it is another source of data that can be compared to the interview data. The survey serves as a cost-effective way of getting data on the impact of the FATF from the Nigerian perspective.[908] Moreover, there is an argument that no sample used in research can be truly representative of a population because if different samples, using identical methods, are taken from the same population, there are bound to be differences in the mean (average) values of each sample.[909] These differences in the mean (average) values of each sample is because of the chance selection of different individuals.[910] So, statistical generalizations have their own challenges as it is likely that the sampling error, which is the measured difference between the mean value of a sample and the larger population, will lead to unwanted distortion of the results of a study. The unwanted distortion of the results will occur because some parts of the population are going to be strongly represented than others (bias).[911] Therefore, because of the vital need for a cost-effective way of getting expert opinions, the survey was conducted with an awareness of the fact that the statistical result gotten from it will not be used to achieve empirical generalization.

In conducting the interviews for this Thesis a non-probability sample was used. At the time of data collection, the researcher was under the impression that a use of non-probability sampling is expected in qualitative research.[912] The idea that non-probability sampling is common in qualitative studies has led Schreier, in her analysis on qualitative research, to be dismissive about the value of viewing statistics as a justification for transferring the conclusions gotten from samples to the larger population. Schreier has observed that "indeed, samples in qualitative research are mostly not representative of the population and using

[906] Saunders, Lewis and Thornhill have observed that although non-probability samples can be used to make generalizations, they cannot be used to make statistical generalizations. Furthermore, in the analysis by Harter it is observed that if an expert can judiciously select a sample that is a good representation of the target population, a purposive sample of this sort cannot, by itself, be used to estimate the precision of the sample-based estimates because no such mathematical formulas are possible. See, Rachel Harter, 'Random Sampling', *Encyclopedia of Survey Research Methods* (2008) 684 <https://methods.sagepub.com/reference/encyclopedia-of-survey-research-methods/n440.xml> accessed 22 May 2021; and see also Mark Saunders, Philip Lewis and Adrian Thornhill, *Research Methods for Business Students* (6th edn, Pearson 2012) 262.
[907] In quantitative studies, it is important that there is no bias in the research process. It is also advisable to have many participants. See, Kumar (n 803) 192, 197 and 210 – 211.
[908] When conducting quantitative research, the cost is one of the factors that influences the researcher's selection of a predetermined sample size. See, ibid 192.
[909] Walliman (n 825) 95.
[910] ibid.
[911] ibid.
[912] Kumar has said that it is the only form of sampling in qualitative research. See, Kumar (n 803) 192.

statistics as a warrant underlying the conclusion from sample to population is then not an option". [913] In explaining the importance of statistics in qualitative research, Schreier has referenced Lincoln and Guba who have gone as far as saying the only generalization is that there is no generalization.[914] Consequently, it must be said that the existence and value of qualitative studies with statistical generalizations is not being ignored or dismissed by Schreier.[915] Rather, Schreier has only explained that the use of statistics to achieve generalizability is not usually the objective in qualitative research.[916] Therefore, 20 interviews were conducted for the purpose of this Thesis. Although the suggested number of participants for an interview is between 25-30, the amount of interviews conducted was determined by the concept of data saturation point.[917] In the textbooks on research, it is usually recommended that qualitative data should be collected until data saturation is reached.[918] Kumar, for instance, has written on how the period when a researcher is no longer getting new and non-negligible information should be viewed as an indication that the research has reached a point of saturation and data collection is to be ended.[919] Another reason for my decision is that some of the experts had kept on postponing the interview. Therefore, because data saturation was achieved, there was no need to keep on asking for more interview.

5.7 Conclusion

This chapter has described the methods and methodologies employed in the Thesis. In this chapter, the research philosophy is introduced by stating that the study takes a socio-legal approach and that it adopts the pragmatic paradigm. By adopting a socio-legal approach, the Thesis focuses on the context in which the anti-IFF related provisions of the UNCAC (2003) have been administered through the activities of the FATF, specifically. Due to its focus on the social context of anti-IFF administration in Nigeria, the Thesis goes beyond legal formalism, which is the paradigm associated with doctrinal research, and adopts a pragmatic paradigm that forms the basis for using a mixed method design to conduct inquiries. The chapter explains why, and the type of evaluative approach which was used to examine the

[913] Schreier (n 898) 85.
[914] Yvonna Lincoln and Egon Guba, *Naturalistic Inquiry* (SAGE Publications 1985) 110.
[915] Schreier has referred to a report by Onwuegbuzie and Leech in 2010, where they reported that 36 per cent of the qualitative studies, they examined used statistical generalization. See, Schreier (n 898) 85.
[916] Schreier (n 898) 85 -86.
[917] Saunders (n 906) 283.
[918] ibid.
[919] Kumar (n 803) 192.

FATF's impact on anti-IFFs and corruption in Nigeria. The evaluated outcome is the impact of the FATF's activities such as the ME processes, and the FATF is the object of the analysis. Moreover, the impact of the FATF on the goal of actualizing the RTD through its influence on anti-IFF in Nigeria is the context of the study.

In this chapter, it is shown that data was collected from through 20 semi structured interviews and 16 completed surveys of AML experts in Nigeria. A convergent mixed method design was adopted, and so, the interview and survey data were collected and analyzed separately before a comparison of the results was done to see if the findings confirmed or contradicted each other. Descriptive statistics such as frequency was used to analyze the survey data and a thinking with theory approach is used to analyze the interview data. The survey and interview respondents were selected because of their expertise in AML and development in Nigeria.

The primary data collected was complimented with secondary data analysis. Accessing information and data provided on the FATF website offered more clarity on its objectives and their consequences. Additionally, reports by Nigerian government and other domestic and international institutions that are relevant to the AML and anti-IFF regime in Nigeria are examples of documents that were used to compliment the interviews and surveys. These documents are used to improve understanding on the interrelationship between the corruption culture, the anti-IFF administration, and the impact of the FATF in Nigeria. Moreover, secondary data on countries' compliance with the FATF Recommendations (2012) are analyzed, using Wilcoxon signed-rank test as a statistical tool for determining the extent of the FATF's ability to influence compliance and to confirm or disprove Gusman's theory of compliance with international law.

In the next chapter, the findings from the survey on corruption culture and the impact of the FATF in Nigeria is presented.

Chapter Six: Analysis of the Survey on Public Sector Corruption and the Value of the FATF Framework in Nigeria

6.1 Introduction: Assessing Guzman's International Legal Theory from the FATF and a Nigerian's Perspective

In the methodology chapter of this Thesis, it is noted that the use of expert survey is one of the ways in which triangulation, which is broadly understood as the use of multiple methodological resources or practices, is achieved.[920] To be specific, a convergent mixed method design is used to undertake an impact evaluation of the FATF as a compliance mechanism for encouraging cooperation against IFF from Nigeria.

In this Thesis, the FATF accountability framework is being evaluated as a soft law mechanism that is relevant to Nigeria's involvement in the global development cooperation against IFF. The study is also an evaluation of how the FATF accountability framework is functioning as a mechanism of international law. Furthermore, in accordance with Guzman's ILT of compliance, the approach of not assuming that States prefer compliance with international law is adopted in this study. Therefore, it is not assumed herein that States, including Nigeria, have a preference for complying with the RTD related anti-IFF norms of international law. Hence, the FATF accountability framework is evaluated because it is not

[920] Natow (n 854) 160 and 161.

assumed that Nigeria has a preference for complying with international law. This assessment of the FATF accountability framework is done to generate conclusions on the level of compliance with the FATF RTD related anti-IFF norms that are also provided for by international instruments such as the United Nations Convention Against Corruption (UNCAC), 2003. The goal is to make determinations about the role that the FATF accountability framework has played in ensuring that Nigeria is a part of an effective global development cooperation against grand-corruption related IFFs.

Flowing from this preceding explanation of how the data is to be understood, the next subsection is going to describe and focus on how the survey data is used. Before proceeding to the next subsection, it is important to note that although, Guzman has implied that States non-compliance under the FATF framework has a potential for retaliation, this study is particularly focused on cost from reputational sanctions. This is because Guzman has noted that the threat of retaliation and reciprocal noncompliance can often serve as an enforcement device, but they are less effective when public goods are involved.[921] Therefore, because it is possible to assert that anti-IFF (as it relates to money laundering in particular) is a global public good, this study does not focus on non-compliance costs of retaliation and reciprocal noncompliance.[922] Moreover, the contentious nature of the RTD does not preclude its proponents from seeing it as a global public good.[923] Subsequently, in the interest of

[921] Guzman (n 15) 66.; A public good is defined by two characteristics: non-rivalry and non-excludability. First, there is no rivalry between potential users of the good: one person can use it without diminishing its availability to others. Secondly, people cannot practically be excluded from using the good. Thus, it is available to everyone, whether they contributed to producing it or not. Global public good refer to public goods that have global effect. See, Daniel Bodansky, 'What's in a Concept? Global Public Goods, International Law, and Legitimacy' (2012) 23(3) The European Journal of International Law 652-653 <https://academic.oup.com/ejil/article/23/3/651/399760> accessed 29 April 2021.

[922] For clarity, note that as Fukuda-Parr has observed, the RTD addresses the human rights challenges of global economic integration by addressing the need for international cooperation to solve certain economic and social problems, which are beyond the ability of States to solve on their own. These problems arise because actions in one State cause harm to people in other States, or because they require global public goods that cannot be produced by one State alone, or because a State has severe resource limitations. This study recognizes that to an extent, anti-IFF, especially in the context of money laundering, is a global public good that is covered by RTD. This is because the protection of the international financial system is undermined by weak links that fail to control money laundering. Bodansky has explained global public good in the context of weak links by using the example of secure maritime transport. See, Bodansky (n 921) 660-661; and see, Sakiko Fukuda-Parr, 'The Right to Development: Reframing a New Discourse for the Twenty-First Century' (2012) 79(4) Human Rights and the Global Economy 857 <https://www.jstor.org/stable/24385631?seq=1#metadata_info_tab_contents> accessed 29 April 2021.; For analysis of money laundering as an international crime and issue, see Selina Keesoony, 'International Anti-Money Laundering Laws: The Problems with Enforcement'(2016) 19(2) Journal of Money Laundering Control 135 <https://www.emerald.com/insight/content/doi/10.1108/JMLC-06-2015-0025/full/html?skipTracking=true> accessed 29 April 2021.

[923] For an author that has referred to the RTD as one of the global public good issues see, Inge Kaul, 'What Role for Civil Society?' (2001) 30(3) Nonprofit and Voluntary Sector Quarterly 597 <https://journals.sagepub.com/doi/abs/10.1177/0899764001303013> accessed 29 April 2021.; Note that it is possible for there to be disagreements about the desirability of global public good. See, Bodansky (n 921) 655-657.

certainty, the approach that is adopted herein is to focus on whether the FATF accountability framework has been effective in facilitating the development cooperation against grand corruption related IFFs in Nigeria because of the malaise impact on the reputation of States. In the next subsection, the result of the survey will be presented.

6.2 Survey Data Description and Use

In Chapter 2 of this Thesis, it is identified that the UN mainstreaming policy is a good policy because it allows for the RTD to be mainstreamed into the FATF framework, or for the FATF Recommendations to be adopted into the UN RTD framework. In Chapter 2, it is also acknowledged that ownership of the development process is accepted as an important component for effective development initiative for Nigeria. Furthermore, it is opined that the leadership role of the government of Nigeria is important for development cooperation with donor countries and agencies. Therefore, with this background in mind, the results of a survey of experts in the field of AML and development are presented herein. The survey is part of a mixed method research that is conducted for the purpose of getting a description of Nigeria's experience of accountability for development cooperation under the FATF framework. The survey and interview data are herein used to achieve an across-method triangulation that increases the validity of the study data. Furthermore, it should be noted that the survey and the overarching research are motivated by the objective of evaluating the FATF's normative influence in the context of Nigeria's fight against the cross-border movement of illicit proceeds from public sector embezzlement.[924] The analysis of primary data, in this Thesis is based on this objective.

6.1.2 Information on the Survey Data

The primary objective of this expert surveys is to aggregate knowledge about the impact of the FATF framework to the development discourse in Nigeria.[925] The objective here is to glean information from members of the Nigerian public who have the privilege because of their employment in government, and NGOs or privately-owned institutions have also gained sufficient knowledge of the FATF and its impact on the Nigerian polity. Therefore, a survey study was conducted as an online survey by which 35 experts on AML in Nigeria were asked

[924] For analysis of evaluation see, Tonell Calhoun, *Introduction to Social Research* (ED-Tech Press 2018) 66.
[925] For an analysis of the value of experts see, René Lindstädt, Sven-Oliver Proksch and Jonathan B. Slapin, 'Assessing the Measurement of Policy Positions in Expert Surveys' (Conference of European Union Studies Association, 7 March 2015) 2 <http://aei.pitt.edu/79404/> accessed 29 April 2021.

to respond to series of questions. Out of the 35 surveys that were sent out, 16 were completed, thereby achieving a 45.7% response rate. 'While the FATF is relatively unknown to people who do not work directly with it or study it, the Task Force and the AML rules it promulgates have become primary tools of economic and security policy' in foreign and domestic fora.[926] So, experts on AML are the respondents to the survey because knowledge of the FATF is not common to everyone, especially those who are not conversant with the field of AML and financial crime (e.g. corruption) in Nigeria or other parts of the world. To be specific, the respondents were chosen because they have worked or are working directly with the FATF Recommendations 2012, and they have reason to be exposed to knowledge about the FATF's work and development in Nigeria.

The initial data collection process involved the sending of the survey to experts that have represented Nigeria in international AML fora. After completing the survey, respondents were also asked to suggest other experts who are familiar with the Nigerian and international AML regimes. Consequently, the experts sampled in the survey are relevant stakeholders to provide information that is useful for critiquing whether the FATF is acceptable as an instrument of accountability for global development cooperation against IFF in Nigeria. These stakeholders included *inter alia*, a Team Lead in the Nigerian Financial Intelligence Unit (NFIU), directors of governmental bodies, directors and staff of financial regulatory bodies, and private sector experts that are proficient in the field AML and development. Accordingly, they are educated about the FATF standards and its economic policy implications in Nigeria. In the next subsections of this chapter, the survey questions are outlined, and the subsequent data is analyzed and described accordingly.

6.3 Survey Results

6.3.1 Demographic Characteristics

Table 1 reports summary demographic data for the respondents. Table 1 shows that the respondents were predominantly government employed AML experts (50%) and they mostly worked in the AML sector for 1-10 years (35.5%). There are no significant systematic differences between the responses of the government employed experts and the experts from the private sector.

[926] The quote is by Nance. See, Mark T. Nance, 'The Regime that FATF Built: An Introduction to the Financial Action Task Force' (2018) 69(2) Crime, Law Social Change 110 <https://search.proquest.com/docview/1975465781> accessed 27 August 2021.

Table 1. Summary Data for Respondents

Total working years in the AML sector	**Percentage**
1-10	6 (35.5%)
11-20	5 (31.25%)
21-30	4 (25%)
31-40	1 (6.25)
41-50	
More than 30	
Total working years in current role/job	**Percentage**
1-5	6 (37.5%)
6-10	5 (31.25%)
11-15	4 (25%)
16-20	0
21-30	1 (6.25%)
More than 30	0
Category of current organization of employment	**Percentage**
AML consultant	7 (43.75%)
Government parastatal	8 (50%)
Non-governmental organization	0
Other	2[927] (12.5%)

6.3.2 FATF's Influence on Nigeria

To garner information on the FATF's ability to influence compliance, the survey asked questions on the relationship between the FATF and Nigeria. Figure 1 reports on the respondents' answers to two questions. The questions in Figure 1 are: 1) Do you think that AML laws in Nigeria are influenced by FATF Recommendations (2012); and if yes, 2) What

[927] The organization of employment for one of the respondents is an AML consultancy for the agricultural sector. Therefore, he selected the columns for AML and others. Another respondent has classed his organization of employment as financial institution supervised by the Central Bank of Nigeria.

is the extent of influence? All the respondents chose the 'yes' option to the question of whether the FATF Recommendations (2012) have influenced the Nigerian AML laws. Most of the respondents chose the high option when answering the question on the extent of influence that the FATF has had on the Nigerian AML laws. The results in Figure 1 are aligned with the prediction in Guzman's theory on compliance with international law, that soft law instruments such as the FATF are mechanisms which influence compliance in the international legal system.

Figure 1: FATF's Influence on Nigerian AML Laws

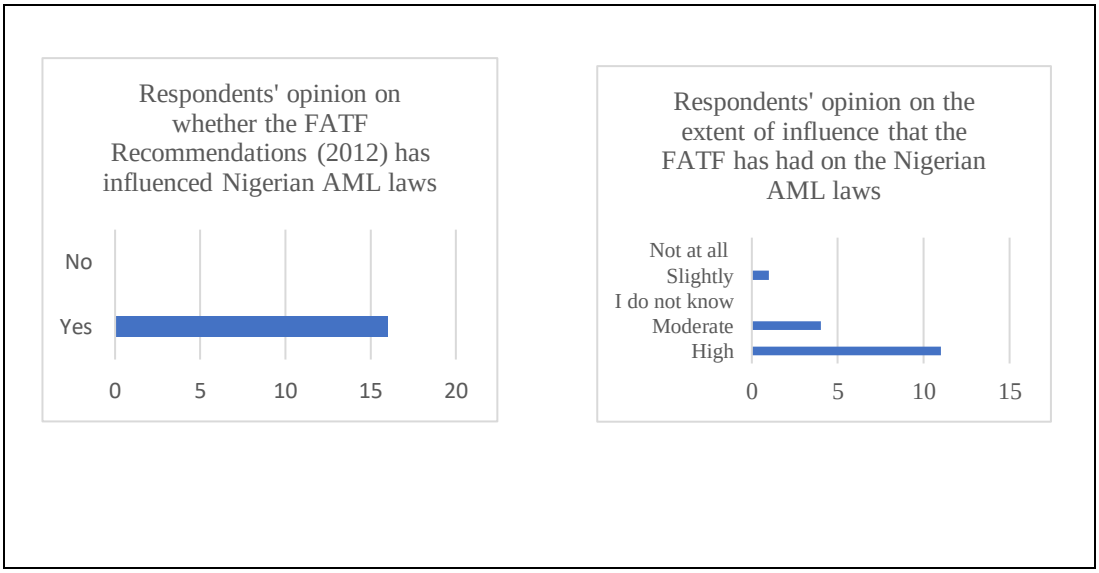

Table 2 also provides information on the FATF's ability to influence compliance. The first section of Table 2 reports on the results for the question: Do you think that the legal and institutional changes that led to Nigeria's removal from the FATF's NCCTs List was indicative of Nigeria's desire not to be on the list?

The second part of Table 2 reports on the question: Do you think that the legal and institutional changes that led to Nigeria's removal from the FATF's NCCTs List a consequence of changes that Nigeria was going to make regardless of the pressure from the FATF? In the first and second part of Table 2, most of the respondents chose 'yes' at a rate of 68.75% and 53.3%, respectively. Therefore, Table 2 indicates that a substantial number of the respondents (50%) chose the 'yes' option for the first and second part.

Table 2: Reasons for Nigeria's Removal from the FATF NCCTs List

Question asked		Answer options	Percentage
(a)	Is it an indication of Nigeria's desire to not be on the list?	Yes	11 (68.75)
		No	5 (31.25)
(b)	Is it a consequence of changes that Nigeria was going to make regardless of the pressure from FATF?	Yes	8 (53.3)
		No	7 (46.7)

The survey also asked questions about the efficacy/suitability of the FATF framework as an international AML regime. Figure 2 reports on the response to the question: Do you think that the FATF membership criteria is important for its ability to address global interests in the international AML regime? Here, the highest response was for 'yes' (68.75%). Some respondents also gave reasons for chosing the 'yes' option. A sample of the reasons for the 'yes' responses are categorized in Table 2. There were several versions of some of the responses (particularly the motivation for compliance and cooperation answers), and these are presented in Table 2.

Futhermore, Figure 2 also reports on the response to the question 'under the current membership structure, how do you assess the FATF willingness to address concerns that are particular to a developing country such as Nigeria?' Here, most of the respondents chose the moderately willing option. Furthermore, the extremely willing option got the second highest selection by the respondents and none of the repondents chose the 'not willing' option.

Figure 2: Opinions on FATF Membership Criteria

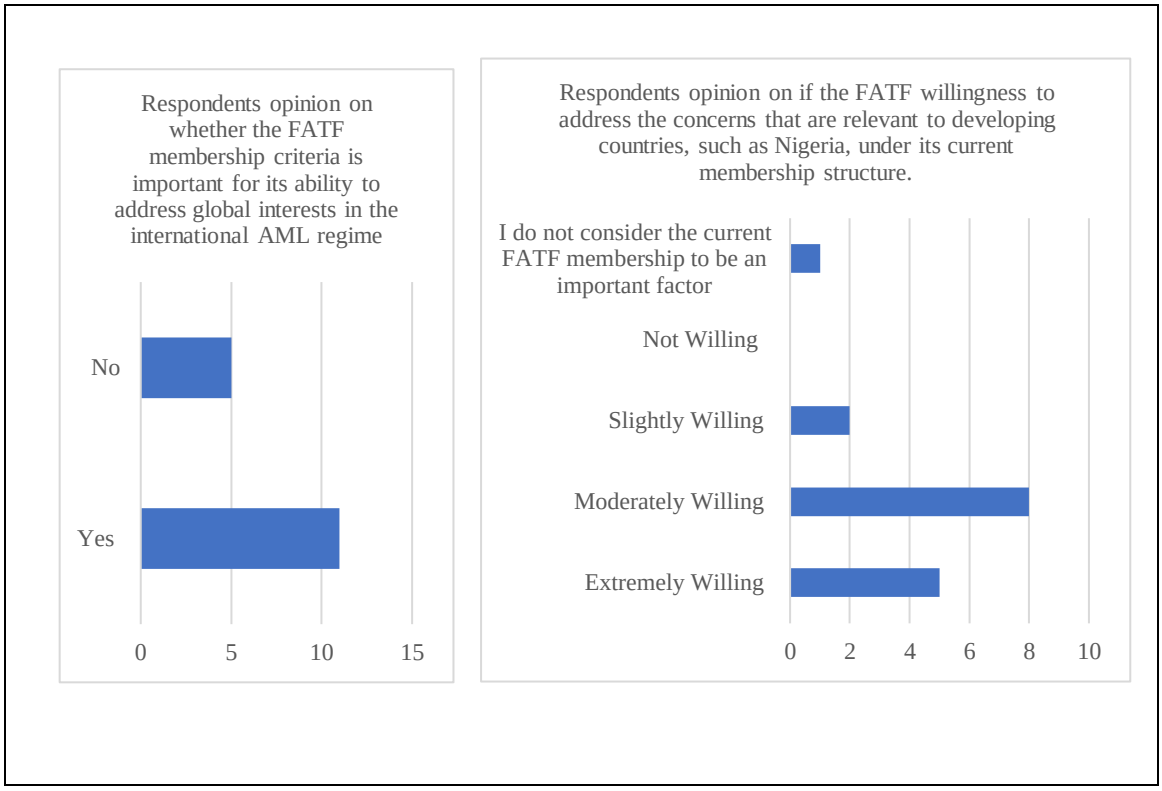

Table 2: Reasons for why the FATF Membership Criteria Is Important

Type of reason	**Reasons stated respondents**
Motivation for compliance and cooperation	It facilitates global AML through increased international cooperation.
Source of reputation for the FATF	It shows the FATF is a body that intends to be comprised of countries that demonstrate a high degree of compliance.
Mechanisms for sanctioning	FATF membership comprises countries that can help it to sanction other countries.

The following table and figures reflect the responses to additional questions about the suitability of the FATF framework as an international AML framework. Figure 3 reports on the question: Do you think that the FATF needs to do more to ensure that its Recommendations address IFFs? The survey result shows that most of the respondents chose the ‘yes’ option. Some respondents also gave reasons for chosing the ‘yes’ option. A sample of the reasons for the ‘yes’ responses are categorized in Table 3.

