Delineating the role of foreign governments in the fight against corruption in Africa
AnzaniIufuno Munyai and Avitus Agbor Agbor

Abstract: Corruption on the African continent unfolds two unique trends: first, the involvement of senior state officials in the perpetration of grand corruption; and secondly, the illicit and surreptitious transfer of stolen assets and funds beyond Africa's borders. As such, African States are heavily drained of their resources when corruption is committed. Foreign states become safe havens for stolen assets from Africa which makes Africa's development stagnated, paralysed and hijacked by the perpetrators. Compounded by a litany of challenges such as weak institutions; poorly written laws; a culture of impunity; the absence of the rule of law; a widening gap between the rich and the poor; the pangs of underdevelopment; undermanned and under-resourced anti-corruption institutions and a sheer absence of a strong political will, the fight against corruption in Africa is one of Africa's biggest battles. While some national efforts to overcome this invisible enemy amongst the African people (corruption) may be commended, it is clear that such efforts themselves are insufficient and ineffective: a holistic approach is more than needed, especially given the trends in which grand corruption in particular is committed. Borrowing from relevant international legal instruments, this paper argues that it is a moral and legal imperative for non-African States to enjoin Africa in its fight against corruption. In making this thesis, this paper identifies and discusses the different ways in which such non-African states can help Africa in its fight against corruption.

ABOUT THE AUTHOR
Dr. AnzaniIufuno Munyai is a Lecturer in the Faculty of Law, University of Johannesburg. Professor Avitus Agbor Agbor is a Research Professor, Faculty of Law, North-West University, South Africa. Dr Munyai pursued a doctorate in Public Law and Legal Philosophy, and was supervised by Professor Agbor. This research was an aspect of her doctoral thesis which was submitted for examination and passed.

PUBLIC INTEREST STATEMENT
Across disciplines in social sciences, and at the centre of credible political leadership is the management of public resources by individuals who occupy public offices, whether elected or appointed. The mismanagement of public resources for private gain does not only stagnate socio-economic development and widen the gap between the rich and the poor, it further erodes the confidence the people have in their leaders. While no society is corruption free, effectively fighting corruption, with the goal of bringing it to a tolerable level, is quite a Herculean task for many African countries that operate on inherently weak or dysfunctional systems (blend of laws and institutions). This study explored the need for foreign countries to assist Africa in her efforts to fight corruption: a commitment that requires the fierce urgency of now given the grave ramifications corruption has on the African continent.
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1. Introduction
Taking the period from 1990 to 2015 (a quarter of a century), an assessment of efforts made by few African countries like Cameroon; Nigeria; Kenya; Equatorial Guinea; Democratic Republic of Congo (former Zaïre after 1997) and Gabon in their fight against corruption within them will lead to dismal findings as no significant progress had been made in that regard. This view may sound pessimistic. However, a close look at the annual reports published by the global anti-corruption watchdog, Transparency International (TI), would not only corroborate this view but also highlight the fact that the foregoing African countries (as well as others on the African continent) struggled, and continue to struggle to combat and defeat an invisible enemy that resides amongst them (that is corruption). These African States have degenerated to the hub of both grand and petty corruption committed by the rank and file of society as corruption is normalised as a way of life therein (Poeschl & Ribeiro, 2016, p. 59). More worrying is the perpetration of grand corruption through syndicated channels which results in the illicit transfers of funds and other assets from African countries to mostly Western-based financial entities where they are concealed. At times, some of these siphoned monies are used for the purchase of expensive and luxurious assets such as residential properties in uptown market areas. The perpetration of theft of state funds and resources in most of Africa is made much easier by the absence of a strong political will to fight corruption; the enactment of weak laws that is penned with technical flaws; the absence of the rule of law which compromises the successful prosecution and conviction of suspects; frail institutional mechanisms that are designed as window-dressing that in essence seldom bark and bite; unskilled and untrained law enforcement personnel who neither have the know-how nor the tools needed to combat corruption through detection, investigation and prosecution of perpetrators (Greenberg et al., 2009, p. 7). The unfortunate outcome of these challenges when put together is that many African States, with beleaguered legal systems, are capacity-deficient with regards to investigating these illicit transfers of stolen funds and other assets. This makes tracing and recovering these stolen assets an enormous challenge. According to the Organisation for Economic Co-operation and Development (hereafter OECD), there is absolutely no doubt that the African countries wherefrom these assets are stolen are deprived of their resources for investment and development, leaving them inextricably entangled in the pangs of underdevelopment, deprivation, destitute and poverty (OECD, 2014, p. 23). On the other hand, the receiving States (where the funds are sent to) utilise such funds for investment and development. Probably, a synopsis of the figures on the illicit transfers of monies and assets stolen from Africa is necessary (Olanijyan, 2014, p. 20). Reliable sources estimate that Africa loses approximately US$ 50 billion annually (Mhango, 2015, p. 169). Precisely, between 1970 and 2008, the amounts of funds that were transferred illicitly from African States to foreign financial institutions reached US$ 850 billion. According to Fofack, it is indisputable that this amount is on the rise. In fact, in the past 10 years, it is unquestionable that these figures have surged. Such surreptitious practices, when perpetrated by senior state officials within frail legal systems; weak institutional mechanisms; and exacerbated by the absence of the rule of law, do render the corruption conundrum more complicated to overcome (Fofack, 2012, pp. 29–34). Moreover, some senior state officials would find different ways of covering up their illicitly acquired wealth (or precisely, embezzled funds) by presenting their ill-gotten gains as coming from a legitimate source. They do this by inserting those gains in the economic circulation through the transfer of funds across national borders.

This paper argues that Western and other foreign-based financial institutions that knowingly facilitate the disposition of embezzled funds and stolen assets from African States are complicit in
the commission of corruption in Africa. It argues that such financial institutions are critical players and contributors to the plight of underdevelopment and misery that have plagued most of Africa and left millions in chronic and abject poverty (poverty that kills). Such persons (both natural and juristic) are as impeachable as the principal offenders as they offer safe havens for these stolen funds to be channelled to them without a trace.

Against this background, this paper argues that foreign non-African governments have a critical and priceless role to play in the fight against corruption in Africa. In other words, Africa’s fight against corruption cannot be waged by African States themselves only: they need the involvement and participation of non-African States given the fact that the perpetration of corruption itself is sometimes facilitated by financial entities that are located without the African continent. Non-African States must partner with Africa in their fight against corruption. This is a legal and moral imperative that is sourced from the different international instruments on corruption which, as discussed below, stipulate the different approaches that can be used to fight cross-border corruption: an international crime like piracy; terrorism; trans-boundary movement of hazardous wastes; etc. Furthermore, as argued below, there is a strong case for the involvement of foreign governments in Africa’s fight against corruption.

International instruments on corruption indicate different approaches that could be used by state parties thereto, in order to recover stolen assets. Such approaches, among other things, contemplate and reflect the fact that grand corruption, even when committed only within the borders of a particular state, seldom ends therein. The proceeds of corruption, especially grand corruption perpetrated by senior state officials, transcend both national and continental borders, which makes it very difficult for them to be traced and recovered (Monteith & Dornbierer, 2013, p. 12). As such, Africa’s efforts to combat corruption, no matter how good-willed they may be, will encounter significant hurdles unless they are backed by the active involvement of foreign governments. There are very compelling reasons why the fight against corruption is not only imperative and urgent but also requires the involvement of foreign governments, which are seen as safe havens for the stolen assets. When financial institutions provide offshore havens where these assets are hidden, it makes it difficult for a state to detect and recover them. Senior state officials in Africa who engage in corrupt practices do so on a very high scale, involving huge sums of monies. Since their local economies are deprived of these resources, development is stagnated and hijacked, maintaining the status quo with the adverse effects suffered by the vast majority of the people. If Africa's development is a serious concern to non-African states, then, they must play an actively significant role in combatting corruption in Africa. As an international crime, corruption requires the collective collaborative effort of every State in order to overcome and defeat it. In fact, as an international crime that has been the subject of some multilateral international instruments, there is an obligation to assist in cases of corruption. This obligation emanates from these international instruments, whose scope, for the sake of space, is delineated synoptically below.

This paper is structured as follows: first, it gauges the impact of corruption on Africa. After making a case for the involvement of foreign non-African governments in the fight against corruption in Africa, the paper then find answers to the how question: the approaches and strategies that can be put in place by foreign non-African and African governments in partnership in the fight against corruption in Africa. Lastly, it concludes with the argument that the fight against corruption in Africa requires a holistic approach that touches on numerous pertinent aspects and irrespective of the efforts made, there is the much needed political that stands as the greatest arsenal in the fight against corruption because the adoption and implementation of the approaches discussed herein will be ineffective and futile if the requisite political will is absent.

2. A synoptic discussion of the adverse ramifications of corruption
Greenberg et al. aver that African States, wherefrom these funds and assets are stolen do encounter challenges when investigating, prosecuting, tracing and recovering assets or funds together with their proceeds therefore (Greenberg et al., 2009, p. 7). The challenges are due to
lack of legal, investigative, and financial resources together with limited judicial capacity (Greenberg et al., 2009). Act(s) of embezzling, misappropriating or stealing of funds and their illegal transfer thereof, coupled with the inability of a state to recover the funds or assets, undoubtedly, has a negative impact on the state where the funds originated or where they were stolen from. The transfer of ill-gotten funds obtained through acts of theft or misappropriation, together with laundering of money may be associated together since the object of these practices is to conceal and/or disguise the origin of the funds by transferring them to foreign territory with complicated or secretive tax systems (Turner, 2011, p. 164).

In an effort to disguise their illicit gains or proceeds, launderers divert their funds from one economic venture to another with no motive to make profit (Aluko & Bagheri, 2012, pp. 442–457). One of the many ways to do this is to invest their ill-gotten funds in economic and commercial ventures (Aluko & Bagheri, 2012). The investments pursued by launderers are not necessarily high profit-generating investments but rather, investments that will allow their proceeds to be recycled despite the low rate return (Aluko & Bagheri, 2012). This kind of activity by launderers has a negative effect on the exchange and interest rate of a state because the large inflow and outflow of capital artificially accentuates the laundering process (Aluko & Bagheri, 2012).

African societies serve as eloquent testimonies of the effect of corruption on a people. For numerous African societies entrenched in underdevelopment, which is made worse by limited resources, the transfer of funds from such an economy to another state devastates such economies. Such funds, ordinarily, were intended for development projects such as the construction of roads, schools and provision of equipment to medical institutions, among others (OECD, 2014, p. 23). These would, undoubtedly, improve the quality of life of the people. Moreover, depriving these economies of such funds would slow down investment and put unemployment on the surge. In cases where the funds are redirected back to the state of origin, they are often invested on luxurious and prodigal lifestyles with no benefit to the broader public and national economy that was bereft of the funds (OECD, 2014).