Figure 3: Opinions on FATF and Cross-Border Flows of Embezzled Public Funds

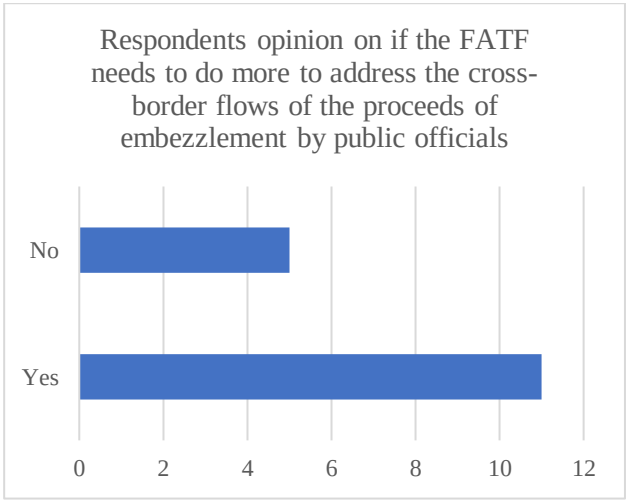

Table 3: Opinions on the Limitations to FATF's Impact on Cross-Border Flows of Embezzled Public Funds

Description of answers given	**Reasons given by respondents**
Framework Limitations of the FATF	The FATF's monitoring process is deficient because it is left to the control of FSRBs which have less resources and technical know-how
Limitations in the FATF's activities	The FATF has not resolved the logistics and infrastructural problems of anti-AML
	The FATF has not been able to address the peculiarities of all countries
	The FATF has not adequately publicized its activities
	The FATF has been incapable of creating consequences for non-cooperative countries

6.3.3 The Relationship between Societal Values in Nigeria and Cross-Border Flows of Embezzled Public Funds

In the survey, respondents were asked questions on the relationship between societal values in Nigeria and the domestic actions to stop the cross-border movement of public sector embezzled funds. Figure 4 reports on the question: Do you think that Nigerians are passive to

corruption? The results in Figure 4 shows that most of the respondents (88%) chose the 'yes' option. Futhermore, the respondents that chose the 'yes' option were asked to choose, from a list of statements, the options that explain the reasons for Nigerians' passiveness to public sector embezzlement. Table 5 reports on the percentage of respondents that selected each of the listed reasons for Nigerians passiveness to public sector embezzlement. The results in Table 5 shows that most of the respondents (56.25%) chose the statement: 'corruption is everywhere, and they have become desensitized to it'.

Figure 4: Opinions on Citizens' Attitude to Public Sector Embezzlement

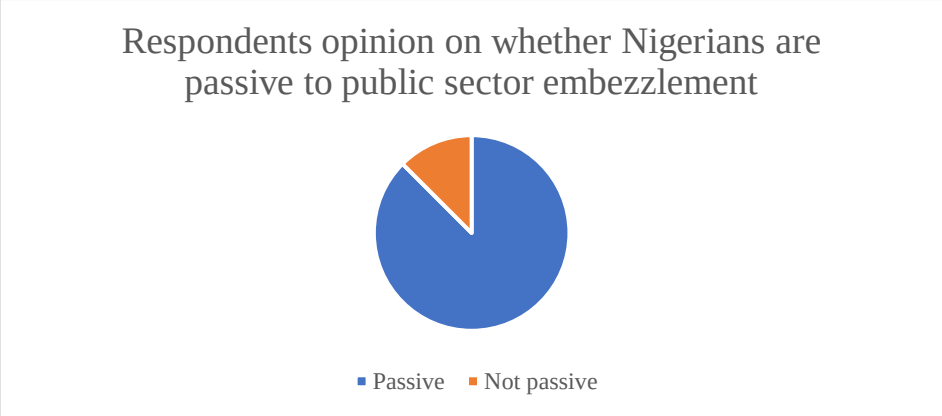

Table 5: Reasons for Citizens' Passiveness to Public Sector Embezzlement

Answer Options	**Percentage of Total Respondents**
They do not want to be seen as a jealous or wicked person that does not want other people to progress.	3(18.75)
There is a possibility that they themselves could engage in corruption in the future.	7 (43.75)
They do not care about public sector embezzlement.	0
Corruption is everywhere and they have become desensitized to it.	9 (56.25)

Figure 5: Role of Nigerian Banks in Detecting Illicit Transactions Involving Nigerian PEPs

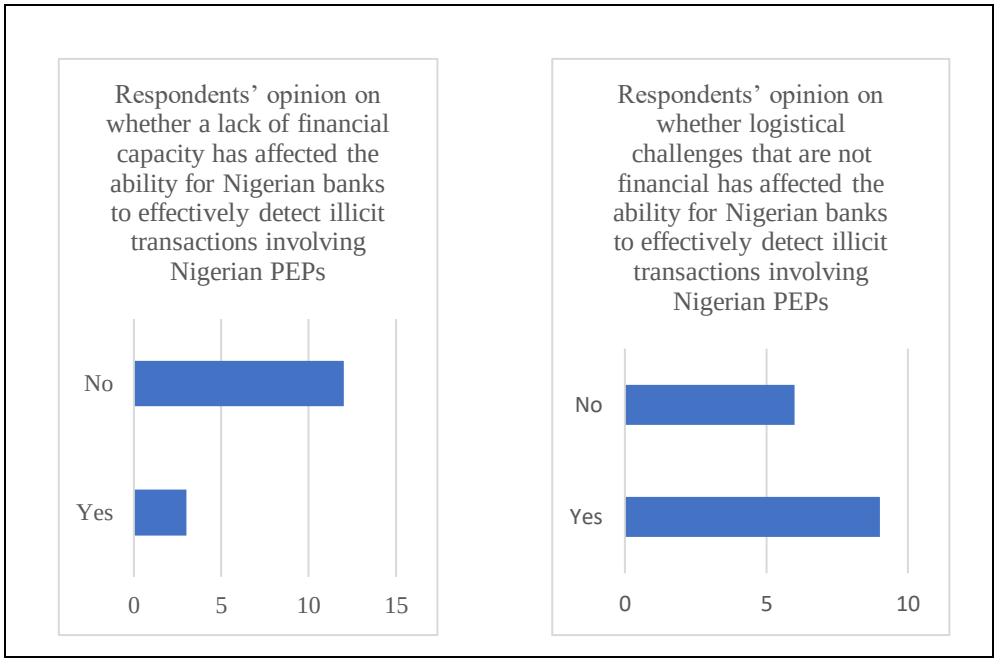

Table 6: Factors that Impede on the Ability for Nigerian Banks to Detect Illicit Transactions by Nigerian PEPs

Description of Answers Given	**Answers Given by Respondents**
Capacity	Lack of technical capacity
Fear	Fear of losing PEP customers
Societal influence	There is institutionalized corruption in the Nigerian system
Regulatory deficiencies	Regulators are enforcing low level of sanctions on complicit banks
	Bank officials are not protected by regulators in situations of dispute between them and customers, their institutions, law enforcement agencies and the regulators.

Respondents were asked to agree or disagree with statements that seem to explain the reasons for failures on the part of Nigerian banks to effectively perform the correspondent banking requirements of the FATF Recommendation 13 for detecting illicit transactions involving

Nigerian PEPs.[928] Consequently, Figure 5 reports the respondents opinion on whether logistical challenges that are not financial and a lack of financial capacity are negative factors which are hindrances to the ability for Nigerian banks to effectively detect illicit transactions involving Nigerian PEPs. The result in Figure 5 shows that most of the respondents (75%) did not consider a lack of financial capacity to be a cause of failures by Nigerian banks to effectively detect illicit transactions involving Nigerian PEPs. Figure 5 also shows that 56.25% of the repondents considered logistical challenges that are not financial to be cause of failures by Nigerian banks to effectively detect illicit transactions involving Nigerian PEPs. Additionally, respondents were asked to identify the factors that cause banks to not effectively detect illicit transactions involving Nigerian PEPs, and therefore, their responses are reported in Table 6.

6.4 Conclusion

In this Thesis, the survey results are used to investigate the proposition in Guzman's theory of compliance in international law about the role that soft law mechanisms, such as the FATF, have in facilitating the ability for the international legal system to influence State behavior. The survey has therefore provided information that is useful for generating hypothesis about the FATF's ability to facilitating cooperation against grand corruption

[928] This question refers to the customer due diligence relationship that is described in FATF's Recommendation 13. FATF has recommended that correspondent banks should monitor and ascertain that respondent banks have adequate AML mechanisms. The FATF has observed that the monitoring role of correspondent banks is important because it helps them to be aware of when the level or nature of residual risk (which is the risk remaining after a financial institution's AML/CFT control framework is applied to a particular situation) has changed. The FATF has recommended that correspondent banks are to maintain ongoing and open dialogue, with respondent banks, that will help to accomplish objectives such as flag new risk and understand existing ones and clear up any incident that may arise during the business relationship. So, FATF's Recommendations 13 requires for correspondent banks and respondent banks to engage in ongoing dialogue about AML challenges, such as the risk of a PEP benefitting from a transaction that was commenced by another person or business entity. Therefore, for the monitoring requirement in FATF's Recommendation 13 to be effectively performed entails that correspondent banks are successful in getting the respondent bank to identify and provide information on ML activities such as illicit transactions involving PEPs. For instance, in an asset recovery case involving Nigeria, a UK court determined that money sent by a business entity, through a Nigerian bank, to the bank account of another business in London was bribe paid to a former Nigerian governor. Thus, in the correspondent banking relationship between the Nigerian and UK bank, the monitoring was not optimal because the respondent bank did not provide information about the illicit nature of the transaction. For this asset recovery case see, Nigeria v. Santolina Investment Corporation and others [2007] EWHC 3053 (QB) [19], [21]-[23], [36], [39] and [54].; For FATF's advisory on customer due diligence, see FATF, 'FATF Guidance: Correspondent Banking Services' (FATF/OECD 2019) 7 <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/correspondent-banking-services.html> accessed 7 June 2019.

related IFFs in Nigeria.[929] A larger confirmatory study on the conclusions that are drawn from the survey are an ideal future venture.

A derived hypothesis from the survey is that Nigerian AML experts have positive perceptions about the FATF membership structure because they do not consider the structure to be a limitation to the FATF's capacity to effectively assist Nigeria's regime for combating ML. This hypothesis is adopted because the survey results are an indication that the current structure of the FATF is not also considered by AML experts in Nigeria to be a limitation to its ability to impact on countries' AML regime. Some of the survey results indicate that although there are divergent opinions on whether the FATF membership structure is important, the respondents did not see it as an impediment on the FATF's willingness to resolve the ML concerns that are relevant to Nigeria. Furthermore, all the respondents affirmed that the FATF's Recommendations (2012) have influenced Nigerian AML laws. In other words, the respondents have affirmed the notion that although the FATF Recommendations (2012) were not developed by Nigeria, but they have influenced the country's AML laws. There are two implications of this survey results. Firstly, the survey results support Guzman's assertion that soft law mechanisms, such as the FATF Recommendations (2012), are international law rules that influence State behavior.[930] Secondly, the results are an indication that, notwithstanding its membership structure and its status as an international body, the FATF's activities are seen as actions that are carried out in the interest of developing countries such as Nigeria. Therefore, the results suggest that the perception of Nigerians about the FATF's influence on the domestic AML regime is not combined with a widespread distrust about its commitment to genuinely assisting Nigeria.

Additionally, the perception of the respondents, regarding anti-grand corruption and IFFs in Nigeria, has provided some insight about the connection between societal values and the state of local interest for citizens' actions that would amplify the effectiveness of the FATF. For instance, respondents chose from a list of statements that were designed to get insight on if the passiveness to corruption in Nigeria is caused by personal values or the impact of societies' corruption related values, or perceptions about the morality or necessity of anticorruption. The survey shows that the option for the people's perceptions about the morality of anticorruption campaigning ('they do not want to be seen as a jealous or wicked

[929] Hackshaw has identified the value of small hypothesis generating studies. See, Allan Hackshaw, 'Small Studies: Strengths and Limitations' (2008) 32 (5) European Respiratory Journal 1141 <https://erj.ersjournals.com/content/erj/32/5/1141.full.pdf> accessed 2 January 2022.
[930] Guzman (n 15) 214.

persons that do not want other people to progress') was rarely selected by respondents. The options for the perceptions about the necessity of anticorruption campaigning ('they do not care about public sector embezzlement') was not chosen by any of the respondents. Most of the respondents chose the options for personal values and the impact of pro-corruption values in society ('there is a possibility that they themselves could engage in corruption in the future,' and that 'corruption is everywhere, and they have become desensitized to it', respectively). Thus, the survey indicates that respondents tended to see personal values and the impact of pro-corruption values in society, instead of citizens' perceptions about the morality or necessity of anticorruption campaigning, as the most likely causes of passiveness to corruption in Nigeria. The survey also evidences that personal and pro-corruption values in society (such as fear of losing customers and institutionalized corruption, respectively) are seen as causes of Nigerian banks' failures to promote the effective performance of the FATF correspondence banking guidance. Therefore, results indicate that pro-corruption values in society is seen as one of the factors that have made some Nigerian banks not to adequately identify illicit transactions by PEPs in order to promote effective execution of the monitoring required in the FATF Recommendation 13. So, the results are aligned with Sen's observation that societal values influence the freedom that citizens choose to treasure. The survey results also suggest that the presence of pro-corruption values in Nigeria is one of the causes of Nigerian banks' failure to effectively detect illicit transactions involving Nigerian PEPs and the lack of interest in anti-corruption campaigning in the country. Therefore, pro-corruption values in Nigeria are seen to have had an impact on the willing of Nigerians to perform actions that enable them to promote the actualization of outcomes that are aligned with the anti-corruption objectives of the FATF.[931]

The survey results also provide information on the perception of the respondents regarding the FATF's role as a mechanism that is relevant to anti-grand corruption related IFFs in Nigeria. Some of the answers of the respondents are also useful for analyzing the Guzman's theory of compliance prepositions on the significance of reputational cost in the discourse on soft law mechanisms. The survey findings have largely but not conclusively reinforced the Guzman's theory of compliance preposition that reputational concerns provide the incentive for States to comply with international legal rules. This is because most but not all of the respondents have agreed with the idea that the reputational damage from being included in

[931] For instance, a populace that actively campaigns against corruption will be fostering anti-corruption values in society and pressuring regulators, as the FATF, to ensure that there is effective implementation of anti-corruption mechanisms in Nigeria.

the FATF NCCTs List was a motivation for institutional and regulatory changes in the Nigerian AML regime. So, an important part of the FATF's mechanisms for holding countries accountable was not universally seen to have influenced Nigeria compliance behavior. Additionally, the FATF's failure to adequately generate publicity and its inability to sanction non-compliant countries were identified by some respondents as their reasons for concluding that the FATF has not done enough to combat cross-border flows of the proceeds of embezzlement by public officials. Therefore, the FATF's willingness to improve the publicity of its activities and the sanctioning of non-compliant countries will enhance its reputation as a mechanism that is assisting Nigeria's actions against cross-border flows of the proceeds of embezzlement by public officials.

Chapter Seven: Secondary Research on FATF Accountability Processes: An Assessment of Cooperation for Anti-IFF objectives from Nigeria's Perspective

7.1 Introduction

The FATF Recommendations are AML best practices that are developed by the Task Force. The FATF holds States accountable for not complying with its Recommendations by asking the States to voluntarily partake in its mutual evaluation process. In Chapter 4, a desk-based analysis of publications by governmental and non-governmental institutions has shown that regulators have helped to enhance the reputational implications of the FATF's processes for holding countries accountable. This chapter uses secondary research to investigate the veracity of the Guzman's theory of compliance's claim that soft law instruments, such as the FATF, can enhance compliance with international law. Accordingly, this chapter investigates the FATF's ability to influence compliance with AML objectives that are valuable for anti-IFF and for the enhancement of RTD. In this chapter, the desk-based analysis of secondary data is part of the enquiry on whether the FATF's accountability process has led to improved compliance with provisions of the FATF Recommendations (2012) that are valuable to the Nigeria's actions against corruption related IFFs.[932] The analysis for this chapter has entailed an examination of how certain provisions of the FATF Recommendations (2012) are relevant to Nigeria's anti-IFF cooperation aspirations and whether or not the FATF accountability processes has improved countries' compliance with them. The desk-based analysis in this chapter has been conducted to generate conclusions on the extent to which there have been improvements in countries' implementation of relevant policies. To achieve this objective, the Thesis looks at secondary data, derived from the FATF website, on countries level of compliance with the various provisions contained in the FATF Recommendations 2012.[933] A total number of 46 countries are analyzed in relation to the improvements made in their Follow-Up Reports to the Mutual Evaluation Reports. These reports are the result of peer reviews of each member's AML/CFT performance conducted by the FATF on an ongoing basis to assess the levels of implementation of the FATF Recommendations.[934] These FATF peer review (mutual evaluation) reports give an in-depth description and analysis of each country's system for preventing criminal abuse of the financial system, and such reports can be seen as available information that can influence the international community's perception

[932] The specific type of corruption related IFFs is illicit flow of embezzled funds and transnational bribery.
[933] FATF 'Topic: Mutual Evaluations' (n 690).
[934] ibid.

about AML regulations in these jurisdictions.[935] Therefore, these FATF peer review reports are soft law instruments that attract reputational accountability to countries when they fail to make progress in establishing the framework, including the regulations that implement the recommendations contained in the FATF Recommendations of 2012. It is also observed that non-binding rules are causing legal consequences because they shape States' expectations as to what constitutes compliant behavior.[936]

In this study, the FATF is recognized, based on Guzman's Rational Choice theory, to be a soft law instrument that is useful for facilitating the fulfillment of the UN member States anti-IFF and development agenda. Therefore, the objective here is to investigate the effectiveness of the FATF as mechanisms that is relevant to legal accountability for the RTD through the use of reputational sanctions.[937] This section looks at the effectiveness of the FATF as an instrument that influences State behavior.

7.2 Analyzing Compliance Behavior Towards Corruption Related IFF Recommendations by FATF

The data used here are the data on countries' level of compliance with the FATF Recommendations 2012.[938] A total of 46 countries' compliance during the Mutual Evaluation process is used to compare their compliance during the Follow-Up evaluation process in order to make determinations about countries that are not in dire need of anti-IFF assistance. The thinking here is based on the generally acknowledged fact that corruption and illicit financial flows need to be addressed by developing and developed countries alike, and unilateral efforts alone will not succeed.[939] This means that all countries need to work hand in hand to overcome the scourge of corruption and IFFs wherever they occur. However, the challenge is that in developing countries and countries with economies in transition, the problem of theft by public officials is particularly worrisome. In addition to this problem of

[935] ibid.
[936] Andrew T. Guzman and Timothy L. Meyer, 'International Soft law' (2010) 2 (1) Journal of Legal Analysis 175 <https://academic.oup.com/jla/article/2/1/171/846831> accessed 17 May 2021.
[937] Note: in addition to the reputational sanction that back soft law instrument, hard law also triggers reputational sanctions. It is observed that compliance with hard law may provide for its own reputational rewards. See Alasdair Ross, 'Reputation: Risk of Risks' (The Economist Intelligence Unit, December 2005) 11<https://databreachinsurancequote.com/wp-content/uploads/2014/10/Reputation-Risks.pdf> accessed 28 May 2021; see also Jackson (n 600) 89.
[938] FATF 'Topic: Mutual Evaluations' (n 690).
[939] Erik Solheim, *Development Co-operation Report 2014: Mobilising Resources For Sustainable Development* (OECD 2014) <https://www.oecd-ilibrary.org/development/development-co-operation-report-2014/fighting-corruption-and-illicit-financial-flows_dcr-2014-17-en;jsessionid=7_AOC1O0yRY6aqfE2hRniBYc.ip-10-240-5-27> accessed 1 September 2020.

massive embezzlement by public officials is the realization that private wealth from developing countries and countries with economies in transition are being stored in offshore accounts and in developed countries.[940] For instance, it is observed that while the global country average for private wealth held in tax havens is 8 per cent, 20 to 30 per cent of private wealth in many African countries is held in tax havens around the world.[941] In the case of Nigeria, to be specific, properties owned by prominent public official such as Bukola Saraki, Diezani Alison-Madueke, Abdulsalami Abubakar, and other prominent Nigerians have been featured on journalistic works such as 'Kleptocracy Tours of London'.[942] Furthermore, some of these prominent political figures have been accused by the media of discreetly investing ill-gotten wealth in foreign jurisdictions as a result of leaked documents such as the Panama Papers.[943] These accusations abound despite the provisions of Sections 3 and 11 of the Fifth Schedule to the Nigerian Constitution, 1999 (as amended) which prohibits them, personal or through proxies, from owning foreign bank accounts and acquiring wealth beyond their legitimate earnings, among other things.[944] The cases of Sani Abacha, Diepreye Alamieyeseigha, Joshua Dariye and James Ibori, all of whom have been proven to have siphoned public funds to bank accounts in developed countries (e.g. the USA, UK and Switzerland), are observed to be an indication that these constitutional provisions are violated and the whole anti-corruption regime in Nigeria is in need of urgent systemic reform.[945] These incidences, or at the very least, the perception that there is ongoing illicit transfer of stolen public funds to other countries have led Nigeria to regard anti-IFFs as a strategy to tackle poverty and accelerate growth among the developing nations.[946] Nigeria does not stand

[940] UNCTAD, *Economic Development in Africa Report 2020: Tackling Illicit Financial Flows for Sustainable Development in Africa* (UN 2020) 22 <https://unctad.org/en/PublicationsLibrary/aldcafrica2020_en.pdf> accessed 1 September 2020; The findings of the EFCC, the National Intelligence Agency (NIA) and other security agencies in early 2004 indicated that a minimum of 25 governors, and many ministers and members of the National Assembly were discovered to be maintaining foreign accounts. See Tell Magazine 'Corrupt Governors: Why More May Go to Jail' *Tell Magazine* (Lagos, 17 October 2005) 27.

[941] UNCTAD (n 940).

[942] Anti-Corruption Digest, ''Kleptocracy Tour' In London Exposes Properties Purchased with Laundered Funds Owned by Saraki' (*ACD*, 6 October 2017) <https://anticorruptiondigest.com/2017/10/06/kleptocracy-tour-in-london-exposes-properties-purchased-with-laundered-funds-owned-by-saraki/#axzz6ZmztQnvD> accessed 1 September 2020.

[943] Conor Gaffey, 'Panama Papers: Nigeria's Senate President Bukola Saraki Under Pressure After Leak' *Newsweek* (4 July 2016) <https://www.newsweek.com/panama-papers-who-nigerias-senate-president-bukola-saraki-444934> accessed 1 September 2020.

[944] Section 3 and 11 in Part I of the Fifth Schedule to the Constitution of the Federal Republic of Nigeria (CFRN) 1999 are some examples of the relevant laws.

[945] Simeon Igbinedion, 'Workability of The Norms of Transparency and Accountability Against Corruption in Nigeria' (2014) 3(1) Afe Babalola University: Journal of Sustainable Development Law and Policy 163 <https://africaneditors.org/journal/JSDLP/abstract/58067-79699> accessed 27 May 2019.

[946] Anti-IFFs as a development strategy was identified by the Nigerian representatives at the Second High-Level United Nations Conference on South-South Cooperation held in Buenos Aires, Argentina between March 20 and 21, 2019. See, Ebuka Onyeji, 'Nigerian Govt Calls on International Cooperation to Tackle Illicit Financial

alone in the clamor for anti-IFF development cooperation as other developing countries, and countries with economies in transition have also asked, at UNRTD platforms for assistance, to identify and return assets of illicit origin derived from corruption.[947] Therefore, for the purpose of this work the developing countries, and countries with economies in transition will be considered as countries in need of development cooperation for anti-corruption and IFF as a means to promote and protect the RTD. These developing countries, and countries with economies in transition are referred to in this work as recipient countries. Furthermore, this Thesis describes developed countries as donors or countries that are not in dire need of assistance for development because, as is observed in the report by the High-Level Panel on IFFs from Africa, they have had relative success in tackling IFFs.[948] Moreover, it is observed by the High-Level Panel on IFFs from Africa that the large corporations are facilitating and involved in IFFs, and are also vulnerable to reputational risk and to pressure from governments of developed countries.[949] Therefore, development assistance through anti-corruption/IFF initiatives are a viable option for developed countries because they have shown interest and commitment to providing technical assistance and development aid for countries in need.[950] Such development initiatives will be appropriate because it is contradictory for developed countries to continue to provide technical assistance and development aid to a country while at the same time maintaining inadequate finance rules that enable the bleeding of its resources through IFFs. In other words, and in particular, it is observed that in 2008, 76.4 percent of the IFFs in oil from Nigeria benefited only developed countries such as the United States, Spain, France, Japan and Germany.[951] It is indicative of a lack of policy coherence for these developed nations to have provided any form of development assistance to Nigeria while fostering an environment that was collecting 76.4

Flow' *Premium Time*s (Abuja, 27 March 2019) <https://allafrica.com/stories/201903280037.html> accessed 1 September 2020

[947] This particular concern of developing countries and countries with economies in transition is noted in the draft resolution presented during agenda item 3 of the HRC fortieth session on the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. See, UNHRC (40th Session) 'Draft Resolution: The Negative Impact of the Non-Repatriation of Funds of Illicit Origin to the Countries of Origin on the Enjoyment of Human Rights, and the Importance of Improving International Cooperation' (25 February–22 March 2019) UN Doc A/HRC/40/L.9.

[948] It is observed that the strong legal frameworks and enforcement agencies in developed countries make it difficult for individuals and companies to move illicit resources, and as such is the reason for this relative success. See, High Level Panel on Illicit Financial Flows from Africa, 'Illicit Financial Flow: Report of the High-Level Panel on Illicit Financial Flows from Africa' (AU/ECA Conference of Ministers of Finance, Planning and Economic Development) 41 <https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf> accessed 27 May 2019.