Secret financial transactions adversely affects social welfare and widens the gap between the rich and the poor: the rich get richer and the poor get poorer. Furthermore, such transactions cause distributional consequences for the poor by deepening income inequality and, at the same time, benefiting the political elites and a fraction of those who are part of the urban population connected to those in the political arena or political establishment.

The effects of such unscrupulous transactions devastate society in various ways. When government officials, particularly senior public officials, embezzle, misappropriate or steal public funds or assets, the obligations of a state towards its people is compromised; and the poverty-stricken or underprivileged members of society often endure the consequences of such criminal conducts. The impact is even more amplified when the funds are transferred to the Western hemisphere, which cripples the economy and affects the nation at large.

To understand the chain between illicit transfer of public funds to foreign territories and its effect on society, the case of Nigeria is considered. With the largest population in Africa, the State is the second largest export economy in Africa. In 2015, Nigeria exported over US$ 45 billion with its top export being crude petroleum. Despite this, Nigeria is considered the poorest in the world, with an estimated 80 million people (or 64% of its population) living below average. Clearly, the unemployment and poverty rates in Nigeria are disturbingly very high for a State that is considered one of the largest export economies on the African continent. The question that is asked is as follows: what accounts for this situation? Wealthy in export but poorest in distribution of income? Obviously, the numerous scandalous financial transactions involving senior state officials in Nigeria are an indication of the effects of these on the society and the economy. These scandals include the following: misappropriation; theft and embezzlement of public funds; and the subsequent illicit transfer thereof. There are several senior public
officials in Nigeria who have been investigated and found guilty in the past for stealing public funds and later concealing the ill-gotten funds by transferring them to Western States. To gauge the impact of such stolen funds on Nigeria’s development, these figures are considered: following the 2010 arrest of James Ibori by the United Kingdom police on stealing charges, the accused, together with his acquaintances were convicted. The United Kingdom court gave confiscation orders against Ibori and his sister Cristine Ibori-Ibie and his associate, Udoamaka Onuigbo amounting to the following sums: GBP 5.1 million (US$ 6,460,500.00); GBP 829,786.44 (US$ 1,072,167.06) and GBP 2.7 million (US$ 3,488,670.00) (Ayogu & Agbor, 2014, p. 351). The Sani Abacha case is another example worthy of illustration. After thorough investigations were conducted, a Special Investigation Panel (hereinafter SIP) revealed that 36 transfers worth US$ 386 million were made by the family (Monfrini, 2008, p. 44). Moreover, with the help of the Swiss Government, assets worth about US$ 83 million were blocked from bank accounts in Geneva and Zurich. At least US$ 2.3 billion have been recovered (Massa, 2014, p. 228). Considering the amounts of funds that have been stolen and recovered from the above-mentioned individuals only, the total of the stolen funds could amount to over US$ 2 billion, which, in essence, could have contributed to some development in Nigeria.

Corruption undermines financial institutions and policies. In 2013, the Global Financial Integrity, a non-profit Washington DC-based research and advisory organisation estimated a significant amount to be drained out of developing states to be roughly US$ 1 trillion in illicit financial outflows due to corruption and tax evasion. In addition, it revealed that the money siphoned out of these states often ends up in developed states like the United States, United Kingdom, and specific “tax havens” such as Switzerland; the British Virgin Island, and Singapore.

The illicit transfer of a state’s resources affects its financial systems and policies as its weak institutional, legislative, and administrative capacity are exploited by corrupt perpetrators for their own personal advantage. Ultimately, this leads to weakening governments’ role towards its people, erosion of the willingness of citizens to work and pay income taxes, evasion of taxes, gradual fading of investors’ confidence in the system and government’s accountability to its people.

Successful transfer of stolen assets from a state to other states is evidence of the inability or unwillingness of the legal system, including law enforcement, to detect, stop and prosecute perpetrators. The imposition and payment of all kinds of taxes in an economy are regulated by laws and policies. To evade the payment of taxes and siphon taxes that are paid to state coffers deal a devastating blow on the state’s revenue.

3. The obligation to render assistance to “victim” African States

A careful examination of international instruments on corruption highlights the existence of the obligation to render assistance to victim states, that is, the states wherefrom the assets or monies have been stolen. These instruments include the following: the United Nations Convention Against Corruption (hereafter the UNCAC); the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (hereafter the OECD Anti-Bribery Convention); the African Union Convention on Preventing and Combating Corruption (hereafter the AUCPCC); the Economic Community of West African States (hereafter ECOWAS) Protocol on the Fight against Corruption; the ECOWAS Convention on Mutual Assistance in Criminal Matters; and the Southern African Development Community (hereafter SADC) Protocol on Mutual Legal Assistance (hereafter the MLA) in Criminal Matters. These international instruments, at global, regional and sub-regional levels, do highlight the importance of foreign legal assistance in the fight against corruption. A brief discussion of them is necessary.

3.1. The United Nations convention against corruption

In the Preamble to the UNCAC, it is stated that the UNCAC was created, among other things, “to prevent, detect and deter in a more effective manner, international transfers of illicitly acquired assets and to strengthen international cooperation in asset recovery” through the promotion,
facilitation and support of international cooperation and technical assistance to prevent and fight corruption (including asset recovery).