[949] ibid 37.

[950] ibid 60.

[951] More generally, the main recipients of IFFs from African countries are developed countries (especially the United States, various European countries, Canada, Japan and the Republic of Korea) and emerging economies (such as China and India), which are also Africa's major trading partners. See, ibid 99.

percent of the country's IFFs. This Thesis regards developed countries as the countries' most likely to aid other countries, and as such, refers to them as donors or countries not in dire need for this kind of assistance because of the afore mentioned reasons. Accordingly, statistical analysis is conducted in this section. The explanation for the statistical analysis is contained in the section on statistical analysis in Chapter 5 (section 5.5.2). Furthermore, the score in the tables should be interpreted as follows:

C (Compliant) = 4
LC (Largely compliant) =3
PC (Partially compliant) =2
NC (Non-compliant) =1
N / A (Not applicable) =0

7.2.2 Recommendation 10: Customer Due Diligence

This recommendation comes under the Special Recommendation on customer due diligence (CDD) that applies to PEPs, among other classes of natural or legal persons.[952] Under this recommendation, countries are required to make regulations to ensure that financial institutions perform CDD measures which include identification, verification, and ongoing due diligence requirements.[953] These CDD requirements are designed to, among other things, help to determine if customers or beneficial owners are PEPs.[954] Consequently, this FATF Recommendation is an example of how the FATF Recommendations (2012) are designed to promote transparency about the involvement of PEPs in any financial transaction. Among other things, the Recommendation stipulates the minimum CDD requirement to be carried out by financial institutions, and the contingency upon which CDD is to be carried out.[955] One of the stipulations under this Recommendation is that countries are to consider geographical risk factors when assessing the levels of ML risk that a client comes with. This is important for the development of countries such as Nigeria because corruption-related ML

[952] FATF, 'FATF Guidance: Politically Exposed Persons (Recommendations 12 and 22)' (FATF/OECD 2013) 5 <https://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf> accessed 27 May 2019.
[953] ibid.
[954] ibid.
[955] FATF, 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations' (FATF/OECD 2019) 12-13 <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf > accessed 5 September 2020.

is one of the factors that should be considered when assessing geographical risk.[956] Therefore, there are extraterritorial development implications in such policies that target corruption and make it difficult for PEPs to take and invest or spend their proceeds of corruption in other countries. When countries implement the policy proliferated under this FATF Recommendation, such as the requirement that countries high level of corruption must be considered when determining the extent of CDD to be undertaken, they are contributing to anti-corruption measures in those countries.[957] For a country like Nigeria, which has been continuously linked to corruption, this Recommendation promotes increased international scrutiny of its PEPs, and therefore enhances the availability of information about the financial transactions of its public sector officials.[958] This is because FATF Recommendations (2012) also require financial institutions to report suspicious transactions if it suspects or has reasonable grounds to suspect that the related funds are the proceeds of a criminal activity.[959] Accordingly, because this Recommendation seeks to ensure that financial institutions are able to conserve and focus its resources on customers that are linked with jurisdictions with high exposure to corruption, it should be seen as a policy that encourages development in Nigeria. This conclusion is the basis on which this Thesis will consider countries' improvement in complying with the Recommendations.

7.2.2.1 Data Analysis for Recommendation 10

Analysis of the statistics reveal that:[960]

No changes in level of compliance score were recorded in 46.67% (7) of the 15 donor countries that were sampled.

6 or 40% of the 15 donor countries sampled were recorded to have made one step improvement to their compliance scores for Recommendation 10. These countries are Austria and Belgium which improved from LC to C; and Denmark, Hungary, Latvia and United States which improved from PC to LC.

Only Iceland, out of all the donor countries, made a two-step improvement which moved from PC to C.

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[956] FATF, 'Best Practices Paper: The Use Of The FATF Recommendations To Combat Corruption' (FATF/OECD 2013) 18 <https://www.fatf-gafi.org/media/fatf/documents/recommendations/BPP-Use-of-FATF-Recs-Corruption.pdf> accessed 27 May 2019.

[957] FATF (n 955) 12-13.

[958] For one analysis that shows how Nigeria has been linked to corruption see, Ebenezer Obadare, 'Nigeria's All Too Familiar Corruption Ranking Begs Broader Questions Around Normative Collapse' (*Council on Foreign Relations*, 24 February 2022) <https://www.cfr.org/blog/nigerias-all-too-familiar-corruption-ranking-begs-broader-questions-around-normative-collapse> accessed 29 April 2022.

[959] In recommendation 20, countries are asked to make suspicious transaction reports.

[960] See the table in appendix 1 for the data analyzed here.

A total of 5 (16.1%) out of the 31 recipient countries, in the sample, made one step improvement to their compliance scores for Recommendation 10. These countries are Botswana which improved from NC to PC; Fiji and Tunisia which improved from PC to LC; and Honduras and Trinidad and Tobago which improved from LC to C.

3 (9.68%) of the 31 recipient countries, in the sample, made two step improvements to their compliance scores for Recommendation 10. These countries are the Bahamas which moved up from PC to C; while Mauritius and Sri Lanka moved from NC to LC.

No changes in level of compliance score were recorded in 23 (74.2%) of the 31 recipient countries in the sample.

In general, improvements in countries' compliance scores were recorded for 15 (32.6%) out of the 46 countries' compliance that were sampled in this study.

Only Mauritania has remained NC after the MER evaluation period and the FUR evaluation period.

Countries that were scored as PC during the MER were more likely to make improvements in their compliance score during the FUR. This could indicate that countries who had a score of PC are better motivated to make improvements than countries with other scores.

Statistical Analysis of Data on Countries' Compliance with Recommendation 10

Wilcoxon Signed Ranks Test

		Ranks								
		General Data			Donor Countries			Recipient Countries		
		N	Mean Rank	Sum of Ranks	N	Mean Rank	Sum of Ranks	N	Mean Rank	Sum of Ranks
R.10 FUR1 - R.10 MER	Negative Ranks	0[a]	0	0	0[a]	0	0	0[a]	0	0
	Positive Ranks	15[b]	8	120	7[b]	4	28	8[b]	4.5	36
	Ties	31[c]			8[c]			23[c]		
	Total	46			15			31		
a. R.10 FUR < R.10 MER b. R.10 FUR > R.10 MER c. R.10 FUR = R.10 MER										

Test Statistics[a]			
R.10 FUR - R.10 MER	General Data	Donor Countries	Recipient Countries
Z	-3.578[b]	-2.530[b]	-2.598[b]
Asymp. Sig. (2-tailed)	0	0.011	0.009
a. Wilcoxon Signed Ranks Test b. Based on negative ranks.			

7.2.3 Recommendation 12: Politically Exposed Persons

Under this Recommendation, the FATF provides that additional CDD must be carried out on foreign PEPs. These PEPs are individuals who are or have been entrusted with prominent public functions by a foreign country. They include, for example, Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, and important political party officials.[961] Therefore the Recommendation, in the context of countries receiving money that is coming from Nigeria, is asking for CDD to be performed for this category of individuals. Furthermore, the Recommendation also expects countries to carry out reasonable measures to determine if a person is a domestic PEPs, or he is a person who is, or has been entrusted with a prominent function by an international organization.[962] However, for the purpose of the focus in this

[961] FATF (n 955) 14.
[962] ibid.

Thesis, the researcher is interested in the emphasis the Recommendation has put on identifying and ensuring that foreign PEPs are not able to move the proceeds of corruption out of the country of origin because of the extraterritorial development implication in the country, such as Nigeria. By the provision in the FATF Recommendations 2012 that the definition of PEPs is not intended to cover middle ranking or more junior individuals, it is clear that the Recommendations are particularly focused on high level PEPs, who are more likely to be the perpetrators of grand corruption.[963] Accordingly, it is clear that the FATF Recommendations 2012 are particularly relevant to the focus in this Thesis to the extent that its Recommendations are applicable to PEPs in Nigeria. Additionally, the FATF classification of PEPs to include persons who have been but are no longer entrusted with a prominent public function is consistent with Nigeria's classification of PEPs.[964] Under Section 25 of the Money Laundering (Prohibition) Act of 2011 (as amended) and Regulation 18 of the Central Bank of Nigeria (Anti-money Laundering and Combating the Financing of Terrorism in Banks and Other Financial Institutions in Nigeria) Regulations 2013, Nigerian PEPs are to remain as PEPs for life. The FATF Recommendations are, in this instance, consistent with the provisions of these Nigerian laws because the FATF does not advocate for PEPs to be decategorized. Accordingly, this Recommendation promotes lifelong scrutiny for Nigerian PEPs and consequently, it seeks to promote availability of information on the transaction of past and present public sector holders that are potentially available to the Nigerian government and citizens. Therefore, because the policy advocated for in Recommendation 12 can be used by counties to institute a regime that can help to prevent grand corruption in Nigeria by fighting it, this Thesis has considered countries' improvement in implementing the Recommendation below.[965]

7.2.3.1 Data Analysis for Recommendation 12

Analysis of the statistics reveal that:[966]

No changes in level of compliance score for Recommendation 12 was recorded in 60% (9) of the 15 donor countries that were sampled.

Secondly, 13.3% of the 15 donor countries sampled were recorded to have made one step improvement to their compliance scores for Recommendation 12. These countries are Andorra which moved from PC to LC, and Sweden which moved from LC to C.

[963] ibid 123; Theodore S. Greenberg and others, *Stolen Asset Recovery: Politically Exposed Persons A Policy Paper on Strengthening Preventive Measures* (IBRD/World Bank 2009) xiii.
[964] FATF (n 952) 12.
[965] Greenberg and others (n 963) 4.
[966] See the table in appendix 2 for the data analyzed here.

4 or 26.67% of the 15 donor countries sampled were recorded to have made two step improvements to their compliance scores for Recommendation 12. These countries are Austria, Belgium, Denmark and Iceland who all improved from PC to C.

Only two recipient countries of Uganda and Tunisia were recorded to have made one step improvement to their compliance scores for Recommendation 12 whereby, they improved from NC to PC, and PC to LC, respectively.

5 (16.1%) of the 31 recipient countries in the sample made two step improvements to their compliance scores for Recommendation 12. These countries are Bahamas and Mauritius which improved from PC to C; and Botswana, Kyrgyzstan and Sri Lanka which improved from NC to LC.

No improvements in compliance score were recorded for 24 (77.42%) of the 31 recipient countries in the sample.

In general, improvements in countries' compliance scores were recorded for 13 (28.26%) out of the 46 countries' compliance that were sampled here.

All the countries that were scored as NC during MER were recorded to have made improvements before the FUR.

Statistical Analysis of Data on Countries Compliance with Recommendation 12

Wilcoxon Signed Ranks Test

		Ranks								
		General Data			Donor Countries			Recipient Countries		
		N	Mean Rank	Sum of Ranks	N	Mean Rank	Sum of Ranks	N	Mean Rank	Sum of Ranks
R.12 FUR - R.12 MER	Negative Ranks	0[a]	0	0	0[a]	0	0	0[a]	0	0
	Positive Ranks	13[b]	7	91	6[b]	3.5	21	7[b]	4	28
	Ties	33[c]			9[c]			24[c]		
	Total	46			15			31		

a. R.12 FUR < R.12 MER
b. R.12 FUR > R.12 MER
c. R.12 FUR = R.12 MER

Test Statistics[a]			
R.12 FUR - R.12 MER	General Data	Donor Countries	Recipient Countries
Z	-3.314[b]	-2.271[b]	-2.460[b]
Asymp. Sig. (2-tailed)	0.001	0.023	0.014

a. Wilcoxon Signed Ranks Test

b. Based on negative ranks.

7.2.4 Recommendation 13: Correspondent Banking

This Special Recommendation provides for additional measures for cross-border corresponding banking which is the provision of banking services by one bank (the correspondent bank which is usually a large international bank) to another bank (the respondent bank which is usually a local or smaller bank).[967] According to the FATF Guidance for Correspondent Banking Services, correspondent banking does not include one-off transactions or the mere use of secure financial messaging services such as the exchanging of SWIFT Relationship Management Application keys (RMA).[968] In other words,

[967] See, FATF (n 955) 119; see also, FATF (n 928) 7.

[968] The SWIFT RMA is a messaging capability enabling SWIFT members to exchange messages over the network and can create a non-customer relationship in particular cases of cash management, custody, trade finance, exchange of messages with payments and securities markets infrastructure entities, e.g., exchanges depositories. See, FATF (n 928) 7.; SWIFT is a global member-owned cooperative and a leading provider of secure financial messaging services. See, SWIFT, 'RMA and RMA Plus: Managing Correspondent Connections

corresponding banking is not characterized by non-customer relationships, but rather it is characterized by its on-going and repetitive nature.[969] Furthermore, correspondent institutions generally do not have direct business relationships with the customers of the respondent institution, unless it provides account services such as pass-by accounts, which are accounts that allow third parties to transact business on their own behalf .[970] The added risk associated with correspondent banking is usually because of those transactions that the correspondent institution is processing or executing for its customer's (respondent institution) customers.[971] Naturally, there is a risk for potential money laundering (ML) because the correspondent bank does not usually have direct relationship with the customers of the respondent institution, and as such may have been excused for not knowing that they were moving assets belonging to suspicious persons or institutions. This is why Recommendation 13 requires additional measures to be applied to cross-border correspondent banking relationships in addition to performing the customer due diligence (CDD) and enhanced due diligence (EDD) measures in FATF Recommendation 10 for high risk customers.[972] The FATF expects that the extent to which additional measures should be applied will vary on a case-by-case basis, depending on the level or type of residual risk, including the AML/CFT measures the respondent institution has implemented to mitigate its own ML/TF risks.[973] Take for instance, how financial institutions are, in relation to cross-border correspondent banking and other similar relationships, required to be satisfied that the respondent bank has conducted CDD on the customers that have direct access to accounts of the correspondent bank.[974] Correspondingly, respondent banks must, on demand, have CDD information on its customers that have access to accounts such as the payable-through accounts, which are accounts that allow respondent banks to permit its customers to use, either directly or through a subaccount, an account it has opened in the correspondent bank.[975] However, the FATF acknowledges that to define what constitutes a higher risk relationship could have the unintended consequence of encouraging rather than discouraging de-risking by promoting a more rules-based and tick-the-box approach to risk management. Therefore, the examples of factors to consider in assessing correspondent banking risks could include, for instance, the

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Financial Crime Compliance' SWIFT, 10 July 2018) <https://www.swift.com/insights/news/rma-and-rma-plus_managing-correspondent-connections> accessed 15 September 2020.

[969] See, FATF (n 928) 7-8.

[970] Payable-through-account services (or pass-by accounts) are correspondent accounts that are used directly by third parties to transact business on their own behalf. See, ibid 8, 12.

[971] ibid 7-8.

[972] ibid.

[973] ibid.

[974] FATF (n 955) 14.

[975] ibid; see also, Legal Information Institute, '31 CFR § 561.307 - Payable-through account' (Cornell University) <https://www.law.cornell.edu/cfr/text/31/561.307> accessed 8 October 2020.

respondent institution's jurisdiction, the products/services it offers, and its customer base. Furthermore, and relevant to this Thesis is the fact that whether the respondent bank represents PEPs is one of the risk indicators that the FATF and Basel Committee on Banking Supervision (BCBS) expect correspondent banks to consider in their risk assessment approach.[976] Accordingly, it is clear that through Recommendation 13 the FATF has proliferated a global policy under which countries are expected to ensure that it is difficult for Nigerian PEPs to hide behind respondent institutions to send and hide the proceeds of grand corruption.

It is important to note that Recommendation 13 also applies to similar relationships such as those established for securities transactions, or funds transfers for either the cross-border financial institution as principal or for its customers.[977] These funds transfers are performed by money or value transfer service (MVTS) providers who render services similar to correspondence banking to customers that want to move the proceeds of corruption across national borders.[978] The term MVTS refers to financial services that involve the acceptance of cash, other monetary instruments, or other means of stored value and the payment of a corresponding sum in cash or other form to a beneficiary by means of a communication, message or transfer.[979] The payment of a corresponding sum in MVTS, which is also referred to as hawala, hundi, and fei-chen in different geographic regions, can also be done through a clearing network to which the MVTS provider belongs.[980] The correspondent relationship is established when MVTS providers act as intermediaries for other MVTS providers, or where an MVTS provider is accessing banking or similar services through the account of another MVTS customer of the bank.[981] Therefore, the FATF policy that is relevant to RTD in the context of this Thesis is the policy on risk assessment by MVTS which are required to apply greater scrutiny to the following categories of customers:[982]

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[976] The FATF has observed that the risk factors included in the Annex II of the BCBS Guidelines on Sound management of risks related to money laundering and financing of terrorism are examples of factors which correspondent institutions can use when assessing the risks of their correspondent banking relationships. See, FATF (n 928) 10.; Basel Committee on Banking Supervision, '*Guidelines: Sound management of risks related to money laundering and financing of terrorism*' (Bank for International Settlements 2020) 25-26 <https://www.bis.org/bcbs/publ/d505.pdf> accessed 1 October 2020.
[977] FATF (n 955) 119.
[978] FATF (n 928) 6.; See also, FATF, 'Guidance for A Risk-Based Approach: Money or Value Transfer Services' (FATF/OECD 2016) 13, 22 <https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-RBA-money-value-transfer-services.pdf> accessed 27 May 2019.
[979] FATF (n 955) 122.
[980] ibid 122.
[981] FATF (n 928) 9.
[982] FATF, 'Guidance for a Risk-Based Approach for the Securities Sector' (FATF/OECD 2018) 22 <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/RBA-Securities-Sector.pdf> accessed 7 June 2019.

- Customer whose transaction patterns appear consistent with generation of criminal proceeds of corruption based on information available to the MVTS provider.
- Politically Exposed Person or his/her family members or close associates, and where beneficial owner of a customer is a PEP as covered under Recommendation 12.

Furthermore, in identifying and assessing indicators of ML/TF risk to which they are exposed, MVTS providers are required by the FATF to consider a range of factors which may include whether the jurisdiction, it operates or is exposed to, is more vulnerable due to the prevalence of corruption.[983]

FATF Recommendation 13 is also applicable to the securities sector. A cross-border correspondent relationship in the securities sector is a relationship that occurs between the securities provider (the correspondent) with an intermediary (the respondent), which is regulated and supervised by a supervisory authority for securities transactions.[984] The securities sector correspondent could, for example, be a global securities firm such as Goldman Sachs Group Inc., while the intermediary or respondent could be a financial institution or stock broker in Nigeria that is conducting transactions for or on behalf of a Nigerian PEP or other types of customer.[985] An example of these securities transactions are trading in transferable securities which include equities and bonds or similar debt instruments.[986] Another example is commodity futures trading, which is the purchase of futures contract (asset) for commercial or institutional use; or for short periods of time in the hope of profiting from changes in the asset's price.[987] Therefore, when there is a relationship between the correspondent and respondent acting on behalf of a Nigeria PEP, for instance, the customer of the respondent is not considered as a customer of the correspondent.[988] If the respondent in this instance is regulated and supervised by a supervisory authority, for securities transactions, then the FATF Recommendations do not require the correspondent securities providers to conduct CDD on the customers of the respondent institution.[989] It does appear that the FATF does not require the correspondent institution to perform CDD here because the regulated and supervised respondent is reasonably expected to have performed CDD on its customers. This approach eliminates the additional cost that would accrue on

[983] ibid 18-19, 20.
[984] ibid 31.
[985] See, FATF (n 955) 119.; Investors buy and sell securities themselves or indirectly through an intermediary, such as a broker or another financial institution. See, ibid 8, 11, 31.
[986] Transferable securities, include equities and bonds or similar debt instruments. See, FATF (n 955) 119.
[987] Paul H. Cootner, 'Speculation, Hedging, And Arbitrage' (*Encyclopedia.com*, 4 October 2020) <https://www.encyclopedia.com/social-sciences/applied-and-social-sciences-magazines/speculation-hedging-and-arbitrage>accessed 8 October 2020.
[988] FATF (n 982) 31.
[989] ibid.

correspondent institutions if they were to perform CDD for the customers of all respondent institutions they transact business with. This approach, therefore, is evidence of how the FATF has reduced cost of compliance. However, this is not to say that the FATF Recommendations are perfect in this regard. There is a real risk that the regulated and supervised respondent institution could falter in performing its CDD obligations and the correspondent institution can therefore absolve itself of the responsibility to perform CDD for relevant transactions. In Nigeria, to be specific, the risk of respondent institution faltering in ensuring that they are not being used to launder proceeds of corruption out of the country is, or at least perceived to be a persistent problem that is yet to be addressed.[990] One must acknowledge that if Recommendation 12 on domestic PEPs were followed in all cases, then all the Nigerian financial institutions that have played a role in assisting with the IFF of proceeds of corruption would have made the relevant suspicious transaction report (STR).[991] These STRs would have been made to the NFIU, in accordance with Recommendation 20 on reporting of suspicious transactions.[992] The NFIU would then receive, analyze and produce intelligence that would be dissemination to competent authorities such as the Nigerian Police, and Economic and Financial Crimes Commission (EFCC) who are empowered to take appropriate steps to recover the loot and prosecute the PEP.[993] However, the financial institutions that have been used to launder the proceeds of corruption to foreign jurisdictions are observed to have been inadequately scrutinized by the Nigerian government.[994] By not amplifying the scrutiny of gatekeeper financial institution, Nigeria misses the opportunity to bring public consciousness to the question of whether the loophole was in the failure to file sufficient STR or with the security outfits that had failed to act on the report. Rather, stakeholders are left to conclude that the incident of corruption related IFFs is a testament to the ineffectiveness of AML measures in the country. However, the question that must be answered is whether the AML measures themselves are ineffective or the human factor, the role played by individuals in implementing the measures are the reasons for ineffective measures? This question has earlier been considered in Chapter 6 of this Thesis. The objective in this chapter is to look at the FATF as an accountability framework for the development related policies contained in them. Accordingly, FATF Recommendation 13 is

[990] Mohammed O. Amali, 'Curbing Money Laundering: Global Reception and Implementation of International Anti Money Laundering Standards- A Case Study On Nigeria' (PhD thesis, University of Huddersfield 2016) 17 <http://eprints.hud.ac.uk/id/eprint/31396/1/__nas01_librhome_librsh3_Desktop_FINAL%20THESIS.pdf> accessed 8 October 2020.
[991] FATF (n 955) 58.
[992] ibid 82.
[993] 'About Us' (*NFIU*) <https://www.nfiu.gov.ng/Home/About> accessed 8 October 2020.; They are empowered under section 6 the EFCC (Establishment) Act (2004).
[994] Ibrahim Yeku, 'Politically exposed persons: Issues and matters arising' *The Guardian* (11 May 2016) <https://guardian.ng/opinion/politically-exposed-persons-issues-and-matters-arising/> accessed 8 October 2020.

analyzed herein because it shows how the FATF has promoted the implementation of mechanisms that are designed to ensure that the institutions engaged in cross-border transactions are not used to conceal the ownership of PEPs' funds. Through Recommendation 13 the FATF has also helped to make it difficult for PEPs to hide any cross-border movement of embezzled funds by asking countries to implement mechanisms that limit the concealment of the origin of the proceeds of crime. Consequently, because Recommendation 13 is helping to ensure that cross-border transactions by Nigerian PEPs are not illicit, it is another example of how the FATF is promoting transparency in Nigeria. This section considers the extent to which the FATF has improved countries' compliance with these important development policies that have been considered herein. The data obtained from the FATF website is interpreted and analyzed in order to test the hypothesis that the FATF Mutual Evaluation Process does not significantly improve countries' implementation of this IFF related Recommendation.

7.2.4.1 Data Analysis for Recommendation 13

Analysis of the statistics reveal that[995] there has been no changes in level of compliance score for Recommendation 13 in any of the 15 donor countries that were sampled.

At one end of the spectrum of donor countries' compliance scores for Recommendation 13 is Australia as the only country that was scored as NC, while on the other end is Spain as the only country that was scored as C. Other countries, 46.67% (7) of them were scored as PC while 40% (6) of them were scored as LC.

Only 2 of the recipient countries of Botswana and Mauritania made a one-step improvement in their compliance's evaluation score for Recommendation 13 by moving from NC to PC, and PC to LC, respectively.

Sri Lanka was the only country that made a two-step improvement from NC to LC in the country's compliance evaluation for Recommendation 13.

Mauritius was the only country that made a three-step improvement from NC to C in the country's compliance evaluation for Recommendation 13.

However, 90.3% (28) of the 31 recipient countries had no improvements in their compliance scores for Recommendation 13.

In general, improvements in countries' compliance scores for Recommendation 13 were recorded for 4 (8.69%) out of the 46 countries that were sampled here.

[995] See the table in appendix 3 for the data analyzed here.