Chapter III of UNCAC criminalises certain conduct as being corrupt and further provides that State Parties must adopt legislative and other measures to establish the conduct as criminal offences. Chapter IV is centred on international cooperation, while Chapter V provides for the recovery of assets. Apart from the UNCAC provisions on how states can recover assets, the OECD Anti-Bribery Convention also paves the way for asset recovery.

3.2. The OECD Anti-Bribery Convention

One of the purposes of the OECD Anti-Bribery Convention is to reduce corrupt transactions in developing states through the encouragement of sanctions against bribery in international business transactions carried out by companies (Laraye, 2002, p. 279). Article 9 of the OECD Anti-Bribery Convention makes provision for MLA between State Parties. The Article (together with Article 46 of UNCAC) provides for a process that allows jurisdictions to “seek and provide assistance to other jurisdictions in the gathering of evidence, investigation and prosecution of criminal cases, and in tracing, freezing, seizing and confiscating proceeds of crime.” Once a request is made, the requested state is under an obligation to cooperate.

South Africa is the only African State that has ratified the Convention. Over and above, African States must consider ratifying the Convention to ensure that foreign governments aid in curbing corruption. Considering the fact that it is the only African State that has ratified the OECD Anti-Bribery Convention, South Africa is a G20 Member: a forum aimed at promoting international cooperation between states by bringing leaders, finance ministers and central banks to discuss issues related to the global financial system (Gür, 2015, p. 9). In order to curb corruption, it is imperative for MLA to be effective in ensuring successful investigations and prosecutions for transnational cases and for asset recovery. To ensure the effectiveness of MLA, G20 and non-G20 states have developed principles and identified mechanisms that have proved to be useful in addressing MLA barriers encountered by states. Due to the diversity of legal systems of G20 states, these principles are not only broadly framed, they are changeable to enable states to use them in line with their legal system.

Despite the existence of principles aimed at ensuring that international cooperation between states is efficient and successful in combating corruption, there are challenges that could be encountered by states from time to time (OECD, 2012, pp. 25–44).

There are three steps to be adhered to when drafting a request for MLA as follows:

(a) Step 1: Preparing for MLA. In this first step, the requesting state must thoroughly look at six (6) distinct issues: “whether to use MLA channels or another intelligence or informal method of cooperation; timing for submitting the request for MLA; status of the authority requesting MLA; type of assistance sought, legal basis for the request; and criminal offence(s) under investigation” (Pereira, 2015, p. 53);

(b) Step 2: Drafting the MLA. The request must contain basic identification information, facts of the case, description of the assistance sought, objectives of the request, any procedure and

(c) Step 3: Submitting a request for MLA. The requesting state needs to decide on the form of the transmission to communicate the request in question: whether it will be transmission via diplomatic channels or central authorities, or direct transmission (Pereira, 2015, p. 53).

3.3. The African Union Convention on Preventing and Combating Corruption

In an attempt to prevent or combat corruption, the AUCPCC provides for foreign government cooperation and MLA in Articles 18 and 19. As stated therein, State Parties are required to provide to each other technical co-operation and assistance when requests are made from national
authorities on the instruction to prevent, detect, investigate or punish corrupt practices. Olaniyan postulates that the AUCPCC requires states to co-operate and encourage each other in taking necessary measures to prevent public officials from enjoying their ill-gotten assets through the freezing of their foreign accounts and facilitating the repatriation of stolen monies to the states of origin (Olaniyan, 2004, pp. 74–92). Cooperation among State Parties under the AUCPCC also includes conducting and exchange of studies, expertise and researchers on corruption-related issues, creating programmes and codes of ethics or organising joint training courses in an effort to address corruption related matters (Olaniyan, 2004, p. 82).

3.4. The ECOWAS Protocol on the fight against corruption

The ECOWAS Protocol on the Fight against Corruption was adopted amongst other things, to promote and strengthen effective mechanisms by State Parties to prevent, suppress and eradicate corruption; to promote, harmonise and coordinate national anti-corruption laws and policies. In addition to these, the Protocol seeks to intensify and revitalise cooperation between State Parties in order to make anti-corruption measures more effective. Articles 13 and 15 of the ECOWAS Protocol on the Fight against Corruption address matters relating to the recovery of assets.

3.5. Ecowas convention on mutual assistance in criminal matters

Member States of ECOWAS maintain that the adoption of common rules on mutual assistance in criminal matters will contribute in the development of integration. For this to be realised, states need to extend the widest MLA to combat offences, particularly serious crimes. Article 2 of the ECOWAS Convention outlines ways through which Member States may provide assistance. In addition, the ECOWAS Convention affords Member States the opportunity to refuse providing assistance from a requesting state subject to Article 4.

3.6. SADC protocol on MLA in criminal matters

SADC Member States share sentiments similar to those of ECOWAS that the adoption of common rules on mutual assistance in criminal matters will contribute in the development of integration. This led to the establishment of a protocol on mutual assistance as a mechanism to adopt common rules on mutual assistance in criminal matters. The Protocol sets out the scope of the assistance and further creates an obligation for State Parties to provide each other with “the widest possible measures of MLA in criminal matters”. Despite the Protocol focusing on developing integrations, ensuring that assets are returned to a victim state and that criminal liability is imposed against perpetrators of corrupt practices in the SADC region, Article 6 of the Protocol sets out grounds on which a State Party may refuse to provide assistance.

As discussed above, the adverse impact of corruption on Africa, especially the fact that it stagnates its development; widens the gap between the rich and the poor; assaults democratic values and norms and compromises the respect for human rights, do all make it a moral imperative for foreign governments to enjoin Africa in its fight against corruption. In addition, the international instruments mentioned above do indicate that there is a legal obligation imposed upon States to render different kinds of assistance to other States in the fight against corruption. This is especially so given the inherent weaknesses suffered by some States in accomplishing such a goal—weaknesses such as a poorly capacitated law enforcement personnel; the lack of know how; the inadequacy of resources in this regard. If foreign governments have to render assistance to African States to fight corruption, the next question is how can this be done? The following discussion outlines the numerous ways through which non-African governments can help Africa in its fight against corruption.

4. Different ways of rendering foreign assistance to African States

Despite the fact that the aim of the numerous multilateral agreements established over the years was to guide and assist states in curbing corruption and recovery of assets or funds, states continue to encounter challenges. Generally, both African and non-African states are often victims of amassed wealth being hidden by corrupt senior officials. However, Western states in particular,
such as the United Kingdom, Switzerland and the United States of America, are ideal destinations to hide ill-gotten gains. When ill-gotten wealth is hidden in the West, African states rely on these Western Governments to assist in the recovery of the assets or funds. Since Western territories are used to hide illegally obtained wealth, foreign governments, together with their banking or financial institutions, must be mindful of their obligations to African States on matters relating to the freezing, seizure, confiscation and recovery of assets.

4.1. Conclusion of bilateral and multilateral agreements on foreign assistance regarding combating corruption

There are instances wherein punishable conducts such as money laundering, financial terrorism; bribery; fraud; and misappropriation of assets or funds are committed beyond the borders of a state. In such instances, cooperation between the affected states is required not only to combat these practices but most importantly to ensure that individuals involved are held accountable. Generally, cooperation between states is crucial particularly for African States where resources used to recover hidden assets or funds in foreign territories are limited or restricted.

The assumption in the eradication of corruption is that no state may combat corruption without the assistance of another; hence, international cooperation is necessary and crucial. The extent of expected cooperation cannot be measured because states have different experiences on the effects of corruption. It is safe to argue that first world states are capable of controlling corruption, investigating, prosecuting and convicting corrupt individuals; together with freezing, seizing, confiscating and recovering assets hidden in foreign territories. The mishap here is that some African countries like Equatorial Guinea; Nigeria and Angola are handicapped by limited or no resources to investigate corruption-related cases, freeze, seize and recover assets or funds. This makes interstate cooperation critical in the detection, tracing and recovery of stolen funds and assets lodged in non-African financial institutions. Having said this, foreign governments must be encouraged and not be reluctant, to enter into agreements or any means of cooperation with African states. Such cooperation agreements will not only assist African States in combating corruption; in fact, relations between the states in question will be established and strengthened.

To illustrate the importance of cooperating between states, Nigeria and the United Kingdom signed an agreement on the recovery and repatriation of assets. Robert Goodwill, Immigration Minister and Abubakar Malami, Nigerian Attorney-General, signed a Memorandum of Understanding reinforcing the states’ commitment to continue cooperating and supporting each other in the return of seized proceeds of bribery. The two States have a mutual understanding that the money to be returned should not revert into the hands of the criminals. As a matter of fact, Nigeria vowed to ensure that the money returned will be used to improve the livelihood of the poorest members of the society and improve access to justice for all Nigerians. These States share the same sentiment that honesty and transparency are important factors for the sustenance of confidence and cooperation between them.

4.2. Enactment of national laws regulating the transfer of funds

Offshore accounts are often facilitated by making use of electronic payments, and though efficient and easy to use, this type of payment system has disadvantages, thus contributing to the perpetration of corrupt practices. There are various forms of electronic banking, one of which is the electronic payment system, which is a money launderer’s dream as it offers ample range to imitate patterns and behaviours of a legitimate transaction. Due to the nature of the system, there is no obvious institutional and functional separation, which can be made between legitimate and illegitimate transfer of money, and so it becomes virtually impossible to differentiate between the two transactions.

Another electronic banking system is on-line banking (Unger & Busuioc, 2007, p. 104). One of the main reasons launderers prefer on-line banking is because it enables them to avoid having to go to the bank and complete various forms. Most importantly, this banking service makes it difficult to trace the operator of on-line banking accounts, especially if they never go to the bank (Unger & Busuioc, 2007).
Another banking system preferred by launders is known as e-cash or electronic transactions services. This banking system makes it difficult to trace a transaction compared to on-line banking transactions, mainly because the transactions made are capable of flowing around the world which makes it twice as hard for authorities to detect (Unger & Busuioc, 2007).

Though convenient, internet banking or e-banking could be misused by money launderers and other individuals. One of its many challenges is that face-to-face contact with a customer cannot be possible (Schaechter, 2002, p. 20). This is problematic because when suspicious transactions are being made to a bank account, it may be difficult to determine if the transaction is being made by the nominal account holder or not (Schaechter, 2002). Moreover, it may also be a challenge for other financial institutions to determine where the transaction was made (Schaechter, 2002). In the place of face-to-face contact, financial institutions need to establish policies or regulations aimed at scrutinising the identity of an account holder and monitoring the transactions made in order to detect, prevent and eradicate money laundering or wrongful transfer of ill-gotten funds or assets and their proceeds thereof (Schaechter, 2002).