Only Australia is recorded as NC after the MER evaluation period and the FUR evaluation period. Countries that were scored as NC during the MER were more likely to make improvements in their compliance score during the FUR.

Statistical Analysis of Data on Countries Compliance with Recommendation 13

Wilcoxon Signed Ranks Test

		Ranks								
		General Data			Donor Countries			Recipient Countries		
		N	Mean Rank	Sum of Ranks	N	Mean Rank	Sum of Ranks	N	Mean Rank	Sum of Ranks
R.13 FUR - R.13 MER	Negative Ranks	0[a]	0	0	0[a]	0	0	0[a]	0	0
	Positive Ranks	4[b]	2.5	10	0[b]	0	0	4[b]	2.5	10
	Ties	42[c]			0[c]			27[c]		
	Total	46			15			31		

a. R.13 FUR < R.13 MER
b. R.13 FUR > R.13 MER
c. R.13 FUR = R.13 MER

Test Statistics[a]			
R.13 FUR - R.13 MER	General Data	Donor Countries	Recipient Countries
Z	-1.841[b]	0.000[b]	-1.841[b]
Asymp. Sig. (2-tailed)	0.066	1	0.066
a. Wilcoxon Signed Ranks Test b. Based on negative ranks.			

7.2.5 Recommendation 22: DNFBPs Customer Due Diligence

Here, countries are to apply the FATF Recommendations on CDD (R10) and PEPs (R12) to designated non-financial businesses and professions (DNFBPs). These businesses include real estate, dealers in precious materials, casinos, among others. The professionals in this category include lawyers, notaries, other independent legal professionals and accountants. DNFBPs also include Trust and Company Service Providers (CSP) which are any natural or legal persons or businesses that are not covered anywhere in the FATF Recommendations 2012, and which as a business offer services such as providing a registered office that acts on behalf of clients.[996] Accordingly, DNFBPs are a known avenue through which proceeds of grand corruption are moved out of Nigeria. The case of the former Governor of Delta State in Nigeria in the person of James Ibori is an example of the role DNFBPs play in the illicit cross-border movement of proceeds of grand corruption out of Nigeria. The Panama Papers revealed that Ibori had established, among other things, a foundation named Julex Foundation, and a trust called the Hopes Trust under which he enlisted himself, his wife and daughters as their beneficiaries.[997] Mr. Ibori has since admitted to using his position as governor to corruptly obtain and divert up to $75 million out of Nigeria. However, this figure is disputed by authorities who believe the diverted loot may have exceeded $250 million.[998] Such figure, whether the $250 million alleged or the $75 million he admitted to have moved out of Nigeria, could have been reinvested or spent in businesses in Nigerian, thereby redistributing wealth to local businesses. Therefore, it is not out of place to conclude that if

[996] For a more detailed explanation see, FATF, 'Guidance for A Risk-Based Approach: Trust and Company Service Providers' (FATF-GAFI 2019) 7-8 <https://www.fatf-gafi.org/media/fatf/documents/reports/RBA-Trust-Company-Service-Providers.pdf > accessed 8 October 2020.
[997] Samuel Ogundipe, '#PanamaPapers Uncovers how Ibori the Thief Organised Massive Stealing of Delta' *Premium Times* (4 April 2016) <https://www.premiumtimesng.com/news/headlines/201265-panamapapers-uncovers-how-ibori-the-thief-organised-massive-stealing-of-delta-funds.html > accessed on 22 February 2018.
[998] ICIJ, 'Former Governor of Nigeria's Delta State: James Ibori (*Offshore Leaks Database by The International Consortium of Investigative Journalists*) <https://offshoreleaks.icij.org/stories/james-ibori> accessed 9 October 2020.

all countries are fully compliant with Recommendation 22, then substantial progress would have been made in combating grand corruption related IFFs from Nigeria. Accordingly, this section considered countries' compliance with FATF Recommendation 22 because in it the FATF has proliferated policies that are designed to ensure that DNFBPs are not used to carryout grand corruption related IFFs. Moreover, FATF Recommendation 22 is important to transparency in Nigeria because it promotes the implementation of mechanisms that impede on the ability of Nigerian PEPs to use any country's DNFBPs to conceal the origin of their cross-border or other financial flows.

7.2.5.1 Data Analysis for Recommendation 22

Analysis of the statistics reveal that[999] 60% (9) of the 15 donor countries sampled are not recorded to have made improvements in their compliance score for FATF Recommendation 22.

It was 33.3% (5) of the 15 donor countries sampled that were recorded to have made one step improvement to their compliance scores for FATF Recommendation 22. These countries are Andorra, Austria, Denmark, Hungary and Latvia, all of whom improved from PC to LC.

Iceland was the only donor country sampled that is recorded to have made a two-step improvement from PC to C in their compliance scores for Recommendation 22.

It was 80.65% (25) of the 31 recipient countries sampled that are not recorded to have made any improvements in their compliance score for FATF Recommendation 22.

Also 12.9% (4) of the 31 recipient countries in the sample made one step improvement to their compliance scores for FATF Recommendation 22. These countries are Fiji, Nicaragua, which improved from NC to PC; Kyrgyzstan improved from PC to LC; and Trinidad and Tobago improved from LC to C.

Two of the 31 recipient countries in the sample, Mauritius and Mongolia are recorded to have had a two-step improvement from PC to C to their compliance scores for Recommendation 22.

In general, improvements in countries' compliance scores for FATF Recommendation 22 were recorded for 12 (26.1%) out of the 46 that were sampled here.

Five countries, Australia, United States, Botswana, Sri Lanka and Thailand have remained NC after the MER evaluation period and the FUR evaluation period.

Countries that were scored as PC during the MER were more likely to make improvements in their compliance score during the FUR.

[999] See the table in appendix 4 for the data analyzed here.

Statistical Analysis of Data on Countries' Compliance with Recommendation 22

Wilcoxon Signed Ranks Test

		Ranks								
		General Data			Donor Countries			Recipient Countries		
		N	Mean Rank	Sum of Ranks	N	Mean Rank	Sum of Ranks	N	Mean Rank	Sum of Ranks
R. 22 FUR - R. 22 MER	Negative Ranks	0[a]	0	0	0[a]	0	0	0[a]	0	0
	Positive Ranks	12[b]	6.5	78	6[b]	3.5	21	6[b]	3.5	21
	Ties	34[c]			9[c]			25[c]		
	Total	46			15			31		
a. R. 22 FUR < R. 22 MER b. R. 22 FUR > R. 22 MER c. R. 22 FUR = R. 22 MER										

Test Statistics[a]			
R.22 FUR - R.22 MER	General Data	Donor Countries	Recipient Countries
Z	-3.217[b]	-2.333[b]	-2.271[b]
Asymp. Sig. (2-tailed)	0.001	0.02	0.023
a. Wilcoxon Signed Ranks Test b. Based on negative ranks.			

7.3 Interpretation of Data

In order to validate the aim of this study, the following hypothesis is subjected to test.

*Ho (hypothesis): That there is significant improvement or difference in countries' compliance scores after the Mutual Evaluation process.

Wilcoxon Signed Ranks Test

Using SPSS to run the Wilcoxon Signed Ranks Test produced basic descriptive statistics for the pair of variables.

From the table on the statistical analysis of countries' compliance level for FUR and MUR, the column labeled Sig (2-Tailed) tells the researcher that if the differences in both points are statistically different then the following can be deduced from the Wilcoxon Signed Ranks

Test conducted on the FATF data on countries' compliance. The test statistic (sum of the positive ranks) is represented as T, standardized test score (z score) is represented as z, and Sig (2-Tailedp value) is represented as p.

- In the table on countries' compliance for Recommendation 10, the Sig (2-Tailed) for the donor and recipient countries in our sample are 0.011 and 0.009 respectively, when considered separately. However, the value of the Sig (2-Tailed) is 0 when donor and recipient countries, in the sample, are considered together. Accordingly, all results for the Wilcoxon Signed Ranks Test indicate that the difference between countries' scores in the FUR and the MUR in FATF Recommendation 10 is statistically significant because $p < .05$.
- In the table on countries' compliance for FATF Recommendation 12, the Sig (2-Tailed) for the donor and recipient countries in our sample are 0.023 and 0.014, respectively. The value of the Sig (2-Tailed) is 0.001 when donor and recipient countries, in the sample, are considered together. Accordingly, all results for the Wilcoxon Signed Ranks Test indicate that the difference between countries' scores in the FUR and the MUR in Recommendation 12 is statistically significant because $p < .05$.
- In the table on countries' compliance for FATF Recommendation 13, the Sig (2-Tailed) for the donor and recipient countries in our sample are 1 and 0.066, respectively. Furthermore, the value of the Sig (2-Tailed) is 0.066 when donor and recipient countries, in the sample, are considered together. Therefore, no significant difference between countries' scores in the FUR and the MUR for Recommendation 12 was found in the results for donors ($T=0$, $Z = .000$, $p > .05$), recipient ($T=10$, $Z = 1.841$, $p > .05$) and generally ($T=10$, $Z = 1.841$, $p > .05$).
- In the table on countries' compliance for FATF Recommendation 22, the Sig (2-Tailed) for the donor and recipient countries in our sample are 0.02 and 0.023, respectively. However, the value of the Sig (2-Tailed) is 0.001 when donor and recipient countries, in the sample, are considered together. Accordingly, all results for the Wilcoxon Signed Ranks Test indicate that the difference between countries' scores in the FUR and the MUR in Recommendation 22 are statistically significant because $p < .05$.

The results of the Wilcoxon signed ranks test shows that countries' compliance for the FATF Recommendations 10, 12 and 22 have improved after the Mutual Evaluation process. The result for Recommendation 13 shows no significant improvement in countries' compliance

after the Mutual Evaluation process. These results imply that, as a collective, the extent of improvements to compliance by countries in the MUR and FUR have been statistically significant because most countries want to avoid reputational damage which could come from negative assessment by the FATF. The results also imply that most countries are improving their compliance with corruption related IFF Recommendations of the FATF because the Mutual Evaluation process is highlighting their deficiencies and they want to have better AML regimes which will protect their financial system from ML. However, the findings for Recommendation 13 are an indication that there are situations where there has been little and insignificant improvement in countries' compliance level. These findings are in line with Blazejewski view that the FATF framework is representative of an international institution which is designed to create an effective international AML/CFT regime by being flexible and capable of facilitating effective regulation.[1000] However, Blazejewski further observes that the FATF has not achieved universal compliance because this objective will require assistance from other international institution.[1001]

7.3.1 Observations on the Findings

This section has explained the anti-corruption related IFF and transparency implications of some Key provisions of the FATF Recommendations (2012). Accordingly, the analysis in this section supports the FATF's claims that its Recommendations improve transparency and enable countries to successfully act against illicit use of their financial system.[1002] By analyzing certain Recommendations of the FATF that are related to anti-IFFs of embezzled funds, this chapter has looked at how the FATF is promoting RTD by asking countries to implement AML mechanisms which encourage transparency in the private dealings of PEPs. The finding in this chapter and in Chapter 4 are largely supportive of the Guzman's theory of compliance assertion that countries will implement international law because of the potential impact of having a bad reputation for not complying with the obligation in soft law instruments.[1003] This is because, as Chapter 4 has shown, owing to the activities of regulators and international institutions, a negative assessment by the FATF will create a bad reputation which then has the potential to affect the international financing capabilities of an assessed

[1000] Kenneth S. Blazejewski, 'The FATF And Its Institutional Partners: Improving the Effectiveness and Accountability of Transgovernmental Networks' (2008) 22(1) Temple International and Comparative Law Journal 1-3 <https://sites.temple.edu/ticlj/2008/04/22/volume-22-number-1-spring-2008/> accessed 27 May 2019.
[1001] ibid.
[1002] FATF (n 267).
[1003] Guzman (n 15) 35.

country and its domestic institutions. Therefore, the findings of the test have largely supported Guzman's theory about reputation and compliance because the countries evaluated have collectively had statistically significant improvements in their compliance with most of the FATF Recommendations considered herein. The statistical test conducted in this chapter has revealed that the improvements recorded between the MER and the FUR are statistically significant in all the Recommendations considered, except for Recommendation 13. The results for Recommendation 13 have shown that no donor country made any improvements and only 4 recipient countries made improvements in their compliance levels after the Mutual Evaluation process. The result for Recommendation 13 is also significant because 8 out of 15 of the countries sampled had the low scores of PC or NC. Accordingly, although there were better country improvements in the other Recommendations considered, the low level of improvements in Recommendation 13 is a cause for concern. The findings in this chapter suggests that the degree of effectiveness of the ME process, as an instrument for achieving compliance, is related to the nature of the requirements contained in a particular Recommendation. Countries may have found it easier to make improvements with certain Recommendations than they did with others. Therefore, the findings suggest that there is a need to enhance the incentive for compliance with Recommendation 13 because countries are not placed on the NCCTs List if they are non-compliant with one or two of the Recommendations by the FATF. It is in the next subsection that we provide the conclusions that are made from the analysis in this chapter.

7.4 Conclusion

This chapter was designed to consider the extent to which there have been improvements in countries' implementation of the relevant FATF-IFF related policies. The theoretical preposition of Guzman's Rational Choice theory is that institutions, such as the FATF, are the soft law instruments that promote compliance in the international community. Therefore, this chapter has examined the FATF's effectiveness as a soft law instrument that is relevant for facilitating the fulfillment of the UN member States' anti-IFF and development agenda. Concurrently, this chapter has shown that the FATF's work promotes the Nigerian citizens' freedom to deal with one another under guarantees of disclosures, which is a concept that is viewed as a part of development in Sen's theory of capabilities. This is because this section has shown that the FATF has promoted the implementation of mechanisms that make it difficult for Nigerian PEPs to conceal their attempts to move funds abroad. The findings in this chapter have also allowed for the assessment of the FATF and Guzman's theory to be

holistic because it is based on an analysis of the collective and individual compliance reality of the FATF assessed countries. In other words, the data on individual cases of non-compliance in the MUR and FUR are not the only element that should be used to assess the FATF and the validity of Guzman's theory because the collective performance of countries has provided some valuable insight. For further clarification, it is possible to conclude that Guzman's theory is not sufficient for analyzing the impact of the FATF because there are some countries that did not improve their non-compliance with some Recommendations of the FATF after undergoing the ME process. For instance, Australia, US, Sri Lanka, and Thailand did not improve their non-compliance score for Recommendation 22 after being subjected to the FATF ME process. However, the non-compliance of some countries is only one element that should be used to analyze the impact of the FATF and the validity of Guzman's theory because other countries have improved their compliance with Recommendation 22 after being subjected to the FATF ME process. Moreover, Guzman's theory is useful for analyzing the impact of the FATF because the countries that have not been compliant with Recommendation 22 have complied with some of the other Recommendations which have been considered in this chapter. Therefore, the chapter has contributed to the analysis of the FATF by showing the instances where the cumulative compliance improvements of the FATF assessed countries have not been statistically significant.

In this chapter, the analysis of some corruption and anti-IFF related Recommendations of the FATF has shown that there have been instances where the FATF assessed countries have improved their compliance in the period after the MER. The results also show that there is no difference in the cumulative compliance improvements for the recipient and donor countries. Therefore, the results do not imply that the FATF has had more influence on donor or the recipient countries. The analyzed data shows that some recipient countries, such as Samoa, which had relatively low scores in the MER did not make improvements in their compliance scores. Furthermore, Ghana, which is a recipient country that had relatively high scores in the MER made no improvements in their compliance levels for the anti-corruption/IFF Recommendations considered in this chapter. On the other hand, some donor countries, such as Switzerland, also made no improvements in their compliance levels for the anti-corruption/IFF Recommendations of the FATF which are considered in this chapter. Accordingly, the FATF's accountability ME process has not influenced all countries to improve on their compliance with the anti-corruption/IFF Recommendations that have been considered in this chapter.

The statistical test and desk-based analysis on data in the MUR and FUR have revealed that there are instances where countries' compliance with Recommendations of the FATF have not improved in the period between two ME processes. One of the findings in this chapter is that the tendency for countries to improve on their compliance with Recommendations by the FATF may be influenced by the nature of the requirement themselves. Therefore, the FATF's ability to influence compliance has been limited in some instances. So, the next chapter relies on interview data from AML experts in Nigeria to further evaluate its value to RTD in the country. The next chapter looks at whether the impact of the FATF has been substantial enough and an indication that it has enhanced the RTD of Nigerians.

Chapter Eight: The Promotion of RTD in Nigeria: A Look at the Impact and Value of the FATF

8.1 Introduction

In the previous chapter 7, the FATF analysis carried out looked at the level of improvements that were recorded after the FAFT accountability framework was administered on countries. The referenced analysis was conducted on the assumption that the changes in levels of compliance recorded by the FATF assessed countries were influenced by the ME Process. The assumption that guided the statistical test of the FATF data on countries' implementation of AML FATF Recommendations is based on Bovens's explanation of accountability frameworks and Guzman's theory on compliance. Consequently, this chapter evaluates this assumption by using data from interviews with Nigerian AML experts. The chapter elaborates on how the FATF's accountability framework has been a suitable and effective mechanism which has enhanced the RTD in Nigeria. The chapter combines contextual information gained from documentary sources with primary data generated from semi-structured interviews to analyze the role of the FATF in Nigeria and conclude on whether its accountability processes are mechanisms that have been suitable for promoting development in the country.

8.2 The Influence of FATF's Accountability Framework on Anti-Corruption Related IFF in Nigeria

It has been observed in Chapter 1 of this Thesis that the impact of development assistance on the polity of a country and a faulty division of roles and power between stakeholders in recipient countries should not be overlooked in development assistance processes.[1004] This consideration is essential because the discussion on the actualization of RTD has continued to be a political issue on whether the focus in RTD should be about territorial duties of countries or the inclusion of extraterritorial duties of other countries. However, both the

[1004] It is observed that in the past the executive was seen as the cornerstone of accountability of both donors and recipient governments towards their respective citizens and Parliaments. The Accra Agenda for Action (AAA) was a progressive step forward because it placed more emphasis on empowering non-state actors. Since 2008, there has been a growing consensus on the importance of including all stakeholders in national development processes, i.e. the design of strategies, decision-making processes and the assessment of achievements. The rationale is that all actors count and make complementary contributions to development. Aid from donors influences the power equation, particularly in aid-dependent partner countries. Therefore, a faulty division of labor and distribution of roles and powers between stakeholders lead to negative development result. The solution is to understand how aid can contribute to inclusive, equitable and effective domestic modes of decision-making, arbitration and peaceful conflict resolution in the management of public affairs. See, Tomlinson (n 223) 3.

territorial and extraterritorial dimension are unavoidably connected if the objective is to achieve positive development outcomes through anti-IFFs in Nigeria. Accordingly, it is valuable that development assistance mechanisms can aid domestic development by influencing domestic and foreign actors. Therefore, this section considers the extent to which the FATF has impacted on the territorial aspect of anti-IFF for the proceeds of grand corruption in Nigeria.

In the introduction of this Thesis, it was noted that the UN experts have identified the relationship between AML, IFFs and RTD. Therefore, the result of the survey, which was presented in Chapter 6, is instructive because all the respondents said that the FATF has influenced AML laws in Nigeria. Correspondingly, several of the interview respondents were emphatic about how the FATF has positively influenced the Nigerian AML legal regime. For instance, a CBN official observed that

> The FATF Recommendations have helped in getting us to where we are now, improving our systems. Without the FATF Recommendations we would never have taken the measures to checkmate IFF, criminal activities, and financial crimes. We could not have done that without the FATF guidance, giving us the standards at the minimum requirements to build upon. I think that there is no doubt about the influence that the FATF Recommendations have had in the improvement of our financial system and the money laundering regime in Nigeria or across the world (Interview #1).

Some respondents also explained the FATF's relevance to anti-IFF in Nigeria. An official with the NFIU said that

> if you look at the FATF Recommendations they may not directly focus on IFF but its reach, if properly implemented, touches on IFF. Because if there is an inflow there must be a due diligence on the funds that are coming in or there must be records to show where goods are coming in from etc. …What the FATF is doing is actually hitting the core of IFF (Interview #12).

The findings gathered in this Thesis have shown that the FATF's Recommendations (2012) are largely deemed to have had a positive impact on Nigeria's anti-IFF regime and consequently, the RTD in the country. Furthermore, there is reason to suspect that Nigeria's approach to adopting the Recommendations of the FATF is a replication of its attitude to

development cooperation that is identified in Chapter 2 of this Thesis. This is because, as with the SAP, there have been improved compliance with the FATF Recommendations (2012) when international actions have been taken against the country. According to Global Witness, while Nigeria was one of the FAFT NCCTs, a package of measures to improve the country's AML/CFT Regime was put in place by the Nigerian government.[1005] Similarly, an official in Nigeria's FIU affirmed that it was when Nigeria found itself on the FATF blacklist that everybody woke up (Interview #12). Therefore, it would seem that before its inclusion in the NCCTs, Nigeria was not concerned about the reputational implications of the FATF accountability framework or whether it would be included in the list. However, the official of the NFIU further clarifies that the FATF wrote letters informing Nigeria of its intention to place the country in the NCCTs List, 'but unfortunately no one knew about this, and the letters just fizzled out and it ended in someone's desk' (Interview #12). Therefore, a lack of sufficient publicity of the FATF's letters to Nigeria is identified as a cause of the continued non-compliance that was responsible for the country's inclusion in the NCCTs List. Eventually, when the FATF publicized Nigeria's inclusion in the NCCTs List, the NFIU official recounted that there were few international banks which were willing to have correspondent banking relations with entities in Nigeria (Interview #12). The NFIU official observed that international corporations, such as Mastercard, did not want to work with Nigerian financial service providers because Nigeria was in the FATF's blacklist. In essence, the inclusion of Nigeria in the NCCTs List created consequences that made the country's compliance with the FATF Recommendations (2012) a priority for the government. A rational choice to comply with the FATF Recommendations (2012) was consequently demonstrated when the Nigerian government established AML mechanisms such as the EFCC.[1006] The FAFT, in its 8th NCCT Review, stated that within the period of Nigeria's inclusion in the NCCT List, it substantially improved its co-operation with the FATF and increased its willingness to address the anti-money laundering deficiencies that were identified before 2001.[1007] The change by Nigeria was swift because the FATF observed that in 2001, when Nigeria was placed on the NCCTs List, that the country made immediate progress on the issue of identifying financial clients and beneficial ownership of accounts in any business relationship.[1008] During the six years that Nigeria was in the NCCTs list, the

[1005] Global Witness, *International Thief Thief: The Complicity of British Banks in Nigerian Corruption* (Global Witness Limited 2010) 6.
[1006] FATF, 'Annual Review of Non-Cooperative Countries and Territories 2006-2007: Eighth NCCT Review' (FATF/OECD 2007) 6-7 <https://www.fatf-gafi.org/media/fatf/documents/reports/2006%202007%20NCCT%20ENG.pdf> accessed 17 October 2020.
[1007] ibid 7.
[1008] ibid 6 and 8.

government implemented several AML reforms which led to Nigeria's removal from the FATF's NCCTs List in 2006.[1009] Some of the AML reforms that led to Nigeria's removal from the NCCTs List, such as the enactment of the Money Laundering (Prohibition) Act (2004), have helped to promote the instrumental freedoms of transparency guarantees for Nigerian citizens.[1010] For instance, in 2004, some laws, such as in section 3 (6) of the Money Laundering (Prohibition) Act (2004) were put in place to guarantee disclosures of financial transactions of ordinary citizens and other entities, including PEPs.[1011] In 2004, the NFIU was established in compliance with Section 1 (2) (c) of the EFCC Act (2004) to receive, analyze and disseminate financial intelligence generated from suspicious transaction reports submitted by financial institutions and DNBPs.[1012] In an interview with a NFIU official, it was noted that the FATF was responsible for the establishment of an FIU in Nigeria (Interview #12). In the EFCC's website, it is stated that the NFIU was established as consequence of Nigeria's inclusion in the NCCTs List, and in compliance with the FATF's requirements.[1013] Therefore, the FATF and its processes had impacted development in Nigeria by influencing the country to establish mechanisms that promote openness in its jurisdiction. The AML mechanisms that were implemented after Nigeria was put in the NCCTs List, such as the requirement for financial institutions to identify the beneficial owners where there are doubts as to whether a client is acting on his own behalf, have been used for anti-IFF in Nigeria.[1014] As a government expert with the CBN observed, the goal of addressing the issue of beneficial ownership is an important part of the Nigerian government's approach to resolving the issue of outflow of IFF from Nigeria (Interview #18). Accordingly, the FATF has impacted development in Nigeria because it was after Nigeria was included in the NCCTs List that its financial institutions began to collect and verify information about the beneficial owners of accounts they were involved with. The situation before the inclusion of Nigeria in the NCCTs List was that the Nigerian AML framework was so weak that the FATF considered the country to have had a deficient workforce. Accordingly, the FATF observed that Nigeria had

[1009] ibid 6-7.
[1010] In Sen's theory of compliance, this instrumental freedom is the citizens freedom to deal with one another under guarantees of disclosure and lucidity. Transparency guarantees refers to the openness that people can expect in society. See, Sen (n 16) 39.
[1011] FATF (n 1006) 7.
[1012] The EFCC was the NFIU at the time.
[1013] EFCC, 'NFIU' (*Economic and Financial Crimes Commission*) <https://www.efcc.gov.ng/about-efcc-3/98-nfiu> accessed 17 March 2022.
[1014] FATF (n 1006) 6 and 8.