It is without a doubt that at times, there could be instances where physical recognition may be impossible to implement, thus it is important for banks to provide alternatives. For example, the Bank of France has established additional verification steps which includes asking for additional documents (including copies of both sides of identity card and passport, two original payslips, original or latest electricity or gas bill or cancelled cheque) to prove the customer’s identity to open accounts in France (Schaechter, 2002, pp. 20–21). If banks are not eager to develop policies aimed at identifying their potential clients, they are at liberty to take firm measures. For example, Spain has strict regulations and policies as to who can make use of their on-line banking services (Schaechter, 2002, p. 21). In Spain, only customers who have already been in an identified traditional relationship with their bank may make use of on-line banking (Schaechter, 2002). This regulation eliminates major risks that could occur when a banking customer intends to create an account online.

States that are prone to being used as safe havens should consider enacting strict laws to allow their financial institutions or banks to regulate electronic transactions made by individuals in other states. Moreover, where a bank has reason to believe that a transaction is suspicious, a report to relevant authorities must be made so that, where necessary, investigations must be initiated. Furthermore, if illicitly obtained assets or funds were transferred, they must be timeously recovered together with their proceeds and returned to the state of origin.

4.3. Monitoring of banking activities conducted by intra-state banks

When a foreign bank has a client from another state, particularly when the transactions involves copious funds, it is important for such a bank to be able to monitor the account(s) of its client. That is, the bank must know its client and whom its client is connected to directly or indirectly. Such scrutiny makes it possible for a bank to determine or detect if its client is a launderer, moreover, it will make it extremely difficult for future launderers to transfer their ill-gotten wealth. The problem, however, is that, in many instances, banks or financial institutions resist to know their customers and their connections, especially if it will put them at a competitive disadvantage since thorough investigations of clients, even though legitimate, could trigger clients to bank elsewhere. Though this may be a fairly-minded reason in the competition arena, the reluctance by banks goes far beyond creating a competitive disadvantage for them. In fact, if their reluctance led or leads to illegal transactions being made, their conduct could easily imply that they are colluding with launderers or any other person who moves or hides their ill-gotten wealth and their proceeds.

4.4. Establishing intergovernmental networks aimed at sharing information

Money laundering is a transnational crime and one of many conducts increasing levels of corruption. To detect it and hold its perpetrators liable, states must cooperate with each other and
exchange information useful for investigative purposes, prosecution, recovery and forfeiture of assets or funds (Joseph, 2001, pp. 11–14).

4.5. Monitoring and regulating international credit transfers
Banks or financial institutions, particularly those in the West, should monitor international credit transfers in order to detect suspicious transactions and ensure that individuals do not transfer funds or assets with which their source of origin is questionable. Acknowledging that international credit transfers involve money being transferred from one bank to another, i.e., from a local bank and a bank in a foreign territory; these institutions should monitor such transactions in accordance with the United Nations Commission on International Trade Law (hereafter the UNCITRAL), which developed rules for international credit transfer of funds (Giorgetti, 2011, p. 290).

Chapter II of UNCITRAL sets out the obligations of the parties. Article 7 sets out instances where a payment order by a receiving bank other than the beneficiary’s bank can be accepted or rejected, while Article 9 provides for instances wherein a beneficiary bank may accept or reject a payment order.

Generally, international credit transfers involving large amounts of funds are often done electronically (Laryea, 2002, p. 141). The scope of UNCITRAL is not restricted to electronic credit transfers even though “it was the explosive growth of electronic credit transfer system” that led to the creation of the law in the first place. The reason why the Model Law is not limited to the electronic credit transfers is because many credit transfers begin with a paper-based payment order followed by an inter-bank payment order in electronic form. Though easy to use, electronic transfer system has its disadvantages, and one of the main reasons is that the sender of the funds may not be easily identified. In such instances, Articles 7(3)(c) and 9(2)(c) provide for solutions when a credit transfer has to be made and the sender is unidentifiable or where information of the sender is unsatisfactory or lacking.

It must be understood that interstate transfer of funds is not prohibited. What makes such transfers illegal is when individuals transfer illicitly obtained funds. It is not unusual for senior public officials to embezzle or steal from public funds, transfer such funds from one foreign bank account to another in an effort to hide the origin of the funds or to simply hide the funds. To address this problem, states must be urged to enact laws aimed at monitoring credit transfers so that suspicious transactions could be detected and where there are reasonable grounds for an investigation to be conducted, it must be done timely.

4.6. Encouraging inter-bank collaboration and cooperation within and beyond African
It could be argued that banks or financial institutions can find themselves explicitly or implicitly contributing to the escalating levels of corruption. They may do this by providing banking services to corrupt public officials or any other person to transfer or hide stolen or illicit funds. A bank’s role in the perpetration of corruption is not limited to its involvement or relationship with its clients. Banks can also engage in acts of corruption among themselves, for example, through collusion or price-fixing. It is important for laws, regulations, or agreements to be established to ensure that transactions made by different banks in different territories, do not amount to a wrongful or illegal conduct aimed at yielding private gains for the bank or any other third party. For example, the Basel Committee on Banking Supervision established 29 Core Principles for Effective Banking Supervision. Some authors are of the view that the Basel Committee is a group of international banking supervisory authorities established by governors of central banks of the Group of Ten States whose purpose is mainly to “enhance understanding of key supervisory issues and improve the quality of banking supervision worldwide” (De Haan et al., 2009, p. 100).