> inadequate or corrupt professional staff in either governmental, judicial, or supervisory authorities or among those responsible for anti-money laundering compliance in the financial services industry.[1015]

Such a verdict was not excessive because there were occurrences that provided a reason to assume a level of deficiency in the Nigerian AML regime. One of the occurrences that justified the FATF's conclusion of the country in its NCCTs List is the scandal involving the former Nigerian dictator, Sani Abacha, who, together with his collaborators abused the local and international financial systems to perpetrate large scale corruption related to IFF.[1016] Furthermore, a cursory look at what the legal framework was for AML before Nigeria was placed on the NCCTs List in 2001 shows that the Money Laundering Decree No. 3 of 1995 (the 1995 Degree) and two other Degrees were the only relevant legal instruments on the subject under review at the time.[1017] The other Degrees that were relevant to AML at the time only covered nonviolent crimes committed for financial gain, and they were the Failed Banks Recovery of Property Degree of 1994 and the Advance Fee Fraud and other Fraud Related Offences Degree of 1995.[1018] Under these legal instruments, there were provisions for sanctions such as seizure and forfeiture of assets, and banks were required to identify customers, maintain records, and report large and suspicious transactions to the Central Bank of Nigeria (CBN).[1019] These laws, however, were observed by the then Governor of the CBN, Dr Joseph Sanusi to not have been effective.[1020] He claimed that the ineffectiveness was due to a lack of successful prosecution of serious and related cases on the subject. However, other explanations proffered by the U.S State Department was that there was inconsistent law enforcement due to corruption and bureaucracy, and lack of training in the preparation of money laundering cases which had slowed down the enforcement structures in the

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[1015] This quote is based on criteria 24. For this quote, see ibid 6 and 10.
[1016] David U. Enweremadu, 'Nigeria's Quest to Recover Looted Assets: The Abacha Affair' (2013) 48(2) Africa Spectrum 53-55 <https://journals.sagepub.com/doi/pdf/10.1177/000203971304800203> accessed 17 October 2020; see also, FATF, 'Specific Risk Factors in Laundering the Proceeds of Corruption: Assistance to Reporting Institutions' (FATF/OECD 2012) 16 <http://www.fatf-gafi.org/media/fatf/documents/reports/Specific%20Risk%20Factors%20in%20the%20Laundering%20of%20Proceeds%20of%20Corruption.pdf> accessed 17 October 2020.
[1017] , 'Money Laundering and Financial Crimes' (*U.S Department of State Diplomacy in Action,* 1 March 2001) <https://2009-2017.state.gov/j/inl/rls/nrcrpt/2000/959.htm > accessed 17 October 2020.
[1018] All of the degrees were ratified as Acts, effective under the 1999 Constitution. See, Joseph O Sanusi, 'Central Bank of Nigeria's standpoint of anti-money laundering compliance' (Anti-Money Laundering in ECOWAS: Bringing the Anti-Money Laundering Require in Compliance with International Standards, Lagos, 3 June 2003) 1 <https://www.bis.org/review/r030606c.pdf> accessed 17 October 2020.
[1019] , 'Money Laundering and Financial Crimes' (*U.S Department of State Diplomacy in Action,* 1 March 2001) <https://2009-2017.state.gov/j/inl/rls/nrcrpt/2000/959.htm> accessed 17 October 2020.
[1020] Sanusi (n 1018) 2.

country.[1021] Another explanation by Nigerian scholars indicate that these laws were made without legislative debate under a military regime where Decrees were rolled out after meetings of the military-dominated ruling councils.[1022] Therefore, the loopholes in the AML regime such as in section 6 of the Anti-Money Laundering Act of 1995 which implied that financial institutions had a discretion in deciding whether or not to report a suspicious transaction, were the reasons why AML was weak in Nigeria. However, while Nigeria was implementing these laws, the government stated that its AML legal framework was adequate in a letter of intent for financial support from the IMF, describing the policies that the country intended to implement in the future.[1023] Through its then CBN Governor, Dr Sanusi and its Finance Minister, Jubril Martins-Kuye, the Nigerian government was adamant that its AML legal framework was adequate but, nevertheless, it was going to approach the FATF to ensure that it conformed with international standards.[1024] The same CBN Governor that described the AML legal framework as adequate in 2000 (before Nigeria's inclusion in the NCCTs List) would in 2003 (after Nigeria's inclusion in the NCCTs List) describe the same legal framework as ineffective and containing loopholes.[1025] Of course, this change of perspective could have been a result of new information gotten from working with the FATF or other AML experts. Nevertheless, this change of perspective by Dr Sanusi, who acted as the CBN Governor on both occasions (in 2000 and 2003) is a clear indication of some Nigerians' attitude to reforming its AML legal framework, pre and post its inclusion in the NCCTs List. This change in perspective is shown in the communications by the CBN Governor also mirrors the observation made by the FATF when it said that after the inclusion of Nigeria in the NCCTs List, the country substantially improved its willingness to address its AML deficiencies.[1026] Upon Nigeria's removal from the NCCTs List, the country has continued to show its commitment to not repeating the level of non-compliance that was identified by the FATF in 2001. For instance, a Presidential Committee on FATF was setup to address deficiencies that were identified in the 2007 ME of the country. Therefore, in the Nigerian context, the FATF's use of accountability mechanisms which may cause damage to

[1021] , 'Money Laundering and Financial Crimes' (*U.S Department of State Diplomacy in Action,* 1 March 2001) <https://2009-2017.state.gov/j/inl/rls/nrcrpt/2000/959.htm> accessed 17 October 2020.
[1022] Nlerum S. Okogbule, 'Combating Money Laundering in Nigeria: An Appraisal of the Money Laundering Prohibition Act 2004' (2007) 28(2) Statute Law Review <https://academic.oup.com/slr/article/28/2/156/1667247?login=true> accessed 19 October 2020; and Abiola Ojo, *Constitutional Law and Military Rule in Nigeria* (Evans Brothers Nigeria Publishers Limited 1987) 32.
[1023] Joseph O Sanusi and Jubril Martins-Kuye, 'Memorandum on Economic and Financial Policies of the Federal Government for 2000' (*IMF*, 20 July 2000) <https://www.imf.org/external/np/loi/2000/nga/01/> accessed 19 October 2020.
[1024] ibid.
[1025] Sanusi (n 1018) 1.
[1026] FATF (n 1006) 7.

the reputation of the country has been a necessary tool for influencing compliance in the country.

8.2.1 Domestic Acceptance for FATF's Impact on Anti-Corruption Related IFF in Nigeria

To enhance ownership is one of the ways the international community has sought to improve aid effectiveness.[1027] Therefore, how has the FATF improved effectiveness by enhancing Nigeria's ownership of foreign assistance against corruption? As already noted in the introduction section of this Thesis in Chapter 1, the fact that corruption is an obstacle to realizing the RTD globally is emphasized in the UN RTD and SDGs platforms.[1028] Similarly, GIABA has observed that corruption is a prominent problem across West African countries because of the frequency of which corrupt acts occur and the aggregated sums of money involved.[1029] The World Bank has identified corruption as the single greatest obstacle to economic and social development in most countries.[1030] Corruption in Nigeria is a cankerworm that is endemic because it pervades activities taking place in public and private sectors. Therefore, the FATF's processes have promoted anti-corruption in Nigeria, but it has not ended corruption in the country. In other words, like in the SAP period, there has been endemic corruption in Nigeria as the government has tried to implement the FATF Recommendations (2012). The FATF's ability to promote anti-corruption in Nigeria has been essential for development because it is observed that corruption has weakened the institutional foundations on which the country's economic growth is dependent on by distorting the rule of law in the country.[1031] The realization that the international and domestic actions which promote anti-corruption are important for Nigeria's development has been an ongoing part of governance discourse in the country. It was observed in the interview with an AML expert who works in a civil society in Nigeria (Interview #19) that all governments for the past 40 years in the country have tried to combat grand corruption as 'we

[1027] An example of this is that enhanced country ownership is one of the main components of the 2005 Paris Declaration on Aid Effectiveness, the implementation of which will be assessed in Accra, Ghana, in September 2008. See, UNCTAD Secretariat (n 123) 93.
[1028] An example is in the UN review of progress in the implementation of the right to development where Bhumika Muchhala expressed this sentiment. See, Human Rights Council Working Group on the Right to Development (Nineteenth session) 'The Right to Development and Illicit Financial Flows: Realizing the Sustainable Development Goals and Financing for Development' (23 – 27 April 2018) UN Doc A/HRC/WG.2/19/CRP.3 para 15.
[1029] GIABA 'Threat Assessment of Money Laundering and Terrorist Financing in West Africa' (GIABA 2010) 35 <http://iffoadatabase.trustafrica.org/iff/116_threat-assessment-on-money-laundering-and-terrorist-financing-in-west-africa---english-rev051410-_added.pdf> accessed 15 May 2021.
[1030] Johnson Ra, *Struggle Against Corruption: A Comparative Study* (Springer 2004) 10.
[1031] Ani Comfort Chinyere, 'Corruption in Criminal Justice Administration in Nigeria: The Role of The Legal Profession' (2011) 7(1) Nigerian Bar Journal 102.

have all agreed' that it is part of what is stopping development in Nigeria. His sentiments that 'Nigerians have all agreed that corruption' is part of what is stopping development in the country is emphasized in most literature on the subject, and through casual conversation with some other Nigerians. Justifiably, the detrimental impact of corruption on Nigeria was an essential talking point of the current president of Nigeria, Muhammadu Buhari during the election campaign that first brought him into office in 2015 as a civilian President. Ekpo, Chime and Enor observe that Buhari's election campaign speeches were incomplete without a mention of how corruption had debilitated the country and its institutions and how he will turn things around.[1032] President Buhari has famously said that 'if Nigeria does not kill corruption, corruption will sooner-or later kill Nigeria'.[1033] There has been heightened and continuous public sentiment against corruption and its impact on development in private and public discussions.[1034] Therefore, it is a cause for bafflement that Nigerians were said to be passive to public sector embezzlement by most of the respondent of the survey. This is because the perception that corruption is excessive in Nigeria is still high.[1035] Although there has been calls for a more vigorous response to corruption in Nigeria, the challenge is that this has not caused the creation of a people or private sector driven anti-corruption regime. In the interview with the AML expert in the Nigerian securities sector (Interview #20), it was observed that anti-grand corruption in Nigeria

> is government driven, whereas, in other countries it is private-sector driven, where the government makes the policies and laws and then the private person and individuals drive the system. It is contrary in Nigeria. The NGOs and all of them are handicapped. They are waiting for government to do something, so they can barely do anything on their own. It is either they are short of

[1032] Charles Ekpo, Jide Chime, and Frank Enor, 'The Irony of Nigeria's Fight Against Corruption: An Appraisal of President Muhammadu Buhari's First Eight Months in Office' (2016) 4(1) International Journal of History and Philosophical Research 68 <http://www.eajournals.org/wp-content/uploads/The-Irony-of-Nigeria---s-Fight-against-Corruption-An-Appraisal-of-President-Muhammadu-Buhari---s-First-Eight-Months-in-Office1.pdf> accessed 27 May 2019.

[1033] Unfortunately, corruption is everywhere, at all levels of government, and every stratum of our society. See, Sani Tukur, 'Why I signed new Executive Order to fight corruption – Buhari' *Premium Times* (5 July 2018) <https://www.premiumtimesng.com/news/top-news/275145-why-i-signed-new-executive-order-to-fight-corruption-buhari.html> accessed 10 February 2020.

[1034] In a survey on corruption in Nigeria conducted by the UNODC and the Nigerian National Bureau of Statistics (NBS), it was reported that most of the respondents thought that the ongoing reality of corruption on a daily basis is the single most pressing challenge to the development of Nigeria, as it is deeply rooted in prevalent social injustice, poor working and living conditions, lack of social support program and stalled economic performance. See, UNODC, 'Corruption in Nigeria: Patterns and Trends Second Survey on Corruption as Experienced by the Population' (UNODC 2019) 28 <https://www.unodc.org/documents/data-and-analysis/statistics/corruption/nigeria/Corruption_in_Nigeria_2019_standard_res_11MB.pdf> accessed 10 February 2020.

[1035] As of 2020 Nigeria has a poor corruption perception index rank of 149 out of 180 and Score of 25 out of 100.

> finances, or they are bullied by the politics and politicians; and anti-grand corruption is not impacting positively on our economic development as much, if it has, very minute.

Another interview respondent observed that

> the champions of anti-corruption happen to be the public agencies such as the EFCC. They need to carry the people along a bit more. There must be a community buy-in, and there must be society ownership. Corruption is endemic and it spreads across all strata of society in Nigeria, and every aspect of fighting it has to have a buy in of the citizens, as this is the only way to ensure that corruption is regulated (Interview #17).

At first glance, the above statements by the interview respondents present a paradox as it contradicts a common-sense expectation that private citizens will be at the fore front of the ant-grand corruption push in Nigeria. This is because, as is stated in a PricewaterhouseCoopers (PwC) report on the impact of corruption on Nigeria's economy, corruption has had an impact that is felt more by poorer households and smaller firms.[1036] Therefore, with the over 40% (over 82 million) of its population that are under the poverty line, there are ample people that are impacted by grand corruption in Nigeria.[1037] The over 82 million poor Nigerians that feel the impact of corruption the most and other well-meaning citizens whether rich or middle class, are enough to makeup an effective private sector led coalition against grand corruption in Nigeria. With a coalition of private citizens including the rich, middle class and poor, there should be both funding and manpower to undertake effective private sector anti-corruption in Nigeria. Unfortunately, the normalization of corruption in the country is a factor that affects the anti-corruption values of private citizens. For instance, in Nigeria, it is common to hear frequent usage of euphemisms such as 'public relations' (PR), '*egunje'* (vernacular for bribe), 'family support and settlement' in daily transactions. The use of these euphemisms has watered down the gravity of the offensive act. The continuous use of these euphemisms further conveys the impression that the menace has

[1036] PwC, 'Impact of Corruption on Nigeria's Economy' (PwC 2016) 9 <https://www.pwc.com/ng/en/assets/pdf/impact-of-corruption-on-nigerias-economy.pdf> accessed 10 February 2020.

[1037] Note that the actual figure supersedes this number because one of the states with the highest concentration of poor people, Borno state, was not included in the calculations. See, Reuters, 'Forty Percent of Nigerians Live Below the Poverty Line: Report' (*Aljazeera*, 4 May 2020) <https://www.aljazeera.com/economy/2020/5/4/forty-percent-of-nigerians-live-below-the-poverty-line-report> 10 February 2020.

now become part of daily life in the Nigerian polity. In a survey on Nigeria, it was established that the propensity for its respondents, 67% in 2019 and 69% in 2016, to pay bribes before a service was provided by a public official is an indication that bribes are routinely expected and are prepared for in advance by bribe-payers.[1038] There is a level of acceptance for corruption in Nigeria, notwithstanding the calls for a more vigorous government response to it.[1039] In a Chatham House study on the reasons for corruption in Nigeria, it is observed that the responses to interviews and survey results suggest that there are situations where bribery is rationalized.[1040] The results of the study suggest that Nigerians do not hold negative beliefs towards practices that can be described as bribery and/ or extortion if they think the transaction is necessary for the running of a public institution and they are receiving the required service.[1041] Martini has provided an explanation on how corruption is accepted in Nigeria by associating the concept with the prebendalism and neo-patrimonial tendencies in the country.[1042] Martini observed that prebendalism/neo-patrimonial characteristics of Nigeria has had serious implications on the social mechanisms enabling corruption to thrive in the country.[1043] A patron-client relationship, where public office holders (are the patron) are expected to generate material benefits for their constituents and kin groups (the client) is an essential part of neo-patrimonialism/prebendalism in Nigeria.[1044] Therefore, Martini has spoken on how there is reason to conclude that Nigerian citizens, as members of a country that relies heavily on patronage and clientelism, have continued to show tolerance and understanding towards acts of favoritism to certain groups of society.[1045] This patron-client relationship in Nigeria has encouraged corruption in the country to the extent that appointments, promotions, admissions, award of contracts, among

[1038] See, UNODC (n 1034) 31.
[1039] Maíra Martini, 'Nigeria: Evidence of Corruption and the Influence of Social Norms' (U4 Anti-corruption Resource Centre 2014) 2-4 <https://www.u4.no/publications/nigeria-evidence-of-corruption-and-the-influence-of-social-norms.pdf> accessed 10 February 2020.
[1040] Leena Koni Hoffmann and Raj Navanit Patel, *Collective Action on Corruption in Nigeria: A Social Norms Approach to Connecting Society and Institutions* (The Royal Institute of International Affairs 2017) <https://baselgovernance.org/sites/default/files/2019-02/2017-05-17-corruption-nigeria-hoffmann-patel.pdf> accessed 10 February 2020.
[1041] ibid 17.
[1042] The concept of Prebendalism refers to the politics of corruption where cronies or members of an ethnic group are compensated when an individual from the group comes into power or where; "state offices are regarded as prebends that can be appropriated by office holders who use them to generate material benefits for themselves and their constituents and kin groups. The concept is credited to Joseph Richard who depicts the politics of corruption in Nigeria to be consistent with this explanation. See, Angela Ajodo-Adebanjoko and Nkemakolam Okorie, 'Corruption and the Challenges of Insecurity in Nigeria: Political Economy Implications' (2014) 14(5) Global Journal of Human-Social Science 12 <https://globaljournals.org/GJHSS_Volume14/2-Corruption-and-the-Challenges.pdf> accessed 10 February 2020.
[1043] Martini (n 1039) 2; and ibid.
[1044] Martini (n 1039) 3 and 4; and Ajodo-Adebanjoko and Okorie (n 1042).
[1045] Martini (n 1039) 3.

others, are done with consideration for one's ethnic or religious affiliations.[1046] For some portion of the Nigerian population, corruption is moral if state resources are used to the benefit of the community (even to the detriment of others), but immoral if the same resources are diverted for personal enrichment.[1047] Therefore, there are Nigerians that are only interested in whether resources have been used for the benefit of the community, and not whether the patron has used part of the misappropriated resource for his personal gain. To an extent, an effective ownership of anti-grand corruption in Nigeria has been hindered because the religious and ethnic diversity has created a situation where the citizens have continued to pick and choose the situations where corruption is moral and acceptable or immoral and unacceptable. So, Nigeria's complex social reality is a factor that has led to situations where the citizens have not promoted the implementation of anti-corruption mechanisms. Accordingly, in the interview with an official of the NFIU (Interview #12), it was explained that there have been situations where Nigerian citizens have pushed against the implementation of the anti-corruption and other Recommendations of the FATF. He observed that

> in 2004, the first push back we got for the 40+8 Recommendations was that the white man has come with something, and they want to impose it on us. Also, because it gained prominence after 9/11, people saw it as something that was all about … and so they thought it was against Islam. It was difficult to sell the Recommendations to some people up in the North (Interview #12).

Therefore, although the FATF Recommendations and MERs by the FATF were asking Nigeria to implement anti-corruption mechanisms that are useful to anti-IFF and development in the country, there was push back against its implementation. As in the SAP period, the concern about international influence was a cause of some domestic push back against the Recommendations by the FATF. The Nigerian AML institutions and the FATF have had to sensitize the polity on the value of the Recommendations by the FATF. The structure and nature of the FATF processes have also enhanced domestic acceptance for its Recommendations. The FATF has contributed to the development process in Nigeria through its processes that have enhanced ownership by providing a reason and platform for citizens to dialogue and seek to influence the FATF's assessment of the country. Although the FATF mandate does not allow the Nigerian private sector to participate in the adoption of its

[1046] Ajodo-Adebanjoko and Okorie (n 1042).
[1047] Martini (n 1039) 4.

standards, guidance, and reports, it does engage with civil society when they are developed and also in its assessment process.[1048] In some of its publications, the FATF has emphasized the importance of a coordinated response from public authorities, the private sector and civil society that will identify and disrupt financial flows from predicate offences.[1049] So, the FATF has created an environment where Nigerian actors have been able to make contributions to its processes. An example of the FATF's interaction with domestic actors in Nigeria was described by a Chief Compliance Officer (CCO) of a Nigerian bank who observed that

> if you look at the 40 Recommendations when it first came out, it was clear that they did not consider the peculiarities of Africa, other Caribbean, and American countries. We have tried to correct that over the years, and I am happy to be part of the people that have been pushing for those things they needed to correct. A good example is the one on corresponding banking that has led to a lot of de-risking of banks in Africa (Interview #15).

Accordingly, there are instances where Nigerian actors have felt that their contributions to the FATF processes have led to desirable changes in the international system.[1050] The FATF mandate allows it to designate the institutions that will be FSRBs. The FATF-Styled Regional Bodies are associate members of the FATF which are contributors to its activities. The FSRBs are allowed to participate in the development of the FATF standards, guidance, and other policies for combating ML and other threats to the integrity of the international financial system.[1051] In developing the FATF standards, guidance, and other policies, the FATF has consulted with the FSRBs including GIABA. An AML expert from the NFIU observed that Nigeria contributes to the development of FATF Recommendations because the contribution that GIABA makes to the FATF is pulled from member countries (Interview #12). This is consistent with both GIABA's statement about its function as an FSRB and

[1048] The FATF constantly relies on impute from the private sector. For instance, the FATF observes that it is currently reviewing the relevant requirements for transparency and beneficial ownership with an aim to ensuring that legal persons will not be misused for ML/TF. The FATF will engage the private sector and civil society organizations in the context of this review. The FATF will also continue its engagement with the private sector and promote understanding of the ML/TF risks of virtual assets and VASPs, including with the publication of red flag indicators and case studies by October 2021. See, FATF, Financial Action Task Force - Annual Report 2019-2020 (FATF/OECD 2020) 12, 22 and 49 <https://www.fatf-gafi.org/publications/fatfgeneral/documents/annual-report-2019-2020.html> accessed 20 February 2020.; For the information on the relevant provisions of the FATF mandate see FATF, 'Financial Action Task Force Mandate' (n 647) 5-8.

[1049] FATF (n 1048) 49.

[1050] For more clarity about this point note that this interviewee was a part of the Nigerian private sector actors that gave comments to the FATF during the development of the Recommendations of 2012.

[1051] FATF, 'Financial Action Task Force Mandate' (n 647) 5, 6 and 8.

some of the provisions in the FATF's mandate. The FATF's consultations with GIABA has been part of the process of developing its standards.[1052] GIABA has conducted typologies and research as part of its primary functions as an FSRB.[1053] In other words, GIABA does research on Nigeria that the FATF accesses as a part of the consultation process before its standards, guidance and other policies are created. The GIABA research process includes, among other things, the involvement of government and non-government stakeholders such as professional bodies, self-regulatory organizations, academic researchers, and civil society organizations.[1054] Therefore, the research approach of GIABA has created an avenue where private citizens can in the long run inform the FATF standards by providing Nigerian based insights to GIABA. The research results which include the public and private sector perspective on anti-corruption related IFF in Nigeria is analyzed by GIABA as part of its duties as an FSRB. The result of the GIABA analysis will then be part of the insights that GIABA can contribute to its consultations with the FATF.[1055] Similarly, the ME of Nigeria is another avenue for private citizens to be part of Nigeria's ownership of anti-corruption related IFF in the country. During the ME process, the GIABA assessors meet with both the public and private sector.[1056] The interactions with the public and private sector provide the insights that GIABA can analyze before deciding on whether the information should be shared as a part of its consultation with the FATF. Moreover, GIABA has observed that there is a need for west African countries to include the private sector in the risk assessment and ME processes as early as possible.[1057] GIABA has also observed that the early inclusion of the private sector in the risk assessment and ME process is an effective way to improve member States' performance levels. This statement by GIABA is reflective of what the concept of inclusive ownership is meant to achieve in development assistance relationships. The statement implies that for Nigeria to have a more effective anti-grand corruption related IFF regime, it will have to have a public and private sector led risk assessment and ME

[1052] ibid 5.
[1053] GIABA, 'GIABA Research Strategy Report' (GIABA 2012) 4 <https://www.giaba.org/media/f/691_GIABA%20Research%20Strategy%20%20-English.pdf> accessed 20 February 2020.
[1054] ibid.
[1055] For example, of how GIABA research becomes a part of its consultation with FATF. See, FATF, 'Improving the understanding of terrorist financing in West Africa and advancing other research' (FATF-GAFI 2019) <https://www.fatf-gafi.org/publications/methodsandtrends/documents/improvingtheunderstandingofterroristfinancinginwestafricaandadvancingotherresearch.html> accessed 20 February 2021.
[1056] GIABA, 'Mutual Evaluation Report: Nigeria' (GIABA 2008) 215-217 <https://www.giaba.org/media/f/299_Mutual%20Evaluation%20Report%20of%20Nigeria.pdf> accessed 20 February 2021.
[1057] This recommendation was part of the lessons learnt from FATF's consultation with the private sector in the FATF Private Sector Consultative Forum in Vienna, Austria, on April 23-24, 2018. See, GIABA, 'GIABA 2018 Annual Report' (GIABA 2018) 90 <https://www.giaba.org/media/f/1106_pkbat_ENG%20-%202018%20ANNUAL%20REPORT%20-%20ABJ%20(6).pdf> accessed 20 February 2021.

process.[1058] Furthermore, the ME process has provided an avenue for proactive citizens to contribute to the discourse on anti-grand corruption related IFF in Nigeria. This is because the inclusion of the private sector and civil society in the accountability process is provided for in the FATF procedure for ME.[1059] One example of a proactive private sector involvement happened during the second round of the ME of Nigeria by the GIABA assessors that took place in 2019. During the ME, it is observed that some civil societies representing over 60 non-profit organizations (NPOs) were allowed to meet with the external assessors from GIABA.[1060] A statement released by the delegation that met with the external assessors explains that the non-profit sector is among the sub-sectors of the Nigerian economy subjected to the scrutiny by the FATF/GIABA external assessors. Therefore, members of civil society in Nigeria had met on three occasions to prepare to engage the FATF/GIABA external assessors during the period of the ME of Nigeria. The convening of meetings in anticipation of the ME is an indication of how the FATF has provided a platform that allows proactive citizens to contribute to the decision-making process for Nigeria. By conferring with nongovernment entities, the GIABA assessment process has emphasized the importance of the private sector perspective to the ME process. So, the FATF has promoted local participation in development related programs because the inclusion of private entities in the ME in Nigeria has led to the coming together of over 60 NPOs who gave their perspective on some domestic AML and corruption challenges.[1061] The participation of NPOs in the ME is another indication of local acceptance, instead of disdain, for FATF's influence on the Nigerian development processes.

Essentially, the Nigerian experience with the FATF has been an example of how the use of its accountability mechanisms (that may cause reputational damages) has been an ideal method for enhancing compliance for development related international policies. This is because the FATF activities, including its accountability process, have been structured in a way that has promoted sufficient Nigerian participation. By ensuring Nigerian participation in its processes, the FATF has avoided the level of public disenchantment against international influence that occurred in Nigeria's past development cooperation relationships with other international institutions. The FATF has gotten significant domestic acceptance because the

[1058] This is based on the understanding that ownership can be achieved through the understanding of how stakeholders can play an effective role in decision- making so as to achieve development results? See, Tomlinson (n 223) 3.
[1059] FATF, 'Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations' (n 648) 34 and 35.
[1060] 'Nigerian CSOs Meet FATF/GIABA Assessors' (*Spaces for Change*, 17 November 2019) <https://spacesforchange.org/nigerian-csos-meet-fatf-giaba-assessors/> accessed 20 March 2020.
[1061] One of the issues identified during these preparatory meetings was the need to look at how regulatory bodies have handled AML issues such as PEPs use of the non-profit sector in Nigeria.

experts surveyed and interviewed have largely been complimentary of the FATF. Like the survey respondents, the experts that were interviewed have not criticized the influence that the FATF has had on Nigeria. The few criticisms of the FATF were on its ability to effectively assist Nigeria to prevent IFFs. For reference, one AML expert in a Nigerian NGO observed that

> although it serves and achieves some of these objectives, it has not, to a large extent, accomplished the anti-IFF objectives because the launderers know how to beat the system and so IFF from Nigeria is still making its way to the destination countries. Therefore, the blacklisting by the FATF as a preventive tool for IFF is inadequate (Interview #13).

For some experts, the FATF's inability to effectively assist Nigeria to combat IFF was understandable because of the reality of the anti-IFF actions in the country. AML consultant and former official of the CBN noted that 'although countries will not want to be in FATF's NCCTs List, the source countries for IFFs must convince others that what it is doing is credible (Interview #16). He further described one obstacle to the cooperation between the FATF and Nigeria by observing that

> the source countries must first do everything they can do to stop the outflows. Like with Nigeria, a lot of its money is in the UAE. If this is so, are Nigerians serious? You see Nigerians involved in IFF being convicted outside but no one is convicted in the country. Does this speak well if we are talking about commitment?

Therefore, some of the respondents recognized the limitations of the FATF, but they did not decry or show concern about the fact that it is an example of international influence on Nigeria. On the contrary, the AML experts were in support of the need for Nigeria to implement the RTD. For reference, one expert observed that

> it is always dynamic, looking at how things change in all countries and adapting, reviewing its recommendations to ensure that they are applicable are relevant to all the member countries across the world. There is no need to do any other thing. If the Recommendations are implemented well, everybody will have the right to development.

Consequently, one of the values of the FATF is in its ability to foster compliance with international rules and be accepted in Nigeria where the domestic legal system is not designed to enforce international obligations that are not enacted in its municipal law.[1062]

8.3 The Value of FATF's Complimentary Role as a Part of the International Assistance Against Corruption in Nigeria

In Chapter 2 of this Thesis, ownership of the development process has been identified as one of the essential components that characterizes effective development strategies. The analysis of Nigeria's experience with development cooperation in Chapter 2 above showed how corruption has affected the country's development assistance relationships. Therefore, the corruption related aspect of the Recommendations by FATF is one of several international mechanisms or actions that are enhancing development cooperation in Nigeria because they are relevant to the country's anti-corruption fight. Accordingly, in the interview with an AML expert who operates in the civil society in Nigeria, he observed that there have been mechanisms on paper to combat corruption related IFF from Nigeria (Interview #19). The international mechanism to stop corruption related IFF has existed from the moment the US government decided to enact the Foreign Corrupt Practices Act of 1977 (FCPA).[1063] From that moment up unto 20 years after its enactment, the FCPA was an important instrument that was designed to contribute to the fight against corrupt practices in foreign jurisdictions such as Nigeria.[1064] This foreign policy implication of the FCPA is emphasized in President Carter's public comments made upon signing the Act into law, where he stated that

> I share Congress['s] belief that … Corrupt practices between corporations and public officials overseas undermine the integrity and stability of governments

[1062] Refer to the analysis on legal accountability for clarification.
[1063] The FCPA was the very first law of its kind in the history of mankind, as no other nation or empire had ever criminalized corrupt practices in foreign jurisdictions. See, Anne Eberhardt, 'How the Foreign Corrupt Practices Act Came to Be' (*Corporate Compliance Insights*, 3 July 2018) <https://www.corporatecomplianceinsights.com/foreign-corrupt-practices-act-came/> accessed on 27 May 2019.; For analysis of how the FCPA relates to corrupt practices in Nigeria and in general see, Dayo Adu, 'The Foreign Corrupt Practices Act ("FCPA") & UK Bribery Act ("UKBA")' (*Lexology*, 7 February 2018) <https://www.lexology.com/library/detail.aspx?g=a1504ece-b333-40fe-852b-b5d8ac8c3dd4> accessed 29 April 2021; and see generally, Wesley Cragg and William Woof, 'The U.S. Foreign Corrupt Practices Act: A Study of Its Effectiveness' (2002) 107(1) Business and Society Review <http://schulich.yorku.ca/wp-content/uploads/2015/06/WCRAGG-Cv-2016.pdf> accessed 29 April 2021.
[1064] Eberhardt (n 1063).

> and harm our relations with other countries. Recent revelations of widespread overseas-bribery have eroded public confidence in our basic institutions.[1065]

This comment by President Carter shows that in addition to the negative reputation that is associated with foreign bribery, the US was equally motivated to help combat corrupt practices between corporations and public officials of foreign jurisdictions such as Nigeria. This ambition was, unfortunately, barely achieved in the 1970s and 1980s because it is observed that the FCPA was barely used by the US law enforcement agencies.[1066] It is worthy of note, however, that Nigeria has benefited from FCPA investigations. One example is in 2010 when Nigeria received $127.5 million as a result of FCPA investigation of a joint venture called the TSKJ Consortium.[1067] Accordingly, although the FCPA was not as impactful from the onset, its enactment represents the beginning of a global trend where States that are acting unilaterally have criminalized foreign corrupt practices.[1068] This global trend that started with the unilateral decision to, according to Bottelier, support anti-corruption efforts in developing countries, is observed to have led to the multilateral cooperation for developing standards, such as the OECD Anti-Bribery Convention of 1997.[1069] These unilateral efforts have also led to the development of global standards such as the UNCAC of 2003 and the FATF Recommendations of 2012.[1070] These global standards on corruption related IFFs are mostly soft law instruments that lack a legal enforcement mechanism. It is only the UNCAC that has an accountability framework and is recognized as a legally binding instrument on corruption related IFF.[1071] Therefore, institutions that propagate soft law are criticized because they are non-binding instruments, and so their initiatives can easily be watered-down at national level due to their lack of a legal enforcement mechanism.[1072] Yet, the UNCAC is criticized for containing a large number of

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[1065] Lianlian Liu, *The Global Collaboration Against Transnational Corruption: Motives, Hurdles, and Solutions* (Palgrave Macmillan US 2018) 68; citing, Jimmy Carter, 'Foreign Corrupt Practices and Investment Disclosure Bill Statement on Signing S. 305 Into Law' (20 December 1977).
[1066] Eberhardt (n 1063).
[1067] Jacinta Anyango Oduor and others, *Left out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery* (IBRD/The World Bank 2014) 136 -140.
[1068] Dan Danielsen and David Kennedy, *Busting Bribery: Sustaining the Global Momentum of the Foreign Corrupt Practices Act* (Open Society Foundations 2011) 11.
[1069] Pieter Bottelier, 'Corruption and Development' (International Symposium on The Prevention and Control of Financial Fraud, Beijing, 19-22 October 1998) 3 <https://icclr.org/wp-content/uploads/2019/06/bott_pap.pdf?x68316> accessed on 27 May 2019.; and ibid.
[1070] Danielsen and Kennedy (n 1068) 11.
[1071] UNGA President of the 73rd Session, 'High-Level Meeting on International Cooperation to Combat Illicit Financial Flows and Strengthen Good Practices on Asset Return' (*United Nations*, 16 May 2019) <https://www.un.org/pga/73/event/international-cooperation-to-combat-illicit-financial-flows-and-strengthen-good-practices-on-asset-returns/> accessed 19 October 2020.
[1072] Maria Helena Meyer Dolve and Saul Mullard, 'Addressing Illicit Financial Flows for Anti-Corruption at Country Level: A Primer for Development Practitioners' (U4 2019) 29

non-mandatory criminalization provisions and some otherwise vague and imprecise norms.[1073] Its treaty provisions have been described as less effective than some of the soft law instruments that provide for internationally accepted non-binding anticorruption norms.[1074] Notwithstanding these criticisms, the global regime has made stride in combating corruption related IFF through UNCAC and the use of soft law instruments. One important fact to note about the international anti-corruption related IFF regime is that the relevant instruments work together. Take for instance Article 14, Paragraph 4 of the UNCAC (2003) which calls upon its State parties to use as a guideline the relevant initiatives of regional, interregional, and multilateral organizations against money-laundering. A further clarification on the provision in the 2012 Legislative Guide for the Implementation of the UNCAC (Legislative Guide) is that during the negotiations, the words 'relevant initiatives of regional, interregional and multilateral organizations' were understood to refer in particular to the FATF.[1075] This observation does not mean that State parties are legally required to use the work of the FATF as guideline because the use of the term calls upon does not confer a mandatory status on Article 14, Paragraph 4 of the UNCAC and the 2012 Legislative Guide is soft law at best. However, it is an indication that the drafters of the UNCAC expect State parties to appreciate the complimentary nature of the UNCAC and the FATF. Subsequently, the FATF and the FATF-Styled Regional Bodies have been promoted in the Legislative Guide as a complementary instrument for the UNCAC.[1076] With respect to anti-corruption related IFF and its connection with the objective of actualizing the RTD, the UN Human Rights Office of the High Commissioner has also promoted the FATF as complimentary to the UNCAC. In the Draft OHCHR Guidelines on a Human Rights Framework for Asset Recovery (Draft Guidelines) of 2020, the OHCHR has promoted the FATF as complementary to the UNCAC.[1077] In the Draft Guidelines (2020) it is stated that

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<https://www.u4.no/publications/addressing-illicit-financial-flows-for-anti-corruption-at-country-level.pdf> accessed 19 October 2020.

[1073] She argues that the UNCAC's relatively ineffective provisions result in part from the inclusiveness of its drafting process. See, Cecily Rose, *International Anti-Corruption Norms: Their Creation and Influence on Domestic Legal Systems* (Oxford University Press 2015) 99.

[1074] One of the examples of such provisions, she discusses, is Article 20 on illicit enrichment. For her analysis of the UNCAC's non-mandatory, vague and qualified provisions, See, ibid 116-131.

[1075] Division for Treaty Affairs United Nations Office on Drugs and Crime, 'Legislative guide for the implementation of the United Nations Convention against Corruption' (2nd edn, United Nations 2012) 52 < https://www.unodc.org/documents/treaties/UNCAC/Publications/LegislativeGuide/UNCAC_Legislative_Guide_E.pdf> accessed 19 October 2020.

[1076] ibid 115, 116 and 203.

[1077] OHCHR, 'Draft OHCHR Guidelines on a Human Rights Framework for Asset Recovery' (OHCHR) <https://www.ohchr.org/Documents/Issues/Development/CFI-Frameworkforassetrecovery/Draft_OHCHR_Guidelines_HR_Asset_Recovery.pdf> accessed 19 October 2020.

> The anti-money laundering provisions contained in UNCAC reflect the more detailed Recommendations of the Financial Action Task Force (FATF), an inter-governmental body that serves as the global standard setter in the anti-money laundering field. Because the FATF 40 Recommendations are significantly more detailed than UNCAC's provisions, the following refers to UNCAC's provisions as well as FATF's standards.[1078]

The Draft Guidelines (2020) also state that although the FATF Recommendations are non-binding, compliance with the Recommendations has been monitored by the FATF and FATF-Style Regional Bodies in a manner which has brought about very widespread domestic implementation. The Draft Guidelines therefore demonstrates an attempt at the international level to promote the complimentary nature of the FATF and UNCAC. More essential to the objective of actualizing RTD is that one of the guiding principles of the Draft Guidelines (2020) is the duty of States to protect and fulfill human rights by adopting and enforcing laws and policies on the prevention of corruption and money laundering. The Draft Guidelines are also guided by the principle that States have a duty to ensure the progressive realization of economic, social, and cultural rights by providing international assistance and cooperation in the context of asset recovery. These principles outlined are arguably not legally binding duties, but because they are included in the Draft Guidelines (2020), the OHCHR has demonstrated that at the global level, there is a serious focus on the role of anti-corruption related IFF in the human rights approach to development. The OHCHR is also emphasizing that the FATF is complimentary to the UNCAC (2003), and it is an important part of anticorruption related IFF, as it relates to the global human rights approach to development. In this regard, the Draft Guidelines further state that

> the Financial Action Task Force recommends that States use confiscated funds for the 'public good', in particular for 'law enforcement, health, education, or other appropriate measures. In this regard, anti-money laundering standards and human rights law are mutually reinforcing. Both bodies of law direct States towards the use of recovered funds for the purpose of advancing human rights, even though the FATF does not use the language of human rights law in making this Recommendation.[1079]

[1078] ibid para 19.
[1079] ibid Para 65.

In other words, before asking States to use confiscated funds for public good, the FATF has first asked for mechanisms to be put in place to prevent ML and avoid the need to confiscate proceeds of corruption related IFF in Nigeria. The FATF has asked States to setup mechanisms such as FIUs that can help the prosecution and laws to guarantee that the offence of corruption related IFF is prosecuted.[1080] The UNCAC has also asked Member States to setup mechanisms to aid prevention and prosecution of the offence of corruption related IFF.[1081] Therefore, it has not mattered if or what international instruments are responsible for AML developments globally when Nigeria has, for instance, relied on legal remedies to retrieve proceeds of corruption related IFFs in foreign jurisdictions. Through Article 23 of the UNCAC and FATF's Recommendation 3, these international instruments have played a significant role by asking countries to criminalize ML which includes corruption related ML.[1082] As countries have criminalized ML in their national legal regimes, Nigeria has been able to use legal remedies to claim damages or reclaim ownership of corruption related IFFs in foreign jurisdictions. For example, in 2007, Nigeria won a series of civil asset recovery cases against Nigerian PEPs in the persons of Alamieyeseigha and Dariye at the High Court in London.[1083] Here, Nigeria was able to claim that the Governors' assets were the proceeds of corruption and therefore the rightful property of the Nigerian government.[1084] This claim was accepted, and so Nigeria was able to get recover £12 million of the two Governors' illegal assets.[1085] Similarly, Nigeria has retrieved looted funds as a *partie civile*, which is a designation in civil jurisdictions under which victims of corruption can participate in criminal proceedings for corruption-related offences. By establishing that it had suffered direct and personal harm because of the criminal offence of corruption and ML, Nigeria was able to also get judgment for monetary sums from Swiss and French courts.[1086] Furthermore, Nigeria has gotten out of court settlements for cases that started as a result of foreign countries' investigation of violations to their domestic laws. For example, in October 2010, Nigeria filed charges against Siemens, alleging a foreign bribery scheme involving Nigerian PEPs.[1087] The investigation by the EFCC and subsequent charges that were filed against Siemens came after a German Court ruling named some Nigerian PEPs as recipients of bribes by the

[1080] Clarke (n 427) 168-169.
[1081] ibid 171.
[1082] FATF (n 956) 3 and 13.
[1083] The Federal Republic of Nigeria vs Santolina Investment Corp & others, [2007] EWHC 3053 (QB).; See also, The Federal Republic of Nigeria vs Joshua Chibi Dariye and another [2007] EWHC 708 (Ch).
[1084] Global Witness (n 1005) 7.
[1085] ibid.; It is estimated that over $17.7 million from the Alamieyeseigha case were recovered and repatriated to Nigeria. See, Gerry Ferguson, *Global Corruption: Law, Theory and Practice* (3rd edn, University of Victoria 2018) 410.
[1086] Ferguson (n 1085) 414 and 532.
[1087] Oduor and others (n 1067) 31.

company in 4th October, 2007.[1088] In an action brought against Siemen for the violation of the FCPA in the US the following year, Nigerian PEPs were also named as recipients of the bribery.[1089] Therefore, following Nigeria's own investigation of the matter, an out-of-court settlement with Siemens involving monetary sanctions was agreed upon in November 2010.[1090] This case shows how the prosecution of a multinational organization by foreign countries has supported anticorruption related IFF in Nigeria.[1091] In the Siemens case, the Nigerian government became aware of violations it could act upon because foreign governments were legally empowered by their local laws to prosecute Siemens for criminal activities which include corruption related IFF.[1092] Therefore, although separate global mechanisms exist as soft law and hard law instruments, they reinforce each other as necessary policy tools to influence domestic laws in a way that assists the objective of stopping grand corruption related IFF in Nigeria. Yet, several of the Nigeria AML experts saw the FATF as the foremost accountability mechanism for tackling the external dimension of anti-corruption related IFF in Nigeria. A private sector AML expert and former government official who was a policy maker for the insurance sector in Nigeria (Interview #14) observed that the FATF is the foremost global mechanism for anti-grand corruption related IFF because of its ability to sanction countries. A civil society campaigner in Nigeria

[1088] David Crawford and Mike Esterl, 'Siemens Ruling Details Bribery Across the Globe' *The Wall Street Journal* (16 November 2007) <https://www.wsj.com/articles/SB119518067226495200> accessed 19 October 2020; in this case, the relevant provision of administrative law that was used to prosecute Siemens is Article 30 of the Ordnungswidrigkeitsgesetz (OWiG), translated to mean in English, the Administrative Offenses Act. See, ibid 25.

[1089] *Securities and Exchange Commission v. Siemens Aktiengesellschaft*, Civil Action No. 08 CV 02167 (D.D.C.)

[1090] Although the terms of the Siemens-Nigeria settlement and those of other similar cases in Nigeria have remained confidential, the Attorney General of Nigeria placed on the public record that the cases have been resolved and yielded a total of $170.8 million in monetary sanctions. See, Oduor and others (n 1067) 31.

[1091] According to US court documents filed by SEC, four telecommunications projects, approximately $2.8 million of the bribe payments were made to Nigerian PEPs for contracts valued at approximately $130million. Approximately $2.8 million of the bribe payments was made to the American bank account of the wife of the ex-president, Atiku Abubakar. This means that the web of cross border flows involved, similar to hawala services, a payment to the American bank account that would be followed by award and payment for the four telecommunications projects. In other words, the approximately $2.8 million of bribe payments that Siemens claims to have paid Atiku's wife is a part of the approximated $130million which was money Siemens was going to collect from the Nigerian government. See, *Securities and Exchange Commission v. Siemens Aktiengesellschaft*, Civil Action No. 08 CV 02167 (D.D.C.); see also, Permanent Subcommittee On Investigations United States Senate, 'Keeping Foreign Corruption Out Of the United States: Four Case Histories' (The United States Senate Committee on Homeland Security and Governmental Affairs 2010) <https://www.hsgac.senate.gov/imo/media/doc/FOREIGNCORRUPTIONREPORTFINAL710.pdf> accessed 6 February 2020.; Moreover, there is reason to believe that the money sent to the American account of the ex-vice president was sent across border because it was reported that German documents show that the Siemens bribery scheme involved the use of hard-to-trace offshore bank accounts to send money out. See, Siri Schubert and T. Christian Miller, 'At Siemens, Bribery Was Just a Line Item' *The New York Times* (Munich, 20 December 2008) <https://www.nytimes.com/2008/12/21/business/worldbusiness/21siemens.html> accessed 6 February 2020.

[1092] German prosecutors initially opened the Siemens case in 2005. American authorities became involved in 2006 because the company's shares are traded on the New York Stock Exchange. See, ibid.

and former official of the CBN observed that, currently, the FATF model is the best because it gives you guidelines and answers to what countries must do to ensure that money laundering is discoverable all over the world (Interview #19). Another interviewee explained the adequacy of the FATF framework by nothing that

> When the FATF is assessing the country, one of the reports they will look at is the Transparency International report because it is speaking about corruption and corruption is a predicate offence of money laundering. When the FATF is going on assessment, bringing in new methodology or bringing in a new Recommendation, it will refer to the conclusions which the WB made on a country as a result of its financial system assessment of countries (Interview #12).

In another interview with the AML expert from the CBN (Interview #1), it is observed that the FATF is a more established and accepted institution because its assessment mechanism involves the countries in its processes. The high appraisal of the FATF by the interviewees is explainable through a comparative analysis of other international accountability mechanisms that are relevant to anti-grand corruption related IFF. For instance, the FATF can place a country under a process known as increased monitoring or the grey list. The FATF, in this regard, has observed that when a country is placed under increased monitoring, it means the country has committed to resolve swiftly the identified strategic deficiencies within agreed timeframes and is also subject to increased monitoring.[1093] This means that there is acceptability for the grey list because listed countries agree to the FATF assessors' conclusions about the deficiencies in their systems. Furthermore, the FATF has also shown an ability to achieve accountability through ME procedures that are acceptable to countries. The FATF accountability procedures have an edge, even though the involvement of countries is also an important part of the UNCAC Implementation Review Mechanism (IRM). Under the IRM process, state parties to the UNCAC are expected to submit their responses to the self-assessment checklist for the first cycle of reviews that began in 2010.[1094] The self-assessment checklist is the basis for a desk review that is carried out by representatives of two other States Parties to the UNCAC, which are referred to as the reviewing State

[1093] FATF, 'Jurisdictions under Increased Monitoring – 21 February 2020' (*FATF-GAFI*) <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-february-2020.html> accessed 20 February 2021.
[1094] Huter and Scaturro (n 603) 8.