With existing corruption cases involving African banks, the African Central Banks may concoct principles, agreements or policies aimed at managing transactions among themselves or transactions between themselves and other banks across the globe.
4.7. Initiative process for the recovery of assets and funds

Foreign governments should take the initiative to assist African States in recovering illicitly obtained assets or funds. For example, during the 2011 Arab uprisings, the Swiss government took an initiative (without waiting for a request for MLA) and decided to be the first state in the world to freeze assets owned by Ben Ali, Mubarak and their associates held by its financial institutions (Adam, 2012). Innovation, p. 260). The instantaneous measure by the Swiss government was based on two main reasons: firstly, to avoid movement of any illicitly acquired asset from one financial centre to another in an effort to evade justice; and secondly, to signal the states of origin or victim states that the Swiss government shall accept requests for international MLA for misappropriated assets be returned (Adam, 2012). Innovation, p. 261).

4.8. Development and enactment of national laws on the freezing, seizure and confiscation of stolen funds and assets

A few writers are of the view that before assets or funds are recovered or returned to their state of origin, two processes which include freezing and confiscation, seizure, or forfeiture, need to take place (Brun et al., 2011, pp. 5–8). These processes are important for the following reasons: on the one hand, when a foreign government freezes illicit funds or assets transferred to its territory, it prevents the perpetrator or any other person from using such funds or from further imminent transfers. On the other hand, assets or funds are seized, forfeited, or confiscated in order to frustrate the perpetrator from using them, together with their proceeds. To ensure that the amount or equivalent value of the assets or funds, together with their proceeds are returned to the state of origin, the foreign government in question must enact laws explicitly stipulating the importance of such processes, how they will be conducted, how assets and funds will be returned and international cooperation.

For example, the Federal Council of Switzerland enacted the Foreign Illicit Assets Act (hereafter the FIAA) which has been in force since 1 July 2016. Section 3 of the Act of the FIAA sets out support measures provisions. The section urges the Confederation, within its efforts, to provide assistance to the state of origin to obtain restitution of the frozen assets. With reference to the Federal Department of Foreign Affairs (hereafter the FDFA) and the Federal Office of Justice (hereafter the FOJ), after consulting with one another may provide technical assistance to the state of origin. Furthermore, Article 13 of section 3 of the FIAA provides for the transmission of information to the state of origin.

4.9. Observation and implementation of the recommendations of the Financial Action Task Force (FATF)

In 1989, an intergovernmental and “policy-making body” on the promotion of the necessary political will among states to bring out national legislative and regulatory reforms within their borders was established (Penna, 2017, p. 269). The FATF was created to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, financing terrorist activities, financing of the proliferation of weapons of mass destruction and other related threats to the integrity of the international financial system (Penna, 2017).

Since its establishment, the FATF has developed recommendations for Western, Eastern and African States, which have been accepted as international standards for combating money-laundering, financing terrorism and proliferation of weapons of mass destruction.

4.10. Suppression of bank secrecy laws

When a bank–customer relationship has been established, one of the conditions of the relationship is that a bank is prohibited from providing any information concerning its customer. This may include account information by disclosing or making any enquiry on the deposits or transactions made by the client to the bank or the disclosure of personal information.
Bank secrecy laws create an obligation to a bank and serve as a privilege afforded to a bank customer that his information will be legally protected from being invaded by third parties (Ping, 2004, p. 376). Balancing the obligation and the privilege on the one hand and combating corrupt practices such as money laundering on the other, could be difficult for financial institutions. It is no doubt that secrecy laws are important and necessary, however, they have been or continue to be misused by individuals who desire to profit more than they should. Several individuals, ranging from senior public officials, successful entrepreneurs and the mafia, prefer states with strict secrecy laws, or states that have weak currency, run-away inflation rates or states simply plagued with instability, in order to shield them from financial loss or protect their wealth (Ping, 2004).

An ideal business environment for money launderers is one which income, cooperate and inheritance tax does not exist, together with the inexistence of exchange control laws and where secrecy laws prohibit an enquiry into the ownership of bank accounts. One of the key issues launderers consider before transferring funds or assets is whether the potential jurisdiction emphasises on banking secrecy and if they offer protection on their assets and anonymity. This enquiry is very crucial for those who wish to hide their money and ensure that it is beyond reach by law enforcement.

Offshore banking involves international banks, major investment firms and accounting firms (Salinger, 2005, p. 580). Due to the special private banking services they provide, they attract “big-money” customers, who roughly, fall within the US$ 50 million to US$ 100 million dollar range of assets and who later take advantage of the bank’s discretion and overseas laws (Salinger, 2005). Offshore bank accounts offer a high degree of confidentiality which is ideal for tax invaders, terrorists, arms and drug traffickers and corrupt politicians or public officials; hence such individuals are drawn to banks that offer anonymity to its customers (Salinger, 2005). Though they may be used for legal services, offshore accounts are perfect for those who yearn to profit from money laundering, fraud, corruption and tax evasion (Salinger, 2005). With many individuals exploiting banking secrecy laws to hide their ill-gotten wealth and/or evade tax, confidential clauses must not be seen as being absolute. In fact, banking secrecy laws must be lifted so that the imposition of criminal or civil responsibility may be effective and efficiently imposed against corrupt individuals. It is, therefore, imperative for efforts on anti-money laundering and financial crimes to address issues of bank secrecy.