Parties.[1095] This desk review may be complemented by any further means of direct dialogue, such as a country visit or a joint meeting at the United Nations Office at Vienna only if the State Party under review agrees to it.[1096] The outcomes of the review are to be outlined in a country review report that is prepared by the reviewing State Parties. In preparing the country review report, the reviewing State Parties must include an executive summary, get assistance from the secretariat of the UNCAC Conference of the State Parties (COSP), and engage in close cooperation and coordination with the State party under review.[1097] The IRM process involves assistance from the UNCAC COSP secretariat, receipt and analysis of information by the trained assessors who are representatives of other member States and the provision of information by the member State under reviewed. When States are subjected to the IRM process, their opinion about the result is prioritized because after the IRM assessors have drafted a country review report, it is sent to the State party under review for agreement. The IRM procedure provides that in case of disagreement, there shall be a dialogue between the State party under review and the governmental experts in order to arrive at a consensual final report before an executive summary shall subsequently be prepared and agreed to.[1098] The priority given to country involvement is not replicated in the Financial Secrecy Index (FSI) platform. Under the FSI, countries are expected to fill out questionnaires that are sent to their ministry of finance and National Audit Office and FIU.[1099] The request for country involvement in the FSI has been challenging because the latest results show that only six (5%) of the questionnaires sent to countries' ministries of finance and national audit offices; and five (4%) of the questionnaires sent to countries' FIU were responded to.[1100] However, the FSI review involves the preparation of secrecy score for countries through the use of qualitative data that is based on their laws, regulations, cooperation with information exchange processes and other verifiable data sources.[1101] One of the variables that determines a country's FSI ranking relates to its ability to cooperate and share information about each

[1095] UNODC, 'Mechanism for the Review of Implementation of the United Nations Convention against Corruption—Basic Documents' (UN 2011) para 18 and 23 <https://www.unodc.org/documents/treaties/UNCAC/Publications/ReviewMechanism-BasicDocuments/Mechanism_for_the_Review_of_Implementation_-_Basic_Documents_-_E.pdf> accessed 20 February 2021.
[1096] ibid para 29.
[1097] ibid para 33.; Note that the Article 63 UNCAC (2003) establishes the Conference of the States Parties (COSP). The Conference is a body that holds biennial sessions and seeks to improve the capacity of and cooperation between States Parties in achieving the objectives set forth in the Convention. It is assisted by the UNCAC secretariat (Article 64 UNCAC (2003)). See, Huter and Scaturro (n 603) 7.
[1098] UNODC (n 1095) para 34.
[1099] Tax Justice Network, 'Financial Secrecy Index 2020 Methodology' (Tax Justice Network 2020) 12<https://fsi.taxjustice.net/PDF/FSI-Methodology.pdf> accessed 2 March 2021.
[1100] ibid.
[1101] ibid 3.

other's taxpayers at a global level.[1102] A part of what the FSI ranking considers in regard to international cooperation is the progress a country has made in allowing its Automatic Exchange of Information (AEOI) data to be used to tackle corruption and money laundering.[1103] Therefore, the FSI is a mechanism that is based on a process that incorporates the countries' assessments by other international organizations into its accountability process. The data for how countries have used their AEOI is contained in peer review reports and supplementary reports published by the Global Forum on Transparency and Exchange of Information for Tax Purposes (GFTEITP).[1104] These published GFTEITP country reports are a part of the qualitative data that are used to prepare the FSI rankings. In the FSI methodology, the GFTEITP reports are referred to as a part of the qualitative data that is based on countries' cooperation with information exchange processes.[1105] Therefore, the FSI ranking process involves the use of data that was provided, and peer review reports by countries. The GFTEITP country reports are a result of an accountability process (the GFTEITP peer review process) that is designed to monitor all countries that have committed to commencing exchanges under the AEOI Standard.[1106] Before the GFTEITP reports are

[1102] Tax Justice Network, 'Financial Secrecy Index: Secrecy indicators' (*Tax Justice Network*) <https://fsi.taxjustice.net/en/methodology> accessed 2 March 2021.

[1103] Tax Justice Network (n 1099) 9-10; and ibid.; AEOI refers to data provided by over 100 jurisdictions having committed to exchanging information with each other under the Common Reporting Standard (CRS). These exchange relationships between jurisdictions are typically based on the multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Convention), in which more than 100 jurisdictions are participating, and the CRS Multilateral Competent Authority Agreement (CRS MCAA), which is based on its article 6. Jurisdictions may alternatively rely on a bilateral agreement, such as a double tax treaty or a tax information exchange agreement. In addition, certain CRS exchanges will take place based on the relevant EU Directive, agreements between the EU and third countries and bilateral agreements, such as the UK-CDOT agreements. The CRS MCAA specifies the details of what information will be exchanged and when. It is a multilateral framework agreement. A particular bilateral relationship under the CRS MCAA becomes effective only if both jurisdictions have the Convention in effect, have filed the required notifications under Section 7 and have listed each other. For more information on the history and developments in the process, see 'International Framework for the CRS' (*OECD/ Global Forum on Transparency and Exchange of Information for Tax Purposes AEOI portal*) <https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/> accessed 2 March 2021.; For the text of the CRS Multilateral Competent Authority Agreement, see OECD, 'Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information' (OECD) <https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/multilateral-competent-authority-agreement.pdf > accessed 2 March 2021.; For the list of CRS MCAA signatories, see OECD, 'Signatories of the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information and Intended First Information Exchange Date' (OECD 2019) <https://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/crs-mcaa-signatories.pdf> accessed 2 March 2021.

[1104] Tax Justice Network (n 1099) 11.

[1105] ibid 3.

[1106] AEOI Standard refers to the Standard for Automatic Exchange of Financial Account Information in Tax Matters. In 2014, the GFTEITP adopted the AEOI Standard, developed by the OECD working with G20 countries. To deliver a level playing field, the GFTEITP launched a commitment process under which 100 jurisdictions committed to implement the AEOI Standard in time to commence exchanges in 2017 or 2018. Exchanges accordingly commenced in September 2017 between a group of 49 "early adopters" and, in 2018, a total of 90 jurisdictions exchanged information under the AEOI Standard. See, Global Forum on Transparency and Exchange of Information for Tax Purposes, 'The 2019 AEOI Implementation Report' (OECD 2019) 1<https://www.oecd.org/tax/transparency/AEOI-implementation-report-2019.pdf> accessed 2 March 2021.; See

made, a peer review process must commence with an initial GFTEITP secretariate in-depth analysis of countries' compliance with the AEOI Terms of Reference requirements.[1107] This in-depth analysis is then sent out for input to be provided by all jurisdictions that are committed to implementing the AEOI Standard, and that have passed domestic legislation to that effect (who are known as the AEOI peers).[1108] Subsequently, the AEOI Peer Review Group (APRG) then approves the analysis and any recommendations, before all AEOI Peers adopt them.[1109] This means that inasmuch as Nigeria is deemed to be eligible to participate in the AEOI, the FSI's rating of countries is relevant to anti-grand corruption related IFF in Nigeria. This is because Nigeria is one of the signatories of the Common Reporting Standard Multilateral Competent Authority Agreement (CRS MCAA) on automatic exchange of financial account information, which is the convention that governs the AEOI.[1110] In theory, the AEOI is a framework that allows destination countries for IFFs to give other countries such as Nigeria access to use their AEOI data beyond tax purposes. So, FSI's use of the AEOI data has made it relevant to Nigeria's anti-grand corruption related IFF agenda. The challenge with this logic is that, as also observed in the FSI methodology, not all signatories of the CRS MCAA have exchanged data with every other signatory.[1111] Furthermore, not all

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also, OECD, *Peer Review of the Automatic Exchange of Financial Account Information 2020* (OECD Publishing 2020) 8 and 19 < https://www.oecd-ilibrary.org/taxation/peer-review-of-the-automatic-exchange-of-financial-account-information-2020_175eeff4-en> accessed 2 March 2021.

[1107] OECD (n 1106) 20.

[1108] ibid.

[1109] ibid.; For the countries that makeup the APRG, see Global Forum on Transparency and Exchange of Information for Tax Purposes, 'Automatic Exchange of Information Peer Review Group (APRG and APRG+)' (OECD 2020) <http://www.oecd.org/tax/transparency/documents/aprg-members.pdf> accessed 2 March 2021.

[1110] This means that Nigeria will benefit from the AEOI process if they put in place the required standards in relation to confidentiality and data safeguards, particularly in relation to the policies and systems, to ensure the information they receive is kept safe. While it is not clear, at the time of writing this thesis, whether Nigeria has shared its AEOI data, the Federal Inland Revenue Service (FIRS), which is the competent authority on tax issues in Nigeria has continued to work on achieving Nigeria's participation in the AEOI process. See, OECD, 'Signatories of The Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information and Intended First Information Exchange Date' (n 1103) 3; 'International tax standards' (*OECD/ Global Forum on Transparency and Exchange of Information for Tax Purposes AEOI portal*) <http://www.oecd.org/tax/transparency/what-we-do/#:~:text=The%20Multilateral%20Competent%20Authority%20Agreement%20(%E2%80%9Cthe%20MCAA%E2%80%9D)%20is,(%E2%80%9Cthe%20Standard%E2%80%9D).> accessed 2 March 2021.; For what the FIRS has been doing in respect to its AEOI data, see Wole Obayomi 'COVID-19 Palliative Measures: FIRS Extends AEOI-CRS Reporting Deadline for Financial Institutions' (KPMG 2020) <https://assets.kpmg/content/dam/kpmg/us/pdf/2020/05/tnf-nigeria-may20-2020.pdf> accessed 2 March 2021; and see also 'FIRS AEOI-CRS is Live' (*Federal Inland Revenue Service*) <https://www.firs.gov.ng/firs-aeoi-crs-is-live/> accessed 2 March 2021.

[1111] Tax Justice Network (n 1099) 154.; Note that the CRS Multilateral Competent Authority Agreement (CRS MCAA) is based on Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters, which is the basis on which the exchange of tax information between jurisdictions are typically based on. The CRS MCAA specifies the details of what information will be exchanged and when. It is a multilateral framework agreement. A particular bilateral relationship under the CRS MCAA becomes effective only if both jurisdictions have the Convention in effect, have filed the required notifications under Section 7 and have listed each other. See, 'International Framework for the CRS' (*OECD/ Global Forum on Transparency and Exchange of*

the AEOI data provided by CRS MCAA signatories are available at a global scale because the exchange of information is between signatories. This means that the FSI is not measuring whether countries are allowing AEOI data to be used globally as a tool for purposes other than tax issues such as grand corruption related IFF. The remedy for this challenge is that the FSI considers whether or not countries are engaged in Pilot Projects to assist the developing countries that are not participating in the AEOI process.[1112] Thus, by publishing rating that are partly based on whether countries have allowed their AEOI information to be used beyond tax purposes to tackle corruption or money laundering, the FSI is putting pressure on them to be compliant with their obligation to provide assistance for anti-corruption.

In the FATF's ME, a different approach to peer review is adopted. In the ME, assessors work with the information that is provided by the country under review. One key difference between the two frameworks is that in an ME, the first information gotten from the assessed country is part of the materials used to conduct a preparatory desk-based review for the country visit, which is an important part of the review process.[1113] To get further preparatory information for the review, the FATF will within six months of the country visit, invite its members and FSRBs to provide information on their experience of international co-operation with the country being evaluated.[1114] In the IRM, it is only if the assessors require it that the assessed countries are expected to provide clarifications or additional information or to address supplementary questions relating to the initial information they had provided in their self-assessment checklist.[1115] This approach used in the IRM is good for making governments give account for their policies that affect grand corruption related IFF from Nigeria. The assessors can ensure that they have sufficient information to make a thorough analysis of data gotten by asking governments to provide additional information on grand corruption related IFF in Nigeria. However, the FATF country visits are a part of the ME process that allows for a more holistic evaluation of countries anti-corruption related IFF regime. The FATF assessors use the desk-based analysis and the international cooperation information that is provided by the FATF members and FRSBs to conduct a country visit for the country that is

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Information for Tax Purposes AEOI portal) <https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/> accessed 2 March 2021.

[1112] Tax Justice Network (n 1099) 199.; Note that the FSI does not consider whether a country AEOI data is being shared to all its signatory countries or not.

[1113] Prior to the on-site visit, the assessment team will conduct a desk-based review of the country's level of technical compliance, and the contextual factors and ML/TF risks. The review will be based on information provided by the country in the information updates on technical compliance, pre- existing information drawn from the country's third round MER, follow-up reports and other credible or reliable sources of information. See, FATF, 'Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations' (n 648) para 21.

[1114] ibid para 24.

[1115] UNODC (n 1095) para 24.

under review. This country visits give the ME an edge over the IRM and FSI accountability process because it involves meetings with the assessed countries' representatives and the private sector or other non-government representatives.[1116] The ME, FSI and IRM have all asked assessed countries to provide information. In the CPI accountability platforms, the assessed countries are not asked to provide information that will be used for the process.

It is difficult to conclude on the effectiveness of the FSI because as the interviews conducted by this study reveal that there is very limited public awareness about its functions. One of the AML experts that works in the civil society observed that FSI is not popular in the country (Interview #13). The minuscule participation of countries in the FSI assessment process is an indication that it has not had as much influence on the international community as the FATF's ME process. There is also reason to conclude that the IRM has also been more influential than the FSI because it has had a substantial amount of country participation. The challenge with the IRM is that its procedures have not been designed to speed up country evaluation. The speed of the IRM process is important because, as of 16th November, 2020, the first cycle of review that started in 2010 was yet to be concluded because some of the member States had not submitted their self-assessment checklists.[1117] In reference to the progress made regarding the second cycle which was launched in 2015, 63 State parties under review had not submitted their responses to the self-assessment checklist by 18th November, 2020. Therefore, the history of the IRM process has been characterized by delays that are caused by countries' failure to complete their reviews so that the accountability process can be achieved in a timely manner.[1118] Under the IRM process, countries have a considerable degree of discretion to lengthen the review process. At the start of the process, the secretariat of the UNCAC COSP is allowed to officially inform the State party under review and the reviewing State parties of the beginning of the conduct of the review and the provisional schedule for the country review.[1119] Subsequently, the procedure for the IRM is that the establishment of an actual schedule is to be determined through consultations between the secretariat of the UNCAC COSP, the State party under review and the reviewing State

[1116] FATF, 'Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations' (n 648) para 34 and 37.
[1117] Conference of the States Parties to the UNCAC 'Report of the Implementation Review Group on its second resumed eleventh session (Vienna, 16 to 18 November 2020)' (21 December 2020) UN Doc CAC/COSP/IRG/2020/5/Add.2 para 14; and UNODC (n 1095) para 20.; As of 8 May 2019, the following countries have not published the executive summary of their 1st cycle review, meaning the process has yet to be completed: Chad, Comoros, Congo-Brazzaville, Democratic Republic of the Congo, Equatorial Guinea, Guyana, India, Japan, North Macedonia, Saint Lucia, Samoa, South Sudan, Sudan, Tajikistan, and Turkmenistan. See, Huter and Scaturro (n 603) 8.
[1118] Huter and Scaturro (n 603) 9.
[1119] UNODC (n 1095) para 12.

parties.[1120] This process is different from the scheduling under the FATF's ME process where a change to the fixed or proposed date of the country visit by assessors and the date for the Plenary discussion of the MER require a FATF Plenary approval.[1121] Therefore, a significant difference in the UNCAC and FATF's procedures is that the IRM does not have a mechanism to discourage arbitrary changes to the review schedule. Unlike the procedures for the ME, the IRM procedures do little to encourage the sense of urgency that is required for its review process. This study has the position that there is no procedure to ensure urgency, other than the expectation that assessed countries will observe the processes and schedules because of the inclusive, impartial, non-adversarial, non-intrusive and non-punitive character of the review IRM.[1122] In contrast, the ME procedures encourage a sense of urgency by informing the parties that the schedule can only be changed when an approval is sought and gotten from the FATF Plenary.[1123] The FATF has put in place procedures for those situations where a country has failed to meet the schedule. The procedure is that

> the FATF President may write to the head of delegation or the relevant Minister in the country. The Plenary will be advised as to reasons for deferral, and publicity could be given to the deferment (as appropriate), or other additional action considered. In addition, the assessment team may have to finalize and conclude the report based on the information available to them at that time.[1124]

Therefore, a country's failure to meet the schedule under the ME process can attract a loss of opportunity to provide inputs in its assessment by the FATF. Although the procedures for the countries that fail to meet the schedules can be varied by the FATF, it is necessary because it encourages urgency in the ME process. In a sense, the procedure on failure to respect the schedule is a caution that reviewed countries must consider when they undertake the ME process. Countries are incentivized to not delay the FATF accountability process because there is a possibility that the ME report will be finalized without their input.

[1120] ibid para 14 and 16.
[1121] FATF, 'Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations' (n 648) para 6.
[1122] UNODC (n 1095) para 20 and 25.; and UNODC, 'Implementation Review Mechanism' (*UNODC*) <https://www.unodc.org/unodc/en/corruption/implementation-review-mechanism.html> accessed 2 March 2021.
[1123] The FATF goes on to observe that the approach to the review process each year is primarily governed by the number of MERs that can be discussed at each Plenary meeting, and by the need to complete the entire round in a reasonable timeframe. See, FATF, 'Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations' (n 648) para 5.
[1124] FATF, 'Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations' (n 648) para 54.

Another issue with the IRM is that out of 183 completed reviews, only 161 of them involved country visits and 14 joint meetings between the reviewing and reviewed member states.[1125] This contrasts with the FATF accountability mechanism which makes the country report on its effectiveness, and the country's visit by assessors is a mandatory part of the mutual evaluation process.[1126] Another challenge of the IRM is that it has been criticized as being weak because of, for instance, the lack of full disclosure that has characterized the process.[1127] Under the reviewing, States prepare a country's report that remains confidential, although the terms of reference encourage State Parties under review to exercise their sovereign right to publish the report or part thereof.[1128] So far, some of the UNCAC Member States have not published their countries' reports, executive summary, and self-assessment checklist.[1129] In contrast, the ME reports on countries, including some of the countries that have not published their reports for the IRM, are publicly available. Therefore, the fact that all ME reports are available on the public platforms of the FATF is an indication of its ability to ensure accountability of all countries which it assesses.

8.4 Conclusion

This Thesis is premised on the idea that AML mechanisms are useful for eradicating IFFs and encouraging RTD in Nigeria. Therefore, this chapter has reflected on if, and, how the FATF accountability processes are suitable for promoting development in Nigeria. The findings in this chapter have shown why FATF's processes are suitable to be used in promoting development in Nigeria. The findings have also contributed to Guzman's theory by identifying some factors that amplify the effectiveness of mechanisms which may cause reputational damage to non-compliant countries. In section 8.1 above, this study has shown that the FATF's influence on Nigeria has been essential and suitable in the Nigerian context because of what it has been able to achieve through processes that have ensured local engagement in its process, and consequently it has not caused public disenchantment. Section

[1125] Conference of the States Parties to the UNCAC 'Report of the Implementation Review Group on its second resumed eleventh session (Vienna, 16 to 18 November 2020)' (21 December 2020) UN Doc CAC/COSP/IRG/2020/5/Add.2 para 14.
[1126] Prior to the on-site visit, the assessed country provided information on the effectiveness of their system to aid in the discussions. See, FATF (n 265).
[1127] For analysis of the review process of the review process of the UNCAC. See, Rose (n 1073)104-106.
[1128] UNODC (n 1095) para 37-38.
[1129] Tajikistan and Turkmenistan are examples of countries that have not published any reports on the completed assessments. See, UNODC, 'Tajikistan' (UNODC) <https://www.unodc.org/unodc/en/corruption/country-profile/countryprofile.html#?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Ftjk.html> accessed 20 April 2022; and see also, UNODC, 'Turkmenistan' (UNODC) <https://www.unodc.org/unodc/en/corruption/country-profile/countryprofile.html#?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Ftkm.html> accessed 20 April 2022.

8.2 demonstrates that the FATF has been a prominent part of the international mechanisms which have encouraged anti-IFF by asking countries to implement AML laws because the Task Force has highly developed procedures for holding States accountable.

Chapter Nine: Final Reflections and Conclusions

9.1 Introduction

The purpose of this study was to investigate whether the FATF's processes for holding states accountable for non-compliance with its Recommendations have been an effective instrument for strengthening anti-corruption related IFF, and consequently RTD in Nigeria. In Chapters 2 and 7, this Thesis has examined the FATF as a mechanism that has sought to promote improved compliance for AML Recommendations of the FATF which are relevant to anti-corruption related IFFs and are consequently valuable to the goal of actualizing RTD in Nigeria. This Thesis uncovered that the need to identify the value of FATF's accountability framework, as a mechanism that is relevant to anti-IFF and consequently the RTD in Nigeria, is significant because of local disenchantment against international influence in the country. Additionally, an improvement in compliance with the FATF Recommendations (2012) by countries in the network of FSRBs and the FATF memberships has not always been achieved, and compliance with its Recommendations on correspondence banking in particular has been significantly low. The Thesis has improved knowledge on the significance of contextual explanations on how the FATF accountability framework has been valuable to RTD in Nigeria.

Furthermore, the study investigated the value of the FATF accountability framework. In Chapter 4, it was found that FATF processes for holding countries accountable is invaluable because it has achieved and enhanced various forms of accountability. In Chapter 6, an analysis of survey data revealed that Nigeria's status as a non-member of the FATF has not elicited local distrust towards the FATF's influence on Nigeria. The survey results in Section 6.3.3 and the findings in Section 8.1 indicate that pro-corruption values in the Nigerian society are important factors that have impeded on the effectiveness of anti-corruption efforts, and so the FATF's processes for getting input and participation from citizens have been essential. The FATF's ability to get input from citizens has ensured and promoted their participation in its process which are relevant for promoting and influencing anti-IFF from grand corruption and RTD in Nigeria. Moreover, in Section 8.2, it is shown that some of the procedures for the FATF's accountability process, including the collection of inputs from the Nigerian government and citizens have enabled it to be an effective and acceptable soft law mechanism.

The main research question for this Thesis was: Have the FATF's Recommendations and processes for holding States accountable for weak implementation of AML policies been effective mechanisms for strengthening Nigeria's ability to combat grand corruption related IFFs and promote the actualization of the RTD? Following this question were two sub-research questions. The first one was: How effective have the FATF's Recommendations and processes for holding States accountable, been in helping the Nigerian AML regime to achieve improved information availability that enhances the country's ability to promote RTD by combating grand corruption related IFFs? The second question was: Why has the FATF been a suitable mechanism for promoting the development process in Nigeria? The following objectives were formulated to answer the research questions:

- Research objective 1: To evaluate the importance of the FATF's processes for holding States accountable and promoting the global implementation of AML policies as mechanisms that are helping to enhance Nigeria's ability to combat grand corruption related IFFs and promote RTD; and

- Research objective 2: To critically examine the role that domestic values regarding international influence have had on development cooperation in Nigeria; and conduct a comparative enquiry on their implication on the FATF's ability to assist and positively impact the Nigerian mechanisms for promoting development through the fight against grand corruption related IFFs.

The first objective was aimed at discovering how valuable the FATF is for achieving Nigeria's request for accountability for the RTD. The second objective focused on the context and implication of domestic values regarding international influence on a key period of international influence in Nigeria to establish a benchmark which is used to evaluate the suitability of the FATF as a foreign institution that engages with the country. Consequently, the background and consequence of the IMF influence on Nigeria's implementation of SAP policies was used to identify the challenges of development cooperation, and the findings provided the context for concluding on the suitability of the FATF's impact on Nigeria. The next section will identify the key conclusions of the study and their significance.

9.2 The Main Conclusions and Findings

This section of the Thesis serves to summarize the insights gained in the previous chapters. The table below shows a summary of the key conclusions in chapters 4, 6, 7 and 8. Subsequently, these key conclusions are further analyzed.

	Key Conclusions
Chapter 4	(i) The FATF's publications on countries' compliance with its Recommendations are valuable accountability mechanisms because non-compliance can cause loss of reputation, and they are supplementary to other institutions that actualize diverse forms of accountability that is relevant to corruption related IFF and RTD. (ii) The FATF's actions have been one of the factors that can cause reputational consequences for the markets of countries with weak AML laws, but this ability of the FATF is largely dependent on the subsequent actions of credit rating agencies and other relevant institutions. (iii) The FATF's mechanisms for holding countries accountable are part of the mechanisms that can be utilized by international institutions that facilitate international fiscal accountability.
Chapter 6	(i) The influence that the FATF's soft law mechanisms have had on Nigerian laws is widely acknowledged by Nigerian AML experts and so the FATF's impact in the country's AML laws is a confirmation of Guzman's theory of compliance. (ii) The FATF's status as an international instrument that has exerted a level of influence on Nigeria has not resulted in widespread local distrust for its cooperation with the country.
Chapter 7	(i) There were improvements to countries' compliance levels for most but not all the Recommendations by the FATF that are relevant to corruption related IFFs after they were subjected to the Task Force's accountability process. (ii) The FATF has achieved universal compliance for most but

	not all of its Recommendations that are relevant to public sector embezzlement related IFFs in Nigeria, and so its mutual evaluation process did not ensure universal compliance for key policies such as correspondence banking.
Chapter 8	(i) The obvious opportunities for Nigeria and its citizens to participate in the FATF processes is an explanation for why Nigeria's implementation of the FATF Recommendations has not caused widespread concerns about international influence, as it was observed with the implementation of SAP policies. (ii) The FATF has been an efficient and prominent part of the international efforts to promote global implementation of mechanisms that prevent and provide remedy for IFF from Nigeria because it has highly developed procedures for holding States accountable.

Conclusions 1, 2(i) and 4(ii) show that the FATF's Recommendations and processes for holding States accountable have been considerably effective in helping the Nigerian AML regime to achieve improved information availability. Therefore, the FATF has effectively enhanced the country's ability to promote RTD by combating public sector embezzlement related IFFs and it has been one of the factors that has influenced the country into complying with the provisions of the UNCAC on implementing international AML initiatives. This is because the analysis that led to conclusions 2(i) and 4(ii) and the analysis in Chapter 7 show that the FATF has been effective in promoting the implementation of policies and laws in Nigeria and other countries which are designed to ensure the collection of information on ML. Consequently, the FATF has effectively enhanced Nigeria's ability to combat public sector embezzlement related IFFs by ensuring that Nigeria and other countries are collecting information that is relevant for the country's effort at stemming cross-border ML. Furthermore, the findings in Chapter 7 and the analysis that led to conclusions 1(ii) and (iii) has shown that the FATF's ability to contribute to actualization of market and fiscal accountability is limited. However, the analysis that led to conclusion 1(i) and the findings in Chapter 7 showed that the FATF has adequately actualized and complemented several forms of accountability that are valuable for promoting the implementation of its

Recommendations. The Thesis has also shown that the FATF has been a suitable mechanism for promoting the development process in Nigeria. This is because the analysis that led to conclusions 2(ii) and 4(i) has shown that the tendency for Nigerians to oppose international influence on domestic governance has been mitigated by the FATF, through its willingness to implement procedures that enable the Nigerian government and its citizens to be involved in the FATF processes. Therefore, the main conclusion of this Thesis is that the FATF's Recommendations and processes for holding States accountable for weak implementation of AML policies has been effective mechanisms for strengthening Nigeria's ability to combat grand corruption related IFFs and promote the actualization of the RTD.

9.3 Recommendations

An analysis of how there have been stages of evolution in regard to the FATF mandates is contained in Chapter 2 of this Thesis. It is clear that the expediencies around predicate offences of ML have at various times led to additional mandates for the FATF. For instance, laundering funds for terrorism, the proceeds of illegal drug sale, and the financing of proliferation of weapons of mass destruction have all been global challenges associated with ML that have influenced the additions to the FATF mandate.[1130] It is not out of place to include these mandates to the FATF because it is within its scope as a standard setter for ML and accordingly, the proliferation of weapons of mass destruction, terrorism and sale of illegal drugs are all predicate offences of ML. In the same way, the FATF AML mandate can be extended to include RTD because the illegal cross-border movement of proceeds of corruption is considered to have significant impact on countries' development.

The conclusions in this Thesis have shown that there is potential in the goal of promoting the actualization of accountability for the RTD by incorporating the idea of using existing and relevant international mechanisms in the UN and academic conversations on the right. Consequently, the UN should take steps to further investigate, confirm and promote the notion that the FATF is a viable example of why the adoption of existing accountability mechanisms should be considered alongside the ongoing discuss on the actualization of an RTD convention.

[1130] Peter Reuter and Edwin Truman, *Chasing Dirty Money: The Fight Against Money Laundering* (Institute for International Economics 2004) 81; and FATF (n 245) 2.; See also, Boister (247) 194.

Specifically, the UN should commission studies on the direct relationship between the FATF activities and the actualization of RTD in several countries. If multiple studies or all of the studies on the relationship between the FATF and the goal of actualizing the RTD show affirmative results, then the UN should take steps to pass a relevant declaration or resolution.

The analysis in Chapter 7 has revealed that the level of improved compliance with the FATF Recommendations (2012) is not significant for all its Recommendations. This indicates that improvement of implementations may be affected by the nature of the requirements themselves. Chapter 7 has also identified that while it is true that the anti-corruption/IFF of the FATF Recommendations can facilitate equality of opportunity for all, they are not without certain flaws. One example identified in Chapter 7 is on how the FATF Recommendation 13 does not require correspondent securities providers to conduct CDD on the customers of the respondent institution that is regulated and supervised by a supervisory authority for securities transactions. If Nigerian respondent institutions that are regulated by relevant securities regulators in Nigeria fail to perform sufficient CDD on their Nigerian PEP customers, the correspondent institution can absolve itself of the responsibility to perform CDD for relevant transactions. With such provisions for potential weaknesses, the conclusion here is that there is a likelihood for flawed policies to be corrected as the FATF Recommendations have constantly evolved to respond to new challenges (e.g. use of crypto currencies, art, and antiquities for ML). As the FATF regime has shown that it allows for dynamic and timely responses to new issues and threats to societal security, integrity and development, its flawed standards should not be seen as a reason to be skeptical of the FATF's value for promoting RTD in Nigeria. On the contrary, the international community should take steps to identify and accentuate the need for improving all of the FATF Recommendations 2012. To be specific, the stakeholders such as the UN, FATF, civil society and national governments should promote education on the weaknesses of the FATF Recommendations (2012) and the need for all members of the societies to take all actions that will mitigate these weaknesses.

The weak compliance for some of the FATF standards that was identified in Chapter 7 should be improved upon by mainstreaming and accentuating their relevance for achieving the extraterritorial dimension of RTD. One way to achieve this goal is by setting up an initiative that ties aid to countries' compliance with those standards such as Recommendations 13 that have been associated with weak country compliance tendencies. In response to the realization that the global AML compliance cost has continued to increase yearly, steps should be taken

to ensure that initial UN aid or aid extensions are awarded when countries have shown significant progress in complying with the relevant Recommendations.

Additionally, the FATF should create a rating or scoring platform that focuses on achieving reputational consequence for the FATF Recommendations that have been associated with weak country compliance. Instead of only having the cumulative publication of its assessments, the FATF can isolate its Recommendations that are challenging but essential for RTD, and publish countries' compliance performance with emphasis on their importance for the development of countries such as Nigeria. These actions are necessary to emphasize the relationship between AML and development assistance. They are not only useful for proliferating the idea that compliance with the FATF Recommendations 2012 is a form of aid, but they are also useful for making the FATF a more effective and identifiable tool for accountability for the RTD.

9.4 Practical Implications

The analysis in Chapter 2 reveals that the political debates on how to implement RTD are not likely to end anytime soon. However, if the continuous circle of debates is allowed to keep on perpetuating, there is a risk that an effective implementation plan would be picked apart and rendered ineffective or achieve consensus but fail to elicit implementation by aggrieved member countries. Therefore, there is a need for an implementation policy that can break the developed and developing country divide and be a true compromise between two sides.

According to Sengupta, this notion of a right to policies that genuinely pursue the objective of making the RTD realizable is a meta-right.[1131] He observes that for the RTD, the process that leads to the outcome of global development is a right and it is not only the outcome of development that is a right. So, if the process that leads to right is accepted as legitimate, an inviolable obligation can be claimed by right holders. Therefore, the consideration of anti-IFF policies as a part of the meta-right of RTD is a valid approach to actualizing the right. The consideration of anti-IFF policies as a part of the meta-right of RTD allows for an analysis into RTD actualization approaches where there is already significant consensus or existing cooperation.

[1131] Arjun Sengupta, *The Human Right to Development* (Routledge 2007) 192.

This is why the identification of FATF's value as an international mechanism that is relevant to anti-IFF related corruption is important. The basis for this conclusion is that the obligation to reduce IFFs and strengthen the recovery and return of stolen assets is provided for in the internationally agreed indicators for SDGs.[1132] This obligation to fight IFFs and corruption is also provided for as one of the sub-criteria (sub-criterion 1 (b) (v) ter) that was being considered for adoption in the RTD criteria and operational sub-criteria.[1133] The need to fight corruption and IFFs was an objective in the UN level deliberations on RTD that has not been agreed to after more than 5 years of deliberations. This Thesis has shown that the FATF is achieving part of the objectives in the RTD criteria and operational sub-criteria through its contribution to the global efforts against corruption related IFFs.

9.5 Limitations of the Study

The work focuses on the FATF's role and impact on local and foreign policy attempts to address IFFs out of Nigeria. Therefore, some of the challenges associated with the study is that the illicit nature of financial flows under consideration mean that information is hard to come by and there is reluctance by some persons to be totally transparent or seen to be overly critical about institutions of power. There is also the typical bureaucratic hoarding of required information by personnel of some stakeholder institutions in Nigeria, despite the extant Freedom of Information Act Cap. A2 LFN 2011 in the country. The challenge was however overcome through professional networking by the researcher with practitioners and the promise of anonymity for those who require such.

Ultimately the goal of the study is to look at, from the Nigerian's context, the propriety of adopting the FATF framework as a tool to achieve accountability for recipient States of development assistance. There is need to get a holistic view of this goal by making a similar inquiry from the perspective of donor States. It is expected that future enquiries will be conducted by the researcher to achieve such goal.

[1132] UN Statistics Division, 'SDG Indicators: Global Indicator Framework for the Sustainable Development Goals and Targets of the 2030 Agenda for Sustainable Development' (*United Nations*) <Https://unstats.un.org/sdgs/indicators/indicators-list/>accessed 7 July 2018.

[1133] For comments and views submitted by governments, groups of governments, regional groups and stakeholders on the draft right to development criteria and operational sub-criteria see, Human Rights Council Working Group on the Right to Development (Eighteenth session) 'The Draft Right to Development Criteria and Operational Sub-Criteria Following its Second Reading, and the Comments and Views Submitted at the Sessions by Governments, Groups of Governments, Regional Groups, and Stakeholders' (3 - 7 April 2017) UN Doc A/HRC/WG.2/18/CRP.1 <https://www.ohchr.org/documents/issues/development/session18/a.hrc.wg.2.18.crp.1.docx> accessed 5 June 2018.

Although the RTD is a universal concept, it is impossible at the present to conduct a universal study on why mainstreaming RTD into the FATF framework is appropriate. Therefore, the study is particularly concerned with Nigeria as an African country that is rich in crude oil but is home to the most amount of poor people in the world. The country's analysis is carried on to find out whether the FATF is an international instrument that has impacted the Nigeria society. It is part of a critical examination of how anti-corruption related IFF measures can be important to development assistance.

9.6 Suggestions for Future Research

By looking at accountability for RTD through accountability for IFF policies under the FATF framework, the Thesis concluded on the importance of the FATF as an instrument that is relevant to the actualization of RTD in Nigeria. The enquiry in this Thesis is based on one of the African perspectives – that of Nigeria - of the problem of accountability for the external dimension of RTD. This African perspective is fundamental in this Thesis and for future research because like Nigeria, a large portion of African countries needs the international community to assist in their development.[1134] At one point, about one-third of the 141 developing countries were in sub-Saharan Africa and 23 of the 28 critically weak states were from the sub-Saharan Africa. Most of the countries in sub-Saharan Africa, including the countries that are top performers in the Index of State Weakness in the Developing World,[1135] scored poorly on social welfare indicators, compared with countries in other regions.[1136] This reality is instructive because African countries have shown interest in the actualization of the RTD. This point is evidenced in Article 1 of the African Charter on Human and Peoples' Rights, 1981 (African Charter), where African States accepted the obligation to adopt legislation or other measures that give effect to the rights, duties and freedoms enshrined therein.[1137] The preamble to the African Charter shows that the actualization of ESC rights

[1134] In a UN report, 33 out of the identified 46 least developed countries in the world were African countries. See, United Nations Committee for Development Policy, 'List of Least Developed Countries ' (UN 2021) <https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/ldc_list.pdf> accessed 1 March 2021.

[1135] The High Performers from Sub-Saharan Africa on the Index of State Weakness in the Developing World are Botswana at #102, Mauritius at #133, The Seychelles at #126, and South Africa at #109. See, Susan Rice and Stewart Patrick, *Index of State Weakness in the Developing World* (Foreign Policy at Brookings 2008) <https://www.brookings.edu/wp-content/uploads/2016/06/02_weak_states_index.pdf> accessed 2 December 2016.

[1136] ibid.

[1137] The Charter was ratified by a majority of member states of the OAU before it came into force on 21 October 1986. However, as of 1999, the African Charter has been ratified by all the member states of the OAU. See,

are important obligations in the Charter.[1138] The language used in the preamble of the African Charter indicates that ESC rights are not subject to or considered to be lesser than CP rights.[1139] Furthermore, it is observed that the African Charter of 1981 promotes the immediate realization of RTD in the African continent.[1140] This African approach is however observed to be the reason why the RTD is described as a manifesto or abstract right.[1141] This is because the resource and institutional constraints that exist around the world is observed to be the reason why the possibility of immediate realization of RTD is impracticable.[1142] Yet, although the immediate realization of RTD is considered as impracticable, scholars such as Sen have argued that this is not a handicap to the right.[1143] Sengupter, for instance, has observed that it is wrong to deny the RTD's status as a human right because of lack of immediate actualization.[1144] Sengupter argues that it will be tantamount to denying the RTD's essential character and role in social transformation if its status as a human right is refuted because of lack of immediate actualization.[1145] This is why global institutions such as the CESCR are able to advocate for the progressive realization rather than the immediate actualization of ESC rights.[1146] The progressive realization of ESC rights is also promoted as

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Yolanda Booyzen, *Celebrating the African Charter at 30: A Guide to the African Human Rights System* (Pretoria University Law Press 2011) 10.

[1138] This point is made by Gittleman, who has further noted that the African Charter's preamble is a guide for the main themes that run throughout the entire charter. See Richard Gittleman, 'The African Charter on Human and Peoples Rights: A Legal Analysis' (1982) 22(4) Virginia journal of international law 677 <http://www.corteidh.or.cr/tablas/4558.pdf> accessed 29 May 2021.

[1139] Mbazira observes that one could interpret the preamble as suggesting that civil and political rights are dependent on socio-economic rights without a reverse statement. See, Christopher Mbazira, 'Enforcing the Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights: Twenty Years of Redundancy, Progression and Significant Strides' (2006) 6(2) African Human Rights Law Journal 333, 339 <http://reference.sabinet.co.za/sa_epublication_article/ju_ahrlj_v6_n2_a5> accessed 9 October 2019.

[1140] The principle in the African Charter is that the RTD is to be progressively realized. See, Serges Alain Djoyou Kamga, 'The Right to Development in the African Human Rights System: The Endorois Case' (2011) 44(2) De Jure Law Journal 381, 391 <http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2225-71602011000200010&lng=en&tlng=en> accessed 14 March 2019.

[1141] Jiji Philip, *The Human Rights Discourse between Liberty and Welfare: A Dialogue with Jacques Maritain and Amartya Sen* (Nomos Verlagsgesellschaft 2017) 361; The target is described as an African approach because the African Charter, itself, is observed to be truly African because its drafters relied heavily upon African documents and traditions rather than upon United Nations declarations and covenants. See, Gittleman (n 1138) 677. See also Mbazira (n 1139) 333, 342.; Therefore, norms from other African documents have been given legal flavor by African States ratification of the Charter.

[1142] Sengupta (n 602) 179-203, 188, 191 and 201; see also, Sakiko Fukuda-Parr, 'Human Rights and Human Development' (2007) The Human Rights Institute: University of Connecticut Economic Rights Working Paper Series Working, 4 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2212866> accessed 14 January 2019.

[1143] Philip (n 1141).

[1144] ibid; citing

Arjun Sengupta, 'Poverty Eradication and Human Rights' in Thomas Pogge (eds), *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?* (Oxford University Press 2007).

[1145] ibid.

[1146] Manisuli Ssenyonjo, 'Reflections on State Obligations with Respect to Economic, Social and Cultural Rights in International Human Rights Law' (2011) 15(6) The International Journal of Human Rights 969-1012, 969 and 987 <http://www.tandfonline.com/doi/abs/10.1080/13642981003719158> accessed 4 July 2018.

a target for actualizing the RTD in the UN system.[1147] Furthermore, industrialized countries such as the United Kingdom of Great Britain and Northern Ireland have, for instance, observed that the RTD requires the progressive realization, rather than immediate realization of ESC rights.[1148] The African Commission on Human and People Right (ACHPR) has also adopted the concept of progressive realization of ERC rights in cases that involve the violation of RTD. The ACHPR decision in Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (Ogoni) is an instance where the concept of progressive realization of ESC rights was used to decide a case that involved a claim for the violation of RTD under the African Charter.[1149] This and other cases such as the decision in Gunme & Others v Cameroon (2009) AHRLR 9 (ACHPR 2009) show that the concept of progressive realization of RTD has been applied in the African context. Therefore, the focus on the impact of the FATF should not be limited to Nigeria alone. The FATF effectiveness in the context of other African countries should be considered so that conclusions can be made on whether the FATF has effectively promoted RTD in the continent.

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[1147] UNHRC (36th Session) (n 80) para 36.
[1148] ibid para 27.
[1149] See, SERAC and Another v Nigeria (Ogoni) (2001) AHRLR 60 (ACHPR 2001).; For analysis of the ACHPR decision to adopt the concept of progressive realization see, Dejo Olowu, *An Integrative Rights-Based Approach to Human Development in Africa* (Pretoria University Law Press 2009) 62- 63.

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Appendices

Appendix i

The score in the tables should be interpreted as follows:

C= 4
LC=3
PC=2
NC=1
N / A=0

Appendix 1

	R.10 MER	R.10 FUR1
1. Andorra	3	3
2. Australia	2	2
3. Austria	3	4
4. Belgium	3	4
5. Denmark	2	3
6. Hungary	2	3
7. Iceland	2	4
8. Italy	3	3
9. Latvia	2	3
10. Norway	2	2
11. Slovenia	3	3
12. Spain	3	3
13. Sweden	3	3
14. Switzerland	2	2
15. United States	2	3

	R.10 MER	R.10 FUR1
1. Albania	3	3
2. Armenia	3	3
3. Bahamas	2	4
4. Bangladesh	3	3
5. Botswana	1	2
6. Cambodia	3	3
7. Dominican Republic	3	3
8. Ethiopia	3	3
9. Fiji	2	3
10. Ghana	3	3
11. Guatemala	3	3
12. Honduras	3	4
13. Kyrgyzstan	3	3
14. Malaysia	4	4
15. Mauritania	1	1
16. Mauritius	1	3
17. Mongolia	3	3
18. Myanmar	2	2
19. Nicaragua	2	2
20. Peru	3	3
21. Philippines	3	3
22. Samoa	2	2
23. Saudi Arabia	4	4
24. Singapore	4	4
25. Sri Lanka	1	3
26. Thailand	3	3
27. Trinidad and Tobago	3	4
28. Tunisia	2	3
29. Uganda	2	2
30. Ukraine	3	3

31. Vanuatu	2	2

Appendix 2

	R.12 MER	R.12 FUR1
1. Andorra	2	3
2. Australia	3	3
3. Austria	2	4
4. Belgium	2	4
5. Denmark	2	4
6. Hungary	2	2
7. Iceland	2	4
8. Italy	3	3
9. Latvia	3	3
10. Norway	2	2
11. Slovenia	2	2
12. Spain	4	4
13. Sweden	3	4
14. Switzerland	3	3
15. United States	2	2

	R.12 MER	R.12 FUR1
1. Albania	3	3
2. Armenia	2	2
3. Bahamas	2	4
4. Bangladesh	3	3
5. Botswana	1	3
6. Cambodia	2	2
7. Dominican Republic	3	3
8. Ethiopia	4	4

9. Fiji	2	2
10. Ghana	4	4
11. Guatemala	3	3
12. Honduras	3	3
13. Kyrgyzstan	1	3
14. Malaysia	3	3
15. Mauritania	2	2
16. Mauritius	2	4
17. Mongolia	3	3
18. Myanmar	2	2
19. Nicaragua	2	2
20. Peru	3	3
21. Philippines	3	3
22. Samoa	2	2
23. Saudi Arabia	4	4
24. Singapore	4	4
25. Sri Lanka	1	3
26. Thailand	3	3
27. Trinidad and Tobago	4	4
28. Tunisia	2	3
29. Uganda	1	2
30. Ukraine	3	3
31. Vanuatu	3	3

Appendix 3

	R.13 MER	R.13 FUR1
1. Andorra	3	3
2. Australia	1	1
3. Austria	3	3
4. Belgium	2	2
5. Denmark	2	2

6. Hungary	2	2
7. Iceland	2	2
8. Italy	2	2
9. Latvia	3	3
10. Norway	2	2
11. Slovenia	2	2
12. Spain	4	4
13. Sweden	3	3
14. Switzerland	3	3
15. United States	3	3

	R.13 MER	R.13 FUR1
1. Albania	3	3
2. Armenia	4	4
3. Bahamas	4	4
4. Bangladesh	3	3
5. Botswana	1	2
6. Cambodia	2	2
7. Dominican Republic	4	4
8. Ethiopia	4	4
9. Fiji	4	4
10. Ghana	4	4
11. Guatemala	4	4
12. Honduras	4	4
13. Kyrgyzstan	3	3
14. Malaysia	3	3
15. Mauritania	2	3
16. Mauritius	1	4
17. Mongolia	3	3
18. Myanmar	2	2
19. Nicaragua	4	4
20. Peru	4	4

21. Philippines	4	4
22. Samoa	2	2
23. Saudi Arabia	4	4
24. Singapore	4	4
25. Sri Lanka	1	3
26. Thailand	2	2
27. Trinidad and Tobago	4	4
28. Tunisia	3	3
29. Uganda	4	4
30. Ukraine	4	4
31. Vanuatu	3	3

Appendix 4

	R.22 MER	R.22 FUR1
1. Andorra	2	3
2. Australia	1	1
3. Austria	2	3
4. Belgium	3	3
5. Denmark	2	3
6. Hungary	2	3
7. Iceland	2	4
8. Italy	3	3
9. Latvia	2	3
10. Norway	2	2
11. Slovenia	3	3
12. Spain	3	3
13. Sweden	3	3
14. Switzerland	2	2
15. United States	1	1

	R.22 MER	R.22

		FUR1
1. Albania	3	3
2. Armenia	3	3
3. Bahamas	2	2
4. Bangladesh	3	3
5. Botswana	1	1
6. Cambodia	2	2
7. Dominican Republic	3	3
8. Ethiopia	3	3
9. Fiji	1	2
10. Ghana	3	3
11. Guatemala	2	2
12. Honduras	3	3
13. Kyrgyzstan	2	3
14. Malaysia	3	3
15. Mauritania	2	2
16. Mauritius	1	3
17. Mongolia	1	3
18. Myanmar	2	2
19. Nicaragua	1	2
20. Peru	3	3
21. Philippines	2	2
22. Samoa	2	2
23. Saudi Arabia	3	3
24. Singapore	2	2
25. Sri Lanka	1	1
26. Thailand	1	1
27. Trinidad and Tobago	3	4
28. Tunisia	2	2
29. Uganda	2	2
30. Ukraine	3	3
31. Vanuatu	2	2

Appendix 4

On Statistical Analysis of Countries Compliance Scores

Reliability test

General dataset

Reliability Statistics	
Cronbach's Alpha	N of Items
0.961	60

Donor Countries

Reliability Statistics	
Cronbach's Alpha	N of Items
0.923	60

Recipient countries

Reliability Statistics	
Cronbach's Alpha	N of Items
0.966	60

Descriptive Statistics

General dataset

	N	Mean	Std. Deviation	Skewness	Kurtosis
R.10 MER	46	2.54	0.751	-0.319	-0.138
R.10 FUR	46	2.96	0.698	-0.351	0.308
R.12	46	2.54	0.836	0.096	-0.496

MER					
R.12					
FUR	46	3.02	0.745	-0.035	-1.152
R.13					
MER	46	2.93	0.998	-0.426	-0.98
R.13					
FUR	46	3.09	0.865	-0.388	-1.021
R.22					
MER	46	2.17	0.739	-0.292	-1.086
R.22					
FUR	46	2.5	0.753	-0.49	-0.216

Donor Countries

	N	Mean	Std. Deviation	Skewness	Kurtosis
R.10 MER	15	2.47	0.516	0.149	-2.308
R.10 FUR	15	3	0.655	0	-0.179
R.12 MER	15	2.47	0.64	1.085	0.398
R.12 FUR	15	3.13	0.834	-0.274	-1.499
R.13 MER	15	2.47	0.743	0.13	0.182
R.13 FUR	15	2.47	0.743	0.13	0.182
R.22 MER	15	2.2	0.676	-0.256	-0.505
R.22 FUR	15	2.67	0.816	-1.077	0.956

Recipient countries

	N	Mean	Std. Deviation	Skewness	Kurtosis
R.10 MER	31	2.58	0.848	-0.445	-0.282
R.10 FUR	31	2.94	0.727	-0.456	0.506
R.12 MER	31	2.58	0.923	-0.117	-0.699
R.12 FUR	31	2.97	0.706	0.045	-0.877
R.13 MER	31	3.16	1.036	-0.92	-0.409
R.13 FUR	31	3.39	0.761	-0.806	-0.756
R.22 MER	31	2.16	0.779	-0.297	-1.257

R.22 FUR	31	2.42	0.72	-0.272	-0.231