In addressing bank secrecy provisions, Article 17 of the AUCPCC urges State Parties to take necessary measures to empower its courts and authorities when ordering confiscation or seizure of banking, financial or commercial documents. Moreover, it provides that “State Parties shall not invoke banking secrecy to justify their refusal to corporate with regard to acts of corruption and related offences”. Lastly, it urges State Parties to enter into bilateral agreements that waive banking secrecy on doubtful accounts and allow competent authorities to have the right to obtain, under judicial power or any evidence from banks and financial institutions.

4.11. Exercise of soft-co-optive power by foreign governments
Nye defines power as “the ability to do things and control others, to get others to do what they would not” (Nye, 1990, pp. 166–167). Nye further defines soft power as the “power which occurs when one state gets other states to want what it wants” through intangible power resources such as culture, ideology, and institutions. When a state presents this power as legitimate, and when its culture and/or ideology, is attractive, there will be less resistance by other states in that, the latter will willfully follow (Nye, 1990). In other words, for a state to possess this kind of power, other states must admire its values, they must wish to follow it, and must aspire the level of prosperity and openness of that particular state (Nye, 2007, p. 391).

One cannot ignore the fact that Africa was subjected to hard power by Western states, which brought about colonialism. Although one cannot erase the injustices of the past, Africa, as a united continent, can look past these injustices and uncover its potential to develop. Since many of its states have gained independence, the first step to development is acknowledgement that African
states have limited or restricted anti-corruption resources; hence, assistance from developed states such as the United Kingdom, Switzerland and the US is important.

When a state exercises soft power against another state, the outcome will benefit both states, for instance, the Democratic Republic of Congo and Switzerland. Congo is considered among the wealthiest states in the world in terms of untapped natural resources estimated to be worth US$ 24 trillion dollars and is the second largest diamond producer. Sad to say, with all its wealth, the State is one of the poorest states in Africa with a large portion of its population living on less than a dollar a day. In addition to this, Congo is among the worst corrupt states in Africa, ranked 156th out of 176 states by Transparency International in 2016. Between 2012 and 2016, its economy grew only 3% on average and in 2016, its inflation accelerated to 4.5%. Switzerland, on the other hand, is among the least corrupt states in the world ranked 5th out of 176 states by Transparency International in 2016. It is one of the world’s most stable economies. Switzerland has a low unemployment rate, high skilled labour force, and is considered to have one of the highest Gross Domestic Product in the world (Starchild, 1994, p. 127).

The common factor between these two States is corruption. With that in mind, it is how the two States dealt with corruption that yielded different results. As one of the least corrupt states in the world, Switzerland could consider exercising soft power against Congo. On the one hand, though it has a stable economy and one of the highest GDP in the world, there is room for economic improvement for Switzerland and it could achieve this through the importation of natural resources, such as diamonds, from Congo. On the other hand, Congo could learn and adopt Switzerland’s anti-corruption practices and could be assisted in developing and structuring anti-corruption laws and institutions. Moreover, with Switzerland being a safe haven for corrupt (senior) officials such as Mobutu Sese Seko, who stole at least US$ 5 billion from the national treasury and hid in foreign bank accounts, Congo will receive future assistance from Switzerland for the freezing, seizure and confiscation of ill-gotten wealth (Minkov, 2011, p. 58). Most importantly, the recovery of funds or assets, could be used to improve its economy and infrastructure, while simultaneously creating employment and evidently decreasing the rate of poverty in the State. Simply put, there are considerable amounts of benefits which Congo could receive if Switzerland could consider exercising soft power towards the State.

5. Conclusion
In the foregoing discussion, we have recognised that African States are mired in a complex battle to defeat an invisible enemy (corruption) that has cancerous effects on national institutions and society. Undeniably, even though numerous national institutional mechanisms and municipal pieces of legislation are in place for the purpose of eradicating corruption, these efforts are not generating the much-expected results for two key reasons: first, African States must acknowledge that the fight against corruption within their nations requires the involvement of non-African governments, especially those to which the stolen funds and assets are surreptitiously wired to. This is not only vital for the success of this fight—it in the end translates to a mutual partnership for development as these assets and funds can be repatriated to the victim state so that they can be used for its social and economic development. In this regard, we identified and discussed the various ways through which these foreign governments can be of assistance. Put simply, a holistic approach in this struggle is likely to be more effective than African States embarking on it solo. Secondly, to fuel foreign government assistance in the fight against corruption, there is the need for political will—a conditio sine qua non (an indispensable condition) that has remained amiss so far, and which partly explains why other efforts are not yielding any tangible results.

Having gauged the impact of corruption and the trends in which it is committed across the African continent, it is our hope that non-African governments enjoin Africa in its fight against corruption by putting in place measures that restrict illicit transfers of assets and funds thereto thereby making them safe havens of illegally acquired wealth and depriving the victim African State of the resources needed to pursue sustainable socio-economic and political development.
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Author details
Anzaniulufuro Munyai1
Avitus Agbor Agbor2
E-mail: aagbor@gmail.com
1 Faculty of Law, University of Johannesburg, Johannesburg, South Africa.
2 Faculty of Law, North-West University, North-West, South Africa.

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